

**An outline of the topics to be covered in the third report of
the Hong Kong Special Administrative Region under
the Convention Against Torture and other Cruel, Inhuman and
Degrading Treatment or Punishment**

Introduction

The Government is preparing for the submission of the third report of the Hong Kong Special Administrative Region (HKSAR) under the United Nations (UN) Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention).

2. In accordance with the established practice, we have prepared an outline of the report. It sets out the broad subject headings and individual topics that we plan to cover in the report. We invite members of the public to submit their views on the implementation of the Convention in respect of those topics, and to suggest any additional topics that should be included in the report.

3. We will consider carefully all the comments and suggestions that will be received. Any persons or organisations wishing to offer views are invited to send them to the Constitutional and Mainland Affairs Bureau (CMAB) on or before 18 July 2012:

by post: Team 5
Constitutional and Mainland Affairs Bureau
Central Government Offices
12/F, East Wing,
2 Tim Mei Avenue, Tamar, Hong Kong

by fax: 2840-0657

by e-mail: cat_consultation@cmab.gov.hk

4. It is voluntary for members of the public to supply their personal data upon providing views on this outline. The submissions and personal data collected may be transferred to the relevant Government bureaux and departments for purposes directly related to the preparation of the report and subsequent follow-up actions relevant to the report. The Government bureaux and departments receiving the data may only use the data for such purposes.

5. The names and views of individuals and organisations who/which put forth submissions in response to this outline (“senders”) may be published for public viewing or otherwise made available for public inspection, including being uploaded to the Internet. We may, either in discussion with others, whether privately or publicly, or in any subsequent report, cite comments submitted in response to this outline.

6. To safeguard senders’ data privacy, we will remove senders’ relevant data (other than names), such as residential/return addresses, email addresses, identity card numbers, telephone numbers, facsimile numbers and signatures, where provided, when publishing their submissions.

7. We will respect the wish of senders to remain anonymous and/or keep the views confidential in part or in whole. If the senders request anonymity in the submissions, their names will be removed when publishing their views. If the senders request confidentiality, their submissions will not be published. If the senders do not request anonymity or confidentiality in the submissions, it will be assumed that the senders can be named and the views can be published in their entirety.

8. Any sender providing personal data to this Bureau in the submission will have rights of access and correction with respect to such personal data. Any requests for data access or correction of personal data should be made in writing through the abovementioned channels to Assistant Secretary for Constitutional and Mainland Affairs (5A).

9. The text of the Convention is available on the CMAB website:

http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/cat.doc

10. References to “the previous report” are to the report of the HKSAR submitted by the Central People's Government in June 2006 and heard by the UN Committee Against Torture (the Committee) in November 2008. A copy of the previous report is available on the CMAB website: http://www.cmab.gov.hk/en/issues/human1_sec.htm. References to “the initial report” are to the report of the HKSAR submitted by the Central People’s Government in May 1999 and heard by

the Committee in May 2000, available at:
<http://www.cmab.gov.hk/en/issues/human1.htm>.

The Report

11. The third report will consist mainly of –
 - (a) information/explanations about any significant developments since the submission of the previous report in 2006;
 - (b) updates of developments that were ongoing at the time of the 2008 hearing and in respect of which we undertook to inform the Committee of future progress or outcomes; and
 - (c) responses to the concerns and recommendations raised in the Committee's Concluding Observations (the Concluding Observations) on the previous report (reproduced at the **Annex**).

12. In suggesting additional topics to be included in the report, please indicate why those issues are significant and relevant to the application of the Convention in Hong Kong. Respondents may also set out their views on the Government's performance in handling such issues.

Part I: Common Core Document of the Hong Kong Special Administrative Region

13. The “Common Core Document” part follows the standard format, form and content as prescribed by the current reporting guidelines of the UN. It contains information of a general and factual nature relating to the implementation of the human right treaties applicable to the HKSAR.

Part II: Information in relation to each of the Articles in the Convention

14. This part of the report contains specific information relating to the implementation of Articles 1 to 16 in Part I of the Convention in the HKSAR as prescribed by the current guidelines of the Committee.

