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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports of States parties due in 1997

Addendum

CHINA*

[4 May 1999]

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* The initial, the additional and the second periodic reports submitted by the Government of China are contained in documents CAT/C/7/Add.5 and 14, and CAT/C/20/Add.5 respectively. For their consideration by the Committee, see documents CAT/C/SR.50, 51, 143/Add.2, 144/Add.2, 145/Add.2, 146/Add.2 and Add.4, 251, 252/Add.1 and 254 and Official Records of the General Assembly, Forty-fifth, Forty-eighth and Fifty-first sessions, Supplement No. 44, (A/45/44, paras. 471-502, A/48/44, paras. 387-429 and A/51/44, paras. 138-150).

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Introduction

1. This is the third report submitted by the People's Republic of China in accordance with article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. China submitted its initial report on the Convention (CAT/C/7/Add.5) in December 1989. This was followed in October 1992 by a supplementary report (CAT/C/7/Add.14, hereinafter "supplementary report"). China's second report (CAT/C/20/Add.5, hereinafter "second report") was submitted in December 1995 and considered by the Committee in May 1996.

3. The initial and supplementary reports and the second report submitted by China described in detail China's political structure, legal framework and statutory and practical prohibitions against torture. This report deals with the relevant new measures taken and progress made by China in implementation of Part I of the Convention, and, taking into account the related issues of concern raised during the previous review by the Committee and in its concluding observations, provides further information on China's implementation of the Convention.

4. China resumed its exercise of sovereignty over Hong Kong and established the Hong Kong Special Administrative Region (HKSAR) on 1 July 1997. Part II of this report provides information on implementation of the Convention in HKSAR. This part was prepared by the Government of HKSAR.

PART I

I. NEW MEASURES TAKEN AND PROGRESS MADE IN IMPLEMENTATION OF THE CONVENTION

Article 2

5. Paragraphs 64-71 of the supplementary report and paragraphs 6-7 and 85 of the second report submitted by China continue to apply.

6. Since the submission of its second report, China has revised the 1979 Criminal Law and Criminal Procedure Law of the People's Republic of China. The revised Criminal Law and Criminal Procedure Law draw on experience with the two original laws and the strengths of contemporary criminal law in other countries. The two new laws explicitly set forth basic principles of criminal law, such as those providing that crimes and punishment shall be determined by law; that the law applies equally to all citizens; that punishment must be compatible with the crime and that no one shall be found guilty without being tried by a people's court in accordance with law.

7. On 17 March 1996, the Fourth Session of the Eighth National People's Congress adopted the Decision on Amending the Criminal Procedure Law of the People's Republic of China. The revised Criminal Procedure Law has been implemented as of 1 January 1997. It strengthens the guarantees against torture and other cruel, inhuman or degrading treatment or punishment with regard to persons suspected, accused or convicted of criminal offences through measures in the following five areas:

(a) Abolition of the system of detention for interrogation;

(b) Establishment of the principle that no one can be deemed guilty before a people's court has tried him in accordance with law. Article 12 of the revised Criminal Procedure Law thus stipulates that no one shall be found guilty without being tried by a people's court in accordance with law. The establishment of this principle means that no suspect or defendant at any stage of criminal proceedings can be treated as a criminal, a stipulation which is conducive to further ensuring the legitimate rights of suspects and defendants and reducing the incidence of torture;

(c) Advancement of the date for lawyers' involvement in criminal proceedings;

(d) Reform of the procedures of criminal adjudication, replacing those characterized by interrogations by judges with means of hearing prosecution and defence arguments;

(e) Change in the means by which a death sentence is executed. The 1979 Criminal Law of China stipulated that a death sentence must be carried out by means of shooting. While maintaining this procedure, the revised Criminal Procedure Law further introduces provisions on more humane means of enforcing death sentences, such as the use of injections.

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8. On 14 March 1997, the Fifth Session of the Eighth National People's Congress of China amended the 1979 Criminal Law. The revised Criminal Law attaches greater importance to the protection of human rights. With regard to the prohibition of the crime of torture, considerable additions and improvements have been made in the revised Criminal Law as compared with the previous law. These mainly include:

(a) Retention of the crime of extorting confessions by torture and the crime of physically abusing prisoners, which were stipulated in the 1979 Criminal Law, and introduction of the crime of the use of force by judicial personnel to extract testimony. This fills a gap in the original law, which lacked explicit provisions on acts involving the use of force to extract testimony from witnesses by judicial personnel;

(b) A more explicit stipulation that those who extort confessions by torture, extract testimony from witnesses by force or physically abuse prisoners shall be punished more severely. Those who cause injury, disability or death through the above three crimes shall be sentenced to death, life imprisonment or fixed□term imprisonment of not less than 10 years.

9. The Regulations on the Use of Police Instruments and Weapons by People's Police, issued by the State Council of China in 1996, clearly define the circumstances in which police instruments or weapons are to be used and the relevant procedures. Article 14 of the Regulations stipulates that people's police who cause unnecessary personal injury or death or loss of personal property through unlawful use of police instruments or weapons shall be punished by law; those whose acts do not constitute a criminal offence shall be subject to administrative discipline. The victims of such crimes shall be compensated by the organ to which the policemen belong in accordance with the relevant provisions of the State Compensation Law.

10. To prevent and reduce the incidence of torture in judicial proceedings, China's judicial organs have taken a series of measures, including:

(a) Institutional improvement. The Supreme People's Court has formulated and issued a provisional set of Measures Concerning the Punishment of Judicial Personnel of the People's Courts Who Break the Law During Trials and a provisional set of Disciplinary Measures Concerning Judicial Personnel of the People's Courts. It has also published a separate pamphlet containing the 13 banned practices of judges, as stipulated in the Judge's Law, and made it available to every judge. The 13 banned practices include extortion of confessions by torture and abuse of power which violates the lawful rights of citizens;

(b) Enhancement of the quality of judicial personnel through education and rectification. To reduce torture and other breaches of law by judicial personnel in the performance of their duties and to improve their quality, the judicial organs of China have initiated a nationwide campaign of education and rectification since March 1998 with a view to establishing a team of judicial personnel who are fair, decent, professionally competent and strictly disciplined. Through the campaign, a number of personnel who had violated laws or disciplinary rules were punished and an attitude of performing duties in strict accordance with the law has been fostered among all judicial personnel;

(c) During the campaign, a supervisory system was established in the courts of China which gave effect to the provision that "the Supreme People's Court shall supervise the administration of justice by the local people's courts at different levels and by the special people's courts", as stipulated in the Constitution and the Organic Law of the Supreme People's Court; the courts have also further strengthened their disciplinary inspection and supervision, and standardized and instituted procedures for such work and the investigation and punishment of violations of laws and disciplinary rules;

(d) Intensification of the practice of open trials and their placement under social and public scrutiny. The courts of China have always regarded open trials as an important link in the realization of judicial justice and the prevention of corruption. The Supreme People's Court issued Provisions for Strict Implementation of the Open Trial System on 8 March 1999, which explicitly call for all cases to be handled through open trials except those involving State secrets or personal privacy and those concerning minors. The practice of open trials helps to prevent torture and other cruel, inhumn or degrading treatment towards defendants, and make public acts of torture or extortion of confessions by torture by judicial personnel during criminal proceedings, since they can be exposed by defendants in the courts, thus forcing the judicial organs to make thorough investigations of the incidents and avoid the occurrence of similar incidents.

Article 3

11. Paragraphs 72 and 73 of the supplementary report continue to apply.

12. It is usually stipulated in extradition treaties between China and other countries, such as the Extradition Treaty between the People's Republic of China and the Republic of Bulgaria, that these instruments do not interfere with the obligations undertaken and rights enjoyed by the two sides under multilateral treaties. Therefore, Sino-foreign extradition treaties do not affect the application of this article.

Article 4

13. See paragraphs 74-81 of the supplementary report. Paragraphs 10-17 of the second report continue to apply.

14. The revised Criminal Law introduces a new crime involving torture and amends the provisions on prohibition of torture by aggravating the punishment, as follows:

(a) Introduction of the crime of extracting testimony by force. Torture as referred to in the Convention covers acts of torture not only against criminal suspects aimed at extorting confessions, but also against other people aimed at extracting "information". This obviously includes the use of torture against witnesses to extract testimony. The previous Criminal Law provided only for the crime of extorting confessions by torture, while the revised Criminal Law furthermore introduces the crime of extracting testimony by force i.e., acts involving the use of force to extract testimony from witnesses by judicial personnel. The punishment meted out for this crime is the same as that for the crime of extorting confessions by torture;

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(b) Revision of the punishment given to those who cause death through extortion of confessions by torture. The previous Criminal Law stipulated that any State functionary who extorts a confession by torture shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention. Whoever causes injury or disability to a person through corporal punishment shall be charged with the crime of injury and given a heavier punishment. The revised Criminal Law stipulates that any State functionary who extorts a confession by torture against a criminal suspect or a defendant shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention. Whoever causes injury, disability or death to a person shall be charged with the crime of intentional injury or the crime of intentional homicide and given a heavier punishment. This shows that the revised Criminal Law imposes a heavier punishment on those who cause death when extorting confessions by torture;

(c) Revision of the provisions on the applicable charges and punishment for persons who cause injury, disability or death through unlawful detention. Both criminal laws provide for State functionaries committing acts of battery or humiliation in the process of unlawful detention to be charged with unlawful detention and given a heavier punishment. However, under the previous Criminal Law, perpetrators of acts of violence in the process of unlawful detention that caused injury or disability could only be charged with unlawful detention and sentenced to fixed-term imprisonment of not less than three years and not more than 10 years; while the perpetrators of acts that caused death could be sentenced to fixed-term imprisonment of not less than seven years. The revised Criminal Law establishes more serious charges and heavier punishment for such acts, the perpetrators being charged with intentional injury or intentional homicide rather than simply unlawful detention, thus increasing the severity of the punishment for such acts;

(d) Revision of the provisions on the applicable charges and punishment for abuses of prisoners that cause injury, disability or death. The previous Criminal Law stipulated that in such cases, if the circumstances are especially serious, the severest punishment should be fixed-term imprisonment for 10 years. The “especially serious circumstances” here included cases in which the abuses caused injury, disability or death to prisoners. The revised Criminal Law stipulates that prison officers who abuse prisoners and cause injury, disability or death shall be charged with intentional injury or intentional homicide and given a heavier punishment. The prison officers whose abuses cause injury, disability or death to prisoners are thus liable to fixed-term imprisonment for more than 10 years, life imprisonment or the death penalty. The revised Criminal Law also stipulates that prison officers who incite prisoners to beat or physically abuse other prisoners shall be punished in the same manner.

Article 5

15. Articles 6 and 9 of the 1997 Criminal Law constitute the legal basis for the exercise of jurisdiction by China over the crimes described in article 4 of the Convention.

16. Article 6 of the 1997 Criminal Law states that “the law is applicable to all who commit crimes within the territory of the People's Republic of China unless otherwise expressly stipulated by law. The law is applicable to all who commit crimes aboard a ship or aircraft of the

People's Republic of China. When either the act or consequence of a crime takes place in the People's Republic of China, a crime is deemed to have been committed within the territory of the People's Republic of China".

17. In the above provision concerning the cases "expressly stipulated by law", the express stipulation, with regard to the Convention, refers to the special provisions on foreigners who enjoy diplomatic privileges and impunity. Article 11 of the 1997 Criminal Law of China states that "the problem of criminal responsibility of foreigners who enjoy diplomatic privileges and impunity is to be resolved through diplomatic channels".

Article 6

18. Paragraphs 85-89 of the supplementary report continue to apply.

Article 7

19. Paragraph 90 of the supplementary report continues to apply. The current extradition treaties between China and foreign countries usually stipulate that both signatory parties have the right to refuse to extradite their own nationals. Under such circumstances, the country of origin of the person whose extradition was requested must submit the case to its competent departments with a view to initiating criminal proceedings against and punishing the person as appropriate in accordance with the law of the country. One example of this is article 5 of the Extradition Treaty between the People's Republic of China and the Russian Federation.

20. Regarding the treatment of criminal suspects and defendants at the various stages of criminal proceedings, see paragraphs 91-98 of the supplementary report.

Article 8

21. Paragraphs 21-24 of the second report continue to apply.

22. As of February 1999, China had concluded extradition treaties with the following countries: Belarus, Bulgaria, Cambodia, Kazakhstan, Kyrgyzstan, Mongolia, Romania, Russia, Thailand, Ukraine. In practice, China also cooperates with some countries in extraditing or repatriating suspect criminals. The relevant articles of international conventions acceded to by China, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, will serve as the legal basis for such cooperation.

Article 9

23. Paragraph 100 of the supplementary report submitted by China continues to apply.

24. By the end of 1998, China had concluded treaties on judicial assistance in criminal matters with some 20 countries, including Canada, Egypt, Greece, Korea, Russia, Turkey and Viet Nam.

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Articles 10 and 11

25. Reference may be made to paragraphs 101-112 of the supplementary report and paragraphs 27-37 of the second report.

26. In the first half of 1996, public security organs in China launched an educational campaign specifically against the practice of extorting confessions by force. Through mandatory study of laws and regulations on interrogation, an attempt was made to raise awareness of the danger of abuse. Public security officers of all grades as well as general law enforcement personnel were required to take refresher courses on the legal system and police discipline. They were taught to handle cases with greater regard for correctness and civility. Since 1996, the number of cases of extortion of confessions by torture has markedly decreased.

