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

Article 1: defining "torture"

55. 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 (Chapter 427)[1].

56. In paragraph 33 of the concluding observations of May 2000, the Committee expressed the concern that "the reference to 'lawful authority, justification or excuse' as a defence for a person charged with torture, as well as the definition of a public official in the Crimes (Torture) Ordinance, (Chapter 427), are not in full conformity with article 1 of the Convention". And, in paragraph 37, the Committee recommended that "the necessary steps be taken to ensure that torture, as defined in article 1 of the Convention, is effectively prosecuted and appropriately sanctioned".

57. The position is as explained in paragraphs 4 to 6 of the initial report, where we advised the Committee that, for the purpose of the Ordinance (section 3(5)), "lawful authority, justification or excuse" meant –

(a) in relation to pain or suffering inflicted in Hong Kong, lawful authority, justification or excuse under the law of Hong Kong;

(b) in relation to pain or suffering inflicted outside Hong Kong –

(i) if it was inflicted by a public official acting under the law of Hong Kong or by a person acting in an official capacity

[1] Chapter 427 gives effect in domestic law to the relevant provisions of the Convention.

under that law, lawful authority, justification or excuse under that law;

(ii) in any other case an authority, justification or excuse which is lawful under the law of the place where it is inflicted.

58. We went on to address local concerns about the consistency of this defence with Article 1.1 of the Convention. Thus, we considered that they were so consistent as they were simply an attempt to give effect to the second sentence of Article 1.1-

> "[Torture] does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions".

That is, the defence was intended to cover matters such as the reasonable use of force to restrain a violent prisoner. It was not intended - nor would the courts be asked to interpret them as authorising - conduct intrinsically equivalent to torture as defined in Article 1.1[2].

59. That remains our position and, with respect to the view taken by the Committee, we find it difficult to see how a provision that is essentially a paraphrase of the Article 1.1 might be considered inconsistent with the Convention. NGOs and other commentators have attempted to point out where the alleged deficiency lies but their objections have not sustained analysis[3]. That said, we have taken due note of the Committee's concerns

---

[2] We reiterated this explanation in paragraph 12 of our initial report (in relation to Article 2 of the Convention), adding that neither "exceptional circumstances" nor "superior orders" could be invoked in the law of Hong Kong as a justification for torture.

[3] For example, the Law Society of Hong Kong pointed to the distinction between the test for torture in Article 1.1 -"…severe pain or suffering..." (our emphases) – and the final sentence of the article "…It does not include pain or suffering…" Thus the exclusion in the final sentence is of pain or suffering that is not severe and therefore not torture as defined in the Convention. But that distinction is clearly incorporated in the Ordinance through section 3(5).

and are continuing our dialogue with local commentators with an open mind as to the outcome.

60. Section 2(1) of the Crimes (Torture) Ordinance defines 'public official' as including "any person holding in Hong Kong an office described in the Schedule". The Schedule lists the following -

> "1. An office in the Hong Kong Police Force. (Amended L.N. 362 of 1997)
>
> 2. An office in the Customs and Excise Department.
>
> 3. An office in the Correctional Services Department.
>
> 4. An office in the Independent Commission Against Corruption
>
> 5. An office in the Immigration Department. "

But section 3 of the Interpretation and General Clauses Ordinance (Chapter 1) uses instead the term 'public officer' which it defines as including -

> "…any person holding an office of emolument under the Government, whether such office be permanent or temporary".

Effectively, therefore, the term 'public officer' includes all civil servants and is therefore wider in scope than 'public official'. Commentators have asked why the Crimes (Torture) Ordinance does not use the more inclusive term.

61. The aim of the Ordinance is to cover the officials normally involved in the custody or treatment of individuals under any form of arrest, detention or imprisonment. It is vastly unlikely that, for example, clerks, swimming pool attendants, or landscape architects would find themselves in a position to commit acts of torture (as defined in Article 1) in the course of their duties. That said, the use in the section 2(1)

definition of the word 'includes' means that the term does *not* prevent the courts from holding other persons, such as a nurse in a government mental hospital, to be a 'public official' (or a "person acting in an official capacity") according to the circumstances.

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

62. The situation remains essentially as explained in paragraphs 7 to 18 of the initial report. Since then, there have been no more reports of torture as defined in the Crimes (Torture) Ordinance. However, there have been some related developments that are discussed below.

Instances of the alleged use of torture

63. In paragraph 34 of the 2000 concluding observations, the Committee expressed the concern that –

> "…there are as yet no prosecutions under the Crimes (Torture) Ordinance, despite circumstances brought to the attention of the Committee justifying such prosecutions."

The reasons for the lack of prosecutions are those that we have explained on previous occasions. The position remains that torture is a particularly serious offence that carries a maximum sentence of life imprisonment. For an act to qualify as torture, there must be evidence that severe pain and suffering were intentionally inflicted by the authorities acting in their official capacities. So far, no cases have met those criteria on the strength of the evidence. And, as indicated above, there have been no cases where torture has even been alleged since 1998 (see paragraphs 14 to 16 of the

initial report).