15. The initial report and the previous report contained information on the laws, policies and practices that are in place to ensure Hong Kong's compliance with the Convention, and many of them remain

unchanged, or have changed only slightly. We propose not to repeat descriptions or explanations of such in this report. This approach avoids repetition and excessive length, and conforms to the guidance in the UN Manual on Human Rights Reporting. It is also consistent with Article 19.1 of the Convention.

Article 1: Defining “torture”

16. We will advise the Committee that the position is as explained in paragraphs 1 to 6 of the initial report, where we discussed the definition of “torture” in section 3 of the Crimes (Torture) Ordinance (Cap. 427) (the Ordinance).

17. We will address the Committee’s recommendations concerning the implementation of the Convention under the Ordinance, in paragraphs 5 and 6 of the previous Concluding Observations, including the definition and defence provisions under that Ordinance.

Article 2: Legislative, administrative, judicial or other measures to prevent acts of torture

18. We will explain that the position regarding our legislative, administrative, judicial and other measures to prevent acts of torture remains similar as explained in paragraphs 7 to 18 of the initial report. We will also update the Committee on the instances of alleged use of torture since the previous report.

Article 3: Torture as a ground for refusal to expel, return or extradite

19. We will provide the Committee with an update on the developments regarding the mechanism on processing torture claims and address the Committee’s recommendation in paragraph 7 of the Concluding Observations relating to removal, expulsion or extradition.

20. In particular, we will give an update on the enhanced torture claim screening mechanism implemented since end December 2009 and the proposed legislative amendments in the Immigration (Amendment) Bill 2011 to underpin the mechanism. The Bill is being considered by the Legislative Council and is targeted for enactment in the second half of 2012.

21. In addition, we will report the latest situation of asylum seekers and refugees in the HKSAR, including the number of reported cases. We will also respond to the Committee's recommendations in paragraph 7 of the Concluding Observations concerning the application of the 1951 Refugee Convention and 1967 Protocol, and the establishment of procedures for dealing with cases of asylum seekers.

Article 4: Making acts of torture offences under the criminal law

22. We will inform the Committee that the position for Article 4 remains as explained in paragraphs 38 and 39 of the initial report.

Article 5: Establishment of jurisdiction

23. We will inform the Committee that the position for Article 5 remains as reported in paragraph 40 of the initial report.

Article 6: Powers of detention

24. We will advise the Committee the position remains essentially as explained in paragraphs 41 to 44 of the initial report. We will also update the Committee on the position regarding the implementation of the recommendations in the Law Reform Commission Report on Arrest.

Article 7: Prosecution of offenders who are not to be extradited

25. We will advise the Committee that the position remains as explained in paragraph 45 of the initial report.

Article 8: Extradition arrangements

26. We will inform the Committee that the position in respect of the transfer of sentenced persons between the HKSAR and the Mainland of China remains essentially as explained in paragraph 80 of the previous report. We will also advise the Committee of the position regarding the discussions concerning the arrangements for the transfer of fugitive offenders between the HKSAR and the Mainland of China, as mentioned in paragraph 8 of the Concluding Observations.

Article 9: Mutual assistance in relation to crimes of torture

27. We will advise the Committee that the position remains essentially as explained in paragraphs 49 to 51 of the initial report. We will also update the Committee on the number of bilateral agreements on mutual legal assistance in criminal matters signed since the previous report.

Article 10: Education and information on the prohibition of torture

28. We will inform the Committee of the measures taken by the law enforcement agencies in this area and in response to the Committee's recommendations in paragraph 11 of the Concluding Observations on training and awareness-raising activities.

29. We will also address the recommendation under paragraph 9 of the Concluding Observations concerning the training for and information provided to healthcare professionals to recognise and detect signs and features that may suggest the occurrence of torture and abuse, as well as the provision of gender sensitive treatment in legal and medical institutions.

