

HONG KONG

香 港

ORDINANCE NO. 11 OF 1993

1993年第11號條例

L.S.

I assent.

公印位置

本人批准。

Christopher PATTEN,
Governor.
20 January 1993

彭定康，
總督
1993年1月20日

An Ordinance to create the offence of torture and to provide for related matters.

本條例旨在將施行酷刑訂為罪行，並就有關事宜訂定條文。

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

由香港總督參照立法局意見並得該局同意而制定。

PART I

第I部

TORTURE

酷刑

1. Short title and commencement

1. 簡稱及生效日期

- (1) This Ordinance may be cited as the Crimes (Torture) Ordinance.
(2) This Ordinance shall come into operation on a day to be appointed by the Governor by notice in the Gazette.

- (1) 本條例可引稱為《刑事罪行(酷刑)條例》。
(2) 本條例自總督以憲報公告指定的日期起實施。

2. Interpretation

2. 釋義

- (1) In this Ordinance—
“the 1989 Act” (《1989年法令》) means the Extradition Act 1989 (1989 c. 33 U.K.);
“country” (國家) includes part of a country;
“office” (職位) includes “appointment” (委任);
“public official” (公務人員) includes any person holding in Hong Kong an office described in the Schedule;
“the Torture Convention” (酷刑公約) means the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 10 December 1984.

- (1) 在本條例中—
“《1989年法令》”(the 1989 Act) 指英國《1989年引渡法令》(1989 c. 33 U.K.);
“公務人員”(public official) 包括在香港擔任附表所列職位的人;
“國家”(country) 包括國家的一部分;
“《酷刑公約》”(the Torture Convention) 指聯合國大會於1984年12月10日通過的《禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約》;
“職位”(office) 包括“委任”(appointment)。

- (2) For the purposes of this Ordinance a person shall be regarded as having acted in an official capacity if at the time he acts (be he acting in Hong

- (2) 就本條例來說，任何人在香港或其他地方行事時，如當時其身分是與香港政府或在香港的任何公共主管當局有關，或與香港以外的國家或領土的政府有關，或與當地的任何其他主管當局有關，而該主管當局是與香港的公共主管當局相似或類似的，均須視該人當時是以公職身分行事。

Kong or elsewhere) that capacity is related either to the Government of, or any public authority in, Hong Kong or to the government of, or any other authority in, a country or territory outside Hong Kong being an authority which is similar or analogous to a public authority in Hong Kong.

(3) For the avoidance of doubt it is hereby declared that section 5 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not be construed as extending the definition of “public official” in subsection (1) to “public officer” within the meaning of section 3 of that Ordinance.

3. Torture

(1) 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.

(2) 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.

(3) For the purposes of this Ordinance, it is immaterial whether pain or suffering is physical or mental and whether it is caused by an act or an omission.

(4) It shall be a defence for a person charged with an offence under this section in respect of any conduct of his to prove that he had lawful authority, justification or excuse for that conduct.

(5) For the purposes of this section “lawful authority, justification or excuse” (合法權限、理由或解釋) 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.

(3) 為免生疑問，特此聲明《釋義及通則條例》(第1章)第5條不得解釋為將本條第(1)款“公務人員”的定義適用範圍擴及該條例第3條所指的“公職人員”。

3. 酷刑

(1) 公務人員或以公職身分行事的人，無論屬何國籍或公民身分，如在執行公務或本意是執行公務時，在香港或其他地方蓄意使他人受到劇烈疼痛或痛苦，即犯施行酷刑罪。

(2) 第(1)款對他不適用的人，無論屬何國籍或公民身分，如有以下情形，即犯施行酷刑罪——

- (a) 在以下人士的唆使、同意或默許下，在香港或其他地方蓄意使他人受到劇烈疼痛或痛苦——
 - (i) 公務人員；或
 - (ii) 以公職身分行事的其他人；以及
- (b) 該公務人員或其他人在唆使、同意或默許他人犯施行酷刑罪時，正在執行公務或本意是執行公務。

