

香港人權監察

HONG KONG HUMAN RIGHTS MONITOR

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Submission to LegCo Panel on Security On the Government Report Regarding the Convention Against Torture 5 December 2006

The Hong Kong Human Rights Monitor is of the opinion that the report by the Hong Kong SAR to the UN Committee Against Torture is unable to address properly the concerns and recommendations of the Committee. It has not been able to provide enough information to enable the Committee to have a complete picture of the situation, especially the shortcomings, in the implementation of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We therefore urge the LegCo Panel on Security to require or make available the following legal opinion, statistics and information to the Panel itself and the Committee Against Torture:

1. Legal opinion on the comments by the Committee that the Crimes (Torture) Ordinance is not in full conformity with Article 1 of the Convention in
 - (a) its the definition of a public official,
 - (b) the inclusion of "lawful authority, justification or excuse" as a defence for a person charged with torture" and
 - (c) that not all instances of torture and other cruel, inhuman or degrading treatment or punishment are covered.¹
2. Annual statistics since 2000, breaking down to different law enforcement agencies and types of offences, on criminal cases in which police officers and other law enforcement officers were charged for different kinds of offences and the number of convictions.
3. Annual statistics since 2000 on civil cases, broken down into different law enforcement agencies (LEAs) and types of claims, in which officers in LEAs were claimed damages and/or other remedies for acts or omissions related to the performance or purported performance of their official duties, the outcomes of such claims and the damages or payments for settlement of claims paid.

4. Annual statistics since 2000 on cases which had been settled before any case were brought (those not covered by Q.3 above), breaking down to different law enforcement agencies (LEAs) and types of claims, in which officers in LEAs were claimed damages against and/or other remedies for acts or omissions related to the performance or purported performance of their official duties, the outcomes of such claims and the damages or payments for settlement of claims paid..
5. Legal opinion on the case of HKSAR v Chuen Lai-Sze and 3 Others, MA 470/98 26 September 1998, on whether charges for torture under the Crimes (Torture) Ordinance should be laid or laid as an alternative (copy enclosed).
6. Annual statistics since 2000, on the number of applications for legal aid for coroners inquests and the results of such applications.
7. Details of procedures and forms used for autopsy for cases in death inquests and criminal investigations to verify its conformity of the standards under CAT and other human rights instruments.
8. Since the coroners rely heavily on information from police to decide whether an inquest should be held, it is very important that the Government discloses more on the information the police have provided the coroners in the following two cases:
 1. The suicide of the former head of police anti-triad operations Stephen Fung Kin-man during an ICAC investigation; and
 2. The deaths of police officers Tsang Kwok Hang and Tsui Po Ko, who allegedly died of gunshots of each other., and the death of constable Leung Shing Yan.

It is important for the authorities, especially the police, to inform the coroners and to provide them all the necessary information to ensure that the coroners can make informed decisions in the cases.

9. What measures have been put in place to assist officers in LEAs to overcome language barriers and racial and social prejudice to ensure that Foreign Domestic Workers, sex workers, asylum seekers and ethnic minorities are treated fairly and have equal access to justice? What impact assessments have been put in place to ensure that and what are the assessment findings?
10. What measures have been put in place to avoid adult illegal immigrants from pretending to be juveniles to avoid detention in adult facilities, especially those who have been doing this more than once?
11. Annual statistics since 2000 on cases of inmates transferred from one detention facility (the first facility) to Siu Lam Psychiatric Centre for “mental assessment”, the length of stay in Siu Lam after the transfer and their subsequent placement (into the third facility) after the assessment (e.g. within 3 months) into Siu Lam or a different facility. Please include information on whether the transfer from the first facility is from a lower security institution to a higher, the same, or lower

security level. Please indicate the grounds for such transfer, e.g. administrative segregation.

¹ The Conclusions and recommendations issued by the Committee in 2000 states, “The Committee is concerned that the reference to “lawful authority, justification or excuse” as a defence for a person charged with torture, as well as the definition of a public official in the Crimes (Torture) Ordinance, chapter 427, are not in full conformity with article 1 of the Convention.” It also raises, “Concern is expressed that not all instances of torture and other cruel, inhuman or degrading treatment or punishment are covered by the Crimes (Torture) Ordinance.”

Per Deputy Judge Lugar-Mawson at pp. 2-3:

The evidence led at trial relevant to the issues in this appeal is as follows:

All four appellants are police officers from Special Duty Squad at Kwai Chung Police Station. In the early evening of 3 March 1997, YIU So-man, the first prosecution witness, was intercepted by the 3rd and 4th appellants at the Ground Floor of Wing Lok House on the Fuk Loi Estate, Tsuen Wan, close to where he lived. He was handcuffed and taken to the refuse room on the 16th Floor. Having been asked what he thought he had done wrong and having refused to answer, he was ordered to lie on the floor on his back. The 3rd appellant sat on his pelvis and punched him in the chest. The 4th appellant removed his spectacles and sat on his shins. The 2nd appellant entered the room and, after discussion with her colleagues, told him that his methadone card had been found, together with a quantity of heroin. When YIU denied that the heroin was his, he was punched in the chest by the 3rd appellant.

The 1st appellant, the inspector in charge of the team, then joined the officers and a further discussion took place which YIU was unable to hear. The second appellant stuffed a shoe in his mouth. Then the 1st appellant, followed by the 2nd appellant, poured water from metal drinks cans into his ears, nose and mouth until he found it difficult to breathe, whilst the 3rd and 4th appellant sat on his body. He said that a Coca-Cola can and a San Miguel beer can were used to do this. Some sheets of cardboard were placed under him.

He was told that he would be released if he was able to borrow money to buy drugs. When he expressed doubt at being able to do this, all four officers carried him to the railings in the refuse room and the 1st appellant threatened to have him thrown to the ground. He agreed to cooperate. He was returned to his position on the floor, where the 3rd appellant pressed his thumbs onto his neck, whilst the 2nd appellant poured more water into his nose and mouth, which caused him to lose consciousness.

When he came around, the 4th appellant handed him a mobile phone. He made a call to his mother and asked her for \$7,000. Other police officers then arrived. He was given a change of clothing, as his own were wet, and released on the basis that they would be in touch with him again shortly. He managed to receive his spectacles, which were broken, and his wallet from which he said \$200 were missing.

YIU was uncertain as to exactly how long the incident lasted but believed it was approximately four hours and that he had been released at around 1 p.m. He was not convinced at the time that those who had assaulted him were police officers."