27. In April 1999, when the Ministry of Public Security acted to address misconduct in law enforcement, it made a special effort to stop interrogation by force, including the use of torture likely to cause death. It insisted that measures be taken to prevent torture and physical abuse of inmates.

28. On 9 March 1998, the Ministry of Public Security further ordered an investigation into police misconduct, calling for the prosecution of such acts as torture, bribery and corruption. From March until the end of the year, a corrective review was undertaken throughout the country. Emphasis was placed on policemen abusing their official capacity to violate rules of discipline and the law and to commit criminal acts, including such acts as the extortion of confessions by torture.

29. Prisons are the principal instruments in legal punishment. It is strictly forbidden to use torture in a prison. No one is ever permitted to torture prisoners under any circumstances or for whatever reason. Prison guards are trained to observe correct and civil behaviour.

30. In 1996, a total of 2,902 training courses were given for law enforcement professionals in the country and these were attended by some 180,000 trainees. To improve the quality of prison management, the Ministry of Justice has also encouraged prison staff to enrol in self-study programmes and pass qualification tests. By the end of 1998, some 80,000 had already taken such tests.

31. To familiarize prison staff with international human rights standards and the present Convention, the Ministry of Justice has compiled relevant United Nations instruments as well as Chinese laws and regulations in manuals. These are issued to each guardian of the law to study and observe.

32. The revised Criminal Procedure Law of China has altered the form of criminal justice with the institution of the defence trial as opposed to trial by judge as formerly practised. In the latter, a judge would be fully apprised of the case against the accused by the procurator. Even before the trial opened, he would have already examined the accused, the witnesses and all the physical evidence submitted. The trial would take place only after the judge had ascertained the facts of the case and the charge. The advantage of this form of justice is that, since the judge

would be thoroughly familiar with the case, the trial would not be prolonged. The drawback, of course, is that the judge would have formed an a priori opinion, which it would be difficult for the defence to reverse.

33. The revised Criminal Procedure Law has laid down the conditions for a defence trial. Article 150 stipulates that if a court, upon looking into a case, finds facts and evidence to support the charge and is satisfied with the witness list and the duplicates and photographs of the main physical evidence, it shall decide to try the case. In the course of the trial, the accused and the defence may, with the permission of the judge, cross-examine witnesses and testifying experts. They may also comment on the evidence and on the merits of the case. They may then present their arguments. Thereafter, the accused may make his final plea. These stipulations have the effect of making a trial more open and more just; they also tend to elevate the position of the accused in a trial and lessen the likelihood of physical abuse.

34. Furthermore, the revised Criminal Procedure Law has abolished the former practice of examination of detainees. This used to be an instrument of administrative coercion, mainly applied to felons who refused to reveal their identity, address or background or who had committed multiple offences in different places or in collusion with others. The examination was conducted by the sole decision of a public security establishment. While the case was being clarified, a detainee could be held for as long as three months, with little or no effective supervision. The revised Criminal Procedure Law has now eliminated this kind of strictly administrative enforcement.

35. As detention is a coercive measure, a public security establishment may not hold anyone without (a) respecting the object and duration of detention as defined by the procedural law; (b) observing the rules concerning the interrogation of suspects and the collection of evidence; and (c) accepting the supervision of the people's procurator. The amendment of the procedural law has thus effectively reduced or prevented the abuse of suspects.

Article 12

36. Paragraphs 113 and 114 of the supplementary report continue to apply.

37. In the last two decades, China's inspectors have placed much greater emphasis on investigating the use of torture during interrogation. Such offences against citizens' rights as may be revealed are severely punished: 409 cases in 1996 and 412 cases in 1997 gave rise to punishment.

38. In trying crimes of torture and violence during interrogation and mistreatment of inmates, the courts insist on being strictly independent and, free from interference either by administrative authorities or by social groups or individuals. It is reported that between January and July 1998, courts in China tried a total of 154 such cases of torture, violence and mistreatment; in 150 cases the defendants were found guilty and in 14 cases they were acquitted. Penalties were imposed in 136 of the 150 cases, while in the other 14 cases the offenders were absolved from punishment. The victims received compensation from the State.

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39. One example that may be cited relates to what happened in the city of Nanhai, in Guangdong province, on 8 February 1996. In that case, a policeman named Zhong and a police trainee named Deng, without prior authorization, interrogated a man named Chen suspected of theft. During the interrogation, these two men beat Chen on the hands, legs and back with wooden rods, killing him. On 15 July, the court of Nanhai sentenced Zhong and Deng to eight years' and three years' imprisonment, respectively, for manslaughter. On 22 July, the head of public security of the municipality was dismissed from his post by the inspector's office.

40. Once the use of torture is discovered in a prison, it will be punished. In 1997, there were 1.44 million inmates in China's prisons guarded by 280,000 law enforcement personnel. Of these, 55 guards were prosecuted for verbal or physical abuse of inmates, and 14 were sentenced to prison terms.

Article 13

41. Paragraphs 39-43 of the second report continue to apply.

42. Article 22 of the Prison Law stipulates: "Charges and evidence against a criminal must be either promptly processed by the prison authority or handed over to a public security authority or a people's inspectorate, which authority or inspectorate shall then communicate the findings of its review to the prison." Article 23 of the same Law stipulates: "Any appeal, accusation or complaint by a criminal must be promptly forwarded without delay."

43. Article 46 of the Regulations on Detention stipulates: "Any appeal or complaint by an inmate must be promptly forwarded without obstruction or delay. Any denunciation or accusation concerning an unlawful act by a law enforcement official must be promptly communicated to a people's inspectorate."

44. Article 153 of the Regulations on the Procedures of Public Security Organs in Handling Criminal Cases stipulates: "Any accusation or complaint by a detainee must be promptly communicated to a relevant authority without delay, suppression or obstruction. Any denunciation of or accusation against a law enforcement official must be communicated by the detention authority to a supervisory public security organ or people's inspectorate."

45. Since 1997, public security organs at different levels have gradually set up their own watchdog bodies to oversee the conduct of policemen, and especially to guard against any violation of rights during interrogation.

46. As a basis for action, the Ministry of Public Security elaborated a set of Working Regulations for the Supervision of Public Security Forces on 10 September 1997, the purpose of which is to ensure the lawful exercise of the supervisory body's mandate. The Working Regulations thus prescribe the mandate and procedure of supervision by stipulating that "when a watchdog task force, in the exercise of its mandate, receives complaints against the police, it must itself undertake an investigation. Should the matter be found to fall without its purview, it must promptly alert a competent public security authority".

47. Torture and the obtaining of testimony by violent means are deemed in China to be criminal behaviour subject to investigation and prosecution. Other lighter offences are subject to administrative disciplinary action.

48. Article 254 of the 1997 Criminal Law has kept the injunction against frame-up and reprisal of the 1979 Law. If a suspect accuses a law enforcement officer of torture and the officer retaliates with further abuse, then the latter is deemed to be an offence of reprisal in addition to torture.

Article 14

49. Reference should be made to paragraphs 117 and 118 of the supplementary report. Paragraphs 45-53 of the second report continue to apply.

50. The Prison Law of China explicitly prohibits the torture of prisoners by anyone for any reason. In addition, the Ministry of Justice has published its own departmental regulations. There is also a Compensation Scheme run by the judicial and administrative authorities. Thus, in the case where a prison guard violates a prisoner's personal rights, the State, according to the regulations, has an obligation to award compensation to the victim.

Article 15

51. Paragraphs 120-122 of the supplementary report and paragraph 55 of the second report continue to apply.

52. In the course of a trial, if the accused claims that his confession has been given under torture, the court must look into such claim and, if necessary, stop the trial to undertake an investigation. No testimony by a witness, declaration by a victim or confession by the accused deemed by the court to have been obtained by unlawful means such as torture, threats, enticement or deceit can be admitted as evidence. The court must call for such conduct to be investigated and prosecuted.

Article 16

53. Reference may be made to paragraphs 123-125 and 129 of the supplementary report.

54. Article 48 of China's 1997 Criminal Law stipulates: "The death penalty shall only be applied to criminals who have committed the most heinous crimes. If the immediate execution of the criminal punishable by death is not deemed necessary, a two-year stay of execution may be pronounced simultaneously with the imposition of the death sentence." "All death sentences except for those which according to law must be decided by the Supreme People's Court, shall be submitted to the Supreme People's Court for approval. A death sentence with a stay of execution may be decided or approved by a higher people's court."

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55. Article 212 of the revised Criminal Procedure Law stipulates that a death penalty is to be executed by either firing squad or lethal injection. A death penalty may be carried out on the execution ground or inside a prison. The execution of death sentences shall be announced but shall not be held in public.

56. Article 50 of China's 1997 Criminal Law stipulates: "If a person sentenced to death with a stay of execution does not deliberately commit a crime during the period of suspension, his punishment shall be commuted to life imprisonment upon the expiration of that two-year period. If he performs meritorious service, his punishment shall be commuted to fixed-term imprisonment of not less than 15 years and not more than 20 years upon the expiration of that two-year period. If it is verified that he has deliberately committed further crime, the death penalty shall be executed upon the approval of the Supreme People's Court."

57. The suspended death sentence is China's cautious way to reduce executions. The purpose is to avoid, as far as possible, the carrying out of a death sentence. A stay of execution is an act of compassion conforming to the Chinese way. As such it embodies China's respect for human rights and its traditional humanitarian approach.

58. Paragraphs 57-62 of the second report continue to apply.

II. ADDITIONAL INFORMATION AS REQUESTED BY THE COMMITTEE

A. The concept of torture

59. Chapters IV and VIII of China's revised Criminal Law of 1997 have enhanced the protection of a citizen's personal and democratic rights. These are not to be violated by any individual or organization under any pretext. Any unlawful violation of a citizen's rights deemed to constitute a crime is punishable according to law. The relevant stipulations of the Criminal Law fully cover the definition of "torture" as given in article 1 of the Convention.

60. Article 247, for example, refers specifically to the crimes of "extortion of a confession by torture" and "extraction of testimony by the use of force." A law enforcement official who tries to extort a confession from a suspect or accused by torture or who tries to extract testimony by force is punishable by three years' imprisonment or detention. "Extortion of a confession by torture" here means the application of physical or other forms of torture by a law enforcement officer to obtain a confession from a suspect or accused. "Extraction of testimony by the use of force" means the use by such a person of similar abusive methods to compel a witness to give testimony.

61. Article 248 of the revised Criminal Law refers to the crime of "physical abuse of inmates." A guard in a prison, detention centre or place of confinement who beats or physically abuses an inmate is punishable, in a serious case, by up to three years' imprisonment or, in an exceptionally serious case, by three to ten years' imprisonment.

62. The above two articles also refer respectively to acts that cause injury and death. By article 234 on the crime of intentional injury and article 232 on the crime of intentional killing, the revised Criminal Law then specifies the punishment for such acts.

63. The following articles of the Criminal Law on different crimes are relevant to combating torture: intentional killing (art. 232); intentional injury (art. 234); illegal detention (art. 238); humiliation (art. 246); and false testimony (art. 305).

64. The Convention refers to torture as simply certain acts "inflicted 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 China's Criminal Law, the crimes of "extortion of a confession by torture" and "extraction of testimony by the use of force" and of "physical abuse of inmates", as in the Convention, also relate to public officials as principal practitioners. The crimes of humiliation and other acts, by contrast, relate both to public officials and to non-public persons as practitioners. Thus Chinese law defines a practitioner of torture in an even broader sense than the Convention. But so far Chinese law does not differentiate between torture by a public official and that by a non-public person, in conformity with articles 1 and 2 of the Convention.

B. Complaints by inmates

65. See the discussion relating to article 13 of the Convention.

C. The mandate of the inspectorate

66. For the mandate of the inspectorate, see paragraphs 27 and 28 of the supplementary report.

67. According to relevant law, the inspectorate is the mechanism for legal supervision in China, with responsibility for investigating and prosecuting crimes committed by State functionaries. Through its practice at different levels, the inspectorate makes reinforcing legal supervision a vital task in ensuring the democratic rule of law. In discharging this responsibility, ensuring vigilance and justice, the inspectorate rigorously prosecutes cases of violation of existing laws, lax law enforcement and failure to pursue law-breakers, paying particular attention to crimes committed by law enforcement officials abusing their prerogatives.

