

ADVISORY COUNCIL OF JURISTS

Terms of Reference on Torture

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 torture and other cruel, inhuman and degrading treatment or punishment ('ill-treatment').

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

- (i) how international human rights instruments, standards and mechanisms define 'torture', and other forms of ill-treatment, including with reference to detention, interrogation, medical experimentation and facilities, corporal punishment, gender specific forms and sexual abuse. The Advisory Council of Jurists is asked to develop a list of minimum standards of interrogation in light of the above analysis;
- (ii) the prohibition on torture and other forms of ill-treatment as a rule of customary international law which is reflected in the jurisprudence of international, regional and national tribunals and the statements of academics and such international bodies as the Human Rights Committee and the Committee Against Torture;
- (iii) whether the prohibition on torture and other forms of ill-treatment can be derogated from in certain circumstances;
- (iv) the nature and scope of procedural guarantees and other safeguards stipulated by international human rights law aimed at preventing acts of torture and other forms of ill-treatment;
- (v) the safeguards stipulated by international human rights law and standards to ensure that any statement which is established to have been made as a result of torture and other forms of ill-treatment shall not be invoked as evidence in any proceedings;
- (vi) remedial measures that should be made available to victims of torture and other forms of ill-treatment, including complaints systems, compensation mechanisms and medical rehabilitation;
- (vii) the nature of the protection to be afforded to persons being forcibly returned to a country in which they may face torture or other forms of ill-treatment;
- (viii) international humanitarian law on torture and other forms of ill-treatment in times of domestic and international conflict;
- (ix) the jurisdiction of national and international tribunals to consider cases of alleged torture and other forms of ill-treatment;

(x) the jurisdiction of national and international tribunals to consider cases of alleged torture and other forms of ill-treatment by international intervention forces; and

(xi) the nature and scope of the obligation to protect against violations by non-state actors.

Relevant international law includes but is not limited to:

- (i) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol;
- (ii) International Covenant on Civil and Political Rights;
- (iii) Convention on the Rights of the Child;
- (iv) the Geneva Conventions of 12 August 1949 and their Protocols;
- (v) Rome Statute of the International Criminal Court;
- (vi) Declaration on the Protection of All Persons from Being Subjected to Torture;
- (vii) Principles on the Effective Investigation and Documentation of Torture;
- (viii) Principles of Medical Ethics and Torture;
- (ix) Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- (x) Standard Minimum Rules for the Treatment of Prisoners;
- (xi) Rules for the Protection of Juveniles Deprived of their Liberty;
- (xii) Code of Conduct for Law Enforcement Officers; and
- (xiii) Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

The Advisory Council of Jurists may also wish to consider regional standards and other initiatives including, but not limited to:

- (i) European Convention for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment;
- (ii) European Prison Rules;
- (iii) Inter American Convention to Prevent and Punish Torture; and
- (iv) the Robben Island Guidelines.