



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

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COMMITTEE AGAINST TORTURE
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**List of issues to be considered during the examination of the
fourth periodic report of Hong Kong (CAT/C/HKG/4)**

Article 1

1. Please clarify whether the Hong Kong Special Administrative Region (HKSAR) is considering revising its Criminal Code to ensure that the definition of torture in section 3 of the Crimes (Torture) Ordinance contains all the elements included in article 1 of the Convention. Also on the issue of definition, please clarify what is meant by “defence of lawful authority, justification or excuse”, which is provided for in section 3 of the Crimes (Torture) Ordinance and explain whether this is in full compliance with article 1 of the Convention.
2. Please indicate the reasons why the term “public official” under Section 2(1) of the Crimes (Torture) Ordinance only covers officials normally involved in the custody or treatment of persons deprived of their liberty. Is there any initiative to apply a more inclusive term in the definition of torture so as to cover all prohibited acts committed by all kinds of public officials or persons acting in public capacity or with their acquiescence or consent?

Article 2

3. Please provide further information on the rights of persons detained in police custody, in particular their right of access to legal counsel and to an independent doctor, to be informed of their rights and to inform their family promptly of their detention. Please also provide further information with respect to the law and practice related to the length of custody and pre-trial detention.
4. Please explain whether HKSAR authorities would have jurisdiction over Chinese military present in HKSAR for any violation of the rights protected under the Convention. If so, please

clarify under which jurisdiction (i.e. civil or military) and where (i.e. in Mainland China or in HKSAR) such persons eventually would be tried and prosecuted.

5. Please comment on the information available to the Committee that while presumption of innocence is a well-established principle in the judicial system of HKSAR, there would be a presumption of guilt in official corruption cases.

6. Please clarify how the independence and impartiality of the judiciary is maintained.

7. Please inform the Committee on any plan to extend to HKSAR the application of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

Article 3

8. Please expand on the Court of Final Appeal (CFA) judgment in the case *Secretary for Security v. Sakthevel Prabakar* and on the new procedures for deportation/removal following thereto. What has been the result of the 58 claims related to Article 3 mentioned in paragraph 66 of the report? Please provide case details, including on countries of origin/return. In this respect, please also clarify the measures taken to ensure compliance with the non-refoulement principle as enshrined in article 3 of the Convention, including clarifying what measures, if any, are in place to assess claims that a person faces a substantial risk of torture upon return.

9. Please clarify whether the decision in *AK v. HKSAR (Director of Immigration)* has affected its recognition or guarantee in local law of a legal right of individuals not to be returned or deported to a country where they face a substantial risk of torture. How is procedural fairness ensured to the person seeking to exercise the rights recognized by the Convention?

10. In view of official statements emphasizing ongoing problems in law and in practice regarding article 3, how do HKSAR policies, since the last review by the Committee, give effect to the recommendation that its laws and practices be brought into full conformity with article 3 of the Convention? Please advise on any legislative proposal or other measures in this regard. Is there any plan to extend to HKSAR the application of the 1951 relating to the Status of Refugees and the 1967 Protocol thereto?

11. With respect to asylum-seekers and irregular migrants, please clarify whether they are held in detention and, if so, provide information on:

(a) the number of asylum-seekers and irregular migrants held in detention;

(b) the nature of this detention (administrative, criminal);

(c) whether foreign persons charged with an administrative or criminal offence enjoy in practice the right to be informed promptly and in a language they understand of the nature and cause of the charge against them;

(d) data for the years since the last periodic report on the number of persons deprived of liberty for violation of immigration regulations, disaggregated by age, sex and nationality;

- (e) whether irregular migrants and/or asylum-seekers detained for violation of immigration regulations are separated from convicted persons or persons detained pending trial;
- (f) the number of asylum-seekers, the number claiming that their return would violate article 3 of the Convention, and the details of the relevant legal cases, including their outcomes.

12. With respect to paragraph 67 and 68 of the HKSAR report, please indicate:

- (a) whether appeals filed against decisions of expulsion/deportation/removal have suspensive effect;
- (b) whether HKSAR is considering the establishment of its own refugee status determination procedure, and if so, how it will ensure that the process is fair and reviewable;
- (c) what the HKSAR relationship is with UNHCR, including in which instances the case of a migrant is referred to UNHCR. Please also provide the Committee with copies of any written rules or guidelines in this respect;
- (d) what the mandate of the Director of Immigration is in relation to decisions taken by UNHCR. Please indicate in how many cases the Director of Immigration ignored the recommendation of UNHCR as to the handling of a specific case;
- (e) whether HKSAR has a list of “safe third countries” for removal, and if so, how this list is created and maintained;
- (f) the number of asylum requests registered, the number of requests granted and the number of expulsions/deportations/removals in the years since the last periodic report, disaggregated by age, sex and nationality;
- (g) whether HKSAR makes use of diplomatic assurances and in what context, and whether post-return monitoring mechanisms are in place to assess what happens to any such returned persons.