68. From 1993 to 1997, China's inspectorate investigated a total of 387,352 cases of bribery, dereliction of duty as well as violation of citizens' personal and democratic rights. In the process, it prosecuted 16,117 officials in senior administrative and party posts, 17,214 staff of the judicial sector, 8,144 staff of the law administration and enforcement sector and 13,330 employees in the economic management sector. In all, charges were brought against 181,873 officials. Through its monitoring efforts, it tries to rectify both lax enforcement and misapplication of law, hitting hard at criminals on the one hand while protecting the innocent and the legitimate rights of suspects on the other. Thus, in 271,629 cases, it decided not to allow arrest and, in 25,638 cases, not to press charges. Insofar as possible miscarriage of justice was concerned, the inspectorate in the same period issued 12,806 critical opinions against mistrials and 12,288 protests and counter-appeals against misjudgements and faulty sentencing. Furthermore, it reviewed 47,590 cases of complaints, corrected 4,285 cases of dereliction of duty including failure to make arrests and/or to press charges, and lodged formal protests in 589 cases where the persons concerned had already been tried and their sentences had taken effect. Since 1995, when the National Compensation Law was first implemented, the

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inspectorate has received 762 formal applications for compensation, of which 179 have been granted. It has also reinforced the supervision of penal work. Thus it ordered corrections in 94,794 cases of failure to submit implementation reports, 407,253 cases of prolonged imprisonment and 2,922 cases of unlawful early or late release. Permanent inspectors have been appointed in the field. At present, there are 78 inspectorate departments and 3,404 inspectorate offices attached to prisons and detention centres in the country.

D. Execution and suspension of the death penalty

69. See the part of this report relating to article 16 of the Convention.

E. Presence of lawyers in trials

70. The revised Criminal Procedure Law now moves the intervention of lawyers forward, allowing them to be present during an investigation. According to that Law, from the day he is first interrogated or subject to compulsory measures by the investigating authority, a criminal suspect may engage a lawyer to provide legal counsel and handle accusations and charges. The lawyer has the right to be informed by the investigating authority of the charges against the suspect and to interview the suspect in custody to be apprised of the relevant particulars of the case.

71. On the one hand, the Law enables the suspect to obtain legal assistance during interrogation and, on the other, obliges investigators to proceed strictly according to law. Should investigators try to inflict torture on the accused, the latter may immediately lodge a complaint through his lawyer. Thus the early presence of a lawyer acts as a powerful deterrent against incidents of torture.

72. These rights are incorporated in article 96 of the revised Criminal Procedure Law. The article stipulates: "From the day a criminal suspect is first interrogated or subject to compulsory measures such as warrant, bail, surveillance, detention or arrest, the suspect can engage a lawyer to provide legal counsel and to handle accusations and charges. If the suspect is in custody, the lawyer can arrange bail pending trial. If, however, a State secret is involved, the suspect must receive permission from the investigating authority before he can engage a lawyer." The same article further stipulates: "A delegated lawyer has the right to be informed by the investigating authority of the particulars of the case. If warranted, the authority may assign someone to be present when the lawyer interviews the suspect. If a State secret is involved, the lawyer must receive permission from the investigating authority before he can visit the suspect."

73. The Supreme People's Court, the People's Chief Procuratorate, the Ministry of Public Security, the Ministry of Justice and the Legislative Commission of the Standing Committee of the National People's Congress on 19 January 1998 jointly published a set of Rules on Issues Encountered in Implementing the Criminal Procedure Law. Rule 10 stipulates: "According to article 96 of the Criminal Procedure Law, a criminal suspect while under investigation may engage a lawyer either by himself or through his family. If the suspect is in custody, the detention centre must promptly forward his request to engage a lawyer to the investigating authority, which must then promptly refer it to a delegated person or law office. If the suspect

merely requests to engage a lawyer but does not have a particular one in mind, the investigating authority must promptly ask a local lawyers' association or judiciary office to recommend a lawyer."

74. Rule 11 provides that "as long as the case concerned does not involve a State secret, a lawyer does not need permission to visit a suspect. Secrecy conditioned by investigation may not be construed as involving a State secret and invoked as grounds for denying a lawyer's visit. A visit with a suspect requested by a lawyer must be arranged within 48 hours. If the arraigned person happens to be a suspected organizer, leader or member of a criminal ring, a terrorist movement or a smuggling, drug-dealing or embezzlement conspiracy involving more than two accomplices, a visit requested by his lawyer must be arranged within five days."

75. To safeguard the implementation of the revised Criminal Procedure Law, the Ministry of Public Security on 14 May 1998 published a revised set of Rules on the Handling of Criminal Cases by Public Security Authorities. The aim of these Rules is to define the mandate and prescribe the standard procedures by which criminal cases can be handled correctly and with dispatch. Rule 8 stipulates: "In handling a criminal case, a public security authority must rely on investigation and proof and not on confession. Extortion of confessions by torture is strictly forbidden."

76. Several of these Rules also specifically refer to the "participation of lawyers in criminal proceedings." They safeguard a lawyer's professional status and provide for his presence during the investigation phase of criminal proceedings. The relevant provisions are as follows:

77. Rule 36 stipulates that from the day a criminal suspect is first interrogated or subject to compulsory measures by a public security authority, he must be informed on record of his right to engage a lawyer to provide legal counsel and to handle accusations and charges.

78. Rule 39 stipulates that when a criminal suspect in custody requests to engage a lawyer, the detention centre must promptly forward his request to the investigating authority, which must then promptly refer it to a delegated person or law office. If the suspect merely requests to engage a lawyer but does not have a particular one in mind, the investigating authority must promptly ask the local lawyers' association or judicial office to recommend a lawyer.

79. Rule 43, paragraph 1, stipulates: "As long as the case concerned does not involve a State secret, a lawyer does not need permission to visit a suspect. Secrecy conditioned by investigation may not be construed as a State secret and invoked as grounds for denying a lawyer's visit."

80. Rule 44 stipulates: "A visit with a suspect requested by a lawyer must be arranged within 48 hours. If the arraigned person happens to be a suspected organizer, leader or member of a criminal ring, a terrorist movement or a smuggling, drug-dealing or embezzlement conspiracy involving more than two accomplices, a visit requested by his lawyer must be arranged within five days."

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F. Allowing a detained or arraigned person to receive family visits and a doctor at the outset

81. Chinese law allows a detained or arraigned person to receive visits from family members and a doctor at the earliest stage of legal proceedings. The revised Criminal Procedure Law provides as follows:

82. Article 14, paragraph 2, stipulates: "In a case involving a felony by a juvenile of less than 18 years of age, the legal representative of the suspect or accused may be called to be present during interrogation and trial."

83. Article 64, paragraph 2, stipulates that in the case of detention, except out of consideration for possible impediment to investigation or due to impossibility to notify, the detainee's family or work unit must be informed of the reason for his detention and his whereabouts within 24 hours.

84. Article 71, paragraph 2, stipulates that in the case of an arrest, except out of consideration for possible impediment to investigation or due to impossibility to notify, the arrested person's family or work unit must be informed of the reason for his arrest and his whereabouts within 24 hours.

85. Article 75 stipulates that a suspect or accused, his legal representative, close family, delegated lawyer or defence counsel has the right to ask a court, prosecutor or public security authority to remove a compulsory measure such as warrant, bail, surveillance, detention or arrest that has exceeded its statutory limit. The court, prosecutor or public security authority must release the suspect or accused in respect of whom the measure has lapsed without imposing bail and surveillance, or must take legal steps to alter such compulsory measure.

86. The revised Rules on the Handling of Criminal Cases by Public Security Authorities further substantiate the revised Criminal Procedure Law as follows:

87. Rule 108 stipulates that when a person is held in custody, a "detention notification" must be sent to the family or the work unit of the detainee within 24 hours. However, with the sanction of a public security authority above the county level, notification may be withheld: (a) when a suspected accomplice may be alerted to flee or hide, or to destroy or falsify evidence; (b) when the suspect refuses to reveal his true name, address or identity; or (c) when notification would impede investigation or when notification is not feasible. Once such imperative no longer exists, the family or the work unit of the detainee must be promptly notified. The reason for any failure to notify within 24 hours must be specified in the detention notification.

88. Rule 125 stipulates that when a criminal suspect is arrested, a "notification of arrest" must be sent to the arrested person's family or work unit within 24 hours. However, with the sanction of a public security authority above the county level, notification may be withheld: (a) when a suspected accomplice may be alerted to flee or hide, or to destroy or falsify evidence; (b) when a suspect refuses to reveal his true name, address or identity; or (c) when notification

would impede investigation or when notification is not feasible. Once such imperative no longer exists, the family or the work unit of the arrested person must be promptly notified. The reason for any failure to notify within 24 hours must be specified in the notification of arrest.

89. Rule 135 stipulates that when a criminal suspect, his legal representative, close family or delegated lawyer asks a public security authority to remove a compulsory measure that has exceeded its statutory limit, the authority must release the suspect without imposing bail or surveillance, or must take legal steps to alter such compulsory measure.

90. Rule 182, paragraph 1, stipulates that the interrogation of a juvenile suspect must take a different form from that of the interrogation of an adult and must take into consideration the juvenile's physical and mental characteristics. Unless notification would impede investigation or is otherwise not feasible, his parents, guardian or teacher must receive notice to be present. Interrogation may take place either in a public security office or in the home, work unit, school or other appropriate location.

91. In China, criminal suspects who are detained or arrested are kept in a place of detention. On 17 March 1990, the State Council promulgated a set of Regulations on Detention. Article 6, paragraph 1, of these Regulations specifies: "Depending on the task at hand, a place of detention may be staffed by guards, wardens and medical, financial and kitchen personnel." Article 14 stipulates: "Juvenile inmates must be separated from adults." Article 26 states: "A place of detention must be provided with the necessary medical equipment and common medication. Inmates who are sick must be promptly treated. Those needing hospital care must be hospitalized nearby. Those who are seriously ill may be legally given medical leave on bail pending trial." Article 28 states: "An inmate under custody may, with the approval of the authority handling his case and the permission of the public security authority, correspond with close family members and receive visits from them."

Annexes*

A. Criminal Procedure Law of the People's Republic of China

B. Criminal Law of the People's Republic of China

C. Administrative Penalty Law of the People's Republic of China

D. Extradition Treaty between the People's Republic of China and the Republic of Bulgaria

E. Extradition Treaty between the People's Republic of China and the Russian Federation

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* These annexes are available for consultation in the files of the Office of the High Commissioner for Human Rights.

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PART II

INFORMATION ON IMPLEMENTATION OF THE CONVENTION IN THE HONG KONG ADMINISTRATIVE REGION

Introduction

Background

92. In June 1997, China's Permanent Representative to the United Nations notified the United Nations Secretary-General that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment would continue to apply to the Hong Kong Special Administrative Region (HKSAR) with effect from 1 July 1997 and that the Central People's Government (CPG) would assume responsibility for the international rights and obligations arising from the application of the Convention to the Region. This report on the HKSAR in the light of article 19 of the Convention is submitted in accordance with that responsibility.

93. Having regard to the fact that the last report on Hong Kong was submitted by the Government of the United Kingdom and subsequently considered by the Committee in November 1995, the purpose of this introductory section is to inform the Committee of certain significant developments between the date of its hearing and 30 June 1997 - a period during which the CPG was not responsible for the rights and obligations arising from the application of the Convention to Hong Kong.

General

94. The position remains essentially as described in the last report on Hong Kong. The framework of legal protections (the rule of law, the Bill of Rights Ordinance, judicial independence, and legislation creating offences of torture and providing for surrender of persons for these offences: paragraph 95 (a) below) remains in place. Indeed, it has been strengthened by the constitutional protections in the Basic Law, article 39 of which provides that the provisions of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.[1] However, there were also developments that took place before 1 July 1997 that were relevant to the implementation of the Convention in the HKSAR. These are explained below.

Developments between November 1995 and 30 June 1997

95. There were two developments of note:

(a) The Fugitive Offenders Ordinance and the Fugitive Offenders (Torture) Order - amendment to the Crimes (Torture) Ordinance: Part II of the Crimes (Torture) Ordinance (Chapter 427) enabled Hong Kong to surrender persons to jurisdictions that were parties to the Torture Convention for offences of torture pursuant to United Kingdom extradition legislation. In June 1997, Part II of the Ordinance was repealed and replaced by the Fugitive Offenders (Torture) Order (Chapter 5031): text at annex 2. This is subordinate legislation made pursuant

to the Fugitive Offenders Ordinance (Chapter 503) at annex 3. The combined effect of the Ordinance and the Order is to permit the HKSAR to surrender persons to parties to the Torture Convention for offences of torture.

(b) Vietnamese refugees and migrants: in paragraph 15 of their concluding observations on the 1995 report, the Committee expressed concern about "the standard of detention of the Vietnamese boat people in Hong Kong". The present position is discussed in paragraphs 33 to 37 of this report in relation to article 3. Essentially, Hong Kong is no longer a port of first asylum for persons leaving Viet Nam. Almost all the Vietnamese migrants formerly detained in Hong Kong holding centres have returned to Viet Nam. The last detention centre for Vietnamese migrants was closed in May 1998. The 640 now remaining (whose situation is explained below in relation to article 3) have been released on recognisance. Like the 1,060 remaining refugees, they are allowed to seek employment and seek their own accommodation. Most of the migrants and about half the refugees live in an open centre (Pillar Point) operated by the Office of the United Nations High Commissioner for Refugees (UNHCR). They have access to medical, social and educational services. Like illegal immigrants from other places, persons from Viet Nam who entered Hong Kong in search of illegal employment are held in custody pending repatriation. The institution where they are held conforms with United Nations minimum standards.

Article 1

96. Section 3 (1) of the Crimes (Torture) Ordinance (Chapter 427) defines the act of torture in the following terms -

> "A public official or person acting in an official capacity, whatever his nationality or citizenship, commits the offence of torture if in Hong Kong or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties."

