

**Hong Kong Human Rights Commission
Society for Community Organization**

**Degrading strip search procedures
by law enforcement agencies**

**Report to the United Nations Committee Against Torture on the Second Report
by Hong Kong Special Administrative Region under Article 19 of the Convention
Against Torture and Other Cruel, Inhuman or Degrading Treatment or
Punishment
(September 2008)**

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Introduction to Hong Kong Human Rights Commission

1. Introduction

This report provides additional information to the report submitted by the Hong Kong Human Rights Commission called “Report to the United Nations Committee Against Torture on the Second Report by Hong Kong Special Administrative Region under Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (April 2008)”. The report focuses on the degrading strip searches that are carried out by the law enforcement agencies.

Severe civil rights infringements continue to take place in detention centers and other penal institutions.

The strip search incidences mentioned in paragraph 25-27 of our previous report referred to how the Police Force routinely conducts strip searches on sex workers and street protesters. The incidence has led to more detailed Police guidelines regarding strip searches. However, the **Immigration Department** (IMMD) and the **Correctional Services Department** (CSD) still conducts routine strip searches (removal of all clothing including underwear), and abuse and degrading treatment takes place. This report focuses on the IMMD and the CSD but will also mention some major problems related to the Police’s new search guidelines.

2. Main problems of strip searches in Immigration Dep. and Correctional Services Dep.

The most shocking is that detainees are asked to undergo strip searches and even rectum searches in front of other detainees. The IMMD and CSD staff seriously infringes the detainees’ right to privacy and right to be treated with dignity and humanity.

The main problems of the strip searches are:

1. IMMD and CSD staff **strip search several detainees at the same time**, asking the detainees to adopt insulting and degrading postures. Some have even been asked to do rectum inspection at the same time, without any regard for their privacy.
2. IMMD and CSD staff subject the detainees to **abuse**, such as sexual comments and abusive and foul language.

3. **Strip searches are conducted *routinely*** for people entering or returning to the institution, even when there are no strong suspicion or justification for the searches.

3. Statistics

Number of people in penal institutions

People in CSD managed penal institutions: 10,781¹ (as at 30 June 2008)

Number and types of complaint cases regarding strip search

- As per August 2008, SoCO has so far received 22 complaints from former detainees about other detainees being present during strip searches.
- In 2005 SoCO supported 11 people to make complaints to the Director of Immigration regarding the detention conditions, of which 7 complained about strip searches. The Immigration Department only responded to 3 of the complaints.
- From SoCO's study in September 2006 about "Conditions of asylum seekers and refugees in detention", which interviewed 51 former detainees, **94% were strip searched.** Of these 35% were searched more than 10 times during detention. **33% confirmed that they were strip searched in front of other detainees.** 31% said they were insulted by staff, 24 % said the officers touched their private parts, and **33% said that they made jokes about them.**

4. Government policy

Immigration Department:

Hong Kong's legislation already provides that strip searches must be conducted with due regard to the privacy of the searched person.

Thus, according to **The Immigration Service (Treatment of Detained Persons)**

¹ This figures includes prisoners/inmates, remands and detainees in prison, drug addiction treatment centers, training centers, detention centers, rehabilitation centers and psychiatric centers.

Order² Chapter 331C, Section 7:

“(2) The searching of a detainee shall be conducted with due regard to decency and self-respect, and in as seemly a manner as is consistent with the necessity of discovering any concealed articles”.

However, the legislation does not provide detailed guidelines relating to the privacy of the detainee, the circumstances of the strip search and that strip searches should only be conducted when necessary.

Correctional Services Department

According to **The Prison Rules (Cap. 234A, Rule 9)**³:

“(3) No prisoner shall be stripped and searched in the sight of another prisoner unless a senior officer considers it necessary in the interests of the security of a prison or the safety of any person.”

However, the Prison Rules do not specify whether the officer needs to justify and make records if he requires other prisoners to be present.

Other laws applying to Hong Kong:

The strip searches conducted by the CSD and IMMD are arbitrary and interferes with the privacy and dignity of the detained people.

Hong Kong already has provisions to protect people against such interference and to protect their human rights:

The Basic Law article⁴ 28(2) states that arbitrary or unlawful search of the body or any resident shall be prohibited.

The **Hong Kong Bill of Rights Ordinance**⁵ article 6 has domesticated ICCPR article 10(1) and mentions the respect for the dignity of the person. Article 14 states that no person shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.

² Gazette Number: L.N: L.N. 536 of 1997, Version Date: 14/11/97

³ 1997

⁴ 1997

⁵ The Hong Kong Bill of Rights Ordinance came into operation on 8 June 1991.

