

*Alternative Report on the
Hong Kong Special Administrative Region (HKSAR)
under the Convention against Torture and
Other Cruel, Inhumane or Degrading Treatment or Punishment*

Overview

1. This paper sets out the response of the Hong Kong Equal Opportunities Commission (EOC) to the Committee against Torture's invitation to provide it with information relevant to the implementation of the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (the Convention). In order that this response is read in context, it is necessary to begin with an explanatory note on the role of the EOC and notion of torture in Hong Kong.

2. The EOC is tasked to administer three anti-discrimination ordinances, i.e. Sex Discrimination Ordinance, Disability Discrimination Ordinance and Family Status Discrimination Ordinance, and has a specific role to protect and promote the economic, social and cultural rights that are within the ambits of these laws. The EOC is aware that the rights of women and people with mental illness, in particular those living in the poorer communities, are particularly vulnerable to structural violations and would easily made victim of inhumane and/or degrading treatment. In protecting and promoting economic, social and cultural rights in Hong Kong, the EOC would also take into account the issue of torture, cruel and inhumane treatment where it is relevant to our mission.

3. Incidents of torture reported in the sense that the term is ordinarily understood are extremely rare in Hong Kong, and so far there is no prosecution under the Crimes (Torture) Ordinance. While we concur with the Hong Kong Special Administrative Region (HKSAR) Government's position that torture is a very serious offence and that for any act to be qualified as torture there must be evidence that severe pain and suffering were intentionally inflicted by the authorities acting in their official capacities, we believe that there is room for improvement in the way the HKSAR Government prevents acts of excessive force use by public officials or other persons acting in an official capacity.

Information in relation to specific Articles in Part I of the Convention

Article 2: legislative, administrative, judicial or other measures to prevent acts of torture

Undercover Operation

4. Over the past few years, advocates for the rights of sex workers have made regular complaints to the media and the HKSAR Government claiming that sex workers in Hong Kong were being treated in a degrading manner by the police. Their complaints primarily focused on the police's abuse of power, both in undercover operations and in regular investigation and interrogation processes. An advocate group for the rights of sex workers claimed that some police officers deliberately took advantage of sex workers in undercover operation, enjoying "free" sex services. The claim attracted much public attention when a sex worker committed suicide in October 2005, leaving a note claiming that she was framed and beaten by the police after providing sex services to a police officer in an undercover operation. While the EOC is in no position to comment on the validity of these claims, we believe that clear and transparent guidelines governing the conduct of law enforcement units should be made publicly available and the redress mechanism should be made more accessible to the general public.

5. The EOC urges the HKSAR Government to review all its guidelines relating to undercover operation to ensure that no person would fall victim to torture, degrading, cruel or inhumane treatment.

Strip Search

6. The police's power to conduct strip search is another area under fire in recent years. Local sex workers and female visitors from Mainland China have made regular complaints of being subjected to unreasonable strip search but the matter did not receive the attention it deserves in Hong Kong until recently (October 2007), when a group of environmental conservationists were strip-searched while they were being remanded overnight for obstructing demolition work on Lee Tung Street. These protestors complained that the strip search was unjustified and insulting; the female protestors also complained of the presence of male police officers during the strip search, as well as leering sexual remarks from the male police officers present.

7. The police were questioned by the media and legislators in respect of the strip search, and it was revealed that at present, there were only very broad guidelines in the police procedures and general orders concerning searches of detainees. This reveals an

inconvenient truth about the lack of transparency in police procedures and general orders and the need to improve our law enforcement procedures and policies so that no person in Hong Kong would be subject to torture, or any inhumane and degrading treatment.

8. The EOC shares the concern expressed by the protestors and urges the Government to review the current police procedures and general orders.

Article 10: education and information on the prohibition of torture

9. Persons with mental disorders and impairment could be vulnerable subjects of abuse, and we believe that government and professional bodies' early detection of possible signs of torture is important in safeguarding the rights of people with mental illness. In this connection, we believe that the government and relevant professional bodies should take measures to ensure all health care professionals working in private practice are also equipped with necessary information and skills, through their training and practice guidelines, to recognize clinical features and physical signs that are suggestive of torture.

Article 13: right of complaint

10. The EOC notes that, in its concluding observation, the Committee recommended that the Independent Police Complaint Council (IPCC) be made a statutory body. The IPCC's status remains unchanged despite the last concluding observation of the Convention. Human rights groups and advocates have made repeated requests to make the IPCC an independent body. Although this is not an issue directly linked to the EOC's remit, the EOC is concerned with the adverse effect of the absence of an independent body to seek redress against police officers. Though the EOC is not questioning the good faith of the Hong Kong Police Force and the IPCC in handling complaints against the police, it is our belief that the establishment of an independent IPCC is a progressive step for the betterment of society as a whole and will foster the community's greater trust in the system.

11. The EOC urges the HKSAR Government to step up its effort to make the IPCC a statutory body with increased competence.

Article 16: prevention of other acts of cruel, inhumane or degrading treatment

12. The HKSAR Government's position is that domestic violence and ill treatment of children did not constitute a form of torture or cruel or inhumane treatment as defined in the Crimes (Torture) Ordinance, or Article 1 of the Convention. Whether failure to provide protection is a form of acquiescence or not is a subject for debate by the international community. For the EOC, we believe that it is incumbent upon the government to step up its effort to prevent cases of domestic violence. Domestic violence in Hong Kong is largely gender-based, and women are the usual victims. Just as the HKSAR Government quoted in its report, the Tin Sui Wai tragedyⁱ is a classic example of how misunderstanding or failure to act could lead to heartbreaking consequences. The woman murdered in that case had sought assistance from the police and social workers on a number of occasions and she also had called for help in the morning of the murder but her call for help did not receive the attention it deserved, resulting in the death of three. Though the police and several related government departments have taken steps to improve their risk assessment practice, similar incidents of family violence have been reported from time to time. It remains to be seen whether the current mechanism is adequate and effective in preventing domestic violence. How to empower the needy so they would not fall victim to torture or cruel or inhumane treatment would be an important area of work for the HKSAR Government.

13. Incidents of domestic violence have increased drastically in recent yearsⁱⁱ. Sensitization of doctors, law enforcers and other professionals involved in responding to the needs of the women subject to domestic violence and co-ordination of the selected services are clearly needed. **The EOC recommends that the government focus on the social-economic empowerment of women who have experienced abuse or domestic violence and identify more effective preventive and support services for women.**

Equal Opportunities Commission

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ⁱ The tragedy happened on 11 April 2004 in Tin Sui Wai in which the mother and 2 young children of a family were killed (and later the father who was suspected to have committed the violence, also died on 23 April 2004). The mother had sought help from social workers, shelter for women, and police on a few previous occasions and had reported to the police in the morning of 11 April 2004 that she was under threat.

ⁱⁱ The overall number of domestic violence cases reported in 2007 was 7,509, a rise of 2,805 when compared with 2006.