Article 11: Review of interrogation rules, instructions, methods and practices for custody and treatment of persons arrested or detained

30. We will inform the Committee of the measures that have been taken since the previous report to improve existing practices and legislation relating to the powers of the law enforcement agencies to stop and search, arrest, and detain a person. Updates in respect of the following will be mentioned -

- legislative amendments to the Criminal Procedures Ordinance
- persons detained in mental hospitals
- prevention of suicides

31. In particular, we will update the Committee in respect of its recommendations regarding strip search and body cavity search in paragraphs 10(a) to (c) in the Concluding Observations.

Article 12: Prompt and impartial investigation of torture

32. We will inform the Committee of the position regarding cases of alleged torture if any, and that the complaints and investigation mechanisms will be elaborated under Article 13.

Article 13: Right of complainant

33. We will advise the Committee of the mechanism in place to ensure that detainees are aware of their right to complain and update the Committee on the statistical information and recent developments in respect of -

- Police
- Correctional Services Department
- Customs and Excise Department
- Immigration Department
- Independent Commission Against Corruption
- Avenues for complaint by mental patients

34. In particular, we will also respond to the Committee's recommendations in paragraphs 11 and 12 of the Concluding Observations concerning allegations of abuses committed during police operations in the context of prostitution-related offences, and the setting up of an independent mechanism to receive and handle complaints on police misconduct.

Article 14: Legal redress for victims of torture and an enforceable right to fair and adequate compensation

35. We will advise the Committee that the position remains essentially as explained in paragraphs 129 to 134 of the initial report, and update the Committee on the number of applications made and approved under the Criminal and Law Enforcement Injuries Compensation Scheme since the previous report.

Article 15: Statements made as a result of torture shall not be invoked as evidence

36. We will inform the Committee of updates since the previous report.

Article 16: Prevention of other acts of cruel, inhuman or degrading treatment or punishment

37. We will update the Committee in respect of the following –

- ill-treatment of children
- children in institutional care, including the child-friendly complaint mechanism available to them
- domestic violence, including a response to the Committee's recommendations in paragraphs 13(a) to (d) of the Concluding Observations
- trafficked persons, including a response to paragraph 7(d) of the Concluding Observations on the protection afforded to trafficked persons such as women and children.

**Constitutional and Mainland Affairs Bureau
June 2012**

UNITED
NATIONS

CAT

**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION****Concluding observations of the Committee against Torture****HONG KONG SPECIAL ADMINISTRATIVE REGION**

1. The Committee against Torture considered, at its 844th and 846th meetings, held on 7 and 10 November 2008 (CAT/C/SR.844 and 846), the report of the Hong Kong Special Administrative Region (HKSAR), forming part of the fourth periodic report of China (CAT/C/HKG/4). It adopted, at its 864th meeting on 21 November 2008 (CAT/C/SR.864), the following concluding observations:

A. Introduction

2. The Committee welcomes the submission of the report of the HKSAR, forming part of the fourth periodic report of China, as well as the written replies to the list of issues (CAT/C/HKG/Q/4/Add.1), which provided additional information on the legislative, administrative, judicial and other measures taken for the implementation of the Convention.

B. Positive aspects

3. The Committee welcomes:

(a) The Hong Kong Bill of Rights Ordinance (Cap. 383), which incorporates into HKSAR's law the provisions of the International Covenant on Civil and Political Rights;

(b) The enactment of the Independent Police Complaints Council Ordinance on 12 July 2008, providing that the Council will start operating as a statutory body in 2009;

(c) The new Guidelines on Searching of Detained Persons introduced and applied by the Police since 1 July 2008, aimed at ensuring that searches are conducted respecting the privacy and dignity of individuals; and

(d) The measures taken to tackle domestic violence, including the strengthening of services to assist victims and the passing of the Domestic Violence (Amendment) Bill in June 2008.

4. The Committee notes that HKSAR is taking the necessary steps to give effect to the provisions of the Optional Protocol on the sale of children, child prostitution and child pornography in order to extend its application to HKSAR.

