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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Concluding observations of the Committee against Torture

Hong Kong Special Administrative Region

1. The Committee against Torture (“the Committee”) considered, at its 844th and 846th meetings, held on 7 and 10 November 2008 (CAT/C/SR.844 and 846), the report of the Hong Kong Special Administrative Region (HKSAR), forming part of the fourth periodic report of China (CAT/C/HKG/4). It adopted, at its 863rd meeting on 21 November 2008 (CAT/C/SR.863), the following concluding observations:

A. Introduction

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

B. Positive aspects

3. The Committee welcomes:
- a) the Hong Kong Bill of Rights Ordinance (Cap. 383), which incorporates into HKSAR’s law the provisions of the International Covenant on Civil and Political Rights;
 - b) the enactment of the Independent Police Complaints Council Ordinance on 12 July 2008, providing that the Council will start operating as a statutory body in 2009;

- c) the new Guidelines on Searching of Detained Persons introduced and applied by the Police since 1 July 2008, aimed at ensuring that searches are conducted respecting the privacy and dignity of individuals; and
- d) the measures taken to tackle domestic violence, including the strengthening of services to assist victims and the passing of the Domestic Violence (Amendment) Bill in June 2008.

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

C. Main issues of concerns and recommendations

Definition of torture

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

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

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

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

Refugees and non-return to torture

7. While the Committee appreciates the cooperation of HKSAR authorities with UNHCR to ensure respect for the principle of non-refoulement and protection of

refugees and asylum seekers, it is still concerned that there is no legal regime governing asylum and establishing a fair and efficient refugee status determination procedure. The Committee is also concerned that there are no plans to extend to HKSAR the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol.

The HKSAR should:

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

Transfer of fugitive offenders/sentenced persons

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

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

Training

9. The Committee welcomes that the “Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (Istanbul Protocol) is distributed among relevant professionals. While noting the information that there is a general awareness among health care professionals in relation to signs that are suggestive of abuse or even torture, the Committee stresses the importance of more specific training programs for medical doctors and other health professionals to detect and document signs of torture, as well as training in gender sensitive treatment in judicial and medical institutions.

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

Strip search and body cavity search

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

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

The HKSAR should:

- a) **ensure that strip searches for persons in police custody are limited to cases where there is a reasonable and clear justification; if carried out, the search has to be conducted with the least intrusive means and in full conformity with article 16 of the Convention; an independent mechanism to monitor those searches, upon request of the detainee, should also be provided;**
- b) **establish precise and strict guidelines regulating the strip searches conducted by all law-enforcement officials, including those from the Immigration and Correctional Services Department; if these guidelines are already in place, they should be strictly abided by and their observance consistently monitored; records of searches should be made and all abuses**

committed should be thoroughly investigated and, if substantiated, punished; and

- c) seek alternate methods to body cavity search for routine screening of prisoners; if such search has to be conducted, it must be only as a last resort and should be performed by trained health personnel and with due regard for the individual's privacy and dignity.**

Police operations

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

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

Independent investigation of police misconduct

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

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

Domestic violence

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

The HKSAR should:

- a) **thoroughly investigate all allegations of domestic violence which, if substantiated, should be appropriately prosecuted and punished;**
- b) **strengthen its efforts to address domestic violence through legislative, policy and social measures;**
- c) **develop national public information and awareness-raising campaigns and stimulate broader public discussions in order to address attitudes and stereotypes that may lead to violence against women; and**
- d) **provide further information on this issue in its next periodic report, including on the progress obtained through the forthcoming Enhanced Central Domestic Violence Database.**

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

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

16. The Committee invites the HKSAR to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.5.

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

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