However, the Bill of Rights does not elaborate on the right to privacy and only provides for very broad protection. The **Personal Data (Privacy) Ordinance**⁶ only protects individuals in relation to personal data. It does not aim at protecting individuals from unwarranted privacy intrusion as such. An individual who strip searches another person without authority is not liable under the Ordinance⁷.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)⁸ article 16 states that the State Party shall undertake to prevent other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

The International Covenant on Civil and Political Rights (ICCPR)⁹ article 10(1) enshrines that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

5. Overseas law

As it appears from above, the laws of searches are not detailed and need revision. In **Australia** there is legislation governing both police officers and other officers involved in searches. The Law and Enforcement (Powers and Responsibilities) Act 2002 of New South Wales spells out that officers must provide reasonable privacy (Section 32, (4)(a)), that they must be done as quickly as possible (Section 32, (4)(b)), and that the strip search must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search.

Hong Kong may revise its legislation on the basis of overseas experience and legislation.

6. No independent complaint mechanism

Although it is possible to make complaints, the existing complaints mechanisms are inadequate and not independent.

⁶ Enacted 1995

⁷ Law Reform Commission of Hong Kong 2004: “Civil liability for invasion of privacy”. p. 37).

⁸ Ratified for Hong Kong in 1992.

⁹ Extended to Hong Kong in 1976.

- The Correctional Services Department has a Complaints Investigation Unit. The staff of this unit are CSD staff. If a complainant is in detention he cannot call this unit directly, but must make a request through the institutional management.
- The Immigration Department maintains a customer services unit for complaints. If a detained person has a complaint he shall make the complaint to a member of the Immigration Service.

Thus the complaints mechanisms are maintained by the departments' own staff. It can't be expected that the complaints would be handled in a fair, transparent and independent manner.

For instance, the Complaints Investigation Unit received 172 grievances in 2006. Of the 90 cases that were fully investigated at that time, only **3.3% (3 cases)** had been partly or fully substantiated. The rest were deemed to be false, faultless or unsubstantiated.

7. Punishment of staff

Although officers may be punished if they breach the guidelines and legislation relating to the searches, the breaches are only deemed to be disciplinary offences.

As for Immigration officers who exercise unlawful or unnecessary exercise of authority, the punishment only amounts to disciplinary offences (Immigration Service Ordinance, Cap. 331, Section 8). Such offences only lead to punishments such as reduction in rank, resignation, dismissal, deferment of increment, fines etc. Thus contravening the guidelines are not criminal offences.

8. Information regarding Police's search guidelines

After severe criticism of the Police's arbitrary strip searches the government has issued guidelines relating to police searches, which took effect on 1 July 2008¹⁰. However, the guidelines still suffer from some major problems:

1. Requirement to search all detainees.

The Administration stated that strip searches should not be conducted routinely, but

¹⁰ These are the Police General Orders 49-04 (PGO 49-04), the revised Force Procedural Manual 49-04, a new Custody Search Form (Pol. 1123) and the new Guidelines on the Searching of Detained Persons. They all took effect on 1 July 2008.

only where there are strong justifications. However, a search of *all* people in police custody will be conducted. It is the scope of search, which will be determined on a case-by-case basis.

The Legislative Council of Hong Kong (LegCo) has reviewed the guidelines and stated that whether a search should be conducted on a detainee should be determined on a case-by-case basis rather than being routinely conducted. In addition it has emphasized that the scope should be no more than what is rational and proportionate.

2. Independent mechanism for monitoring search of detainees involving complete removal of clothing

The Administration has stated in the guidelines that at least two police officers of same gender will be present during a search in order to monitor the searches.

However, LegCo has suggested that there should be an independent mechanism for monitoring searches involving complete removal of clothing so as to prevent abuse of power by officers. It suggested presence of lawyer etc or video-recording if the detainee so prefers.

3. Adopting certain insulting and degrading postures or to perform certain acts during a search

The Administration states that the Duty Officer needs to justify if certain acts have to be performed.

As this is not specifically spelled out in the guidelines, LegCo has suggested that such detailed guidelines should be spelled out explicitly in the Police General Orders (PGO) and the Force Procedures Manual (FPM).

9. Recommendations

1. All searches must be with due regard to the **privacy and dignity of detainees**. Under no circumstances shall searches be conducted in view of non-officers, that is, other detainees. Also the search may not be conducted in view of other persons than those officers required to carry out, witness or supervise the search.
2. All searches must be carried out with dignity and respect for the individual. Ridicule and abuse should be punishable. A search must be rational, necessary and proportionate.