C. Main issues of concerns and recommendations

Definition of torture

5. The Committee takes note of the HKSAR's explanation with respect to the limitation of the term "public official", in Section 2 (1) of the Crimes (Torture) Ordinance, to those professionals normally involved in the custody or treatment of persons deprived of their liberty. Nevertheless, the Committee reiterates its concern expressed in the previous concluding observations, that the way Section 2(1) of the Crimes (Torture) Ordinance is currently drafted is too restrictive and may create in practice loopholes preventing effective prosecution of torture.

The HKSAR should consider adopting a more inclusive definition of the term "public official" in the definition of torture as to clearly include all acts inflicted by or at the instigation of or with the consent or acquiescence of all public officials or other persons acting in an official capacity. The Committee further recommends that HKSAR ensure that the definition comprises all the elements contained in article 1, including discrimination of any kind.

6. The Committee notes the HKSAR's position that the "defence of lawful authority, justification or excuse" contained in Section 3 (4) of the Crimes (Torture) Ordinance simply serves to give effect to the second sentence of article 1, paragraph 1 of the Convention. However, the Committee - reiterating its concern expressed in the previous concluding observations - emphasizes that the Convention does not authorize any possible defense for acts of torture.

The HKSAR should consider abolishing the defense contained in section 3 (4) of the Crimes (Torture) Ordinance; to this end, the State party could, for instance, incorporate article 1 of the Convention into its Basic Law, as it has done with article 7 of the International Covenant on Civil and Political Rights.

Refugees and non-return to torture

7. While the Committee appreciates the cooperation of HKSAR authorities with UNHCR to ensure respect for the principle of non-refoulement and protection of refugees and asylum-seekers, it is still concerned that there is no legal regime governing asylum and establishing a fair and efficient refugee status determination procedure. The Committee is also concerned that there are no plans to extend to HKSAR the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol.

The HKSAR should:

- (a) Incorporate the provisions contained in article 3 of the Convention under the Crimes (Torture) Ordinance;**
- (b) Consider adopting a legal regime on asylum establishing a comprehensive and effective procedure to examine thoroughly, when determining the applicability of its obligations under article 3 of the Convention, the merits of each individual case;**
- (c) Ensure that adequate mechanisms for the review of the decision are in place for each person subject to removal, expulsion or extradition;**
- (d) Increase protection, including recovery and reintegration, to trafficked persons, especially women and children, who should be treated as victims and not criminalized;**
- (e) Ensure effective post-return monitoring arrangements; and**
- (f) Consider the extension of the 1951 Refugee Convention and the 1967 Protocol to Hong Kong.**

Transfer of fugitive offenders/sentenced persons

8. The Committee notes the discussion between HKSAR and the mainland of China with respect to arrangement for the transfer of fugitive offenders and sentenced persons as well as that “death penalty safeguards” have been included in the draft arrangement.

If resorting to the use of “death penalty safeguards” in the surrender of fugitive offenders/sentenced persons, the HKSAR should provide the Committee, in its next report, with information on the number of cases where “surrender” or removals subject to safeguards or guarantees have occurred in the reporting period; with information on the HKSAR’s minimum requirements for these safeguards; the measures of subsequent monitoring undertaken by HKSAR in such cases as well as the legal enforceability of these safeguards.

Training

9. The Committee welcomes that the “Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (Istanbul Protocol) is distributed among relevant professionals. While

noting the information that there is a general awareness among health-care professionals in relation to signs that are suggestive of abuse or even torture, the Committee stresses the importance of more specific training programmes for medical doctors and other health professionals to detect and document signs of torture, as well as training in gender sensitive treatment in judicial and medical institutions.

The HKSAR should ensure that health-care professionals are equipped with the necessary training and information to recognize and detect signs and features that may suggest the occurrence of torture, as well as to provide gender sensitive treatment in legal and medical institutions.

Strip search and body cavity search

10. The Committee notes the new Police guidelines in force from 1 July 2008 on the handling of searches of detainees in police custody. While welcoming that, under this revised procedure, a designated officer has to justify the scope and conduct of a search based on objective and identifiable criteria, the Committee is concerned at:

- (a) The Police Commissioner's determination that every person in police custody has to be searched every time he or she enters a detention facility maintained by the police, making body searches automatic for all individuals in police custody, irrespective of whether or not there is any objective justification thereto;
- (b) Allegations of abusive strip searches, including in facilities of the Immigration Department and of the Correctional Services Department; and
- (c) Allegations of the routine practice of conducting body cavity searches of those entering in prison, despite the fact that Rule 9 of the Hong Kong prison rules only provides for the possibility of conducting such searches.