97. The Ordinance does not restrict the concept of torture to acts committed by public officials or persons acting in an official capacity. Section 3 (2) provides that:

> "A person not falling within subsection (1), whatever his nationality or citizenship, commits the offence of torture if :
>
> (a) in Hong Kong or elsewhere he intentionally inflicts severe pain or suffering on another at the instigation or with the consent or acquiescence of:
>
> (i) a public official; or
>
> (ii) any other person acting in an official capacity; and
>
> (b) the official or other person is performing or purporting to perform his official duties when he instigates the commission of the offence or consents to or acquiesces in it."

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Thus, we consider that - taken together - the provisions of section 3 are consistent with article 1 of the Convention.

98. Under section 3 (3) of the Ordinance, it is immaterial whether pain or suffering is physical or mental and whether it is caused by an act or an omission.

99. Section 3 (4) provides that it shall be a defence for a person charged with the offence of torture to prove that he had lawful authority, justification or excuse for that conduct. For the purpose of the Ordinance (section 3 (5)), "lawful authority, justification or excuse" means:

(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 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.

100. Some commentators have queried whether sections 3 (4) and (5) of the Ordinance, which provide for a defence of "lawful authority, justification or excuse" is compatible with article 1.1 of the Convention, which relates only to "lawful sanctions".

101. The HKSAR Government considers that the defence in sections 3 (4) and (5) is consistent with the "proviso" in the final sentence of article 1.1. The section is an attempt to give effect to the second sentence of article 1.1 ("Torture does not include pain or suffering arising from, inherent in or incidental to lawful sanctions"). It is intended to cover matters such as the reasonable use of force to restrain a violent prisoner. It is not intended - nor would the court be asked to interpret it as authorizing - conduct intrinsically equivalent to torture.

Article 2

102. Article 3 of the Bill of Rights Ordinance (BORO) provides that no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his full consent to medical or scientific experimentation. This gives effect in domestic law to article 7 of the ICCPR and, indeed, to the aims of the Convention.

103. Article 39 of the Basic Law provides, inter alia, that the provisions of the ICCPR, as applied to Hong Kong, shall remain in force and shall be implemented through the laws of the HKSAR. This means that the provisions of article 7 of that Covenant are entrenched at the constitutional level.

104. Should an emergency arise in future which necessitates the making of new regulations under the Emergency Regulations Ordinance (Chapter 241), or should it be decided by the Standing Committee of the National People's Congress that the HKSAR was in a state of

emergency beyond the control of the HKSAR under article 18 of the Basic Law, both the new regulations and article 18 would still be read with article 39 of the Basic Law. In other words, derogating measures may be taken only to the extent strictly required by the exigencies of the situation and in accordance with law. No measure shall be taken that is inconsistent with any obligation under international law that applies to Hong Kong.

105. The Geneva Conventions, which, inter alia, proscribe the torture or inhuman treatment of a person who is a protected person under one of the four Conventions, continue to apply to Hong Kong.

106. The Offences against the Person Ordinance (Chapter 212) makes it a criminal offence to assault a person. Depending on the circumstances, offences such as murder, wounding and assault occasioning actual bodily harm could entail acts of torture. Assaults are also civil wrongs and could found a civil action.

107. As explained in paragraph 99 above, in relation to article 1, the defence of "lawful authority, justification or excuse" in sections 3 (4) and (5) of the Crimes (Torture) Ordinance is intended to cover such matters as the reasonable use of force to restrain a violent prisoner. It does not sanction acts that are intrinsically equivalent to torture. Neither "exceptional circumstances" nor "superior orders" could be invoked in the law of Hong Kong as a justification for torture.

Instances of the alleged use of torture

108. There have been no reports of torture as defined in the Crimes (Torture) Ordinance involving the Correctional Services Department, the Customs and Excise Department and the Independent Commission against Corruption (ICAC). And, with the special exception of the case discussed in paragraph 109 below, there have been none concerning the police. However, since the Ordinance was enacted, there have been 21 allegations involving the Immigration Department. All were investigated, none were substantiated.

Alleged use of torture by police officers

109. In April 1998, four police officers were found guilty of assaulting a drug addict to force a confession. They were charged and convicted for assault occasioning actual bodily harm under the Offences against the Person Ordinance (Chapter 212). The complainant alleged that the police beat him up, poured water into his ears and nose, and stuffed a shoe into his mouth. Commentators have asked why the officers were not charged under the Crimes (Torture) Ordinance. Some have suggested that this was in order to avoid the severe penalties imposed under section 3 of the Ordinance. That view is unfounded.

110. The critical issue in determining whether it is appropriate to lay a charge of torture under section 3 of the Crimes (Torture) Ordinance is whether the prosecution can prove beyond reasonable doubt that an official has intentionally inflicted severe pain or suffering on another in

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the performance or purported performance of his official duties. On an application of the ordinary rules of statutory interpretation concerning criminal statutes, section 3 requires that the prosecution must prove that the accused:

(a) Committed the act which inflicted pain intentionally; and

(b) Intended that his act would result in severe pain.

111. The word "severe" clearly indicates the intention of the legislature to require proof beyond reasonable doubt a degree of pain above that which is normal in order to qualify as torture. Thus, it would not suffice for a court to be satisfied only that there was an intention to inflict pain. In the case under discussion, those whose duty it was to decide whether to charge and what (if any) charge to lay,[2] concluded that a charge of occasioning actual bodily harm was the appropriate exercise both of the discretion to prosecute and of the related discretion to select the charge upon which to prosecute. On the basis of published guidelines, they concluded that there was no reasonable prospect of securing a conviction for an offence alleging an offence against section 3 of the Crimes (Torture) Ordinance. In reaching this conclusion, they did not overlook the fact that - within section 3 - "severe pain" included mental pain.

112. Commentators have said that defendants frequently challenge the admissibility of cautioned statements in court, alleging that those statements were obtained as a result of impropriety on the part of the authorities. They have urged us to include statistical data on instances of this kind. We are unable to do so as neither the police nor the Director of Public Prosecutions maintains such statistics. However, a very serious view is taken of the fabrication of "evidence" or its extraction by illegal means. If, in the opinion of a court, a police officer (or an officer of any other disciplined services) has lied under oath or has provided a false statement, the police will investigate the matter. Subject to the advice of the Secretary for Justice on the evidence available, criminal and/or disciplinary action will be taken as appropriate against the officer concerned. Relevant procedures will be reviewed and changed if and as necessary.

113. The measures adopted by various disciplined forces to prevent acts of torture are set out in detail under article 11.

Article 3

Extradition

114. As indicated in paragraph 95 above, the Fugitive Offenders Ordinance (Chapter 503) now provides the statutory framework for the implementation of bilateral agreements and multilateral arrangements on the surrender of fugitive offenders.[3] Section 13 of the Ordinance gives the Chief Executive a discretion to refuse to order the surrender of a fugitive criminal to another jurisdiction. That discretion would always be exercised consistently with the obligation in article 3 not to expel, return (refouler) or extradite persons to States where there are substantial grounds for believing that they would be in danger of being subjected to torture. The Chief Executive's decision is judicially reviewable.

115. There have been many extraditions of fugitive criminals from the HKSAR to other countries. But there has been no case of the Chief Executive having to refuse the surrender of persons on the ground that they would be in danger of being subjected to torture.

Removal and deportation

116. Article 9 of the BORO (which gives effect in domestic law to the provision of article 13 of the ICCPR) provides that:

> "A person who does not have the right of abode in Hong Kong but who is lawfully in Hong Kong may be expelled therefrom only in pursuance of a decision reached in accordance with the law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion to, and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons specially designated by the competent authority."

117. Section 19 of the Immigration Ordinance (Chapter 115) provides that the Director, Deputy Director or an Assistant Director of Immigration may make a removal order against a person who does not enjoy the right of abode in Hong Kong, or who does not have the Director's permission to remain in Hong Kong. And section 20 of that Ordinance provides that the Chief Executive may make a deportation order against an immigrant if the immigrant has been found guilty of an offence punishable with imprisonment for not less than two years, or if the Chief Executive deems it to be conducive to the public good.

118. Persons subject to removal orders may appeal to the Immigration Tribunal.[4] This is an independent statutory body established under the Immigration Ordinance. The Director of Immigration shall serve written notice on the persons to be removed informing them of the grounds on which the orders are made and their right of appeal to the Immigration Tribunal.

119. Before deportation orders are made, the persons concerned are served with a notice by the Director of Immigration informing them that they can make representations to the Director of Immigration who will include such representations in applications for deportation submitted to the Secretary for Security. They are given ample opportunity to state any grounds they may have for objecting to deportation, including the likelihood of their being subject to torture after deportation.

120. An immigrant against whom a deportation order has been made may lodge an objection to the decision with the Chief Secretary for Administration within 14 days. Section 53 of the Immigration Ordinance provides that the objection will be considered by the Chief Executive in Council. Alternatively, the immigrant may make a petition to the Chief Executive under article 48 of the Basic Law for the suspension or rescission of the deportation order.

121. Before the reunification, British citizens facing deportation had the right to make representations to a Deportation Tribunal. That privilege - which reflected the constitutional relationship between Britain and Hong Kong - was abolished in June 1997. Now, British citizens facing deportation are subject to the same arrangements as other foreign nationals.

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122. Should potential removees or deportees claim that they would be subjected to torture in the country to which they are to be returned, the claim would be carefully assessed, by both the Director of Immigration and the Secretary for Security or, where the subject has appealed to the Chief Executive, by the Chief Executive in Council.[5] Where such a claim was considered to be well founded, the subject's return would not be ordered. In considering such a claim, the Government would take into account all relevant considerations, including the human rights situation in the State concerned, as required by article 3.2 of the Convention. However, there have been no cases so far where the question of torture has been an issue. Thus article 3.2 has not been applied in any particular case.

123. Some commentators have questioned whether these arrangements apply equally to persons from all jurisdictions. The arrangements governing removal and deportation apply to all people from places outside the HKSAR, irrespective of where they come from.[6]

124. Section 32 of the Immigration Ordinance provides that a person may be detained for a certain period pending his removal or deportation from Hong Kong. The period of detention is kept to a minimum as far as practicable. Commentators have asserted that such persons cannot challenge the lawfulness of their detention in view of section 11 of the BORO.[7] This is not the case: persons who are detained may apply to the courts for a writ of habeas corpus. If that is granted, those persons will be released.

Mainland children: the Certificate of Entitlement Scheme

125. Some commentators consider that the removal to the Mainland of children who qualify as permanent residents under article 24 (3)[8] of the Basic Law - but who fail to comply with the requirements under the Certificate of Entitlement Scheme (C of E Scheme) - constitutes cruel and inhuman treatment. For the reasons below, the Government considers that the allegation is unfounded.

126. Before 1 July 1997, persons covered by article 24 (3) of the Basic Law were not entitled to the right of abode in Hong Kong. The Basic Law is silent on the procedures by which such persons may establish their entitlement to the right of abode in the HKSAR. The Immigration (Amendment) (No. 3) Ordinance ("the No. 3 Ordinance") was enacted on 10 July 1997, with effect from 1 July 1997, to provide for such procedures. This Ordinance, which introduced the C of E Scheme, provides that a person's status as a permanent resident of the HKSAR under article 24 (3) of the Basic Law can only be established by his/her holding, amongst other things, a valid travel document with a valid C of E affixed to it. In this connection, persons who were born in Mainland China to Hong Kong residents and claim that they have the right of abode in the HKSAR have to obtain a valid travel document and C of E before being admitted to Hong Kong. This arrangement ensures that those who claim that they have the right of abode in the HKSAR under article 24 (3) of the Basic Law have that claim verified before entering Hong Kong.

127. To expedite entry for family reunion, a sub-quota of 48 places has been reserved (under the overall daily quota of 150) to enable Mainland mothers to take with them a child aged under 14 when they enter Hong Kong for settlement. Nevertheless, some families continue to arrange for their children to enter Hong Kong illegally. When discovered, they are removed to

the Mainland. Removal remains necessary both in justice to those waiting their turn in the queue and to preserve an orderly and manageable rate of entry. The C of E Scheme does not deprive individuals of their rights. Hong Kong permanent residents have the right to leave Hong Kong. If families do live apart, it is because they have chosen to do so and not because of the Ordinance. Hong Kong permanent residents have the right to leave Hong Kong and to join their families in Mainland China.

Repatriation of Vietnamese migrants

128. The issue of Vietnamese asylum seekers is coming to a close following the decision in January 1998 to end the port of first asylum policy.

