

# 香港人權監察

## HONG KONG HUMAN RIGHTS MONITOR

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Submission on the Code of Practice  
under section 12A of the United Nations (Anti-Terrorism Measures) Ordinance  
April 2010

1. Section 12A of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (“the Ordinance”) enables the Secretary for Justice to apply to the Court for an order to require certain persons to answer questions, furnish information or produce materials relevant to the investigation of an offence under the Ordinance. According to section 12A(14) of the Ordinance the Secretary for Security shall prepare a Code of Practice in connection with the exercise of the powers and the discharge of the duties under section 12A. The Code has serious impacts on the treatments, and therefore the rights, of any persons subject to such orders (“subjected persons”), especially those who are required to answer questions (“interviewees”).

**Presumption against restrictions & all restrictions in the Code have to be cogently justified**

2. As a matter of principle, a subjected person is not an arrested person or a detainee but a person ordered to answer questions or furnish information or produce materials relevant to the investigation of an offence under the Ordinance. They should have all their rights respected to the fullest extent and be subjected only to those minimal restrictions of rights implicit and incidental in a lawfully court order and are necessary and reasonable to fulfill the order commensurate to the circumstances of the case and in the light of the objectives of the Ordinance and the rights provisions in the Basic Law and other laws.
3. Most importantly, we do not see it proper or legal for a Code of Practice to impose restrictions on the subjected persons without such restrictions explicitly provided for in the parent Ordinance. The Code, however, is useful in reminding all those involved about the rights the subjected persons are entitled to in a faithful way and to guard against possible abuses by authorised officers in their performing of their duties under the Ordinance. In their performance of their duties, all authorised persons should not be exercising any power, especially those which restricts the rights of the subjected persons, if it is not clearly provided for. Any ambiguities in respect of the rights of the subjected persons in the Ordinance should be resolved in favour of the rights of these subjected persons.
4. We therefore urge the LegCo to ask the Government to justify each and every restriction laid down in the Draft Code of Practice prepared by the Secretary for Security. The Secretary for Security should be required to justify also the degree or extent of restriction to make sure that the restriction is only minimal (proportional) generally and also in the circumstances of the case.
5. For example, we cannot see any strong grounds for restricting the making of calls and telegraphs, etc., in the Draft Code. The Secretary for Security may argue that the making of calls during the questioning time is so excessive and unjustified that it amounts to a refusal

to obey the order. But even so, the person should be charged or brought before a court of law for contempt, if the law enforcement agencies (LEAs) can lawfully do so. The police officers cannot deny the subjected person making such calls, or deny him phones or other communication devices.

6. We should bear in mind that the UN High Commission for Human Rights has expressed its concern that many jurisdictions have imposed restriction of rights inconsistent with human rights. It is therefore not a sufficient justification for the government to cite an example of another jurisdiction to justify a restriction. Each and every restriction should be cogently justified in accordance with international human rights standards which, to certain extent, are domesticated in the Basic Law. We also note that the obligations imposed on persons under the Ordinance in a way goes beyond that which the UN and the international community has asked for. For example, the Financial Action Task Force on Money Laundering (FATF) imposes the obligation only on "financial institutions, other business or entities subject to anti-money laundering obligations". We therefore have more reasons to expect the Secretary for Security to take a serious role in defending the rights of the subjected persons in the Code of Practice.

### **A Code for restraining the authorised persons and the Law Enforcement Agencies**

7. The draft Code should ensure that every person who is required to answer questions, to furnish information or produce material subjected to the section 12A order ("subjected person") to understand the procedures and fundamental rights, especially noting that these persons are neither arrested nor detained. It also provides concrete guidelines for every law enforcement officials performing their duties under the Ordinance.
8. The Hong Kong Human Rights Monitor ("the Monitor") considers it important for the Secretary for Security to spell out clearly in the Code at the very beginning in lucid layman terms the principles discussed in paragraph 2 above. This serves not only to inform the subjected persons, but also to remind and restrain the authorised officers in their performance of functions and exercise of powers.
9. It should also make it clear that violation of the Code, especially in the treatment of a subjected person, by an authorised officer is a disciplinary offence in the officer's LEA. The Code should require the LEA to amend or clarify in its internal rules like the Standing Orders to make it a disciplinary offence in violation of the Code.
10. The Code should clearly state that the investigating officers are prohibited from doing certain acts they usually do, or acts which persons have complained that they have done, to suspects, especially their detainees or arrested persons, including but not limited to the following:
  - a. search of the subjected person and his/her personal belongings;
  - b. seizure or withholding, even temporarily, any personal belongings or things in his or her possession, including mobile telephones and audio-visual equipments unless expressly specified in the order;
  - c. inspection of papers or electronic information in his possession unless expressly specified in the order;
  - d. taking of any photos, fingerprints or bodily samples from the subjected persons unless expressly specified in the order;
  - e. obtaining any news materials from any media body or media worker unless expressly specified in the order;

- f. interference in their efforts to communicate with others including the reasonable use of phone and making of calls, and
- g. acts of torture, degrading or inhuman treatments, including any violent acts.