64. The Government does not condone or tolerate the use of any excessive force by Police officers, who are trained to treat all persons - including detainees and arrested persons as individuals - with humanity and respect, and to act within the law at all times. Officers who fail to comply with these requirements will be subject to disciplinary action and/or criminal proceedings as appropriate.

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

65. In paragraph 36 of the 2000 concluding observations, the Committee noted with concern that "the practices in the Hong Kong Special Administrative Region relating to refugees may not be in full conformity with article 3 of the Convention". In paragraph 40, it recommended that "laws and practices relating to refugees be brought into full conformity with article 3 of the Convention". At the time, we found this perplexing as the issue had not been discussed at the hearing and the concluding observations did not indicate where the deficiency lay. However, there have since been several claims involving Article 3.1. And, in 2004, our Court of Final Appeal (CFA) had the opportunity to consider the standards applicable in the screening of such claims in the case of *Secretary for Security vs Sakthevel Prabakar*[4].

66. Following the CFA judgment in that case, we put in place administrative procedures for assessing torture claims under Article 3.1 and are confident that those procedures will fully meet the high standards

[4] [2005] 1 HKLRD 289, CFA.

of fairness laid down by the CFA. As at 31 March 2005, some 58 Article 3-related claims were under consideration. These involved 73 persons who could be subject to deportation/removal cases and one person who could be subject to surrender. These claims are being assessed in accordance with the new procedures.

Removal and deportation

67. It should be noted that Hong Kong's obligations under Article 3.1 will only arise where persons who do not enjoy the right to stay in Hong Kong are to be removed or deported to places where there are substantial grounds for believing that they would be in danger of being subjected to torture. Where they are to be removed or deported to places to which no claims of torture relate, Article 3.1 will not be engaged.

68. Claimants who have failed to establish their claims will be removed from Hong Kong in accordance with our laws. Claimants whose claims are established will not be removed to places where there are substantial grounds for believing that they would be in danger of being subjected to torture. However, removal to places where they may be admitted without the danger of being subjected to torture may be considered. If subsequent changes in conditions of a place are such that a claim of a person established earlier in respect of that place can no longer be substantiated, his removal to that place may be considered.

Surrender of fugitive offenders

69. The position as explained in paragraphs 19 to 20 of the initial report is essentially the same. As at end 2004, we had signed a total of 13 bilateral agreements on the surrender of fugitive offenders.

70. Where claims are made by fugitives under Article 3.1 in respect of their surrender to the requesting jurisdictions concerned, their claims will be assessed to ascertain whether their surrender would entail any breach of the CAT. The Chief Executive shall take into account the determination of such claims and other relevant factors when considering whether the fugitives concerned should be surrendered to the requesting jurisdictions.

Remaining Vietnamese refugees and migrants

71. In January 1998, the issue of Vietnamese asylum seekers came to a close, following the decision to permit the remaining Vietnamese refugees and migrants – as persons who were unlikely to be accepted for overseas resettlement or for return to Vietnam –to apply for settlement in Hong Kong. The last remaining refugee centre was closed in June 2000.

Vietnamese illegal migrants

72. The position remains essentially as explained in paragraphs 35 to 36 of the initial report. As at 31 December 2004, there were 214 such migrants in the territory.

Ex-China Vietnamese

73. We explained the position of persons in this category in paragraph 37 of the initial report. In April 2000, the Court of First Instance found in favour for the Government in the judicial review proceedings initiated by 116 families against removal to Mainland China. The families appealed but the appeal was later withdrawn by consent. The Government subsequently reviewed the situation and allowed the remaining 396 Ex-China Vietnamese to apply for stay in Hong Kong. As at 31 December

2004, all except one who had gone missing had been granted stay in Hong Kong.

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

74. The position is essentially as explained in paragraphs 38 and 39 of the initial report, which reaffirmed the prohibition of torture under the Crimes (Torture) Ordinance (Chapter 427) and advised the Committee of the prohibition of aiding and abetting in section 89 of the Criminal Procedure Ordinance (Chapter 221). Any attempts to commit torture are prohibited under section 159G of the Crimes Ordinance (Chapter 200).

Article 5: establishment of jurisdiction

75. As explained in paragraph 40 of the initial report, section 3 of the Crimes (Torture) Ordinance provides that the offence of torture is committed, whether the conduct take place in Hong Kong or elsewhere. The nationality of the perpetrator or the victim is immaterial. The courts of the HKSAR have full jurisdiction in conformity with this Article.

Article 6: powers of detention

76. The position remains essentially as explained in paragraphs 41 to 44 of the initial report. But commentators have called on us to implement recommendations made by the Law Reform Commission in its 1992 Report on Arrest. Those recommendations concerned the introduction of legislative amendments to -

(a) institute continuous review of the need for detention;

(b) set a clear time limit for detention without charges;

(c) provide for the appointment of Custody Officers; and

(d) provide for regular review of police detention.