129. As at 30 September 1998, there were about 1,060 Vietnamese refugees remaining in Hong Kong awaiting resettlement overseas. There were also about 640 Vietnamese persons who had been determined to be non-refugees under the Comprehensive Plan of Action[9] (CPA). They comprise:

(a) The 390 "non-nationals": most of these people are ethnic Chinese. The Vietnamese Government has been refusing to recognize them as its nationals or to agree to their repatriation. But some 70 of them have family members who have been identified as Vietnamese nationals (see (b) below). They and their families have been released on recognisance and live at the Pillar Point Centre. The Vietnamese Government has indicated that it will reconsider these particular cases individually if there is fresh information proving that the persons concerned are indeed Vietnamese nationals. Progress has been slow. But we will continue to seek the return of all the "non-nationals"; and

(b) The 250 whose repatriations have been delayed: this group has been "cleared" for return by the Vietnamese Government. But some 110 of them are family members of the 70 "non-nationals" discussed in (a) above. Others - for various reasons - have yet to be repatriated. Some of these are in ill health; some are serving prison sentences; some are involved in court proceedings; others are missing. All will be repatriated when the factors delaying their repatriation are resolved or, in the case of the escapees, when they are recaptured.

The Government will continue to pursue their return to Viet Nam in accordance with practices established during the time of the CPA. Most of them have been released on recognisance and live in an open centre[10]. The last Vietnamese detention centre in Hong Kong was closed in May 1998.

Vietnamese illegal immigrants

130. As at 30 September 1998, there were about 370 Vietnamese illegal immigrants in the territory. To speed up their repatriation, Vietnamese Government officials regularly travel to Hong Kong to interview them and to verify their identity. Otherwise, they have the rights - and are subject to the procedures - described in paragraphs 116-124 above (in relation to removal and deportations).

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131. The repatriation of Vietnamese illegal immigrants is likely to be an ongoing programme for as long as the incentive of black market job opportunities remains.

Ex-China Vietnamese

132. This term refers to some 300 persons now in Hong Kong who fled Viet Nam in the early 1980s. They settled in Mainland China and lived there for some years before moving to Hong Kong. Most of them arrived in 1993 without legal documentation. They have initiated judicial review proceedings against the Government's decision to remove them to Mainland China. At the time of drafting this report, the matter was still before the courts. Pending the court's ruling, the persons concerned have been released on recognisance in accordance with the ruling by the Court of First Instance in habeas corpus proceedings that they initiated in mid-1997. Both the Court of Appeal and the Court of Final Appeal subsequently ruled that the detention of most of these people was lawful. But the Government has undertaken not to re-detain them until the Court of First Instance has delivered its decision in the judicial review proceedings.

Article 4

133. As explained above in relation to article 1, torture is prohibited under section 3 of the Crimes (Torture) Ordinance. Persons who commit acts of torture (as defined in the Ordinance) are liable to imprisonment for life. We have also explained that offences defined under other statutes could entail the crime of torture.

134. Section 89 of the Criminal Procedures Ordinance (Chapter 221) provides that "a person who aids, abets, counsels, or procures the commission by another person of any offence is guilty of the like offence".

Article 5

135. Section 3 of the Crimes (Torture) Ordinance provides that the offence of torture is committed whether the conduct takes place in the HKSAR 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

136. The power to arrest and detain a person alleged to have participated in an act of torture is provided under the Police Force Ordinance (Chapter 232). Section 50 (1) of that Ordinance empowers the police to arrest, without warrant, persons reasonably suspected of such offences.[11] Arrested persons detained for questioning shall normally be charged and taken before a magistrates' court as soon as practicable and in any event within 48 hours. Otherwise, they must either be charged, released and bailed to appear in court or be released without charge, either on bail or without bail.

137. These provisions apply to all persons within the territory of the HKSAR, regardless of their nationality or country of origin.

138. The Fugitive Offenders Ordinance and the Fugitive Offender (Torture) Order (Chapter 503I) permit the HKSAR to surrender persons to States parties to the Torture Convention for offences of torture. Section 7 of that Ordinance empowers a magistrate to issue a warrant for the arrest of a person suspected of such acts and further requires that a person so arrested be brought as soon as practicable before a magistrate sitting as the court of committal. The court of committal is empowered under the Ordinance to remand a person in custody or on bail pending the submission of the formal request for surrender by a State party and the receipt of Authority to Proceed issued by the Chief Executive pertaining to the request.

139. In accordance with article 6.3, persons arrested or detained with a view to trial or extradition for the offence of torture enjoy the protections in article 5 of the BORO (annex 4) which gives effect in domestic law to the provisions of article 9 of the ICCPR. Law enforcement officers of the HKSAR are required to comply with the Vienna Convention on Consular Relations of 1963. If a person in custody is a foreign national and so requests, our law enforcement agencies inform the consulate of the relevant State that the person has been arrested or committed to prison - or to custody pending trial - or is detained in any other manner. Consular officers have freedom of access to - and communications with - that person. Where the States of which the arrestees/detainees are nationals have no consular presence in the HKSAR, they will be asked if they wish their arrest to be notified to their consular authorities elsewhere. If that is their wish, the law enforcement agencies would render necessary assistance without delay.

Article 7

140. The law regarding the investigation, prosecution and trial of alleged criminal offences, and the rights of persons charged with or convicted of such offences[12], accord with the provisions of article 7. So too do the established practices of the relevant authorities. These matters are regulated by articles 5, 6, and 10 to 12 of the BORO (annex 4) which correspond respectively to articles 9, 10, 14 and 15 of the ICCPR. The provisions of that Covenant - as applied to Hong Kong - are entrenched at the constitutional level by article 39 of the Basic Law.

Article 8

141. As explained above in relation to article 3, the Government has negotiated a network of bilateral agreements on the surrender of fugitive offenders. These are listed at annex 5.

142. And - as explained above in relation to article 6, the Fugitive Offenders (Torture) Order applies the procedures in the Fugitive Offenders Ordinance to requests for extradition by jurisdictions to which the Convention applies for offences created by the Convention. This enables the Government to extradite such offenders to all such jurisdictions. Extradition may be granted even if the jurisdiction requesting it is exercising extraterritorial jurisdiction in respect of the offence[13].

143. At the time of drafting this report, there had been no such requests.

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Article 9

144. Assistance to States parties may be effected on an informal, non-statutory basis by the provision of information and investigatory assistance. Where formal provision of evidence is requested, the necessary machinery is provided by sections 75 to 77 B of the Evidence Ordinance (Chapter 8). These provide that the Court of First Instance may compel witnesses to testify if a request is received from a foreign court in which criminal proceedings have been instituted or are likely to be instituted if such evidence is obtained.

145. The Mutual Legal Assistance in Criminal Matters Ordinance (Chapter 525) - enacted in 1997 - empowers the HKSAR Government to provide certain forms of assistance provided an agreement is in place or reciprocity is guaranteed. These are

(a) The taking of evidence or the production of a thing in court;

(b) The search or seizure of a thing or the production of documents pursuant to court orders;

(c) The service of documents;

(d) The transfer of prisoners to give assistance; and

(e) The seizure and confiscation of the proceeds of crime.

As at 30 September 1998, agreements had been signed with Australia, France, New Zealand, the United Kingdom and the United States. Subsidiary legislation was being prepared to bring them into force. The terms are essentially standard. By way of illustration, the text of the agreement with Australia is at annex 8.

Liaison between HKSAR and Mainland authorities

146. The Hong Kong Police and the Mainland Ministry of Public Security maintain close contact through the Liaison Bureau and Interpol National Centre Bureau China in relation to cross-boundary crimes committed in Hong Kong and the Mainland. This complements the daily contacts between Hong Kong Police, immigration and customs officers and their counterparts in Guangdong Province[14] through the boundary liaison channel that has been in place since 1981.

Article 10

Police

147. The police force fully recognizes the importance of ensuring that their officers treat all persons - including detainees and arrested persons - as individuals, with humanity and respect, and to act within the law at all times. To that end, the basic and subsequent training of police officers includes, inter alia, procedures for handling suspects and the disciplinary codes prescribed in the Police Force Ordinance, the Police General Order and Headquarters Order, and the BORO. Reference is made to the Crimes (Torture) Ordinance - in appropriate contexts -

throughout the training process. The police have also issued a booklet to help front-line officers understand the Rules and Directions for the Questioning of Suspects and the Taking of Statements (see below in relation to article 11).

Correctional Services Department

148. Induction and ongoing training (such as in-service and development training) ensure that staff are familiar with the requirements of the relevant laws and policies. The training process covers the United Nations Standard Minimum Rules for the Treatment of Prisoners, the BORO and the provisions of the Crimes (Torture) Ordinance. And training in general nursing care enables staff to identify physical signs of abuse. Selected members of staff receive specialist training - in areas such as psychiatric nursing - that provides them with the professional knowledge necessary to assist medical officers in the monitoring of the physical and mental well-being of inmates with psychiatric problems.

Customs and Excise Department

149. All officers involved in the custody, interrogation or treatment of arrested persons or detainees - whether disciplined or civilian - are trained in the proper handling of such persons. The training process emphasizes the need to treat everyone as an individual, with humanity and respect, and to act within the law at all times. It covers, inter alia, the BORO, the Crimes (Torture) Ordinance, detailed procedures such as the Rules and Directions for the Questioning of Suspects and the Taking of Statements and other internal orders and instructions aimed at ensuring the proper treatment of detainees or arrested persons.

Immigration Department

150. All immigration officers receive instruction on the proper handling of arrested persons in the course of their induction and in-service training. Like the other disciplined services, the training process covers the provisions of the BORO and the Crimes (Torture) Ordinance. And they, too, are trained to treat all persons with humanity and respect and to act within the law at all times.

Independent Commission against Corruption

151. All ICAC officers are made aware that torture is an offence. To ensure that detainees are treated fairly while in ICAC custody, all officers receive comprehensive training on the Rules and Directions for the Questioning of Suspects and the Taking of Statements, the BORO and the ICAC (Treatment of Detained Persons) Order (Chapter 204A).[15]

Training of health care professionals on recognition of signs of abuse

152. All health care professionals, and in particular doctors and nurses working under the Hospital Authority and the Department of Health, are equipped through their training to

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recognize clinical features and physical signs that are suggestive of abuse. They would include the sequelae of torture. Both nurses and doctors closely monitor the physical and mental well-being of patients in the course of routine patient care.

153. Similarly, psychiatrists and psychiatric nurses working under the Hospital Authority are equipped with the skills and knowledge necessary to identify psychological indications of mental anguish, itself a possible indication of torture or cruel, inhuman, or degrading treatment or punishment. They are also trained to exercise care and patience in dealing with patients with mental disorders and to provide suitable medical intervention.

Article 11

Law enforcement agencies

154. In 1997, following public consultations the Government initiated a three-year programme of improvements in relation to the powers of law enforcement agencies to stop, search, arrest and detain a person.[16] This entails:

(a) Publishing leaflets on the powers and procedures relating to stop, search, arrest and detention;

(b) Formalizing existing practice by appointing "Custody Officers" to ensure the proper treatment of persons in detention and "Review Officers" to assess the need for further detention;

(c) Extending the use of videotaping interviews of suspects;

(d) Amending legislation to

(i) Clarify the provisions governing the length of detention;

(ii) Provide continuous and accountable review of the need for longer periods of detention; and

(iii) Provide a statutory right for an arrested person to inform a friend or relative or consult a lawyer privately at any time (again, formalizing an existing practice); and

(e) Improving the standard of detention facilities.

Police

155. No form of physical violence is tolerated or condoned in the treatment of detained and arrested persons. The Offences against the Person Ordinance also prohibits acts of physical violence committed by any person including police officers.

Correctional Services Department

156. The operation of custodial institutions and detention centres under the Correctional Services Department are governed by:

(a) The Prisons Ordinance and its subsidiary legislation (Chapter 234);

(b) The Detention Centres Ordinance and its subsidiary legislation (Chapter 239);

(c) The Drug Addiction Treatment Centres Ordinance and its subsidiary legislation (Chapter 244);

(d) The Training Centres Ordinance and its subsidiary legislation (Chapter 280); and

(e) The Immigration Ordinance and its subsidiary legislation (Chapter 115).

157. These provide for the treatment of inmates in the Department's custody and regulate the conduct and discipline of both staff and inmates. They are complemented by administrative instructions and guidelines on the everyday management of the institutions. All take full account of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

158. The Department's programmes emphasize correction and rehabilitation. Torture and other cruel, inhuman or degrading treatment or punishment are strictly prohibited. They are regularly reviewed to ensure their consistency with the Basic Law (which entrenches the ICCPR) and the BORO. Staff who fail to comply are liable to disciplinary or criminal proceedings.

Measures to detect signs of physical abuse/torture

159. Trained nursing staff conduct regular body checks on all inmates at least once a week to detect signs of injury and skin infection. Any sign of injury will be thoroughly investigated to confirm its cause. The Department is alert to possible abuse - including abuse that could amount to torture - by other inmates and regularly works with other government authorities to detect and prevent criminal activities in the institutions that might involve such acts. Visiting Justices of the Peace are required by law to visit prisons on a regular basis and report abuses to the Commissioner of Correctional Services. The Commissioner, in turn, is required to consider their views and suggestions and to take such action as may be appropriate.

Corporal punishment

160. Corporal punishment was abolished in 1990. All references to it have been removed from the statutes.

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Suicides in custody

161. In 1997, four prisoners committed suicide - all by hanging - while in custody.[17] The Coroner made certain recommendations to prevent similar fatalities in future. These recommendations have always received the highest attention of the Department. Some of them have been implemented while the others are being pursued. As at 30 September 1998, there had been a further three deaths, also by hanging. The inquests were still in progress at the time of drafting this report.