### **No fewer rights than detainees or arrested persons**

11. While it is wrong to deduce any rights from those enjoyed by detainees or arrested persons, it is reasonable to expect that a subjected person should not enjoy fewer rights than the detained or arrested ones.
12. The “rights” enjoyed by detainees or arrested persons can be gathered in the following papers (enclosed):
  - a. Rules and Directions for the Questioning of Suspects and the Taking of Statements (issued by the Secretary for Security); and
  - b. Notice to Persons under Investigation by, or Detained in the Custody of, the Police (issued by the Secretary for police).
13. The Monitor is afraid that if the Code is allowed to be less favourable than those standards recognised in these papers, it would become an excuse for triggering a series of downward spirals in the erosion of rights of suspects especially those under arrest or in detention.
14. For example, the 8<sup>th</sup> item in the list of rights in the Notice to Persons under Investigation by, or Detained in the Custody of, the Police spelt out the entitlement of a detainee or arrested person in police custody to make phone calls, send emails and faxes to friends and relatives. The restrictions on a subjected person on making phone calls in paragraph 9 of the Draft Code is even more restrictive than that for a detainee as stated in the police Notice.
15. Most important of all, there is no legal basis for inserting such restrictions in the Draft Code. This remains the case no matter how generous the Secretary for Security would allow follow-up calls in cases of a failed call or repeated failed calls. The restrictions cannot stand any legal challenges. It is also important that our Secretary for Security should not allow such an ultra vires provision to creep into any documents of law issued in his name.
16. Another example is that in the Rules and Directions for the Questioning of Suspects and the Taking of Statements issued by the Secretary for Security to the police, etc., a child under the age of 16 should only be interrogated in the presence of an independent person of the same sex if his or her parents or guardians are not available to accompany him or her during the questioning. These protections have been watered down in the Draft Code. We recommend that a lawyer from the Official Solicitor's Office, which has special obligations to children in legal matters, should be invited to act as the independent person to offer proper protection to the child.
17. There are other local laws or subsidiary legislation in which the rights of detainees are set out. The Independent Commission Against Corruption (Treatment of Detained Persons) Order and the Immigration Service (Treatment of Detained Persons) Order are just two of the examples.
18. The Secretary for Security should be required to prepare a comparison of the rights provided for in those documents list in paragraph 12 and the legal instruments in Hong Kong to those stated in the Draft Code. Then advice and comments from the legal advisor would be very useful in identifying any missing rights and protection measures.

## **An accessible Code**

19. While we support the idea to brief the subjected persons about his rights and the nature of the order before the questioning, it should be done by the supervisory officer of the officers responsible for the questioning to avoid a conflict of interest and to provide better protection to the subjected person.
20. We also welcome that a copy of sections 2(5), 12A and 14 of the Ordinance be provided to a subjected person together with the Code as an annex. While we have support that these provisions should be provided to subjected persons, we are concerned that the provisions are too technical for ordinary people to understand. The Government should therefore reproduce and explain the sections in layman terms in a leaflet and make them available to the public, including all subjected persons.
21. It is a common complaint that the Notice to Persons under Investigation by, or Detained in the Custody of, the Police is given to suspects after the interrogation. To prevent similar problems from happening with respect to the Code, there should include a clear requirement that the Code must be given at the time of the notice, once again when the subjected person arrives at the place specified and any time when a subjected person requested it. The supervisory officer responsible for the briefing (as proposed by us above) should check if the subjected person has the information in their possession and help him or her to understand the information in these papers during the briefing or any time the supervisory officer is approached by the subjected person or his or her representative. The Code should require that a summary in the form of a big poster be prominently and visibly displayed near the subjected person in any venue of questioning or receiving of materials.
22. The supervisory officer should verbally explain to the subjected persons the nature of the duty and their rights when performing their duty. The supervisory officer should also make it clear to the subjected persons that they are neither arrested nor detained. All explanations must be interpreted as in the interview. Interpretation services should be made available if it is desirable or there is such a need.
23. Paragraph 1 of the Draft Code states that “This Code of Practice must be readily available in English and Chinese at all places...”. The Monitor recalls the Government’s response to a question raised by a LegCo member that,  
    “[T]wo commonly used forms and documents (namely the “Notice of Rights to Persons Detained in Custody by the Police” and the “Personal Information Collection Statement”) have been translated into nine languages (i.e. Tagalog, Vietnamese, Thai, Indonesian, Hindi, Mongolian, Nepali, Tamil and Urdu) for use in all police stations”.<sup>1</sup>  
The Government should take similar steps to translate the Code into the nine languages listed above. Further, the Government should consider translating the Code into other languages which might be more likely to be used by prospective subjected persons. Moreover, the Code in Braille, sign languages and verbal format should be made available to facilitate subjected persons with disabilities. If the law enforcement agencies still fail to provide the Code in the mother tongues of the subjected persons, translation or interpretation should be made available.