77. The position is that, in 1998-99, the Police, the Immigration Department, the Customs and Excise Department, and the Independent Commission Against Corruption instituted a system whereby designated Custody Officers and Review Officers ensure the proper treatment of persons in detention and keep the need for their further detention under continuous review. The recommendation concerning a statutory time limit on the length of detention without charge is under consideration. The Commission's recommendations concerning the taking of intimate and non-intimate samples, and the tape-recording and video-taping of interviews are discussed further in paragraphs 91 and 100 below, in relation to Article 11 of the Convention.

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

78. The position is as explained in paragraph 45 of the initial report.

Article 8: extradition arrangements

79. The position remains essentially as explained in paragraphs 46 to 48 of the initial report. But commentators have asked why there are as yet no formal surrender of fugitive offenders arrangements between the Mainland and the HKSAR. Formal discussions on such arrangements began in March 1999. Because of the differences between the respective legal systems and the complexity of the issues involved, the discussions

must be conducted with particular care and attention to details and cannot, therefore, be expected to reach a swift conclusion. We will advise the Committee of any developments when it hears the present report.

80. In March 2000, the two sides initiated discussions on the arrangements for the transfer of sentenced persons. These have centred on the main principles and provisions enshrined in the Transfer of Sentenced Persons Ordinance and the agreements on transfer of sentenced persons that we have signed with other jurisdictions. These include, for example, the conditions for transfer, procedures for transfer, retention of jurisdiction and continued enforcement of sentence. At the time of finalising this report, the discussions were still underway, again because of the differences in the legal and judicial systems and the complexity of the issues.

Article 9: mutual assistance in relation to crimes of torture

81. The position remains essentially as explained in paragraphs 49 to 51 of the initial report. As at 31 December 2004, we had signed 17 bilateral agreements on mutual legal assistance in criminal matters.

82. Some commentators have asked why there is no agreement between the Mainland and the HKSAR on mutual legal assistance in criminal matters. The position is that - in criminal investigations - the police authorities of both sides do, in fact, provide mutual assistance in accordance with Interpol practice.

Article 10: education and information on the prohibition of torture

General

83. The position remains broadly as explained in paragraphs 52 to 58 of the initial report, though there have been some developments as explained below. However, we take the opportunity to mention that the 'Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' - issued by the Office of the United Nations High Commissioner for Human Rights (the Istanbul Protocol) – has been distributed to relevant bureaux and departments (including particularly those discussed below).

Police

84. In paragraph 39 of the 2000 concluding observations, the Committee recommended "the continuation and intensification of preventive measures, including training for law enforcement officials". The position remains largely as explained in paragraph 52 of the initial report. Additionally, however, frontline officers periodically attend induction and continuation training designed to remind them of the importance of using minimum force during arrest actions and observing the 'Rules and Directions for the Questioning of Suspects and the Taking of Statement's'. Examples of the topics covered include the Hong Kong Bill of Rights Ordinance, the Crimes (Torture) Ordinance, the use of force, the handling and questioning of suspects, cautioned statements, and the care and custody of prisoners.

85. Commentators have said that we should explain in this report what training, if any, Police officers receive in handling cases of domestic violence, abuse of the elderly, and child abuse. Police officers do indeed

receive such training on a regular basis. However, we do not believe that the forms of violence and abuse entailed in such cases constitute torture as defined in Article 1.1 of the Convention. To the extent that they might conceivably fall within the ambit of the treaty, they might be considered as a form of cruel or inhuman treatment or punishment. We therefore address the question in paragraphs 138 and 139 below in relation to Article 16, though we have reservations about doing so because these things concern the acts of persons in their capacity as private individuals. As such, it is our view that they fall outside the scope of the Convention.

Correctional Services Department

86. The Prisons Ordinance (Chapter 234) and its subsidiary legislation expressly provide that prisoners must be treated with kindness and humanity. The Department has incorporated these requirements in its 'Vision, Mission and Value Statement', which states that all persons in its custody have the right to correct and fair treatment with dignity. Staff training strongly emphasises the prohibitions against the cruel and degrading treatment or punishment of persons under custody. Essentially, therefore, the position is as explained in paragraph 53 of the initial report.

Customs and Excise Department, Immigration Department and Independent Commission Against Corruption

87. The position is essentially as explained in paragraphs 54 to 56 of the initial report.

Health care professionals

88. The position is essentially as explained in paragraphs 57 and 58 of the initial report.

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

89. In paragraphs 59 to 84 of the initial report, we advised the Committee of our intention to improve existing practices and legislation relating to the powers of the law enforcement agencies to stop and search, arrest, and detain a person. We discussed the rules and practices of the disciplined services, including the measures taken to detect signs of physical abuse/torture, to prevent suicides by persons in custody, and the protections afforded to persons detained in mental hospitals. We explained the controlled circumstances in which health professionals administered electro-convulsive therapy to patients with severe depressive illness and as an adjunct to neuroleptic treatment when response to medication had been unsatisfactory. In this chapter, we take this opportunity to inform the Committee of the progress made since the submission of our initial report.

The Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Ordinance 2000

90. In paragraph 59 of the initial report, we informed the Committee of a programme of improvements – initiated in 1997 - in relation to the powers of law enforcement agencies to stop, search, arrest and detain a person. The programme was on the basis of recommendations put forward by a working group formed to examine proposals advanced by the Law Reform Commission, with a view to improving existing safeguards against possible abuses of power.

91. In this connection, the Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Ordinance 2000 was enacted in June 2000 and came into operation on 1

July 2001. It empowers the Police, the Customs and Excise Department, and the Independent Commission Against Corruption to take intimate and non-intimate samples from suspects for forensic purposes, and provides for the establishment of a DNA database. Since then, these measures have contributed to the detection and investigation of serious crimes. But the Ordinance also provides for safeguards against possible abuses of power. Among others, these include the requirement that, the taking of non-intimate samples from a suspect in police detention or in custody must be authorised by officers at the rank of superintendent or above. The taking of intimate samples requires –

(a) the authorisation by officers at the rank of superintendent or above;

(b) the approval by a magistrate; and

(c) the written consent by the suspect.

We will continue to take appropriate steps to implement the working group's recommendations. In so doing, we will take into account developments since the working group's report. In this process, we will seek to strike a careful balance between-

- the need to ensure that law enforcement agencies have the necessary powers to discharge their statutory duties;
- the need to guard against possible abuse of powers; and
- the rights of individuals.

Police

92. The situation remains essentially as explained in paragraph 60 of

the initial report.

Correctional Services Department

93. In 2001, the Legislative Council enacted the Rehabilitation Centres Ordinance (Chapter 567) and its subsidiary legislation and the Department started operating rehabilitation centres in July 2002. The centres provide an additional sentencing option for the courts to deal with young offenders aged between 14 and under 21, who are in need of short-term residential rehabilitation. The Department's programme comprises a two phase process –

(a) **phase I:** an initial detention period of two to five months' regimented training in a penal institution; and

(b) **phase II:** a period of one to four months' subsequent accommodation in a half-way house setting. Discharged offenders are subject to one year's statutory supervision by aftercare officers of the Department.

The Criminal Procedure (Amendment) Ordinance 2004

94. The Ordinance came into effect in July 2004. It provides for a revised scheme for prisoners who –

(a) have been detained at Executive discretion;

(b) have been serving mandatory life sentences for murder committed when the prisoner was aged under 18; or

(c) have been serving discretionary life sentences since the commencement of, or any time before the commencement of, the provisions which previously provided for the determination of the minimum terms to be served by such prisoners.

95. The Ordinance now requires the Secretary for Justice to apply to the court for a determination by a judge in respect of each prescribed prisoner. The judge hearing such an application must determine the minimum term that the prescribed prisoner must serve for the relevant offence. Where the prescribed prisoners are serving sentences for murder committed when they were under 18 years old, and subject to the consent of the prescribed prisoners, the judge will have discretion as to whether to –

(a) make a determination of the minimum terms as above mentioned; or

(b) give a determinate sentence as an alternative to determining a minimum term.

Prevention of suicides

96. In early 2004, the Correctional Services Department conducted a review of the mechanism and strategies for the detection and prevention of suicide in custody. The review resulted in the institution of several improvement measures, including early screening of inmates for suicidal tendencies, enhanced supervision of those assessed as being at high risk of suicide, and modifications to the fittings in prison accommodation to make suicide attempts more difficult. The Department will review the effectiveness of these measures on a regular basis.

Death of an inmate at Siu Lam Psychiatric Centre

97. In late 2001, an inmate of the Siu Lam Psychiatric Centre was found dead. A task group appointed by the Commissioner of Correctional Services to study the circumstances of the incident recommended improvements in relation to nursing practices and the control of medical

drugs at all penal institutions. Out of 34 recommendations, 32 have been implemented. The remaining two recommendations were that we should conduct a review of the Centre's staffing levels and seek comments from external associations on the Centre's services. The Department is pursuing this.

98. In 2002, the Coroner's Court examining the case reached an open verdict. The Police also carried out a thorough investigation and had found no evidence of foul play. At a joint meeting of the Legislative Council Panels on Security and Health Services on 17 July 2003, independent medical experts gave their views on the probable cause of death and the needle marks found on the inmate's body. They took the view that the probable cause of death was diabetic ketoacidosis.

99. Under the present legal framework, all inmates committed to the custody of the Correctional Services Department are placed under the medical charge of officers seconded from Department of Health. In-house nursing care is provided by Correctional Services officers with nursing qualifications, under the directions of the medical officers. The system has worked well and, having considered the findings of the task group, the Coroner's Court and the independent experts, we have concluded that there is no immediate need for changes beyond those arising from the task group's recommendations.

Immigration Department

100. The situation remains largely as explained in paragraphs 67 to 68 of the initial report. However, we take the opportunity to inform the Committee that the Immigration Department video-records its interviews and questioning during their investigative work subject to the consent of

the suspects. At present, all immigration investigation offices and major control points are equipped with video-recording facilities.