3. The government should immediately **investigate** the allegations of routine strip searches and the fact that detainees are searched together.
4. The Immigration Department and the Correctional Services Department should provide **guidelines** and search forms to set out how searches are to be carried and the scope of searches. The guidelines should also ensure that searches are not done as routine checks on all detainees, but only carried out when there are strong justifications and reasons to believe that the detainee may carry dangerous articles. Thus there should be reasonable grounds that it is necessary to conduct a strip search of the person for the purposes of the search and that the seriousness and urgency of the circumstances require the strip search to be carried out.
5. The government should adopt **legislative** provisions detailing requirements, rules and procedures for all types of searches conducted by the Police Force, the Correctional Services Department and the Immigration Department or other departments that may be involved in body searches. Breaches of such legislation should be punishable by law.
6. The different departments mentioned above should set up **independent complaints systems** that have the power to carry out complaint investigations. Individuals shall have the complaint promptly and impartially examined. Also, steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.
7. The government shall ensure that **education** is fully included in the training of law enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody of people subjected to arrest, detention or imprisonment.
8. The Police, Immigration Department and Correctional Services Department should systematically **review their practices and arrangements** relating to arrested, detained or imprisoned persons, with a view to preventing any cases of torture or cruel, inhuman or degrading treatment.
9. The government should enact statutory provisions of comprehensive **protection for the right of privacy**.

Appendix 1: Case summaries

Case 1: Peter

Peter was detained from March-June 2007 for overstay. He surrendered himself to the Immigration Department in Kowloon Bay. In Kowloon Bay he was subject to a rectum search by an officer in the interview room. 3 officers were present.

He was then transferred to Castle Peak Immigration Centre, which is under the Correctional Services Department's management, where he was strip searched together with another detainee at the same time. When he was transferred to Ma Tau Kok Detention Centre 4-5 people were asked to take off their clothes for strip searching. They also had to jump and bend and the three officers were laughing at them.

When he had a shower in Ma Tau Kok Detention Centre some of the officers who were supervising the shower room asked other officers to come and have a laugh.

Case 2: Allan

Allan was detained in June-July 2008 in Ma Tau Kok Detention Centre and Castle Peak Immigration Centre for overstay. On 16 June 2006 he was strip searched with 3-4 other detainees at the same time. The following day, he was strip searched with 9-10 people. When he was transferred to Castle Peak Immigration Centre (CIC) he was strip searched in front of 25 other detainees. He has made a complaint and waiting for the outcome of the investigation.

Case 3: George

George was detained in 2005 for overstay and detained several places such as Victoria Immigration, Ma Tau Kok Detention Centre, Lai Chi Kok Reception Centre and Castle Peak Immigration Centre.

When he was detained in Lai Chi Kok Reception Centre he was strip searched with 15 other people at the same time. After that, 3-4 people were asked to go to the doctor's room to have a rectum search. Thus when he was rectum searched 3-4 people were able to witness the search.

When he went to Victoria Prison 15 people were strip searched at the same time.

Asylum seeker 'strip-searched 60 times'

.....
Scarlett Chiang

A Sri Lankan asylum seeker claims he was strip-searched 60 times over the two months he was shuttled between a detention centre and various police stations during the year he spent in custody.

The revelations came as guidelines on searches took effect this month after an incident in May in which police came under fire for strip-searching a domestic helper.

The asylum seeker, who asked to

be identified as Peter, said that at 5.30pm every day during a two-month period he was transferred from the detention centre at Victoria Prison to another police station, where he would stay the night. When he got there he was told to undress.

"I have been searched every day," he said. "I don't know why they do this. They just said it was the rule."

Peter said he often had to stand naked in front of two police officers.

"Sometimes they were talking but I did not understand," he said.

Under the new guidelines, duty officers have to record the reason for the strip-search as well as concerns raised by detainees. But at a Legislative Council subcommittee meeting yesterday, sex workers, domestic helpers, Christians, social activists and human rights groups said they were dissatisfied with the guidelines.

Altogether 13 groups, including a person who had been strip-searched last October following a protest, said the guidelines would not protect the privacy of detainees.

Wong Ho-yi, one of 11 people who had been searched after protesting at the demolition of "Wedding Card Street" in Wan Chai, hoped the police would standardise procedures so detainees would know their rights.

Bonnie Lam of the sex workers' group Zi Teng, who works at a sauna, said she had been strip-searched as police checked the operating licence.

A member of another sex workers' group, Action for Reach Out, said a sex worker was strip-searched after reporting an assault.

Local

Asylum seekers tell of strip-search hell

Adele Wong

Asylum seekers have painted a disturbing picture of detention in Hong Kong — claiming that demeaning strip searches, humiliating sexual harassment and physical privations are commonplace.

One detainee claimed he and 25 other men were forced to strip naked as a group inside a police station as they underwent questioning.

They also claim they were forced naked into "very cold" rooms and laughed and pointed at by immigration officers as they posed in compromising positions.