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<sup>1</sup> Government Press Release: LCQ14: Police render assistance to ethnic minorities, March 12, 2008. Available at: <http://www.info.gov.hk/gia/general/200803/12/P200803120186.htm>

## **Substantive rights – phone calls**

24. Paragraph 9 of the Draft Code states that the subjected person is allowed to have a barrister and/or a solicitor to be present during the interview and to consult with the barrister and/or solicitor privately. Also the subjected person is allowed to make one telephone call for a reasonable time. The Monitor is of the opinion that it is too restrictive and there is no legal basis to restrict the subjected person to make only one telephone call. He or she is neither arrested nor detained, so his or her right to the use of a phone should not be restricted. The law enforcement officials should not have the power to ask for the telephone numbers or names of persons the subjected person has called or plans to call. If the subjected persons are not allowed to make phone calls, reasons for refusal must be supported and recorded in detail, and reviewed by an assistant commissioner or above and referred to the Secretary for Justice for follow-up actions.
25. Moreover, the Monitor is of the opinion that to ensure the right of the subjected person to enjoy legal services, including legal aid services, the Code should further state that the subjected person is allowed to request a list of barristers and/or solicitors from the investigating authority; and that information about legal assistance and legal aid services should be made readily available to the subjected person. Moreover, the Code should state that there should not be any restrictions on making any telephone calls and talking to any barristers and/or solicitors in confidence.

## **Protection of children**

26. Paragraph 11 of the Draft Code states that if the interviewee is or appears to be under 16, he or she should be interviewed in the presence of a parent, guardian or other person responsible for his or her care. The age of 16 may be too low in the light of the obligation of the Hong Kong government under various human rights treaties to offer special protection to all children who are defined in the Convention of the Rights of the Child as any person below the age of 18. The Monitor is concerned that since the subjected persons are not arrested persons yet they do not have the right to remain silent in this kind of special situation, the Government should consider extending the age to all children under 18 to provide better protection to these subjected persons who have not yet reached their age of majority.
27. Paragraph 14 of the Draft Code states that the interview should be audio and/or video recorded if the subjected person is or appears to be visually handicapped. The Monitor is of the opinion that the audio recording should be made in every interview to record the briefing and the procedures and processes of the interviews and all the dealings with the subjected persons except any conversations with the lawyers (or any parent or guardian or independent person present) and any private phone calls. The subjected person, however, has the right to refuse to have such electronic recording of part of or the whole process. This recording should include any sign languages and all complaints made against the law enforcement officers. It is a good tool to prevent any abuses by investigating officers and to investigate any complaints made by the subjected person.

## **Gender sensitivity**

28. The Monitor also urges the Government to amend the Draft Code to state that the subjected person is allowed to request an investigating officer of the same actual or self identified sex as the subjected person to be present in the whole questioning procedure as well as at other times the subjected person is in the questioning premises.

### **Reasonable comfort**

29. The Code should include all reasonable ways to make the subjected persons enjoy reasonable comfort, including adequate and suitable snacks and refreshment, reasonable and suitable meals during ordinary lunch or dinner hours or the hours the interviewees normally have their meal.
30. Refreshments should be made available all times. Medical attention, adequate warm blankets and clothing, proper and reasonable use of toilet in dignity and privacy should be available anytime when there is such a need. Comfortable air conditioning should be made available as far as possible. These should be spelt out clearly in the Code.
31. Paragraph 16 of the Draft Code states that “the interview shall last for only a reasonable period”. The Monitor is of the opinion that the Code should further state the interview shall be conducted expeditiously and without unreasonable delay. Both the authorised officers and their supervisory officer are responsible for any failure on their part to ensure that.

### **Hourly inspection and debriefing by supervisory officer to detect and prevent abuses**

32. Subjected persons must be given opportunities to report issues of comfort and abuses at any time to the supervisory officer, especially during an hourly inspection or in a debriefing conducted by the supervisory officer. Such an hourly inspection and a debriefing by the supervisory officer and the requirements on a proper record of treatments and abuses should be laid down in the Code. These measures would help to detect and prevent abuses. However, a subjected person may choose not to participate in any debriefing.