Customs and Excise Department

101. The position is as explained in paragraph 69 of the initial report. But Customs offices are now equipped with video recording facilities, on a need basis. Such facilities will be provided in all new customs offices.

Persons detained in mental hospitals

102. The position regarding the protection of the rights of persons detained in mental hospitals remains essentially as explained in paragraphs 73 to 80 of the initial report. The only developments of note have been that –

(a) in 2001, the Judiciary and the Hospital Authority formulated administrative arrangements to ensure that mental patients could have access to a judge or magistrate, if required, before their compulsory detention in a mental hospital; and

(b) in 2003, the Chief Executive delegated to the Secretary for Health Welfare and Food the power to order the transfer of a mentally disordered person detained in the Correctional Services Department's psychiatric centre to a mental hospital under section 52B of the Mental Health Ordinance (Chapter 136).

Neither of these developments entailed amending legislation.

103. The pattern of application in the past five years has been –

	2000-01	2001-02	2002-03	2003-04	2004-05
Number of Patients receiving ECT	194	175	153	110	137
Number of treatments	1 395	1 387	1 266	828	945
Average number of treatments per patient	7.2	7.9	8.3	7.5	6.9

Article 12: prompt and impartial investigation of torture

104. As explained in paragraph 63 above in relation to Article 2, there have been no cases, or even allegations, of torture in the period under report. Any claim or suspicion of torture having occurred in Hong Kong would be subject to immediate investigation through the complaints mechanisms described in paragraphs 105 to 122 below in relation to Article 13[5]. Assertions of torture occurring in other jurisdictions would be handled as explained above in relation to Articles 3, 8, and 9.

Article 13: right of complaint

General

105. The position is essentially as explained in paragraphs 85 to 101 of the initial report. However, we take the opportunity to update the statistical information therein and to inform the Committee of recent developments.

[5] Paragraphs 85 to 101 of the initial report described matters relating to complaints mechanisms under the section on Article 12, whereas they should properly have been addressed in Article 13. This was due to an editorial error in the preparation of that report.

Police

106. In paragraph 38 of the 2000 concluding observations, the Committee recommended that "continued efforts be made to ensure that the Independent Police Complaints Council becomes a statutory body, with increased competence". Local commentators have echoed that call. We are taking steps to convert the IPCC into a statutory body and are drafting legislation to that purpose. Inter alia, this will empower the IPCC to oblige the CAPO to submit for its examination statements and videotapes taken during investigations of complaints. Consultations conducted in March 2002 indicated that this proposal enjoyed public support.

107. We think it important to explain that our system does not, as some commentators appear to believe, rely exclusively on the good faith of serving members of the Police Force. The CAPO operates independently of all operational and support formations of the Police. And the Independent Police Complaints Council (IPCC) closely monitors and reviews CAPO's investigations of complaints against the police. The IPCC is an independent civilian body comprising non-official members from a wide spectrum of the community, including members of the Legislative Council and the Ombudsman or her representative. It is serviced by its own full-time secretariat.

108. There are effective checks and balances to ensure that complaints are handled thoroughly, fairly and impartially. The CAPO prepares detailed investigation reports on complaints received. These are then submitted to the IPCC, which rigorously examines them. Where IPCC members have doubts about a particular investigation, they may invite the

complainants, complainees, and witnesses to interviews. The Council can also ask CAPO to submit for its reference document or information relevant to a complaint. In discharging their duties, members of the IPCC may observe the CAPO's investigations in person, on either a surprise or a scheduled basis. If the IPCC is not satisfied with the results of an investigation, it can ask the CAPO to clarify any doubts or to reinvestigate the complaint. It may also bring the case to the personal attention of the Chief Executive, together with recommendations as to its disposition. Clearly, therefore, the IPCC has adequate means to ensure that investigations are conducted properly and effectively.

109. Over the years, we have introduced numerous measures to improve the credibility and transparency of the system. In particular, the Observers Scheme and the IPCC Interviewing Witness Scheme have improved the IPCC's ability to monitor CAPO investigations. Other measures have included the establishment of a special IPCC panel to monitor serious complaints and appointing retired members of the IPCC and other community leaders as Lay Observers of CAPO investigations.

Correctional Services Department

110. All complaints from prisoners are referred to the Department's Complaints Investigation Unit (CIU). The Unit is vested with independent investigative authority - delegated by the Commissioner of Correctional Services - to handle all complaints within its purview expeditiously, thoroughly and impartially. All allegations of criminal offence will be reported, without delay, for investigation by the Police.

111. The CIU handles cases referred to it by both internal and external stakeholders. It deals with complaints according to the Prison Rules

(Chapter 234A) and the Department's Standing Orders and Procedures, in the spirit of its statement of Vision, Mission and Values[6]. Complainants are normally interviewed by CIU investigators on the day following receipt of their complaints. The CIU service is certified under the ISO 9001:2000 quality management system and its modus operandi - which takes full account of the United Nations Standard Minimum Rules for the Treatment of Prisoners - is governed by the Department's Complaints Handling Manual.

