



Law Council
OF AUSTRALIA

GUIDELINES

Law Council Intervention on International Human Rights Matters

July 2011



Guidelines on Law Council Intervention on International Human Rights Matters

In these Guidelines, “intervention” means any representation, statement or other communication expressing the Law Council’s position, other than a formal representation in the proceedings of a court, tribunal or similar body.

A decision on whether to intervene in an international human rights matter must be made by the Secretary-General, unless he or she considers the matter of such significance that it requires a decision by the Executive. The decision to intervene, and the decision on whether to refer the intervention decision to the Executive, may be made in consultation with office holders of the Law Council if this is considered appropriate by the Secretary-General.

A decision not to intervene will be briefly reported in the Secretary-General’s regular written reports to the Executive and Directors.

The decision should take into account the following factors:

- ◇ Whether the alleged human rights violation and/or potential violation relates specifically to those fundamental individual rights which affect a person’s liberty, dignity and equality in the context of the legal system (see in particular those rights which are protected by Articles 9, 10 and 14 of the International Covenant on Civil and Political Rights);
- ◇ Whether the Law Council has access to sufficient independent and credible information to make an informed assessment of the factual context within which the alleged or potential violation is said to have occurred;
- ◇ Whether the Law Council is able to form a definitive view about the extent to which the known facts constitute, or would if they came to pass constitute, a breach of international human rights law or standards;
- ◇ Whether a clear objective for Law Council intervention can be identified and whether the intervention is likely to achieve or partially achieve that objective (in this regard particular

attention should be given to whether the Law Council has the requisite networks to approach relevant decision makers and exert influence over their decision making);

- ◇ Whether other individuals or organisations are already taking action to draw attention to, prevent or address the alleged violation or potential violation and whether Law Council intervention would materially add to these efforts;
- ◇ Where the potential intervention concerns an identified individual or individuals, whether he or she has legal representation and if so, what contact has been made with the legal representative about whether and what type of intervention might be helpful;
- ◇ Whether Law Council intervention would be consonant with any policy of the Law Council (including the Law Council’s policy in relation to the death penalty); and
- ◇ Whether the Law Council realistically has the available resources to intervene taking into account the other priorities of the Law Council.

Authorised by the Law Council Executive
29 July 2011

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.



4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. ...
 - (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
 - (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the

extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against himself or to confess guilt.



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