Immigration Department

162. The powers to arrest and detain a suspect are provided under the Immigration Ordinance and Immigration Service Ordinance. The treatment of persons so detained is prescribed in the Immigration Service (Treatment of Detained Persons) Order[18]. To ensure that the detained persons are treated in accordance with the law, section 18 of the Order provides for the visits of the Justices of the Peace (JPs) to the Detention Centre. Complaints so received are investigated and any views or suggestions made by the visiting JPs are considered by the Director of Immigration. The rights and interests of suspects and detained persons are also safeguarded through standing orders and administrative guidelines on the procedures for the questioning and handling of suspects. A bilingual notice detailing the rights of persons in custody is displayed in all places of detention and interview rooms.

163. Tape- (and video-) recording of interviews is progressively being introduced as the necessary equipment is installed. A further initiative[19] to prevent possible abuse of power was the appointment of "Custody Officers" - responsible for ensuring that detainees are treated properly and impartially - and "Review Officers", who regularly review the need for further detention.

Customs and Excise Department

164. The Customs and Excise Department video-records its interviews of suspects subject to their agreement and to the availability of facilities. Additional facilities for this purpose are under construction and will be ready for use by the end of 1998.

Independent Commission against Corruption

165. Officers of the Commission have power to arrest suspects and to detain them for a limited period for the purpose of further inquiries. Persons so detained are held in a purpose-built Detention Centre. The Detention Centre facilities were recently refurbished to ensure the health and comfort of detainees. Detention Centre staff are officers of the Commission but are not involved in its investigative work. Their duties are restricted to the custody and welfare of detainees and they are answerable to their Guard Commander. The number of officers employed on these duties is kept under regular review.

166. The treatment, rights and dignities of persons detained by the Commission are protected and controlled under the Independent Commission against Corruption (Treatment of Detained Persons) Order.[20]

Secretary for Security's "Rules and Directions for the Questioning of Suspects and the Taking of Statements"

167. These have replaced the former Judges' Rules and apply to law enforcement officers in the Hong Kong Police Force, the Customs and Excise Department, the Immigration Department and the Independent Commission against Corruption. They set out the rules and directions for law enforcement officers to question suspects and take statements and cover such areas as cautioning of suspects, the right to contact friends, the right to private consultation with a legal adviser, the right to obtain copies of any statement made, and the right to be provided with reasonable arrangement for refreshment. The Rules are intended to ensure that interviews are conducted fairly and that any resulting confession is not procured by threat or inducement. Failure on the part of law enforcement officers to comply with the Rules may render inadmissible any evidence obtained as a result of such failure.

Patients detained under mental health legislation

168. The Mental Health Ordinance (Chapter 136) protects the rights of detained patients. It also prescribes the criteria for compulsory detention (see below). Even when these - very stringent - criteria are met, the power to detain is not invoked except in cases where, all other means having been fully considered, detention in hospital is considered the most appropriate means of providing the care and treatment that a patient needs.

169. The criteria for the compulsory admission of persons to mental hospital are:

(a) They must be suffering from a mental disorder as defined by the Ordinance;

(b) The mental disorder must be of a nature or degree which makes admission to mental hospital appropriate;

(c) Medical treatment must be necessary for the patients' own health or safety or for the protection of other persons; and

(d) The treatment cannot be provided in some other way, such as on an out-patient basis.

170. The stringency of these criteria reflects the gravity of a situation where a person's freedom is restricted. Whether they are satisfied in any individual case is a matter of professional judgement on the part of the doctors and others concerned.

171. Under the Mental Health Ordinance, a medical assessment is mandatory before a patient is detained in a mental hospital for observation. Prior to such committal, patients have the right to be heard by a judge or magistrate, if they so wish. Committal forms must be countersigned by a judge or magistrate.

172. Section 45 of the Mental Health Ordinance provides for compulsory detention, that is, if - on the basis of medical testimony - the court is satisfied that a convicted offender is suffering

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from a mental disorder, it may order that person's admission to, and detention in, a mental hospital for psychiatric treatment if that is the most suitable method of disposing of the case. Section 52 empowers the Chief Executive to order the transfer of mentally disordered prisoners from the institutions where they are detained to such mental hospital as is specified in the order for treatment. Section 53 provides this power in respect of prisoners who are not serving prison sentences.[21]

173. The Ordinance provides important safeguards of the rights for detained patients. Patients and their relatives may apply to the Mental Health Review Tribunal, an independent statutory body, for review of their detention and treatment. If the review finds that the detention and treatment should continue, they may apply again after 12 months or earlier with the leave of the Tribunal. The Ordinance also provides that - if neither the patients nor their relatives apply for review - their cases will periodically be referred to the Tribunal. Such referrals will be made by the Medical Superintendent - if the patient is liable to be detained in a mental hospital - or by the Commissioner for Correctional Services if the patient is liable to be detained in the Correctional Services Department Psychiatric Centre. The Tribunal has the power to direct that a patient be discharged. Persons applying to the Tribunal may apply for legal aid. Patients may be represented before the Tribunal by anyone they wish, except by other mental patients.

174. Additionally:

(a) All detained patients must be given an explanation of their rights under the Mental Health Ordinance. The matters covered must include the procedures for securing their discharge, the conduct of their treatment, how they can make a complaint and their rights in relation to Mental Health Review Tribunals;

(b) A relative of every detained patient should be kept fully advised of the patient's rights, unless the patient objects;

(c) Like all other persons, detained patients are entitled, at their own expense, to seek legal advice or a second medical opinion;

(d) The Mental Health Regulations prevent arbitrary interference in the privacy and freedom of patients in mental hospitals. They prescribe clear conditions under which a medical superintendent may impose restrictions on the communication (such as letters and parcels) between patients and persons outside. Superintendents must inform the patients and the persons with whom they are in communication of a decision to impose such restrictions.

175. Formerly, when accused persons were found not guilty of an offence by reason of insanity, or unfit to be tried, courts had no option but to order their detention in the Correctional Services Department Psychiatric Centre or in a mental hospital. Now, recent amendments to the Criminal Procedure Ordinance and the Mental Health Ordinance provide the additional options such as guardianship orders, supervision and treatment orders, and orders for absolute discharge.

Electro-convulsive therapy (ECT)

176. Like medical institutions elsewhere, public hospitals in Hong Kong use ECT for patients with severe depressive illness, mania or schizophrenia. ECT is considered a safe and effective treatment for patients with strong suicidal tendencies and for those who do not respond well to drug therapy. There are clear guidelines governing the application of ECT to patients. The major indication for use of ECT is in cases of severe depressive illness. To a lesser extent it is also indicated for patients with mania or schizophrenia, especially as an adjunct to neuroleptic treatment when response to medication has not been satisfactory.

177. Electro-convulsive treatment is carried out in public hospitals by qualified and properly trained health-care professionals including psychiatrists, anaesthetists and nurses. This technique is applied in accordance with guidelines endorsed by the Quality Assurance Sub-Committee of the Co-ordinating Committee (Psychiatry) of the Hospital Authority. These guidelines are compatible with international standards.

178. Electro-convulsive therapy is only administered with the patient's consent or a second medical opinion. If a patient is not mentally fit to consent to treatment on his own behalf, such consent must be obtained from his/her relatives or guardians and a second expert opinion must be sought to justify the use of the treatment. Physical fitness is carefully assessed before treatment is administered by a specially trained team of anaesthetists, psychiatrists and nurses. The procedure is closely supervised and the patient's response is carefully monitored. ECT is part of an individualized treatment plan that is regularly reviewed by the clinical team responsible for the patient concerned.

179. In recent years, the pattern of application has been:

	1995-1996	1996-1997	1997-1998
Number of patients receiving ECT	226	191	180
Number of treatments	1 279	1 081	1 080
Average number of treatments per patient	5.65	5.66	6

Article 12

180. As explained above in relation to article 6, the power to arrest and detain a person alleged to have participated in an act of torture rests with the police. Nevertheless, all the disciplined forces maintain complaint systems. These are described below.

Police

181. Complaints against police officers are dealt with by the Complaints against Police Office (CAPO) under the Commissioner of Police. But they are monitored and reviewed by a civilian body, the Independent Police Complaints Council (IPCC). The IPCC comprises non-official members appointed by the Chief Executive from a wide spectrum of the community. Any

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person aggrieved by the conduct of a police officer in the execution of his duties may make a complaint to CAPO. The results of CAPO's investigations are rigorously scrutinized by the IPCC. In discharging their duties, IPCC members may observe CAPO investigations, either by prior arrangement or on a surprise basis. They may also interview complainants, complainees, witnesses and professionals - such as forensic pathologists - from whom they may receive expert advice.

182. Following an independent review of the complaints procedures and a comparative study of overseas police complaints systems, the Government has introduced over 40 measures to enhance the transparency and credibility of the system in Hong Kong. These include:

(a) Setting target norms for the handling of complaints (such as the time limits within which CAPO must complete an investigation in normal circumstances);

(b) Establishing a special panel under the IPCC to monitor investigations of serious complaints;

(c) Tightening police procedures: for example, requiring a duty officer at a police station to ask suspects - in the absence of investigating officers - whether they have any complaints against the police and to report any such complaints to CAPO;

(d) Giving complainants more details of investigation results and making available additional information on CAPO procedures at all police stations;

(e) Opening part of the IPCC's meetings to the public; and

(f) Launching a $3 million publicity campaign to enhance public awareness of the complaints system.

183. Statistics relating to cases handled by the CAPO and endorsed[22] by the IPCC are at annex 9. These show that the number of complaints alleging assault has decreased over the past three years. Only 7 of the 1,324 allegations of assault (1997) were substantiated. None were found to amount to acts of torture.

184. In July 1996, the Government introduced a bill into the then Legislative Council with the aim of making the IPCC a statutory body. The bill was withdrawn in June 1997 after legislators moved major amendments which - if implemented - would have disrupted the effective operation of the police complaints system, fundamentally changing the main principles of the bill.

185. At the time of drafting this report, the Government was reviewing the provisions of the bill and considering the way forward.

Correctional Services Department

186. The Complaints Investigation Unit (CIU) of the Correctional Services Department is vested with independent power to investigate any complaints made against the Department and its staff.

187. On average, the CIU needs about eight weeks to complete an investigation. All complaints are dealt with fairly, openly and in accordance with both the letter and the spirit of the Prison Rules, the Department's Standing Orders, and its "Complaints Handling Manual". As indicated above, these take full account of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

188. The CIU's findings are scrutinized by the Department's "Case Review Committee". The Committee's decisions may be scrutinized by external bodies such as the Ombudsman and the Justices of the Peace. Complainants and complainees are informed in writing of the outcome of the investigations into their complaints. Complainants who are dissatisfied with those findings may seek re-examination by the Case Review Committee - with or without further supporting materials or fresh evidence - within 14 days of such notification.

Immigration Department

189. Normally, the Immigration Department refers all allegations of criminal offences, including torture, to the police. But complaints concerning the attitude, behaviour, or working efficiency of its staff are handled by the Department's Complaint Unit which is independent from all operation sections. The Unit normally completes an investigation within two months. Its findings are reported to a working party, headed by an Assistant Director of Immigration, for review and endorsement. Other details of complaint procedures of the Department are described in the core document and below in relation to article 13.

Customs and Excise Department

190. Administrative guidelines require all complaints - whether verbal or written - to be investigated and dealt with expeditiously and impartially. Ab initio, they must be brought to the attention of the Deputy Commissioner of Customs and Excise. Complaints that indicate the possible commission of a criminal offence are promptly referred to the police. The investigation of other complaints is monitored by the Deputy Commissioner. Complaints must be handled within six weeks. No extension of this limit may be made without the prior approval of the Deputy Commissioner.

Independent Commission against Corruption

191. The Independent Commission against Corruption Complaints Committee (the Committee) is an independent body appointed by the Chief Executive. It monitors and reviews the ICAC's handling of complaints against the Commission and its officers. The Committee may also make recommendations to improve the ICAC procedures. It is chaired by the convenor of the Executive Council and consists of leading members of the community, including members of the Executive and the Legislative Councils. The Ombudsman is an ex officio member.

192. Complaints against the ICAC are investigated internally by a special unit. On completing its investigations, the Unit submits it findings for the consideration of the Committee.

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193. In 1997, there were 30 complaints against the ICAC and its officers. In 1996 there were 22. Of the 30 received in 1997, 19 contained more than one allegation. Indeed, there were a total of 76 allegations. Most (47 per cent of these) alleged misconduct on the part of ICAC officers. Another 33 per cent related to neglect of duties. The remaining 20 per cent related to abuse of power and to ICAC procedures.

194. Nine of the 32 complaints[23] considered by the Committee in 1997 contained allegations that were found to be either substantiated or partially substantiated. Examples included a delay in providing a receipt on a seized property and failure to explain to a detainee the reason for his extended detention.

195. Complaints of assault and other unlawful violation of a person's physical integrity or liberty by ICAC officers are complaints of a criminal nature. These are referred to the police for investigation.

196. Some commentators suggested that the Government should include non-ICAC members in the investigations of complaints against the ICAC officers. We do not think that this is necessary. Complaints about crimes other than corruption are referred to the police for investigation. The ICAC investigates complaints concerning corruption only after obtaining the consent of the Secretary for Justice. Investigations are reviewed by an Operations Review Committee that comprises 12 non-official members. Together, these suffice to ensure the impartiality of investigations.