Asylum seeker Sunny said yesterday he left Pakistan for political reasons and has been in Hong Kong for five years.

He claimed he was arrested for overstaying his visa, taken to Yau Ma Tei police station and ordered to strip. When he questioned the order, an officer said he better comply. Then the officer and his colleagues pointed at his body and laughed, Sunny claimed.

He said the next day he was taken to Victoria detention center and strip-searched again. When he refused to crouch he was warned of "consequences."

Sunny said he underwent similar procedures during a weeklong process at Hung Hom police station where he was stripped naked along with up to 25 other men.

"I left my home country because of human rights issues. I could not believe I would be subjected to human rights abuses in Hong Kong as well," Sunny said.

Society for Community Organization



Detainee 'Sunny' says he was stripped naked and forced to stand still as officers pointed and laughed at his body.

SINGTAO

organizer Annie Lin On-lei, who handles complaints filed by the asylum seekers, outlined a case where a man with hair on his chest was told "he was sexy" by officers.

Other asylum seekers spoke of being put into cold cells while naked. All have filed formal complaints with the authorities concerned but claim the process does not work.

Lin said the stories she heard suggested there is an element of racial discrimination because most complaints came from African or South Asian asylum seekers and none from Caucasians or Chinese immigrants.

An Immigration Department said strip searches have to be done to ensure safety. He said there is a procedure that has to be followed and each individual is required to sign a form indicating acceptance of the procedure.

The spokesman said individuals who have issues with the search can lodge complaints to be investigated.

A spokesman from the Correctional Services Department also said there is a new complaint mechanism for aggrieved detainees.

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Asylum seekers complain about strip searches

.....
May Chan

Seven asylum seekers have complained to the Ombudsman about strip searches undertaken by Correctional Services, Immigration and the police.

The Society for Community Organisation arranged for them to meet officers from the Office of the Ombudsman yesterday, requesting a direct investigation of each case.

Society community officer Annie Lin On-nei said the seven complainants, some of whom were torture claimants, had experienced improperly conducted strip searches carried out by the Correctional Services Department, the Immigration Department and the police.

They claimed searches had been held in front of more than one person, and some reported mass strip searches involving 15 or 20 people.

It was also alleged that duty officers had made insulting comments and jeered at the body parts of those being strip searched.

An Ombudsman's spokeswoman said the complaints would have to be substantiated before possible action, including direct investigation, could be considered.

But she added that there was no

legal basis for the Ombudsman to investigate the police.

Ms Lin said the society would file complaints against strip searches conducted by police with the Complaints Against Police Office.

She urged the government to legislate to restrict the use of strip searches by law enforcement agencies to ensure the protection and integrity of those involved.

The society has written a letter to the Security Bureau seeking further discussions on the need for a new law.

New police guidelines were issued early this year in response to public concern about the alleged abuse of strip searches by officers on both asylum seekers and members of the local community.

Under the guidelines, anyone detained in police custody is searched, but the duty officer determines the level of intrusiveness on a case-by-case basis.

They say strip searches should not be done routinely and require strong justification.

Legislators, social activists and human right groups are dissatisfied with the guidelines and want legislation to regulate strip searches by all law enforcement agencies.

Introduction to the Hong Kong Human Rights Commission

The Hong Kong Human Rights Commission is a coalition of ten non-governmental organizations including religious, women, community and students groups. It was founded in March 1988.

Though coming from different backgrounds, all groups believe that every man and woman has the inherent rights and dignity. Based on the belief of universal brotherhood and sisterhood, Human Rights Commission considers mutual respect, equality and freedom are the foundations on which a just, peaceful and humane society is to be built.

All these years, Human Rights Commission has endeavored in the protection of human rights for the community. We came to realize that not only does Hong Kong lack a democratic system, through legislation, the local government also inherited from the colonial regime enormous power so as to maintain social control. Thus, members of the Commission wish to gather resources and consolidate civil power to activate public concern and urge the government to improve the human rights situation.

Besides campaigning for the enactment of the Bill of Rights Ordinance and subsequent amendments of laws, the Human Rights Commission has also promoted human rights education through exhibitions, conducting workshops and giving talks to schools and community centers. Public awareness and participation are vital to the development of human rights. Only through the establishment of a culture that respects human rights will its protection be substantial. Though there is an initial achievement after these few years' work, it is still inadequate.

Members of the Hong Kong Human Rights Commission:

Christians for Hong Kong Society
Hong Kong Christian Industrial Committee
Hong Kong Christian Students Movement
Hong Kong Federation of Catholic Students
Hong Kong Federation of Civil Service Union
Hong Kong Social Workers General Union
Hong Kong Woman Christian Council
Justice and Peace Commission of the HK Catholic Diocese
Society for Community Organization
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