

Society for Community Organization

**Comments on Code of Practice for Requiring Persons to
Furnish Information or Produce Material under Section 12A
of the United Nations (Anti-terrorism Measures) Ordinance
(Cap. 575)**

**Submission to Subcommittee on Proposed Resolution under Section 12A of the
United Nations (Anti-terrorism Measures) Ordinance (Cap. 575).**

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A. Introduction

This document represents Society for Community Organization's comments on the Code of Practice for Requiring Persons to Furnish Information or Produce Material under Section 12A of the United Nations (Anti-terrorism Measures) Ordinance (Cap. 575) ("the code") as outlined at Annex of LC Paper No. CB(2)1126/09-10(02).

We would like to reiterate some of the concerns previously stated in our submission titled "Protection of human rights under the United Nations (Anti-terrorism Measures) (Amendment) Ordinance 2004 (Cap. 575)" (LC Paper No. CB(2)389/08-09(01)) as the code still needs to incorporate more details to state the rights of persons subject to a section 12A order.

Again, we would like to draw the attention to some overseas codes of practice, as they may provide guidance for a more detailed code of practice and with a strong emphasis on human rights. These are the:

1. *Code of Practice for the Detention, Treatment and Questioning of Persons Detained Under the Terrorism Act 2000* (Northern Ireland)
2. *Police & Criminal Evidence Act 1984(PACE): Code H. Code of Practice in Connection with the Detention, Treatment and Questioning by Police Officers of Persons under Section 41 of, and Schedule 8 to, the Terrorism Act 2000* (United Kingdom)

B. Comments on the code

1. Provide copy of code when serving notice to attend interview

The Preamble of the code states that all persons required to provide information must be given a copy of the code. It is important that the person subject to a section 12A order is informed of his rights as soon as practicable. Therefore the code should state that the person should be provided with the code when a) the Secretary of Justice serves a notice in writing to him requiring him to attend before an authorized officer for interview, according to section 12(A)(5) of the ordinance and b) prior to the interview.

2. Availability of code of practice in different languages

Paragraph 1 of the code only states that the code should be available in English and

Chinese. We recommend that the code, including annex A and B, should also be available in other languages, especially for the major ethnic minority languages in Hong Kong and also for the major languages of those countries from which the government suspect that terrorist organizations may originate from. It is further recommended that the code should be available in Braille, large print format and audiocassette.

Documentation

A record should be signed both by the authorized officer and the person subject to the section 12A order that the code has been provided to the person held. The record should note in what language it has been provided and whether attention to special needs has been given.

A record should be made whenever the person makes a request for the code and whether the code was provided to the person held.

3. Complete interview records

Paragraph 17(g) of the code only requires that *material* points covered in the interview should be recorded.

- a. The code should specify that the *whole interview* must be accurately recorded no matter where the interview takes place.
- b. The interview record should be made during the course of the interview. If it is not made during the course of the interview reasons should be recorded.

4. Rights to be included

Although the code does include some rights of the person held, some have not been mentioned. Besides from those mentioned in this submission, we recommend that the following be included:

4.1 Right not to be held incommunicado:

- a. Any person subject to the order has the right, on public expense, to inform a person about his whereabouts as soon as practicable.
- b. *Documentation* of requests and action taken on it should be made.

4.2 Right to legal advice:

- a. The person subject to the order shall be served with a list of solicitors/barristers that he may contact.
- b. Officers should not do anything with the intention to dissuade the person from obtaining legal advice.

- c. *Documentation* of requests for legal advice should be made and what action was taken.

4.3 Right of foreign nationals

- a. Foreign nationals have a right to communicate at any time with their High Commission, Embassy or Consulate, to explain to them their whereabouts, and the grounds for being subject to the section 12A order.
- b. Foreign nationals have a right to receive visits from the consular officers. Such visits shall take place without the hearing of the authorized officer.
- c. In cases where the person held is a refugee or seeking asylum at the UNHCR or making a Convention Against Torture (CAT) claim at the Immigration Department, a consular shall not be informed of the person held except at the person's express request.
- d. *Documentation*: Records of requests for communication with a High Commission, Embassy or Consulate should be made, and whether any action was taken.

4.4 Right to communicate in mother tongue

Paragraph 10 of the code specifies that communication relating to the interview must be conducted in the mother tongue of the interviewee.

However, besides from the interview situation, there are other situations where language may act as a barrier to communication and to equal access to justice for persons under a section 12A order. The code should therefore be sensitive to overcoming any language barriers:

- a. A person subject to a section 12A order has a right to communicate both orally and in writing in his own mother tongue. This applies not only to the interview but to all situations and communication with his solicitor/barrister, medical officers, authorized officers and other relevant persons. Persons should expressly be made aware of this right.
- b. *Documentation* of requests for translation, interpretation should be made. Record should be made that all documents served to the person have been interpreted/translated. These should be signed by the officer and the person held.

4.5 Right to complain and initiate legal proceedings

- a. A person subject to a section 12A order should be informed about the right to complain not only to the supervisory officer, but also that he has a right to contact the Ombudsman and that he may initiate legal proceedings if any

provision of the code has not been complied with.

- b. The complaint mechanism should be made by an independent authority.
- c. *Documentation:* Records of complaints should be signed by the person subject to the section 12A order, and a copy should be served to the complainant.

4.6 *Right to not being subject to torture or other degrading treatment*

- a. The code should emphasize that no officer may try to obtain answers to questions or to elicit a statement by the use of oppression or creating an oppressive or intimidating atmosphere or by the use of torture, inhuman or degrading treatment, violence or the threat of violence.
- b. The code should make specific reference to the Convention Against Torture (CAT), relevant rights in the International Covenant on Civil and Political Rights (ICCPR) and the Hong Kong Bill of Rights Ordinance (Bill of Rights).
- c. *Documentation:* Documentation should be made that the person subject to the section 12A order has been made aware of his rights under CAT, ICCPR and the Bill of Rights.