Article 13

Police

197. The position is as explained above in relation to article 12. All persons in police custody have the right to complain if they are aggrieved by the conduct of police officers in the execution of their duties. As explained in the core document - and in relation to article 12 - such complaints are handled by CAPO whose subsequent investigations are monitored and reviewed by the IPCC.

198. Detailed procedures for the handling of complaints are prescribed in the "Police General Orders".

Correctional Services Department

199. All prisoners are informed of the avenues of complaint available to them through induction sessions, booklets, notices posted in institutions, and at interviews with officers of the Correctional Services Department (CSD).

200. The investigation of complaints falls to the Department's Complaints Investigation Unit. The Unit's findings are scrutinized by an (impartial) Case Review Committee. All complainants - and those complained of, if any - are informed in writing of the outcome of the

investigations of their complaints. Complainants aggrieved by these findings may seek re-examination by the Case Review Committee - with or without further supporting materials or fresh evidence - within 14 days of such notification.

201. In 1997, inmates made a total of 204 complaints to the Complaints Investigation Unit. These concerned use of unnecessary force, general misconduct (such as use of abusive language), and abuse of authority by CSD staff. Fourteen of these were substantiated.

202. The handling of a particular complaint depends on the Unit's assessment of its nature and seriousness. That is:

(a) "Major complaints" are those determined to be of a serious or abnormal nature, such as the alleged use of unnecessary force. Action is taken by the Unit itself;

(b) "Minor complaints" concern trivial matters arising from minor misconduct, administrative oversight, and so forth. Depending on the circumstances, the Unit may direct the institution concerned to investigate a complaint of this nature; and

(c) "Operational complaints" relate to routine or operational matters and can generally be resolved "on the spot" by the prison management.

203. Avenues of complaint are prescribed in the Prison Rules (Chapter 234A). Rule 95 provides that heads of institution shall ensure that every prisoner shall have ample facilities to make complaints or requests to them, and that all grievances received are redressed so far as is possible. Rule 228 states that the visiting Justices of the Peace have the duty to hear and investigate any complaints that prisoners may desire to make to them.

Complaints to the Ombudsman

204. Analysis of complaints that prisoners have made to the Ombudsman indicates that most concern:

(a) Treatment by prison staff;

(b) Welfare issues, including prison conditions or facilities, food and diet, mail handling, extra visits, access to telephone, access to medical service and standard of care;

(c) Discipline, segregation, protection and control;

(d) Prison transfer and labour allocation; and

(e) Handling of complaints and access to visiting JPs and the Ombudsman.

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205. To ensure that prisoners are aware of the Ombudsman's services - and have ready access to his Office:

(a) On admission to penal institutions, prisoners receive leaflets informing them of the Ombudsman's services and how to access them;

(b) On request, prisoners are given post-free complaint forms issued by the Ombudsman's Office;

(c) All penal institutions display dedicated notice boards and posters informing prisoners of matters relating to the Ombudsman;

(d) Procedures are in place to facilitate investigatory visits by the Ombudsman's Office; and

(e) Correspondence between prisoners and the Ombudsman is promptly delivered.[24]

206. In July 1998, the Ombudsman published a report on the Correctional Services Department's complaint system. This found that:

(a) The penal system placed increasing emphasis on correction and rehabilitation;

(b) The Correctional Services Department's "Vision, Mission Statement and Values" had due regard to the interests and rights of inmates in its legal custody; and

(c) The Department's internal complaint system was properly established and generally accessible. Its Complaints Investigation Unit provided an independent internal channel for complaints. The Unit's work was subject to the scrutiny of the Case Review Committee.

207. The report contained suggestions for improving the Correctional Services Department's complaint handling system. These included:

(a) Enhanced publicity of the internal complaint system;

(b) Target response time for complaint handling; and

(c) Improving staff training in complaints handling skills.

The Government has carefully considered these suggestions and is actively pursuing those that are practicable.

Incident at Ma Po Ping Prison: Lantau Island

208. On 27 July 1998, staff at Ma Po Ping Prison took action to prevent a disturbance between two groups of prisoners. Over 60 prisoners were involved and the staff tried to keep the two groups apart. Some of the prisoners tried to seize batons from the staff and individual officers

were physically attacked. It then became necessary for the officers involved to use a degree of force to bring the situation under control. Two officers and 19 prisoners sustained injuries: most being minor abrasions, bruises and redness on the body or limbs.

209. More than 70 prisoners then filed complaints with the Correctional Services Department, the Police, the Ombudsman, Legislative Councillors, and Justices of the Peace. On 30 July, the Commissioner of Correctional Services ordered a full investigation by a Board of Inquiry. The Board was chaired by an Assistant Commissioner. Its members comprised senior officers from institutions other than Ma Po Ping. In the course of its inquiries, the Board took more than 300 statements from the complainants, prison staff and some 160 other prisoners who might have witnessed the incident. It also reviewed a videotape of the incident and relevant documents such as the medical reports on the persons who sustained injury.

210. The Board's main findings were that:

(a) The force used by the prison staff was necessary and its use was justified given the nature and extent of the disturbance. And the action had successfully restored order; and

(b) There was room for improvement in the prison management's handling of the incident and in its general preparations for such outbreaks. The conduct of certain individual staff was called into question.

211. The management of Ma Po Ping Prison was admonished. The members of staff whose conduct was called into question may face disciplinary action. But proceedings against them have been deferred pending the outcome of a separate and independent police investigation of the prisoners' complaints to the police. That investigation was in progress at the time of drafting this report.

212. Some commentators have expressed concern that the inquiry was conducted on a purely internal basis. Their concern is understandable. But the inquiry was conducted with scrupulous impartiality by senior officers who, at the time, were not directly responsible for the daily operation of the institution involved. The Board considered all the relevant evidence - including the statements made by the complainants and other witnesses, the medical reports relating to the complaints about the use of force - before reaching its conclusions. Its findings drew attention to deficiencies in the handling of the incident as well as to the actions that were entirely appropriate. The Department took immediate steps to strengthen the management of the institution, to improve staff training in the handling of such incidents, and to review its existing operational guidelines (the latter were found to be adequate for their purpose).

Immigration Department

213. Persons wishing to lodge complaints may:

(a) Speak directly to the officer-in-charge; or

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(b) Write to the Immigration Headquarters, or ask their legal representatives, friends or relatives to do so; or

(c) Complain to Legislative Councillors, the Ombudsman, the Chief Executive, visiting Justice of the Peace, or to the courts.

214. Departmental standing orders govern the handling of complaints from different sources. These include rules on the need to keep proper records; to designate a specific officer to take charge of investigations; the time-frame within which investigations must be conducted; action on the findings; and review procedures. A review working party, headed by an Assistant Director, reviews all complaints received and handled.

Customs and Excise Department

215. Persons in Customs custody who consider that they have been ill-treated may complain to any Customs officer. Detailed procedures for the handling of complaints are prescribed in a Departmental Standing Circular. All complaints made by detainees must be properly recorded and reported to the Deputy Commissioner of Customs and Excise as soon as possible. The Deputy Commissioner will determine the course of action to be taken. Cases will be referred to the police or to the ICAC if there is suspicion of a criminal offence that falls within their respective purviews.

216. Ten complaints of assault were received in 1997. All were found unsubstantiated after thorough investigation.

Independent Commission against Corruption

217. All persons detained by the Commission are, upon release, specifically asked if they wish to complain about any aspect of their detention. They are invited to provide details in writing. The written complaints are then immediately referred to a Senior Officer for action.

218. Complaints of ill-treatment may also be made to the Commissioner direct, to the police, to Legislative Councillors, or to the Independent Commission against Corruption Complaints Committee (see above in relation to article 12).

219. The table below provides the number of complaints of assault made against ICAC officers between 1995-1998.

	1995	1996	1997	1998 (up to September)
No. of complaints	0	1	4	0
Investigation result:				
- Not substantiated	0	1	3	0
- Still under police investigation	0	0	1	0

Avenues for complaint by mental patients

220. Such avenues include the Medical Superintendent of the hospital concerned or the visiting Justices of the Peace who, under the Mental Health Ordinance, are required to pay monthly visits to the hospitals.

221. Section 65 of the Mental Health Ordinance provides that the ill-treatment and/or wilful neglect of a mental patient is a criminal offence. Mental patients who claim to have sustained harm as a result of such conduct have recourse to the courts for civil redress.

222. The Hospital Authority has well-established complaint handling procedures. All complaints are thoroughly investigated under the supervision of senior management and complainants are informed of the outcome - verbally and/or in writing - once investigations are complete.

223. Complainants who are dissatisfied with the outcome of such investigations may seek a review by the Public Complaints Committee (PCC) of the Hospital Authority or by the Ombudsman. The PCC is an independent committee, formed under the Hospital Authority Board to consider and determine complaints. Its membership comprises members of the general community and "non-executives"[25] of the Hospital Authority Board. Of all the complaint cases lodged by mental patients (including two appeal cases handled by the PCC), none of the cases relating to allegations of malpractice in the management and care provided to patients was found to be substantiated.

Total number of complaints received from mental patients by the Hospital Authority		
1995-96	1996-97	1997-98
128	140	164

Article 14

224. Under the Crown Proceedings Ordinance (Chapter 300) a person who alleges that a civil wrong (which would of course include an act of torture) has been committed against him by a public official acting in the course of his employment may bring an action for damages not only against the official in question but also against the Hong Kong Government. The nationality or other status (for example, as a refugee) of the plaintiff is immaterial.

225. Where a person is convicted of an offence, the Criminal Procedures Ordinance empowers the court to order that person to pay to any aggrieved person compensation - at a level that it considers reasonable - for personal injury and/or the loss of or damage to property. Section 12 of the Costs in Criminal Cases Ordinance (Chapter 492) empowers the court to award costs against persons convicted of indictable offences.

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Criminal and Law Enforcement Injuries Compensation Scheme

226. This Scheme provides for the payment of compensation for any injury (whether physical or psychiatric) or death resulting from:

(a) Any criminal offence involving the use of violence by the assailant on the victim or;

(b) The use of a weapon by a law enforcement officer in the course of his duty. A "law enforcement officer" means any police officer or other public officer on duty.

227. The Scheme is publicly funded and is not means tested. It extends to all persons - residents, foreign visitors, or refugees - who have entered Hong Kong legally.

228. The Scheme is administered by two Boards: the Criminal Injuries Compensation Board, and the Law Enforcement Injuries Compensation Board. Each considers claims in respect of the category of injury for which it is responsible. Applicants are notified of the Boards' decisions in writing. Appeals against those decisions can be made to an ad hoc "appended board" that is convened upon application. Legal representation in the appeal may be allowed (at the appellant's own expense), subject to the approval of the appeal board.

229. Compensation is paid in the form of a lump sum grant. The rates paid in relation to criminal injuries are based on those paid under the Emergency Relief Fund. They currently range from HK$ 1,692 to HK$ 139,825. The rates paid in relation to injuries arising from law enforcement are assessed either on the basis of common law damages or in accordance with the Emergency Relief Fund rates, whichever is the greater.

Article 15

230. Under common law no statements by persons accused of crimes are admissible against them unless they are shown by the prosecution to have been voluntary statements. That is, the statements have not been obtained either by fear of prejudice or hope of advantage excited or held out by a person in authority or obtained by oppression. Thus, it is clear that on no account would a statement obtained by torture be admissible.

231. Law enforcement agencies are required to adhere to the "Rules and Directions for the Questioning of Suspects and the Taking of Statements" (see above in relation to article 11).

232. The Police, Customs and Immigration services - the departments most frequently involved in the process of taking statements - are progressively expanding the use of video-interviewing. By the end of 1998, every major divisional police station will have its own video-interviewing facility. At present, the Immigration Department has one video interview room and the Customs and Excise Department has three. They will install additional facilities as needed and subject to the availability of resources. The use of video-interviewing has long been a standard practice of the ICAC.

Review of the "voir dire" procedure

233. Before evidence of a confession statement can be admitted in a criminal trial, the prosecution must prove that the confession was voluntarily obtained. Where the trial is before a judge and jury, the determination of this issue will generally take place in the absence of the jury in what is called a *voir dire* (or "trial within a trial"). In the *voir dire*, evidence is led as to the obtaining of the statement. At the conclusion of the *voir dire*, the judge rules as to whether or not the statement is admissible. If the statement is ruled inadmissible, the jury, on their return to court, will not be told anything about the confession. If, on the other hand, the statement is ruled admissible, the evidence as to the confession will be led once more, but this time in the presence of the jury. The result is that, where the statement is ruled admissible after a *voir dire*, there is a duplication of evidence and concern has been expressed that this is an unnecessary waste of court time and resources.

234. In response, the independent Law Reform Commission has been examining the issue to establish whether there are ways of streamlining the process without in any way or degree compromising the safeguards provided by the existing system. The *voir dire* is by no means a universal process and options for consideration might include, for example, the Scottish approach which allows *all* the evidence (including that relating to admissibility) to go before the jury, and relying on the jury to determine whether or not admissions have been made voluntarily. The Commission expects to publish its findings for consultation in December 1998. Its consultation paper will invite comment on several options. At this stage, the Commission has reached no conclusion as to a preferred option and will seek the public's views before making any final recommendations.