The HKSAR should:

- (a) Ensure that strip searches for persons in police custody are limited to cases where there is a reasonable and clear justification; if carried out, the search has to be conducted with the least intrusive means and in full conformity with article 16 of the Convention; an independent mechanism to monitor those searches, upon request of the detainee, should also be provided;**
- (b) Establish precise and strict guidelines regulating the strip searches conducted by all law-enforcement officials, including those from the Immigration and Correctional Services Department; if these guidelines are already in place, they should be strictly abided by and their observance consistently monitored; records of searches should be made and all abuses committed should be thoroughly investigated and, if substantiated, punished; and**
- (c) Seek alternate methods to body cavity search for routine screening of prisoners; if such search has to be conducted, it must be only as a last**

resort and should be performed by trained health personnel and with due regard for the individual's privacy and dignity.

Police operations

11. The Committee welcomes the information provided by the delegation that the Police has reviewed and revised, in late 2007, the guidelines for the conduct of officers engaging in police operations in the context of prostitution-related offences. However, the Committee is concerned at the allegations of routine police abuses of persons during such operations.

HKSAR authorities should thoroughly investigate all allegations of abuses committed during police operations in the context of prostitution-related offences which, if substantiated, should be appropriately prosecuted and punished. The HKSAR should also tackle, including through training and awareness-raising activities, all existing attitudes suggesting that such abuses may be condoned.

Independent investigation of police misconduct

12. The Committee welcomes the enactment of the Independent Police Complaints Council (IPCC) Ordinance on 12 July 2008 converting the IPCC into a statutory body, as previously recommended by the Committee. However, the Committee is concerned that, while the statutory framework has reinforced the independent role of the IPCC, the latter only has advisory and oversight functions to monitor and review the activity of the Complaints Against Police Office (CAPO), which is still - in fact - the body responsible for handling and investigating complaints of police misconduct. In this respect, the Committee also notes with concern the information that - despite the considerable number of reportable complaints filed with the CAPO - a small percentage of them were considered as substantiated and only in one case an officer has been prosecuted and convicted of a criminal offence.

The HKSAR should continue to take steps to establish a fully independent mechanism mandated to receive and investigate complaints on police misconduct. This body should be equipped with the necessary human and financial resources and have the executive authority to formulate binding recommendations in respect of investigations conducted and findings regarding such complaints, in line with the requirements of Article 12 of the Convention.

Domestic violence

13. The Committee, while noting with appreciation the efforts taken by HKSAR to eradicate domestic violence, is concerned at the high incidence of domestic violence in HKSAR.

The HKSAR should:

- (a) Thoroughly investigate all allegations of domestic violence which, if substantiated, should be appropriately prosecuted and punished;**
- (b) Strengthen its efforts to address domestic violence through legislative, policy and social measures;**

(c) Develop national public information and awareness-raising campaigns and stimulate broader public discussions in order to address attitudes and stereotypes that may lead to violence against women; and

(d) Provide further information on this issue in its next periodic report, including on the progress obtained through the forthcoming Enhanced Central Domestic Violence Database.

14. The Committee encourages the HKSAR to complete the process to give effect to the provisions of the Optional Protocol on the sale of children, child prostitution and child pornography, so to allow the extension of its application to HKSAR.

15. The HKSAR should widely disseminate its report, its replies to the list of issues, the summary records of the meetings and the concluding observations of the Committee, in appropriate languages, through official websites, the media and non-governmental organizations.

16. The Committee invites the HKSAR to submit its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.5.

17. The Committee requests that the HKSAR provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 10 and 12 above.

18. The HKSAR is invited to submit its next periodic report, which will be included in China's fifth periodic report, by 21 November 2012.