

THE LEGAL ADVISER

DEPARTMENT OF STATE

WASHINGTON

December 20, 2010

Dear Governor:

This follows up on my earlier communication to you concerning certain human rights treaties to which the United States is party, which are implemented through existing laws at all levels of government (federal, state, insular and local). These treaties include the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and two optional protocols to the Convention on the Rights of the Child. Among the obligations under these treaties is the requirement to submit periodic reports on the actions the United States is taking to implement the treaties.

In January of 2010, I wrote to inform you about these treaties in general (that letter is now available at <http://www.state.gov/g/drl/hr/treaties/index.htm>). Now I write to ask for more specific input on activities within your jurisdiction to assist us in preparing reports we will be submitting in 2011.

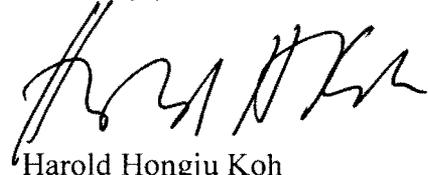
The Department of State and other federal agencies are now working on two reports – the report on U.S. implementation of the CAT, which is due to the United Nations Committee Against Torture on July 15, 2011, and the report on U.S. implementation of the CERD, which is due to the United Nations Committee on Elimination of Racial Discrimination on November 18, 2010. Because both of these international conventions are implemented in large part through state and territorial laws and human rights programs, I am writing to ask for any additional information you may have on your laws and/or programs. Attached to this letter are descriptions of the types of information that would be helpful for the CERD and a list of questions for which information is needed for the CAT.

I would appreciate your forwarding this request to the appropriate offices for response. Based on our drafting schedule for the upcoming CAT report, we are requesting information by January 21, 2011. For the CERD report, we would appreciate

receiving information by May 1, 2011. Should you have any questions or wish to discuss the matter further, please feel free to contact Nina Schou of my office (SchouNE@state.gov) for either report; Sally Cummins (sallycummins@earthlink.net) concerning the CAT report; or Mary Beth West (west.marybeth@gmail.com) concerning the CERD report.

We greatly appreciate your assistance on this important matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Harold Koh', written in a cursive style.

Harold Hongju Koh
The Legal Adviser

cc: Special Representative for Global Intergovernmental Affairs Reta Jo Lewis

Types of Information Requested for the USG Report on the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

1. The various territorial agencies that implement human rights laws (such as the Attorney General's Office, and a human rights agency, if any). Where territorial human rights entities are located in the governmental structure (e.g., part of another office or independent).
2. What issues are addressed by territorial laws and human rights agencies – employment, housing, hate crimes, access to public services and the political system, etc.
3. How human rights issues are addressed in the territory – through litigation in courts, through an adjudicatory body that hears and decides cases itself, through an entity that advocates for people who have complaints, through mediation, through programs that seek to work with communities to address issues before they become problems or to handle issues when they arise, or through a combination of these.
4. Whether you do any training for police, teachers, prison workers, health workers or others concerning ways to prevent or address racial profiling or other discriminatory behaviors based on race or ethnicity.
5. What networks the territory participates in – with other territories, states and local agencies, and/or with the federal government, and how these networks assist with human rights work.
6. Examples of cases and issues dealt with in recent years – cases adjudicated and decided, as well as issues dealt with in communities through programmatic efforts and/or dispute resolution efforts. (Examples of cases and issues are the most difficult information for us to find publicly – and therefore would be very helpful for our reports.)
7. Issues that have been of particular concern in the jurisdiction in recent years.

Questions for Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment¹ (CAT)

The UN Committee Against Torture has asked the United States to respond to 55 specific questions rather than preparing a report like the one being prepared for CERD. While many of the questions relate only to federal activities, the following questions address issues that are also implemented by state, tribal, territorial and local governments.

1. Does your territory register all persons in detention? Is registration required by law and does it provide the following:

identity of the detainee, the date, time and place of the detention, the identity of the authority that detained the person, the ground for the detention, the date and time of admission to the detention facility and the state of health of the detainee upon admission and any changes thereto, the time and place of interrogations, with the names of all interrogators present, as well as the date and time of release or transfer to another detention facility.

2. Does your territory have a law specifically prohibiting torture by government officials? If not, do you have other laws that would apply to a situation where a government official tortured a detainee or subjected a detainee to ill-treatment?

3. Please provide information on education and training of all law enforcement personnel involved in the interrogation of suspects.

a. Is this training conducted on a regular basis, and does it include training on interrogation rules, instructions and methods, as well as specific training on how to identify signs of torture and cruel, inhuman or degrading treatment? Are personnel instructed to report such incidents?

b. Are medical personnel dealing with detainees trained to detect signs of torture and ill-treatment? Is the Istanbul Protocol of 1999² and/or the Principles of Medical Ethics relevant to the Role of Health Personnel in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment included in this training?

c. Do you have a system to evaluate the implementation of training/education programs and their effectiveness?

4. Does your territory exclude from evidence statements that are established to have been made as a result of torture? Does your territory have an independent mechanism to guarantee the rights of all detainees in custody?

5. Please provide information on steps taken by your territory to design and implement appropriate measures to prevent all sexual violence in detention centers.

¹ For simplicity we have used the term "ill-treatment" to mean "cruel, inhuman or degrading treatment or punishment" in the questions that follow.

² The Protocol is available at www.ohchr.org/Documents/Publications/training8Rev1en.pdf; the Principles are Annex 1 in that document.

Include information on investigation and prosecution of allegations of violence and ability of victims to seek redress. Do you have any data on the prevalence of the problem and on the number of requests for redress made and granted?

6. Please provide information on measures adopted to ensure that women in detention do not suffer ill-treatment. We have been asked specifically about gender-based humiliation and shackling of women detainees during childbirth.

7. Are detained children kept in facilities separate from adults in both pretrial detention and after sentencing?

8. Does your territory use electroshock devices such as tasers; if so, are they used only as a substitute for lethal weapons and not to restrain persons in custody?

9. Please provide information on steps taken to address brutality and use of excessive force by law enforcement officials and ill-treatment of vulnerable groups, in particular racial minorities, migrants and persons of different sexual orientation. Can you provide data on complaints of torture or ill-treatment by law enforcement officials?

What measures has your government taken to combat racial profiling?

If your territory has taken measures to respond to threats of terrorism, please indicate how such measures comply with human rights obligations.

10. Is corporal punishment allowed in your schools? If so, please describe any steps taken to end this practice, in particular of mentally and/or physically disabled students.

11. Has your territory undertaken any other new measures in the last five years relevant to prevention of torture and cruel, inhuman or degrading treatment or punishment not covered by these questions?