Article 16

General

235. To a large extent, the legislative and administrative provisions discussed in the earlier parts of this report in relation to torture apply equally to conduct that falls short of torture but may amount to cruel, inhuman or degrading treatment or punishment. It is the position of the HKSAR Government that all persons acting in a public capacity shall act according to the rule of law. To that end, it has put in place measures 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 - would be subject to criminal or disciplinary sanctions.

236. At the risk of some repetition, the following paragraphs draw to certain features of the system (and more generally, of the situation currently obtaining in Hong Kong) that the Committee may consider to be relevant in this context.

Police disciplinary procedures

237. It is an offence against discipline for a police officer to exercise unlawful or unnecessary authority resulting in loss or injury to any other person[26]. The Regulations prescribe procedures

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for investigation of offences, punishment and appeals. Persons aggrieved by the conduct of police officers in the execution of their duties have access to the complaints system discussed above in relation to article 12 and article 13.

Ill-treatment of children

238. The Government is committed to protecting victims of child abuse and to bringing offenders to justice. Laws that exist for the achievement of that aim include:

(a) Offences against the Persons Ordinance (Chapter 212): this contains provisions on wounding or inflicting grievous bodily harm, assault occasioning actual bodily harm;

(b) Crimes Ordinance (Chapter 200): Part VI and XII contain provisions to protect children from sexual abuse; and

(c) Criminal Procedure Ordinance (Chapter 221): Part IIIA makes special provisions for the treatment of child witnesses and other vulnerable groups (see paragraph 240 below).

239. The taking of evidence and the construction of victims' accounts of child abuse require particular sensitivity and skill and the police have established dedicated units to handle such cases. These are the Police Child Protection Policy Unit and the Child Abuse Investigation Units. These units take an interdisciplinary approach to their work, with the police, social workers and clinical psychologists working closely together to discover the facts of the cases while seeking to minimize the trauma of both victims and their families. A child victim's first account of alleged abuse is video-taped by an officer specifically trained for the purpose. And the trauma of giving evidence in court is avoided by allowing video-taped testimony[27] to stand as such evidence and permitting the victims to testify or be cross-examined by live television link. Ongoing training programmes are organized for police officers to keep them abreast of procedures and developments and to "sensitise" them to the special needs of child victims.

240. The Child Protection Special Investigation Team - jointly operated by the police and the Social Welfare Department - investigates cases of suspected child abuse and makes video recordings of interviews with the victims. Where the witness is a child or is mentally handicapped, a "support person" may also be present with the permission of the court.[28] Further, Direction 5 of the Rules and Directions for the Questioning of Suspects and the Taking of Statements provides that children and young persons under the age of 16 years should only be interviewed in the presence of a parent or guardian, or, in their absence, a person who is not a police officer and is of the same sex as the child.

241. Care and protection orders are issued by the Magistrates Courts. Some commentators consider this unsuitable because, they say, the children in question are often placed in the same rooms as juvenile offenders, are frightened, confused, and perceive themselves as being guilty of wrongdoing. The commentators who take this view consider the Court procedure to be a form of degrading, even cruel, treatment. The Government considers that this view is exaggerated. Certainly, there is no intention to cause the children any distress.

242. The arrangements are in accordance with section 34 of the Protection of Children and Juveniles Ordinance (Chapter 213) which was originally drafted on the model of the corresponding United Kingdom legislation. We are considering whether the system can be improved. Should we find that changes are desirable we will proceed accordingly. One proposal being considered is to have different Juvenile Courts, one specialising in care and protection cases, the other in criminal matters. Meanwhile, we recognize that most of our magistracies were designed for the conduct of criminal proceedings and that some children might find them somewhat forbidding. Court officials do what they can to reduce any stress that children involved in care and protection cases might experience. For example:

(a) Where conditions (such as the caseload in a particular court) permit, they will schedule the hearing of criminal cases on different days - or at different sessions - from care and protection cases;

(b) In the event that children involved in criminal proceedings and children in need of care or protection orders are attending the same court, they will not be placed in the same waiting room. Police officers will look after them and ensure that there is no contact between the two groups;

(c) Children involved in care or protection cases are accompanied by their family members and/or caseworkers to provide emotional and psychological support; and

(d) Where physical constraints permit, children in particular need of emotional support may be invited to await their hearings in the office of the duty probation officer. This arrangement is admittedly not ideal. But it affords a measure of privacy and a sense of security.

Children in institutional care

243. As a matter of policy, the use of physical and mental punishment to discipline children in residential homes is not permitted. Instead, discipline is maintained through a system of "positive reinforcement" (rewarding good behaviour and deterring misbehaviour by adjusting points/grades gained). The Social Welfare Department closely monitors the operation of such homes. The homes themselves work closely with parents and caseworkers to ensure the welfare and development of the children in their care.

244. The Social Welfare Department's "Visiting Officers" visit homes run by NGOs on a regular basis. And the Justices of the Peace regularly visit the homes without prior notice so as to ensure that there is no concealment of malpractice. The Visiting Officers, the Justices of the Peace and the Department's District Social Welfare Officers are all empowered to receive complaints directly and to investigate them. Action will be taken to rectify matters if the complaints are substantiated. The children or their families also have access to external channels such as the Ombudsman, members of the Legislative Council or the police. So far, none has reported complaints of maltreatment or excessive punishment on the part of the homes.

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Young offenders in custody

245. The custody and treatment of young persons detained in homes operated by the Social Welfare Department homes are governed by:

Persons	By
Placed under probation order with residential requirement in probation homes/hostels.	Probation of Offenders Ordinance and Probation of Offenders Rules, Chapter 298.
Placed under reformatory school order.	Reformatory Schools Ordinance and the Reformatory School Rules, Chapter 225.
Placed under detention in accordance with section 15 (1) (k) of the Juvenile Offenders Ordinance.	Juvenile Offenders Ordinance and Remand Home Rules, Chapter 226.
Placed under remand, pending investigation by police, trial or sentence.	Juvenile Offenders Ordinance and the Remand Home Rules, Chapter 226.

246. The rules and regulations made under these Ordinances prescribe the minimum requirements for treatment, punishment and visits by the Justices of the Peace. Additionally, the "Manual of Procedures, Correctional Institutions and Aftercare Service" provides for the daily operation of all residential services.

247. Social workers in residential services receive induction, refresher and on-the-job training to ensure that they are familiar with the relevant legal requirements and the standards of treatment that they are expected to provide. Inmates (referred to as "clients") or their relatives may air any grievances they may have with the field management, the Director of Social Welfare or external authorities such as Ombudsman, Members of the Legislative Council, or the police. Such grievances could, of course, relate to acts of cruel, inhuman or degrading treatment or punishment.

248. The management and operation of residential units is the responsibility of their Superintendents. They, in turn, are supervised by, and accountable to, Senior Social Work Officers. And they are supervised by and accountable to a Chief Social Work Officer. Two Justices of the Peace visit each residential unit monthly and without notice. Their observation reports are forwarded to the policy bureau. They are empowered by law to interview any resident, and to look into any issue concerning the residential unit.

249. Each residential unit has a full-time registered nurse, and is visited weekly (once or twice depending on need) by a qualified registered medical practitioner. These officers are by profession trained to recognize physical signs of abuse. Residents are allowed visits on a daily basis. This affords regular and frequent contact with family and friends, helping to ensure that any ill-treatment will readily be exposed. The units receive regular visits by social work students supervised by training institute instructors, and large numbers of volunteers from universities and post-secondary colleges. Residents' letters to their parents and friends are uncensored. Together, these measures help to guard against abuse.

250. Prominent notices in each office/residential unit inform clients and their families of their right to lodge complaints with the supervisor of the officer-in-charge of the unit or with the Ombudsman. The names and telephone numbers of those officers are printed on the notice.

251. All complaints of ill-treatment are thoroughly investigated in accordance with operational instructions, departmental complaints procedures and legal requirements. The complainant will be advised of the outcome. Where a complaint concerns conduct which is or which may be criminal offence, the matter is reported to the police for investigation. In other cases, or where the police advise that criminal proceedings are not appropriate, action will be taken, if necessary, according to the disciplinary procedures governing the civil service.

The Ombudsman

252. In 1997-98, the Ombudsman investigated a total of 355 complaints. None entailed torture and other cruel, inhuman or degrading treatment or punishment.

Avenues for complaints against ICAC staff

253. These are discussed above in relation to article 12 and article 13.

Notes

[1] This provision is made in the first paragraph of article 39. The second paragraph provides that the rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless prescribed by law, and that such restrictions shall not contravene the provisions of the preceding paragraph. The full text of the Basic Law is at annex I to this report.

[2] Officers of the Director of Public Prosecutions.

[3] As at 30 September 1998, 11 bilateral agreements had been signed, 8 of which had come into operation. A list of these is at annex 5. Annex 6 is the text of the agreement with Australia which is supplied by way of illustration. The terms of these agreements are essentially uniform.

[4] The operation of the Immigration Tribunal is explained at annex 7.

[5] Should a removee make such a claim to the Immigration Tribunal, the Tribunal would normally give directions to refer the claim to the Secretary for Security for assessment.

[6] There is no deportation to Mainland China.

[7] Section 11 of the BORO provides that “As regards persons not having the right to enter and remain in Hong Kong, this Ordinance does not affect any immigration legislation governing entry into, stay in and departure from Hong Kong, or the application of any such legislation.”

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[8] Article 24 (3) of the Basic Law is reflected in Schedule 1 to the Immigration Ordinance, which provides that a person is a permanent resident if he/she is of Chinese nationality and born outside Hong Kong to a parent who is a permanent resident and who had the right of abode in Hong Kong at the time of the birth of the person.

[9] The Comprehensive Plan of Action was agreed by all 74 main resettlement and first asylum countries and the country of origin at the International Conference on Indo-Chinese Refugees (ICICR) hosted by UNHCR in Geneva in June 1989. This provided for the implementation of a fair and just refugee determination process. The CPA was the cornerstone of the Hong Kong Government's policy on Vietnamese migrants. The CPA formally came to an end on 30 June 1996 as agreed at the seventh meeting of the Steering Committee of the ICICR held in March 1996.

[10] The minority who have not been released are those in jail and the escapees.

[11] The provision requires that the officer reasonably believe that the person apprehended is guilty of (inter alia) an offence for which a person may, on first conviction, be sentenced to imprisonment. Torture would certainly be such an offence.

[12] The law relating to these matters is extensive and it would not be practical to provide an exhaustive list of the provisions entailed. However, examples include the Criminal Procedures Ordinance, the Police Force Ordinance and the Magistrates Ordinance (Chapter 227).

[13] Thus, for example, if a State were to seek the extradition of a person, the HKSAR Government would do so, provided that the State in question had jurisdiction over that person by virtue of its laws or of any treaties it had entered into. Extradition would proceed even if the person's offence had been committed outside the requesting State.

[14] All the HKSAR's boundaries adjoin Guangdong Province.

[15] The Treatment of Detained Persons Order contains rules covering the detention, notification of relatives, communication with legal advisers, supply of food and drink, provisions of toilet facilities, exercise, treatment of sickness and injury and visits by Justices of the Peace.

[16] 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.

[17] Confirmed by verdict of the Coroner's Court.

[18] Immigration Service Ordinance, subsidiary legislation (Chapter 331C).

[19] Introduced in May 1998.

[20] Chapter 204, subsidiary legislation.

[21] For example, prisoners who have been remanded in custody awaiting trial or sentence.

[22] In this context, "endorsed" means that, having examined the findings of CAPO investigations, the IPCC agrees with them. If it does not, the Council can ask CAPO to clarify areas of doubt or to reinvestigate the complaint.

[23] Some of these were "spillovers" from 1996.

[24] Under the Prison (Amendment) Rules 1997, prison staff may not read letters that prisoners write to the Ombudsman.

[25] "Non-executive" members are persons who are not on the staff of the Hospital Authority and are not involved in its daily operation.

[26] Police (Discipline) Regulations, Police Force Ordinance (Chapter 232) subsidiary legislation.

[27] This is specifically provided for in Part IIIA of the Criminal Procedure Ordinance.

[28] See paragraph 7 of the Chief Justice's "Practice Direction" of February 1996 at annex 10.

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List of annexes*

1. The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

2. Fugitive Offenders (Torture) Order.

3. Fugitive Offenders Ordinance.

4. Hong Kong Bill of Rights Ordinance.

5. List of signed agreements of fugitive offenders.

6. Agreement for the surrender of accused and convicted persons between the Government of Hong Kong and the Government of Australia.

7. Immigration Tribunal.

8. Agreement between the Government of Hong Kong and the Government of Australia concerning mutual legal assistance in criminal matters.

9. Cases handled by the Complaints Against Police Office and endorsed by the Independent Police Complaints Council.

10. Practice Direction. Part III A of the Criminal Procedure Ordinance (Cap. 221) as amended by the Criminal Procedure (Amendment) Ordinance, No. 69 of 1995.

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* These annexes are available for consultation in the files of the Office for the High Commissioner for Human Rights.