Article 4

13. What legal or administrative measures does HKSAR have in place to ensure that the Convention’s prohibition against torture is not derogated from in public emergency or state of exception? In this regard, please comment on article 18 of the Basic Law and what “relevant national laws” may be imposed in public emergencies to override those of HKSAR. How does section 2(1) of the Emergency Regulations Ordinance (Cap. 241), empowering the Chief Executive “to make any regulations whatsoever”, comply with the non-derogability of torture?

14. Please provide updated detailed information since the last periodic report on any specific complaint of torture or cruel, inhuman or degrading treatment or punishment or similar offences committed by members of the police forces and other public officials, specifying the number of investigations resulting from these complaints, their status, the authorities before which they are pending and their outcome.

15. Please provide information, disaggregated by sex, age and nationality of victims, on the number of investigations, convictions and sanctions that have been applied in the years since the last periodic report in cases of human trafficking and commercial sexual exploitation. In this respect, please also provide information on the measures taken to prevent and combat trafficking in children, especially for the purpose of sexual exploitation.

16. According to the information before the Committee, domestic violence cases in HKSAR have risen in 2006-2007 by as much as 50 per cent, with a particularly large number of cases involving immigrants from the Mainland. Please clarify how such abuses, including but not limited to rape, marital rape, assaults and other acts of domestic violence are criminalized in accordance with the requirements of the Convention. Are the sentences commensurate with the gravity of the crimes? Please provide data on cases of domestic violence and prosecutions, trials and convictions thereof. What other measures are available to provide protection from such abuses and assistance to persons affected?

Article 5

17. Please indicate whether HKSAR applies the principle of *aut dedere aut iudicare* when the alleged offender of an act of torture committed abroad is present in its territory. In this respect, please indicate whether HKSAR authorities have ever prosecuted anyone present in HKSAR territory who has committed a crime of torture outside of HKSAR, irrespective of the definition or legal provisions related to torture in that country.

Articles 6, 7, 8, 9

18. With reference to paragraph 79 and 80 of the HKSAR report, please update the Committee on any progress with respect to arrangements between the Mainland and HKSAR for the transfer of fugitive offenders and/or sentenced persons. Can HKSAR transfer to the Mainland a detainee who would risk receiving the death penalty there?

19. Please provide information on cases, if any, where HKSAR authorities have rejected a request for extradition by another State for an individual suspected of having committed a crime of torture, and thus have engaged its own prosecution as a result.

Article 10

20. Please provide more detailed information on the instruction and training provided for law enforcement officials and other public officials with respect to human rights and specifically the treatment of detainees and measures for the prevention of torture and cruel, inhuman or degrading treatment or punishment. Please also provide information on training in areas such as non-coercive investigatory techniques. What monitoring and evaluation are used to assess the impact of these programmes, if any?

21. Please indicate whether there are programmes to train medical and health personnel to detect signs of torture and whether they are prepared to assist in the rehabilitation of victims. Is there any training to develop more gender-sensitive treatment, both in legal and medical institutions?

22. Please elaborate on what kind of training is provided to officials dealing with the expulsion, return or extradition of foreign nationals.

Article 11

23. Please provide updated information on the number of persons and the occupancy rate of the places of deprivation of liberty in the criminal justice system. Could you please also elaborate on the reasons why HKSAR has an unusually high proportion of its female population deprived of their liberty?

24. Please inform the Committee on measures taken to protect and guarantee the rights of vulnerable persons deprived of their liberty, and notably women, migrants, persons suffering from mental illness and children. Please also inform the Committee on measures taken to ensure that deprivation of liberty for persons under 18 years old is always used as a last resort. What measures alternative to detention are used or planned?

25. With respect to mental illness and to paragraph 89 of the HKSAR report, please elaborate on the administration of electro-convulsive therapy (ECT) to patients with severe depressive illness. In particular, please provide statistical data similar to those contained in paragraph 179 of the previous report (CAT/C/39/Add.2), on the pattern of application of ECT in the reporting period. Please also elaborate on the rights of persons placed under involuntary treatment in psychiatric hospitals.

26. Please clarify whether there are precise procedural rules or guidelines regarding body or cavity search of arrested persons and what consent rules and other protective measures apply. According to information before the Committee, routine compulsory rectal searches of prisoners are performed under Rule 9 of the Prison Rules. Please comment on whether the HKSAR government plans to use alternative means of inspecting prisoners, as reportedly pledged by authorities in 2005.

