

For information
on 3 July 2012

Legislative Council Panel on Security

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

Purpose

This paper seeks Members' comments on the proposed outline of the topics to be included in the third report of the Hong Kong Special Administrative Region (HKSAR) under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Application of the CAT

2. The application of the CAT was extended to Hong Kong in 1992. Its provisions continue to apply to Hong Kong after the establishment of the HKSAR on 1 July 1997.

Reporting under the CAT

3. Under Article 19 of the CAT, State Parties have obligation to make reports to the UN Committee Against Torture (the Committee) on measures they have taken to give effect to their undertakings under the Convention. China has ratified the CAT in October 1988. After the establishment of the HKSAR, our reports under the CAT are submitted to the UN as part of the reports of China, as with the reports of other human rights treaties applicable to Hong Kong for which China has ratified. The HKSAR's initial report was submitted to the UN in May 1999 and was considered by the Committee in May 2000. The second report was submitted to the UN in June 2006 and was considered by the Committee in August 2008.

4. The Committee, in its previous Concluding Observations in 2008, set November 2012 as the date for the submission of the HKSAR's third periodic report under the CAT. The Central People's Government (CPG) is preparing its sixth report under the CAT. In this connection, the HKSAR

Government will submit to the CPG a report on the implementation of the CAT in the HKSAR for incorporation into China's report.

Public Consultation

5. In line with the established practice, the Administration has prepared for public consultation an outline of the topics for inclusion in the report at **Appendix**. It covers developments in the HKSAR since the Committee last examined the HKSAR's report in 2008. The purpose of the consultation is to invite members of the public to submit views on the implementation of the CAT in the HKSAR in respect of those topics and to suggest any additional topics that should be included in the report.

6. The public consultation on the report outline starts on 5 June 2012. The Administration has issued the outline to relevant non-governmental organisations and other concerned groups to invite their views. The outline is also available at all Public Enquiry Service Centres of District Offices, and uploaded onto the website of the Constitutional and Mainland Affairs Bureau at <http://www.cmab.gov.hk>.

7. The public consultation will close on 18 July 2012. The comments will be made available to members of the public on request, unless the contributors have asked us specifically to keep their views confidential.

8. Members of the Panel on Security, as well as all other members of the Legislative Council, are invited to comment on the outline. The Administration will take into consideration carefully the views and suggestions received, including those of Members, in drafting the HKSAR Report.

Security Bureau
June 2012

**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**