

ADVISORY COUNCIL OF JURISTS

Terms of Reference on the legal obligations of States for the implementation of economic, social and cultural rights, with respect to the right to education.

The Asia Pacific Forum of National Human Rights Institutions refers to the Advisory Council of Jurists to advise and make recommendations as to international law, instruments and standards relevant to the legal obligations of States for the implementation of economic, social and cultural rights, with respect to the right to education.

In particular the Advisory Council of Jurists is asked to consider:

- (i) how international law, standards and mechanisms define the ‘right to education’, including with reference to the obligation to *respect, protect, promote* and *fulfil* the right to education.
- (ii) the nature and scope of the obligation to undertake steps by all appropriate means, including legislative measures, and the requirement to avoid retrogressive measures. Consideration should be given to the following interrelated and essential features of the right to education: *availability, accessibility, acceptability* and *adaptability*. The Advisory Council of Jurists is asked to be mindful of fundamental issues including the minimum age of employment, marriage and criminal responsibility.
- (iii) the question of the justiciability of the right to education;
- (iv) the nature and scope of the obligation to prioritise the introduction of compulsory and free primary education for all and to achieve progressively the full realisation of secondary, higher and fundamental education;
- (v) the nature and scope of the obligation of the State to use the maximum of its available resources;
- (vi) the nature and scope of the obligation to ensure non-discrimination and equality of opportunity in access to education, including access to education for non-nationals, refugees, internally displaced persons, people living with disabilities and other minorities;
- (vii) the nature and scope of the obligation to ensure gender parity and gender equality in education;
- (viii) the nature and scope of the obligation to respect religious and cultural practices within schools and other educational institutions;

- (ix) the nature and scope of the obligation to provide quality education and to establish minimum education standards and an effective and transparent system to monitor such standards;
- (x) the nature and scope of the obligation of the State, within the context of the right to education, to ensure the realisation of the right to human rights education for all;
- (xi) the nature and scope of the obligation to ensure academic freedom and the autonomy of educational institutions;
- (xii) the nature and scope of the obligation to respect parents and legal guardians' freedom of choice of educational institution and educational program;
- (xiii) the nature and scope of the obligation of States to receive and to provide international assistance and cooperation;
- (xiv) the nature and scope of the obligation of non-state actors, including international financial institutions and trans-national corporations, to protect and promote the right to education.

Relevant international instruments include but are not limited to:

- (i) Universal Declaration of Human Rights;
- (ii) International Covenant on Economic, Social and Cultural Rights;
- (iii) International Convention on the Elimination of All Forms of Racial Discrimination;
- (iv) Convention on the Elimination of All Forms of Discrimination Against Women;
- (v) Convention on the Rights of the Child;
- (vi) Convention Against Discrimination in Education;
- (vii) Minimum Age Convention 1973
- (viii) Worst Forms of Child Labour Convention 1999

The Advisory Council of Jurists may wish to consider:

- (i) General Comment No.3 of the Committee on Economic, Social and Cultural Rights: The nature of States parties obligations
- (ii) General Comment No. 13 of the Committee on Economic, Social and Cultural Rights: The right to education
- (iii) General Comment No. 10 of the Committee on Economic, Social and Cultural Rights: The role of national human rights institutions in the protection of economic, social and cultural rights
- (iv) General Comment No. 1 (2001) of the Committee on the Rights of the Child on the aims of education
- (v) General recommendation N°3 (1987) of the Committee on the Elimination of All Forms of Discrimination Against Women

- (vi) Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights;
- (vii) Maastricht Guidelines on Violations of Economic, Social and Cultural Rights
- (viii) The UN Millennium Development Goals
- (ix) The Dakar Framework for Action;
- (x) The Asia and Pacific Regional Framework for Action: Education for All;
- (xi) Revised Recommendations concerning Technical and Vocational Education;
- (xii) Vienna Declaration and Programme of Action;
- (xiii) Plan of Action for the first phase (2005-2007) of the World Programme for Human Rights Education (A/59/525/Rev.1), dedicated to the integration of human rights education within the primary and secondary school systems.

The Advisory Council of Jurists may wish to consider the following regional human rights instruments:

- (i) African Charter on Human and Peoples' Rights (1981)
- (ii) Additional Protocol in the Area of Economic, Social and Cultural Rights to the American Convention on Human Rights (Protocol of San Salvador) (1988)
- (iii) European Social Charter (revised 1996) and the Additional Protocol thereto.