112. In 2004, the CIU received a total of 204 complaints from inmates and members of the public. During the year, the Department's Complaints Committee examined 199 complaints - including cases brought forward from the previous year) - of which four were substantiated.

113. All investigation reports are examined by the Department's Complaints Committee, which either confirms their findings or directs that other courses of action be taken. The Committee is chaired by a civilian directorate officer who is independent of the uniformed stream and it members comprise, among others, the Prison Chaplain and the Assistant Commissioner of the Quality Assurance Division. The composition of the

---

[6] The statement is as follows –

"Vision - Internationally acclaimed Correctional Service

Mission- As an integral part of the Hong Kong criminal justice system, we detain persons committed to our custody in a decent and healthy environment, and provide comprehensive rehabilitative services in a secure, safe, humane and cost effective manner, so as to enhance the physical and psychological health of prisoners, protect the public and help reduce crime.

Values - Integrity - We value honesty, humility, uprightness and personal responsibility.

Professionalism - We take pride in our profession and are committed to continuous improvement in efficiency, competence and quality of service.

Humanity - We recognize that all persons have the right to correct and fair treatment with dignity, whether they are members of the public, members of staff or persons in our custody.

Discipline - We respect the rule of law, orderliness and harmony.

Economy - We optimize the use of resources and emphasize sustainability."

membership is intended to ensure the impartiality and transparency of the system. This two-tier mechanism allows dissatisfied complainants the opportunity to have their complaints re-examined. Any appeals beyond the Committee are handled by the Commissioner of Correctional Services.

114. The Committee's decisions are subject to scrutiny by external bodies such as the judiciary (through judicial review or civil claims), the Ombudsman, or Justices of the Peace. Cases are expected to be completed within the target response time of 18 weeks[7]. The parties concerned are informed of the outcome in writing.

115. As explained in paragraph 104 of the initial report, all prisoners are informed of the avenues of complaint available to them through induction sessions, information booklets, notices posted at prominent places in institutions, and during interviews with officers of the Department. Avenues for the redress of prisoner's grievances include channels, such as members of the Legislative Council, the Ombudsman, visiting Justices of the Peace, and the Independent Commission Against Corruption. Prisoners from other jurisdictions may also complain to their respective Consulates General. Rule 47C of the Prison Rules (Chapter 234A) provides that letters from prisoners to the 'specified persons'[8] - as defined in Rule 1A - are not to be read.

116. The rules governing avenues of complaint remains as explained in paragraph 108 of the initial report.

---

[7] The target is prescribed in the Department's Complaints Handling Manual.

[8] Rule 1A defines 'specified person' as comprising the Chief Executive, a member of Executive Council, a member of Legislative Council, a member of District Council, a visiting justice, the Ombudsman or the Commissioner of the Independent Commission Against Corruption.

Immigration Department

117. The situation remains essentially as explained in paragraphs 118 and 119 of the initial report.

Customs and Excise Department

118. The position remains essentially as explained in paragraph 120 of the initial report. There were 224 complaints of assault received in the reporting period of 1998 - 2004. All were found unsubstantiated after police's investigations.

Independent Commission Against Corruption (ICAC)

119. In paragraph 96 of the initial report, we stated that the Independent Commission Against Corruption Complaints Committee was chaired by the convenor of the Executive Council. The then Chairman has since retired. The current incumbent is a member of the Executive Council.

120. In paragraph 98 of the initial report, we said that, in 1997, there were 30 complaints against the ICAC and its officers; 19 of those contained more than one allegation, there being a total of 76 allegations. Most (47%) alleged misconduct on the part of ICAC officers. Another 33% alleged neglect of duties. The remaining 20% alleged abuse of power or related to ICAC procedures. Corresponding figures for the period 1998 to 2003 are as follows –

Year	No. of complaints	Total no. of allegations	Category of allegation (%)			
			Misconduct	Abuse of power	Neglect of duties	Inadequacy of ICAC procedures
1998	25	54	56	20	18	6
1999	37	110	56	23	21	0
2000	44	116	19	59	22	0
2001	26	92	25	48	24	3
2002	38	111	31	45	20	4
2003	29	70	34	25	10	1
2004	21	53	17	19	17	0

121. In paragraph 99 of the initial report, we explained that nine of the 32 complaints considered by the ICAC Complaints Committee in 1997 contained allegations that were found to be either substantiated or partially substantiated. The corresponding figures for the period 1998 to 2004 are as follows –

Year	No. of complaints considered	No. either substantiated or partially substantiated
1998	26	6
1999	30	7
2000	29	10
2001	26	5
2002	26	10
2003	35	10
2004	22	7

122. Commentators have called for the establishment of an independent department to handle complaints against all the disciplinary forces. Our view is that the existing systems described above work well and that there is no need to replace them.

Avenues for complaint by mental patients

123. The position remains as explained in paragraphs 125 to 127 of the initial report. The numbers of complaints received from mental patients by the Hospital Authority in the past five years are set out in the table below. As stated in paragraph 128 of the initial report, complainants who are dissatisfied with the outcome of the investigations conducted by the Hospital Authority may seek a review by the Public Complaints Committee of the Hospital Authority or by the Ombudsman.