### **Supervisory officer at least accessible by phone during the questioning**

33. A subjected person should be provided with information about the name and rank of the supervisory officer and his or her phone number(s) and be given access to a telephone to enable them to call the supervisory officer in confidence any time during the stay of the subjected person in the questioning premises for any information regarding their duty under the order and the rights they have and for making any reports of abuses. Assistance of an interpreter should be provided for interpreting the calls. The supervisory officer should take all reasonable actions in response to the telephone conversation, including inspecting of the questioning scene and talking to the subjected person in person where necessary. All steps taken to fulfill each of these requirements, any questions asked and any requests or complaints made by the subjected person, and any follow-up measures by each of the officers involved, including answers given to the subjected persons, should be properly, and contemporaneously unless urgent actions are required, recorded by the officers involved.

### **Copy of accurate record and translation**

34. In paragraph 17, besides those listed in the Draft Code, an accurate record on any questions, concerns, comments, requests and complaints the subjected person raised should be made as soon as reasonably practicable. The time and duration for the briefing on the Code and rights before the questioning should also be clearly recorded.
35. Paragraph 22 of the Draft Code states that “[T]he interviewee is entitled, as soon as

reasonably practicable to receive a copy of the record...” The Monitor is of the opinion that if the record is not in the mother tongue of the subjected person, it should be translated into the mother tongue of the subjected person at government expenses if he or she or requests. The subjected person should be given a copy of the original record and a copy of the translation the free of charge. The Code should also deal with any requests for amendments of the record by the subjected person. Copy of the record should be required to be given to the subjected person immediately, or else as soon as reasonably practicable but with the record of the reasons for the delay and evidence in support of the reasons for delay. Copy of the certified English or Chinese translation or any other translation of the record of interview should be given to the interviewee as soon as it is translated.

### **Retention and handling of information and independent scrutiny**

36. There should be provisions added to the Draft Code to ensure that the six personal data protection principles are adhered to in the handling of any information involving personal data. There should be a system of proper records to ensure accountability of the LEAs and officers involved. For instance, all LEAs should always be well prepared to encounter judicial reviews. Records should not be prematurely destroyed denying the court the opportunities to examine them in judicial reviews and other legal proceedings. Zealing such information for a limited period of time before final destruction may be considered.
37. In the drafting and adding provisions in the Code on a proper system of records obtained under the s12A orders, it is important for the Secretary for Security to approach the Government Records Services and the Privacy Commissioner for guidance on how to establish a proper records management system to ensure government transparency and accountability while at the same time properly address all legitimate privacy and rights concerns.
38. Hong Kong should also establish a system of “parliamentary supervision” in the LegCo to address the need for secrecy and accountability akin to those operating in other jurisdictions like the United States of America. Or else the executive and the LEAs are left unchecked and the requirement in Article 64 of the Basic Law that “The Government of the Hong Kong Special Administrative Region must ... be accountable to the Legislative Council of the Region” would become empty words. Furthermore, the Commissioner on Interception of Communications and Surveillance may be reformed and expanded to provide much needed independent “close-up” scrutiny on the handling of such information and materials.

### **Retention and access to articles, substance and other materials**

39. Paragraph 24 of the Draft Code states that material produced under a section 12A order shall be retained only for as long as in necessary in the circumstances. The Monitor is of the opinion that a maximum time limit should be set in the Code for its return and proper measures should be put in place to ensure that reviews are conducted periodically and regularly for any grounds for the continual retention of the material. Otherwise the law enforcement agencies may keep the information or material forever as if it is ALWAYS “necessary in the circumstances”.
40. If the material concerned is to be destroyed, the issue of the need for a system of proper safekeeping of materials to ensure accountability of the LEAs and officers arises. Again, experts should be consulted to addresses these concerns in the Code.

41. A subjected person should not be denied his rights to the subject matter retained by an authorised officer or an LEA in any unjustified manner. The subjected person should be allowed to use or have access to it whatever way he or she likes or at least as the need arises subject only to limited restrictions to be strictly justified by the authorities. The restrictions imposed under paragraph 26 of the Draft Code may not have any legal basis. At the very least, it has to be justified by the Secretary for Security in accordance with international jurisprudence and the parent Ordinance.
42. Paragraph 26 states that subjected person who has produced material must be allowed supervised access to the material to examine it or have it photographed or copied, or must be provided with a photograph or copy of the material. These restrictions are too restrictive.
43. The subject matter retained by an LEA “includes any book, document or other record in any form whatsoever, and any article or substance”.<sup>2</sup> It may be a key, bank cards, identity papers, work related papers (e.g. security guard certificates), a commercial document, a mobile phone or computers with useful numbers stored in it, an important device hard to get by, a substance being used in a laboratory experiment, etc. It may be useful to the subjected persons in many ways: opening of a safe, drawing money, taking up a security post, taking delivery of goods, extracting of information, performing a special function or operation, returning part of the bulk for conduction of experiment, etc. If access to it is restricted to the limited ways specified in the current draft, it would be inconsistent with the rights of the person. It would create unnecessary or even serious hardship to the subjected person.
44. As far as the costs of making copies is concerned, the Monitor is of the opinion that it should be at the expense of the law enforcement agencies for any reasonable copies if the costs are not necessary or more expensive had the subject matter not been under retention of the LEA under the relevant order. The law enforcement agencies may charge for copies only if the charge is reasonable given all the circumstances of the case.
45. Actually, if the order makes a subjected person suffer or exposed to any costs or losses, the secretary for Justice and the LEA concerned should bear the costs or losses. The Code should include provisions for making such repayments and compensations to the subjected persons.
46. It is important to bear in mind that it is not only the subjected person who may be adversely affected by the order, the true owners or co-owners may also be so affected. They should be given reasonable access and remedies as well.