27. Please comment on the information received by the Committee that in the last years, sex workers have often complained about the treatment received during both undercover operations and in investigations and interrogations, including allegations of unnecessary and intrusive strip searches and the reported receiving of free sexual services by the police through abuse of their position. Have there been any investigations into these allegations and any measures taken to ensure that these persons are protected in accordance with the Convention, and those responsible for any abuses held accountable?

Articles 12 and 13

28. Is there a special central register to keep an overview over complaints and investigations with respect to allegations of torture and other cruel, inhuman or degrading treatment?

29. With reference to paragraph 106 of the HKSAR report, please describe any development with respect to the conversion of the Independent Police Complaints Council (IPCC) into a statutory body. Also, with respect to investigations of allegations of police misconduct, including excessive use of force and abuse of power, please further elaborate on the two-tier system provided by the Complaints Against Police Office (CAPO) and the Independent Police Complaints Council (IPCC). In particular, please clarify:

- (a) what the criteria are for classifying a complaint of torture as unsubstantiated and how many claims (of torture or other ill-treatment, including police abuse) were considered substantiated;
- (b) what kind of powers the IPCC has with respect to the findings of the CAPO;
- (c) what kind of follow-up is given to findings of police misconduct by the CAPO and the IPCC;
- (d) whether there is any other body, outside the police, where complaints about allegation of police misconduct can be filed. If so, please provide information on its composition, mandate and activities.

30. Please also provide data related to the period since the last HKSAR report with respect to:

- (a) the number of complaints filed with the Complaints Against Police Office (CAPO) investigating the conduct of police force members which are reviewed by the Independent Police Complaints Council (IPCC), and the number of disciplinary, civil and /or criminal proceedings initiated as a result of those complaints, and the number of convictions or disciplinary sentences;
- (b) the number of complaints from persons deprived of their liberty filed with the Department's Complaints Investigation Unit, the results of the investigations and the number of disciplinary, civil and /or criminal proceedings initiated and concluded as a result of those complaints;
- (c) the number of complaints filed with the Immigration Department for alleged abuse of authority or ill-treatment by members of the Immigration Service and the results of the investigations.

31. Please explain whether HKSAR has taken or envisages to take any steps to establish a fully independent national human rights institution in conformity with the Paris Principles with, inter alia, investigative, oversight and monitoring powers. What are the limitations to the present oversight mechanisms, for instance the ombudsperson and other independent civil mechanisms?

32. Please indicate the measures taken to ensure that complainants and witnesses in cases of abuse and ill-treatment committed by public officials are protected against all ill-treatment and intimidation as a consequence of the complaint or the evidence given.

Article 14

33. Please indicate whether the right to compensation depends on the existence of a judgement in criminal proceedings ordering compensation. Can compensation be obtained by a victim of torture or cruel, inhuman or degrading treatment the perpetrator of which has been subjected to a disciplinary, but not to a penal, sanction? Has compensation or rehabilitation been provided to persons who are victims of trafficking in humans or other forms of sexual exploitation, including children?

34. Please indicate in further detail what services exist for the treatment of trauma and other forms of rehabilitation of victims of torture or other cruel, inhuman or degrading treatment.

Article 16

35. Please inform the Committee of measures taken to prohibit the use of corporal punishment in all settings.

36. Please clarify the elements and functioning of the system identified in paragraph 77 of the HKSAR report for proper treatment of persons in detention. What administrative rules govern its operation, and how does it reflect the suggestions in the Report on Arrest of the Law Reform Commission of Hong Kong?

37. Please comment on allegations before the Committee that, following the demonstrations in connection with the World Trade Organization Ministerial Meeting in December 2005, mass arrests and overnight detention of more than 1,100 demonstrators were carried out without adequate safeguards to protect the rights of the detainees, resulting in claims of inhuman and degrading treatment.

38. Please provide updated statistics on cases of abuse of the aged and the governmental responses thereto. What supervision of homes for the aged does the Government provide? Have any state employees been found responsible for such abuses?

39. Please comment on allegations of breaches of the Convention in respect to the treatment of teenagers belonging to ethnic minorities, such as those submitted to the Legislative Council by the Hong Kong Unison Limited, and provide information regarding any investigations into such allegations. Do the police videotape interrogations, particularly in temporary holding areas? How many complaints of police misconduct emanate from persons belonging to ethnic minorities, and what has been the result of these complaints?

40. Please elaborate on the right of abode policy in HKSAR and explain how this is compatible with the protection of family unity.