The total number of complaints received from mental patients by the Hospital Authority				
2000-01	2001-02	2002-03	2003-04	2004-05
204	168	150	132	182

<u>Article 14: legal redress for victims of torture and an enforceable right to fair and adequate compensation</u>

124. The position remains as explained in paragraphs 129 to 134 of the initial report.

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

125. The position is essentially as explained in paragraphs 135 to 137 of the initial report. The number of Police Video Interview Rooms has increased from 11 in 1996 to 70 as at 31 December 2004. Every major divisional police station has at least one such facility and the Customs and Excise Department has 18. These measures have served to increase the transparency of the statement taking process and the admissibility of confession statements in the courts.

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

General

126. In paragraphs 140 to 158 of the initial report, we advised the Committee that, to a large extent, the legislative and administrative provisions discussed in the earlier parts of the report in relation to torture applied equally to conduct that fell short of torture but might constitute cruel, inhuman or degrading treatment or punishment. The position is essentially as explained there and it remains the case that all persons acting in a public capacity must act in accordance with the rule of law. Measures are in place to ensure that any cruel, inhuman or degrading treatment or punishment committed by, at the instigation of, or with the consent or acquiescence of, any public official - or by anyone acting in an official capacity - is subject to criminal or disciplinary sanctions.

127. However, in paragraph 35 of the 2000 concluding observations, the Committee expressed concern that "not all instances of torture and

other cruel, inhuman or degrading treatment or punishment are covered by the Crimes (Torture) Ordinance". And, in paragraph 37, the Committee recommended that "efforts be made to prevent other acts of cruel, inhuman or degrading treatment or punishment, in accordance with the provisions of the Convention".

128. As we explained at the hearing of our initial report, the provisions of the Convention enjoy the force of law through –

(a) Article 28 of the Basic Law, which prohibits the torture of any resident;

(b) the Hong Kong Bill of Rights Ordinance (Chapter 383), Article 3 of which gives effect to Article 7 of the ICCPR on torture or cruel, inhuman or degrading treatment or punishment; and

(c) the Crimes (Torture) Ordinance (Chapter 427): see paragraph 55 above in relation to Article 1 of the Convention.

As we also explained at the 2000 hearing, the Hong Kong Courts will construe domestic legislation in such a way as to ensure compatibility with our international obligations, including those imposed under the Convention.

129. While the overall position remains broadly as explained in paragraphs 143 to 156 of the previous report, there have been developments and innovations since then as discussed below. Essentially, and as pointed out in paragraph 143 of the initial report, acts of the kind envisaged in Article 16 are comprehensively prohibited in such statutes as –

(a) Article 3 of the Hong Kong Bill of Rights Ordinance: per

paragraph 128(b) above;

(b) the Offences against the Person Ordinance (Chapter 212), which contains provisions on wounding or inflicting grievous bodily harm, assault occasioning actual bodily harm;

(c) the Crimes Ordinance (Chapter 200) Parts VI and XII of which contain provisions to protect children from sexual abuse and prohibit child sex tourism by giving extra-territorial effect to 24 offences listed in Schedule 2 of the Ordinance (reproduced at **Annex 3**); and

(d) the Criminal Procedure Ordinance (Chapter 221): Part IIIA makes special provisions for the treatment of child witnesses and other vulnerable groups ; and

(e) the Prevention of Child Pornography Ordinance (Chapter 579), which protects children against sexual exploitation.

130. For these reasons, we respectfully maintain the view that the requirements of the Convention are fully met within the body of our laws. However, we are open to persuasion and, if the Committee is in a position to identify the specific areas where it considers that our laws are deficient as regards the Convention (the 2000 concluding observations were not specific in that regard), we will certainly review the position, acting as necessary on our findings.

Police disciplinary procedures

131. The position remains essentially as explained in paragraph 142 of the initial report.

Ill-treatment of children

132. In broad terms, the position remains as explained in paragraphs 143 to 147 of the initial report. However, in October 2003, in order to fulfil the obligation under Article 37(d) of the Convention on the Rights of the Child, we initiated a legal representation service for children and juveniles involved in care or protection proceedings and who were deprived of their liberty and detained in a gazetted place of refuge[9]. The scheme is provided through the Duty Lawyer Service[10] as soon as practicable after the children or juveniles in question have been taken to a place of refuge. We completed a review of the scheme in February 2005, concluding that it was generally working well. On the basis of the review, we have decided to expand the scope of service to cover more cases where children or juveniles are likely to be deprived of their liberty but are not immediately to be detained in a place of refuge.

Children in institutional care

133. The position is essentially as explained in paragraph 149 of the initial report. Justices of the Peace and the Social Welfare Department's 'Agency Officers' visit homes run by NGOs on both a scheduled and surprise basis. They and the Department's District Social Welfare Officers are empowered to receive complaints and to make investigations.