### **Information and materials subjected to an appeal**

47. The Code should include provisions to deal with various issues in situations in which a subjected person has made an appeal to the Court to challenge an order made under section 12A.

### **Complaints**

48. Paragraph 27 of the Draft Code states that “A person subject to a section 12A order may complain to a supervisory officer if any provision of this Code has not been complied with”. The Monitor is concerned that such a complaint mechanism means that the

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<sup>2</sup> Definition of the term “material” in Section 2 of the Ordinance.



investigation officers being complained against and the supervisory officer handling such complaints are from the same law enforcement agencies. The Monitor urges that Government consider setting up one or more independent authorities, for example an upgraded Independent Police Complaints Council entrusted with the powers and equipped to conduct independent investigations into such complaints.

**Other rights to be spelt out**

49. Besides the above comments found in the Draft Code, the Monitor is of the opinion that additional statements should be put into the Code in detail to offer better protection to all subjected persons turning up for questioning:
- a. the right to a reasonably comfortable seat;
  - b. the right to be provided with papers and writing tools and facilities for writing and email communications;
  - c. the right to drinking water, medicine, medical care and services whenever necessary;
  - d. the right to request fresh water, reasonable toiletries and, for female, napkins; and
  - e. the right to use toilets any time and changing rooms when reasonably necessary and to use them in privacy and in dignity.

RULES AND DIRECTIONS FOR THE QUESTIONING OF  
SUSPECTS AND THE TAKING OF STATEMENTS

RULES AND DIRECTIONS FOR THE QUESTIONING OF  
SUSPECTS AND THE TAKING OF STATEMENTS

2 October 1992

Notice is hereby given that with effect from 1 October 1992, the Secretary for Security promulgated the following Rules and Directions for law enforcement officers in the Royal Hong Kong Police Force, the Customs and Excise Department, the Immigration Department and the Independent Commission Against Corruption to follow in questioning suspects and taking statements:—

NOTE

These Rules do not affect the principles

- (a) That citizens have a duty to help a police officer to discover and apprehend offenders;
- (b) That police officers, otherwise than by arrest, cannot compel any person against his will to come to or remain in any police station;
- (c) That every person at any stage of an investigation should be able to communicate and to consult privately with a solicitor or barrister. This is so even if he is in custody, provided that in such a case no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so;
- (d) That when a police officer who is making enquiries of any person about an offence has enough evidence to prefer a charge against that person for the offence, he should without delay cause that person to be charged or informed that he may be prosecuted for the offence; and
- (e) That it is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression.

That principle set out in paragraph (e) above is overriding and applicable in all cases. Within that principle the following Rules and Directions are put forward as a guide to all police officers conducting investigations. Non-conformity with these Rules and Directions may render answers and statements liable to be excluded from evidence in subsequent criminal proceedings.

RULES AND DIRECTIONS FOR THE QUESTIONING OF  
SUSPECTS AND THE TAKING OF STATEMENTS

RULES

- I. When a police officer is trying to discover whether, or by whom, an offence has been committed he is entitled to question any person, whether suspected or not, from whom he thinks that useful information may be obtained. This is so whether or not the person in question has been taken into custody so long as he has not been charged with the offence or informed that he may be prosecuted for it.
- II. As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions or further questions, relating to that offence.  
The caution shall be in the following terms:—  
“You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence.”  
When after being cautioned a person is being questioned, or elects to make a statement, a contemporaneous record shall be kept, so far as is practicable, of the time and place at which any such questioning or statement began and ended and of the persons present.
- III. (a) Where a person is charged with or informed that he may be prosecuted for an offence he shall be cautioned in the following terms:—  
“Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence.”  
(b) It is only in exceptional cases that questions relating to the offence should be put to the accused person after he has been charged or informed that he may be prosecuted. Such questions may be put where they are necessary for the purpose of preventing or minimizing harm or loss to some other person or to the public or for clearing up an ambiguity in a previous answer or statement.  
Before any such questions are put the accused should be cautioned in these terms:—  
“I wish to put some questions to you about the offence with which you have been charged (or about the offence for which you may be prosecuted). You are not obliged to answer any of these questions, but if you do the questions and answers will be taken down in writing and may be given in evidence.”  
Any questions put and answers given relating to the offence must be contemporaneously recorded in full and the record signed by that person or if he refuses by the interrogating officer.