(3) 就本條例來說，不論疼痛或痛苦是肉體上的或精神上的，或是因任何作為或不作為而引致的，均無關重要。

(4) 任何人因其行為而被控以本條所訂罪行，如證明他對作出該行為有合法權限、理由或解釋，即可以此作為免責辯護。

(5) 就本條來說，“合法權限、理由或解釋”(lawful authority, justification or excuse)——

- (a) 如是關於在香港使他人受到疼痛或痛苦的，指香港法律下的合法權限、理由或解釋；
- (b) 如是關於在香港以外地方使他人受到疼痛或痛苦的——
 - (i) 而疼痛或痛苦是由公務人員根據香港法律行事時所造成，或由任何人根據香港法律以公職身分行事時所造成，則指香港法律下的合法權限、理由或解釋；
 - (ii) 在其他情況下，則指在使他人受到疼痛或痛苦事件發生的地方的法律下的合法權限、理由或解釋。

(6) A person who commits the offence of torture shall be liable on conviction on indictment to imprisonment for life.

4. Attorney General's consent required for prosecutions under section 3

Proceedings for an offence under section 3 shall not be instituted except with the consent of the Attorney General.

PART II

EXTRADITION

5. Application of Extradition Act 1989 extended

(1) To the extent that it applies to Hong Kong, Schedule 1 to the 1989 Act (in this section subsequently referred to as “the Schedule”) shall be construed and have effect in accordance with the provisions of subsection (2).

(2) (a) Subject to the limitation in paragraph (b) and to sections 30, 31 and 34 of the 1989 Act and to the exercise of a power conferred by section 37(3) of that Act, the Schedule also applies as regards both the Republic of Ireland and any foreign state which is a foreign state to which this section applies.

(b) Paragraph (a) shall extend the application of the Schedule only in respect of the following offences—

- (i) torture;
- (ii) attempted torture;
- (iii) counselling, procuring, commanding, aiding or abetting torture; and
- (iv) being accessory to torture.

(3) This section applies to any foreign state which is a party to the Torture Convention.

6. Amendment of Fugitive Offenders Act 1967

(1) To the extent that, by virtue of section 34(3) of the 1989 Act, it applies to Hong Kong, the Fugitive Offenders Act 1967 (1967 c. 68 U.K.) (in this section subsequently referred to as “the 1967 Act”), as adapted and modified by the Fugitive Offenders (Hong Kong) Order 1967 (App. III, p. CK1), shall be construed and have effect in accordance with the provisions of subsection (2).

(6) 任何人犯施行酷刑罪，循公訴程序定罪後，可處終生監禁。

4. 根據第3條檢控須經律政司同意

除非經律政司同意，否則不得就第3條所訂的罪行提起訴訟。

第II部

引渡

5. 擴展英國《1989年引渡法令》的適用範圍

(1) 《1989年法令》附表1(以下在本條內稱為“該附表”)在適用於香港的範圍內，須依照第(2)款的規定予以解釋及應用。

(2) (a) 該附表亦適用於愛爾蘭共和國及本條所適用的外國，但須符合(b)段的限制，且不抵觸《1989年法令》第30、31及34條條文，以及不抵觸該法令第37(3)條所賦權力的行使。

(b) (a)段只限於就以下罪行而擴展該附表的適用範圍——

- (i) 施行酷刑；
- (ii) 企圖施行酷刑；
- (iii) 慫恿、促使、命令、協助或教唆他人施行酷刑；及
- (iv) 作為施行酷刑的從犯。

(3) 本條適用於任何屬《酷刑公約》締約國的外國。

6. 英國《1967年逃犯法令》的修訂

(1) 英國《1967年逃犯法令》(1967 c. 68 U.K.)(以下在本條內稱為“《1967年法令》”)，依據英國《1967年逃犯(香港)頒令》(附錄III，CK1頁)予以刪訂及修改後，在憑藉《1989年法令》第34(3)條而適用於香港的範圍內，須依照第(2)款的規定予以解釋及應用。