Domestic violence

134. Commentators have argued that domestic violence - which includes spouse battering, child abuse, and the abuse of the elderly - are forms of cruel or inhuman treatment and that the Government is obliged to

---

9 Under section 34E of the Protection of Children and Juveniles Ordinance (Cap. 213) (PCJO).
10 See paragraph 38 in Part I of this report.

address in the spirit of the Convention. We have pointed out that these forms of abuse do not fall within the scope of Article 16, which – inter alia – requires that acts of cruel or inhuman treatment (and so forth) be –

> "committed by, or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity."

In response, it has been asserted that failure to provide protection is a form of acquiescence for the purposes of Article 16. We reject that view. But since the matter has been raised, we take this opportunity to put our position on record in the paragraphs that follow.

135. Our strategy for tackling domestic violence includes preventive measures (such as publicity, community education, and nurturing social capital), support services (such as family services, housing assistance, financial assistance, and child care), and specialised services and crisis intervention, such as – inter alia - Family and Child Protective Services Units, a Family Crisis Support Centre, and refuge centres for women.

136. There are laws in place that prohibit physical assault, murder, rape, and so forth, most notably the Crimes Ordinance (Chapter 200) and the Offences Against the Person Ordinance (Chapter 212), and the provisions against blackmail – which contains an element of menace and therefore of mental violence - in the Theft Ordinance (Chapter 210). The Domestic Violence Ordinance (Chapter 189) protects married or cohabitating couples and their children from domestic violence. There is also legislation in place to protect children from abuse.

137. Of course, domestic violence does occur in Hong Kong, as it does in all societies. A particularly serious one that occurred in 2004 gave

rise to considerable public concern and is discussed below for the Committee's information, though we maintain that it does not fall within the scope of the Convention.

The Tin Shui Wai murder case

138. In April 2004, a woman living in the Tin Shui Wai[11] and her two daughters were killed by her husband. The woman, who arrived from the Mainland in January 2004, had been admitted to a shelter prior to the tragedy. On the day of the tragedy, she left the shelter and sought help from the local police station. Commentators say that the tragedy highlights the need to provide training to social workers and the police on the handling of domestic violence and other family problems. The position is as follows -

(a) **social welfare response:** the Social Welfare Department is well aware of the need for such training and, between April 2001 and March 2004, organised over 70 training programmes on domestic violence. Over 3,500 participants took part. Among others, the trainees included social workers, clinical psychologists, police officers, teachers, and medical staff. The programmes were in the form of workshops, seminars and lectures conducted by local overseas trainers. The trainers included experienced practitioners and academics with ample experiences in the area. The training covered risk assessment, intervention skills, case/group work techniques, and multi-disciplinary collaboration in the handling of cases involving violence. Repeated emphasis was placed on victim safety.

[11] Tin Shui Wai is a new town in the Northwestern New Territories.

After the Tin Shui Wai tragedy, the Director of Social Welfare appointed a panel to review the provision and delivery process of family services in Tin Shui Wai where the deceased lived and to propose improvements. The panel submitted its report in November 2004, proposing a number of improvements, including - among others - strengthening professional training in managing family violence. In addition to the training programmes already in place, the Social Welfare Department will further strengthen this area of training, with particular emphasis on crisis management, risk assessment, gender sensitivity, early detection, and different approaches to intervention and treatment; and

(b) **Police response:** police officers receive ongoing training on the handling of domestic violence at various stages throughout their career. Immediately after the tragedy, Police reviewed their handling procedures and made improvements to the training - and access to information - of frontline officers. The measures had regard to the need to foster better communications among the frontline officers of stakeholders departments, such as the Social Welfare Department, the Police, and local NGOs.

139. Commentators have asked why we have not made it compulsory to report cases of elderly abuse and for the abusers to seek counselling. The position is that abuse of the elderly usually involves complex and long-term family relationship problems. The abusers are usually close relatives or family members of the victims and the latter are often reluctant to involve them in legal proceedings. We therefore think it likely that compulsory reporting could discourage elderly people from seeking help. Against this background, our priorities are to –

- raise community and professional awareness of the problems;
- facilitate the early identification of abuse;
- empower elderly people to protect themselves. By 'empowerment', we mean helping elderly people to understand their rights to survival, freedom and personal safety, restoring their self-esteem and ability to make their own decisions, to take better care of themselves, and so forth; and
- encourage victims of elder abuse and their family/friends to seek early assistance.

140. Abusers do, in fact, receive individual compulsory counselling if they are placed under the supervision of a probation officer by order of a court. The supervising probation officers are also social workers and provide counselling to abusers in the normal course of their duties. However, we are currently examining the feasibility and implications of adopting other modes of compulsory counselling.

Removal of Mainland children under the Certificate of Entitlement Scheme

141. We explained the scheme and the reasons for introducing it in paragraph 31 of the initial report, in relation to Article 3. Commentators have reiterated the accusation that such removals constitute cruel and inhuman treatment. This view is unfounded for the reasons given in paragraphs 31 and 32 of the initial report[12].

[12] In the initial report, we discussed this in relation to Article 3. But we consider it more appropriate to address the issue under Article 16 as our interlocutors have alleged cruel and inhuman treatment.