RULES AND DIRECTIONS FOR THE QUESTIONING OF  
SUSPECTS AND THE TAKING OF STATEMENTS

- (c) When such a person is being questioned, or elects to make a statement, a contemporaneous record shall be kept, so far as is practicable of the time and place at which any questioning or statement began and ended and of the persons present.

*Written Statements*

IV. All written statements made after caution shall be taken in the following manner:—

- (a) If a person says that he wants to make a statement he shall be told that it is intended to make a written record of what he says. He shall always be asked whether he wishes to write down himself what he wants to say; if he says that he cannot write or that he would like someone to write it for him, a police officer may offer to write the statement for him. If he accepts the offer the police officer shall, before starting, ask the person making the statement to sign, or make his mark to, the following:—

"I, ....., wish to make a statement. I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence."

- (b) Any person writing his own statement shall be allowed to do so without any prompting as distinct from indicating to him what matters are material.
- (c) The person making the statement, if he is going to write it himself, shall be asked to write out and sign before writing what he wants to say, or before any questioning, the following:—  
"I make this statement of my own free will. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence."
- (d) Whenever a police officer writes the statement he shall take down the exact words spoken by the person making the statement, without putting any questions other than such as may be needed to make the statement coherent, intelligible and relevant to the material matters. He shall not prompt him.
- (e) When the writing of a statement by a police officer is finished the person making it shall be asked to read it and to make any corrections, alterations, or additions he wishes. When he has finished reading it he shall be asked to write and sign or make his mark on the following Certificate at the end of the statement:—  
"I have read the above statement and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it of my own free will."

RULES AND DIRECTIONS FOR THE QUESTIONING OF  
SUSPECTS AND THE TAKING OF STATEMENTS

- (f) If the person who has made a statement refuses to read it or to write the above mentioned Certificate at the end of it or to sign it, the senior police officer present shall record on the statement itself, and in the presence of the person making it, what has happened. If the person making the statement cannot read, or refuses to read it, the officer who has taken it down shall read it over to him and ask him whether he would like to correct, alter or add anything to what has been recorded and to put his signature or make his mark at the end. The police officer shall then certify on the statement itself what he has done.

*Interview Records*

V. The questioning of suspects shall be recorded in the following manner:—

- (a) Accurate records must be made of each interview with a person suspected of an offence.
- (b) If an interview with a suspect takes place in a police station, or other premises providing reasonable privacy and facilities for such interview, a contemporaneous written record of the interview must be made. The only exception to this rule will be where equipment is available to record the interview by mechanical means.
- (c) Where a contemporaneous written record of an interview has been made, it must immediately after completion be read over to the suspect, and he should be given the opportunity to read it. The suspect must also be given an opportunity to make any corrections, alterations or additions he wishes to the record, and afterwards he should be invited to write and sign the following Certificate at the end of the record:—  
"I, ..... have read the above record of interview, consisting of ..... pages. It is an accurate record of questions asked, and answers I provided."

(Signed).

If the suspect cannot read, or refuses to read the record, or to write and sign the certificate, the senior officer present shall record within the record of interview, and in the presence of the suspect, what has happened. Nothing recorded in a record of interview shall be obliterated by either the interviewing officer or the suspect. The record must accurately reflect the total of what occurred during the interview.

RULES AND DIRECTIONS FOR THE QUESTIONING OF  
SUSPECTS AND THE TAKING OF STATEMENTS

VI. If at any time after a person has been charged with, or has been informed that he may be prosecuted for an offence, a police officer wishes to bring to the notice of that person any written statement made by, or record of an interview with, another person, who in respect of the same offence has also been charged or informed that he may be prosecuted, he shall hand to that person a true copy of such written statement or record of interview, but nothing shall be said or done to invite any reply or comment. If that person says that he would like to make a statement in reply, or starts to say something, he shall at once be cautioned or further cautioned as prescribed by Rule III(a).

VII. Persons other than police officers charged with the duty of investigating offences or charging offenders shall, so far as may be practicable, comply with these Rules.

