

**Terms of Reference for Consideration of the Trafficking Issue
by the Advisory Committee of Jurists
of the Asia Pacific Forum of National Human Rights Institutions**

The Asia Pacific Forum of National Human Rights Institutions refers to the Advisory Council of Jurists for advice and recommendation regarding the nature and scope of States' obligation under international law, including international human rights law, to prevent trafficking, investigate and prosecute traffickers, and provide protection, assistance and redress to trafficked persons.

In particular, the Council is requested to consider:

- (i) The nature and scope of state responsibility for trafficking and related conduct taking into account that much trafficking activity is undertaken by non-state entities;
- (ii) Whether international law requires States to criminalise, investigate and punish trafficking and related conduct.
- (iii) Whether international law prevents the detention or prosecution of trafficked persons for their unwilling or coerced involvement in unlawful activities;
- (iv) Whether international law requires States to provide legal and social assistance to trafficked persons;
- (v) Whether international law prevents the compulsory testing of trafficked persons for HIV/AIDS and other diseases;
- (vi) Whether international law prevents States from summarily deporting or returning a trafficked person when such deportation or return poses a serious and verifiable risk to the safety of the trafficked person and/or that person's family;
- (vii) The nature and extent of States' obligation to take active and timely steps to identify trafficked persons from among vulnerable groups such as irregular migrants;
- (viii) The nature of special protections which should be extended to trafficked children in accordance with international law;
- (ix) Whether trafficking should constitute an extraditable offence and thereby be included as such in bilateral and multilateral extradition treaties;
- (x) The extent to which international law permits the development and implementation of extraterritorial measures aimed at preventing trafficking and apprehending traffickers;
- (xi) The nature of States' obligations, under international law, to provide trafficked persons with access to effective and appropriate remedies.

- (xii) The extent to which the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (as the only directly relevant regional instrument) provides an adequate framework for responding to the problem of trafficking

The Council may wish to comment upon:

- (i) the socio-economic, political and legal environments in Forum Member States;
- (ii) The religious and cultural traditions in Forum Member States;
- (iii) The roles to be served by a criminal justice system; and
- (iv) The international legal obligations of each Member State, including duties of cooperation between Member States.

Relevant international law would include but not limited to:

- Universal Declaration of Human Rights;
- International Covenant on Civil and Political Rights;

- International Covenant on Economic, Social and Cultural Rights;
- Convention on the Rights of the Child and its relevant Optional Protocol;
- Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO No. 182)
- Convention on the Elimination of All Forms of Discrimination against Women;
- United Nations Protocol to Suppress, Prevent and Punish Trafficking in Persons especially Women and Children supplementing the Convention against Transnational Organized Crime;
- SAARC Convention on Combating Trafficking in Women and Children for Prostitution.