- (2) (a) Schedule 1 to the 1967 Act is amended by the addition of—
“29. Torture.”.
- (b) Subject to the limitation in paragraph (c) and to sections 32, 33 and 34 of the 1989 Act and to the exercise of a power conferred by section 34(3) of that Act, the 1967 Act shall also have effect in relation to the return of persons to, or in relation to persons returned from, any country or territory to which this section applies.
- (c) Paragraph (b) shall operate to extend the application of the 1967 Act only in respect of the following offences—
- (i) torture;
 - (ii) attempted torture;
 - (iii) counselling, procuring, commanding, aiding or abetting torture; and
 - (iv) being accessory to torture.
- (3) This section applies to—
- (a) any country within the Commonwealth which is a party to the Torture Convention but in relation to which there is not for the time being in force a direction of the Governor under section 2(3) of the 1967 Act (as extended to Hong Kong);
 - (b) any territory for the external relations of which a country described in paragraph (a) is responsible; and
 - (c) any territory which—
 - (i) is a territory for the external relations of which a designated Commonwealth country which is such a party is responsible; and
 - (ii) is not a territory in relation to which a direction described in paragraph (a) is for the time being in force.
- (4) In this section “designated Commonwealth country” (指定英聯邦國家) has the meaning assigned to it by section 2 of the 1967 Act (as extended to Hong Kong).

7. Evidential value of certain certificates

In any proceedings for an offence under section 3, a statement in a certificate purporting to be signed by the Chief Secretary that, at a time or during a period specified in the certificate—

- (a) a state specified in the certificate was a foreign state to which section 5 applies; or
 - (b) a country or territory so specified was a country or territory, as the case may be, to which section 6 applies,
- shall be evidence until the contrary is shown of the facts so certified.

- (2) (a) 《1967年法令》附表1現予修訂，加入——
“29. Torture.”。
- (b) 《1967年法令》亦適用於將任何人送回本條適用的國家或領土，及由本條適用的國家或領土送回的任何人士，但須符合(c)段的限制，且不抵觸《1989年法令》第32、33及34條條文，以及不抵觸該法令第34(3)條所賦權力的行使。
- (c) (b)段只限於就以下罪行而擴展《1967年法令》的適用範圍——
- (i) 施行酷刑；
 - (ii) 企圖施行酷刑；
 - (iii) 慫使、促致、命令、協助或教唆他人施行酷刑；及
 - (iv) 作為施行酷刑的從犯。
- (3) 對於——
- (a) 任何英聯邦國家，如屬《酷刑公約》締約國之一，而且並無根據《1967年法令》(適用範圍擴及香港者)第2(3)條發出而現時有效的有關該國家的總督指示者；
 - (b) 任何領土，而其對外關係是由(a)段所述國家負責的；及
 - (c) 任何領土——
 - (i) 而其對外關係是由屬《酷刑公約》締約國之一的指定英聯邦國家負責；及
 - (ii) 並無(a)段所述而現時有效的與其有關的指示者，
- 本條均適用。
- (4) 在本條中，“指定英聯邦國家”(designated Commonwealth country)具有《1967年法令》(適用範圍擴及香港者)第2條給予該詞的含義。

7. 某些證明書有可作為證據的價值

在就第3條所訂罪行而進行的訴訟中，一份看來是由布政司簽署的證明書，如述明在證明書所指明的時間或期間——

- (a) 證明書所指明的某國是第5條適用的外國；或
 - (b) 證明書所指明的某國家或領土是第6條適用的國家或領土，
- 則須以此作為所核證事實的證據，直至證明並非如此為止。

PART III

第III部

MISCELLANEOUS

雜項

8. Amendment of Schedule

The Governor in Council may by order amend the Schedule.

8. 附表的修訂

總督會同行政局可藉命令修訂附表。

9. Amendment of Second Schedule to Magistrates Ordinance

Part I of the Second Schedule to the Magistrates Ordinance (Cap. 227) is amended by adding—
“9. Torture.”.

9. 《裁判官條例》第2附表的修訂

《裁判官條例》(第227章)第2附表第I部現予修訂，加入——
“9. Torture.”。

SCHEDULE

[s. 2]

附表

[第2條]

OFFICES REFERRED TO IN SECTION 2

第2條所指的職位

1. An office in the Royal Hong Kong Police Force.
2. An office in the Customs and Excise Department.
3. An office in the Correctional Services Department.
4. An office in the Independent Commission Against Corruption.
5. An office in the Immigration Department.

1. 皇家香港警務處的職位。
2. 香港海關的職位。
3. 懲教署的職位。
4. 總督特派廉政專員公署的職位。
5. 人民入境事務處的職位。