DIRECTIONS

1. *Procedure generally*

- (a) Police officers' notebooks should be used for taking statements only when no other stationery is available.
- (b) When a person is being questioned or elects to make a statement, a record should be kept of the time or times at which, during the questioning or making of a statement, there were intervals or refreshment was taken. The nature of the refreshment should be noted. In no circumstances should alcoholic drink be given.
- (c) In writing down a statement, the words used should not be translated into "official" vocabulary; this may give a misleading impression of the genuineness of the statement.
- (d) Care should be taken to avoid any suggestion that the person's answers can only be used in evidence against him, as this may prevent an innocent person making a statement which might help to clear him of the charge.

2. *Record of interview*

Rule II and Rule III(c) demand that a record should be kept of the following matters:—

- (a) when, after being cautioned in accordance with Rule II, the person is being questioned or elects to make a statement—of the time and place at which any such questioning began and ended and of the persons present;
- (b) when, after being cautioned in accordance with Rule III(a) or (b), a person is being questioned or elects to make a statement—of the time and place at which any questioning or statement began and ended and of the persons present.

RULES AND DIRECTIONS FOR THE QUESTIONING OF  
SUSPECTS AND THE TAKING OF STATEMENTS

In addition to the records required by these Rules, full records of the following matters should additionally be kept:—

- (i) of the time or times at which cautions were given, and
- (ii) of the time when a charge was made and/or the person was arrested, and
- (iii) of the matters referred to in paragraph 1(b) above.

If two or more police officers are present when the questions are being put or the statement made, the records made should be countersigned by the other officers present.

3. *Interviews at police station*

When a suspect is questioned in a police station, or other premises affording reasonable privacy and facilities for interview, a contemporaneous record must be made of all interviews conducted there.

4. *Comfort and refreshment*

Reasonable arrangements should be made for the comfort and refreshment of persons being questioned. Whenever practicable both the person being questioned or making a statement and the officers asking the questions or taking the statement should be seated.

5. *Interrogation of children and young persons*

So far as practicable, children and young persons under the age of 16 years (whether suspected of crime or not) should only be interviewed in the presence of a parent or guardian, or, in their absence, some person who is not a police officer and is of the same sex as the child. A child or young person should not be arrested, or even interviewed, at school if such action can possibly be avoided. Where it is found essential to conduct the interview at school, this should be done only with the consent, and in the presence, of the head teacher, or his nominee.

6. *Statements in languages other than English*

In the case of a person making a statement or answering questions in a language other than English:—

- (a) Whenever possible all interviews should be conducted in the mother tongue of the suspect unless he chooses, or consents, to use another language in which he is obviously proficient.
- (b) The statement or record of interview should be recorded in the language used by the person making the statement or answering the questions.

RULES AND DIRECTIONS FOR THE QUESTIONING OF  
SUSPECTS AND THE TAKING OF STATEMENTS

- (b) A police officer may only delay or prevent communication between a solicitor or barrister and a person in custody, or present with the police and under investigation by them, if he has reasonable grounds for believing that unreasonable delay, or hindrance to the processes of investigation or to the administration of justice, is likely to be caused if such communication is permitted. The fact that a solicitor or barrister might advise that person not to make, or continue to make, a statement, or not to answer questions, or not to assist the police in their enquiries, should not in itself be treated by a police officer as a ground for delaying or preventing communication between the solicitor or barrister and that person.
- (c) A person in custody, or present with the police and under investigation by them, should be supplied on request with writing materials.
- (d) A person in custody, or present with the police and under investigation by them, should be informed of his rights and the facilities available to him, and in addition notices describing them should be displayed at convenient and conspicuous places at police stations.

The above Rules and Directions replace the Judges' Rules previously adopted by the courts.

**INDEPENDENT COMMISSION AGAINST CORRUPTION  
(TREATMENT OF DETAINED PERSONS) ORDER**

(Cap. 204, section 10A(8))

[3 September 1976]

**1. Citation**

This order may be cited as the Independent Commission Against Corruption (Treatment of Detained Persons) Order.

**2. Interpretation**

In this order, unless the context otherwise requires—

“arrest/detention sheet” means the sheet or record maintained in respect of a detainee under paragraph 6;

“detainee” means a person detained at the offices of the Commission under section 10A(2)(a) of the Ordinance or pursuant to the order of a magistrate under the Magistrates Ordinance (Cap. 227);

“Detention Centre” means the detention facilities maintained by the Commission at its offices in Murray Road Car Park Building, Hong Kong; (51 of 1987 s. 9)

“guarding officer” means an officer appointed to be a guarding officer under paragraph 5(1) and, in relation to any detainee, means the guarding officer for the time being in charge of the Detention Centre. (51 of 1987 s. 9)

**2A. Detainee to be taken to Detention Centre**

An officer of the rank of Senior Commission Against Corruption Officer or above who detains or authorizes the detention of a detainee shall cause the detainee to be taken to the Detention Centre and placed in the custody of the guarding officer.

(51 of 1987 s. 9)

**3. Notification to relatives, etc.**

Immediately after the detention of a detainee, or so soon thereafter as may be practicable, the officer who authorized the detention shall—

**(PERSONAL DATA)**  
**NOTICE TO PERSONS UNDER INVESTIGATION BY, OR DETAINED IN THE CUSTODY OF, THE POLICE**  
**YOUR RIGHTS**

1. request to have your arrest/detention notified to the consulate of your home country in Hong Kong or, if there is no consular representation in Hong Kong, the authorities in your home country [Note: For foreign nationals (EXCLUDING Mainland residents) ONLY];
2. request that a friend or relative be notified of your detention;
3. be supplied with adequate food and refreshment free of charge;
4. request to be provided with drinking water;
5. request to receive medical attention should you feel ill;
6. request to be provided with a list of solicitors;
7. request to be released on bail (or to be released if under investigation);
8. make telephone calls, send e-mail or faxes to friends or relatives;
9. make private telephone calls to, or communicate in writing or in person with, a solicitor or barrister;
10. have a solicitor or barrister present during any interview with the Police;
11. communicate privately with a solicitor or barrister claiming to have been instructed by a third person on your behalf;
12. refuse to communicate with a solicitor or barrister claiming to have been instructed by a third person on your behalf;
13. request to be provided with a supply of writing materials;
14. request to have letters posted or delivered as soon as practicable, at your own expense;
15. be supplied with a copy of your cautioned statement(s) or questions and answers under caution as soon as practicable after the interview;
16. refuse to answer subsequent questions until a copy of the cautioned statement(s) or questions and answers under caution have been provided to you;
17. request to be provided with food/refreshment at your own expense -- for persons detained in custody (I & II) this will be subject to the approval of the officer in charge of the police station and the inspection of such food; and
18. send a telegram at your own expense.

**SEARCH OF PERSONS TO BE DETAINED IN CUSTODY OF THE POLICE**

In order for the Police to properly discharge their statutory functions and fulfill their duty of care to all persons detained in their custody, the Commissioner of Police has determined that a search will be conducted on all persons to be detained in police custody. A Duty Officer, or an officer authorized by him, will search a detained person prior to his being detained in a Temporary Holding Area or cell block, the scope of which shall be determined by the prevailing circumstances and on a case-by-case basis in order to satisfy himself that the detained person does not have:

- (a) on his person any weapon or article with which he might do himself or others an injury or any implement with which he might effect an escape;
- (b) in his possession evidence which is material to the offence with which he is charged; or
- (c) in his possession any article with which he could commit a further crime e.g. malicious damage to property or consumption or distribution of dangerous drugs.

The officer conducting the search will inform the detained person of the reason for and the scope of the search before carrying out the search. If the detained person raises any concern about the reason for and/or the scope of the search prior to or during the search, the officer conducting the search will bring such concerns to the attention of the Duty Officer.

Note: Original of this Notice to be retained by the OC Case as an exhibit.

**I PERSONS DETAINED IN CUSTODY OF THE POLICE**

As a person who has been detained in the custody of the police, you are entitled to all the rights set out in paragraphs (1) to (7) opposite.

Provided that no unreasonable delay or hindrance is reasonably likely to be caused to the process of investigation or the administration of justice, you have the additional rights set out in the remaining paragraphs (8) to (18) opposite.

**II PERSONS DETAINED IN CUSTODY OF THE POLICE ON THE ORDER OF A MAGISTRATE**

As a person who has been detained in the custody of the police on the order of a magistrate or a court, you are entitled to all the rights as set out in paragraphs (1) to (6), (13), (14) and (18) opposite.

Provided that no unreasonable delay or hindrance is reasonably likely to be caused to the process of investigation or the administration of justice, you have the additional rights set out in the remaining paragraphs (8) to (12) and (15) to (17) opposite.

**III PERSONS UNDER INVESTIGATION BY THE POLICE**

As a person under investigation by the police, you are entitled to full civil rights: these include, but are not limited to, all the rights set out in paragraphs (4) to (18) opposite.

FORMATION (REF. NO.)

ISSUING OFFICER

INTERPRETER'S NAME

LANGUAGE/DIALECT

DATE & TIME

NAME OF RECIPIENT

ID CARD NO. OF RECIPIENT

I (\* have read / have had read over to me) the opposite paragraphs as listed in section (\* I / II / III) above.

For persons in Sections I and II: I have been informed of the reason for and the scope of the search to be conducted on me before it is carried out.

I acknowledge receipt of a copy of this Notice at ..... hours on ..... (Date).

\_\_\_\_\_  
(Recipient)

\_\_\_\_\_  
(Interpreter)

\_\_\_\_\_  
(Issuing Officer)

\* Delete as appropriate

Tick appropriate box