

For information on
3 November 2015

Legislative Council Panel on Security

The third report of the Hong Kong Special Administrative Region under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Purpose

This paper sets out the arrangements for the hearing in Geneva of the third periodic report of the Hong Kong Special Administrative Region (HKSAR) under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The HKSAR's third report has been incorporated as part of the sixth report of the People's Republic of China under the CAT.

Background

2. The CAT has applied to Hong Kong since 1992. To fulfill the reporting requirement under the Convention, the HKSAR Government submitted the first report as part of China's third periodic report to the United Nations Committee against Torture (CAT Committee) in 1999. The HKSAR's second periodic report was submitted to the CAT Committee in 2006 as part of the combined fourth and fifth reports of China. The second report was considered by the CAT Committee at its hearing held in November 2008. The Concluding Observations adopted by the CAT Committee were reported to this Panel in February 2009 (relevant paper reproduced at **Annex A**).

3. The HKSAR's third periodic report was submitted to the CAT Committee as part of China's sixth report under CAT. It was uploaded onto the website of the Constitutional and Mainland Affairs Bureau¹ for

¹ See http://www.cmab.gov.hk/en/issues/sixth_report.htm.

access by public, and hard copies of the report were distributed to the public, stakeholders and the Legislative Council in February 2015.

4. The CAT Committee has adopted a List of Issues in relation to China's sixth report (extract of the part concerning HKSAR is at **Annex B**). In line with established arrangements, the HKSAR's response to the List of Issues will be submitted to the CAT Committee through the Central People's Government. It will be made public when the CAT Committee has received it.

The Hearing

5. The CAT Committee will consider China's sixth report (incorporating the HKSAR's third report) at the United Nations in Geneva on 17 and 18 November 2015. A delegation from the HKSAR Government will attend the hearing as part of the Chinese delegation.

6. Members are invited to note the content of this paper.

**Security Bureau
October 2015**

**Legislative Council
Panel on Security**

**Hearing of the Second Report of
the Hong Kong Special Administrative Region
under the Convention Against Torture and Other Cruel, Inhuman or
Degrading Treatment or Punishment**

Introduction

This paper aims to inform the Panel:

- (a) the outcome of the hearing by the United Nations (UN) Committee Against Torture (the Committee) of the Second Report of the Hong Kong Special Administrative Region (HKSAR) under the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention); and
- (b) the Administration's initial views on the issues raised.

Background

2. Under the Convention, States Parties have an obligation to submit to the Committee periodic reports on the implementation of the Convention. The report on HKSAR forms part of the Report of the People's Republic of China. The first report of the HKSAR was submitted in 1998 as part of the China's Third Report under the Convention. The second report on the HKSAR was submitted to the Committee in 2006 as part of China's Combined Fourth and Fifth Reports under the Convention.

The Hearing

3. The Report was considered by the Committee at its hearing held in Geneva in November 2008. Before the hearing, the issues relevant to the work of the Security Bureau in the second periodic report was discussed by the Panel on 27 October 2008.

4. An HKSAR team, led by the Deputy Solicitor General, Mr James O'Neil, attended the hearing as part of the Chinese delegation. The team comprised officials from the Department of Justice, Constitutional and Mainland Affairs Bureau and Security Bureau.

5. The hearing was held over two three-hour sessions on 7 and 10 November 2008. The Concluding Observations of the Committee, which contains the gist of the discussion and the Committee's recommendations concerning the HKSAR, was adopted by the Committee on 21 November 2008. A copy of the Concluding Observation is at Annex A¹.

Recommendations of the Committee and the Administration's Initial Views

(A) Positive aspects

6. The Committee expressed appreciation of the initiatives which the HKSAR has taken, in particular the enactment of the Independent Police Complaints Council Ordinance, the introduction of new Police Guidelines on Searching of Detained Persons, and the additional measures taken to tackle domestic violence, including the enactment of the Domestic Violence (Amendment) Ordinance in 2008.

¹ English version available. The official Chinese version of the Observations is being arranged by the UN Committee Against Torture. This will be made available to Members once ready.

(B) Other recommendations

7. The Committee also sets out some recommendations which mainly relate to the elements of the offence of torture in the Crimes (Torture) Ordinance, the arrangement for searches of detainees in police custody, police operations in relation to prostitution-related offences and the functions of the Independent Police Complaints Council. These recommendations, and the Administration's initial views, are set out at **Annex B**.

Follow-up actions

8. As in paragraph 17 of the Committee's Concluding Observations (at **Annex A**), the HKSAR will provide formal response to the recommendations in paragraphs 7, 10 and 12 of the Concluding Observations by the required date of 21 November 2009.

**Security Bureau
January 2009**

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COMMITTEE AGAINST TORTURE
Forty-first session
Geneva, 3-21 November 2008

ADVANCE UNEDITED VERSION

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Concluding observations of the Committee against Torture

Hong Kong Special Administrative Region

1. The Committee against Torture ("the Committee") considered, at its 844th and 846th meetings, held on 7 and 10 November 2008 (CAT/C/SR.844 and 846), the report of the Hong Kong Special Administrative Region (HKSAR), forming part of the fourth periodic report of China (CAT/C/HKG/4). It adopted, at its 863rd meeting on 21 November 2008 (CAT/C/SR.863), the following concluding observations:

A. Introduction

2. The Committee welcomes the submission of the report of the HKSAR, forming part of the fourth periodic report of China, as well as the written replies to the list of issues (CAT/C/HKG/Q/4/Add.1), which provided additional information on the legislative, administrative, judicial and other measures taken for the implementation of the Convention.

B. Positive aspects

3. The Committee welcomes:
- a) the Hong Kong Bill of Rights Ordinance (Cap. 383), which incorporates into HKSAR's law the provisions of the International Covenant on Civil and Political Rights;
 - b) the enactment of the Independent Police Complaints Council Ordinance on 12 July 2008, providing that the Council will start operating as a statutory body in 2009;

- c) the new Guidelines on Searching of Detained Persons introduced and applied by the Police since 1 July 2008, aimed at ensuring that searches are conducted respecting the privacy and dignity of individuals; and
- d) the measures taken to tackle domestic violence, including the strengthening of services to assist victims and the passing of the Domestic Violence (Amendment) Bill in June 2008.

4. The Committee notes that HKSAR is taking the necessary steps to give effect to the provisions of the Optional Protocol on the sale of children, child prostitution and child pornography in order to extend its application to HKSAR.

C. Main issues of concerns and recommendations

Definition of torture

5. The Committee takes note of the HKSAR's explanation with respect to the limitation of the term "public official" - in Section 2 (1) of the Crimes (Torture) Ordinance - to those professionals normally involved in the custody or treatment of persons deprived of their liberty. Nevertheless, the Committee reiterates its concern expressed in the previous concluding observations, that the way Section 2(1) of the Crimes (Torture) Ordinance is currently drafted is too restrictive and may create in practice loopholes preventing effective prosecution of torture.

The HKSAR should consider adopting a more inclusive definition of the term "public official" in the definition of torture as to clearly include all acts inflicted by or at the instigation of or with the consent or acquiescence of all public officials or other persons acting in an official capacity. The Committee further recommends that HKSAR ensures that the definition comprises all the elements contained in article 1, including discrimination of any kind.

6. The Committee notes the HKSAR's position that the "defence of lawful authority, justification or excuse" contained in section 3 (4) of the Crimes (Torture) Ordinance simply serves to give effect to the second sentence of article 1, paragraph 1 of the Convention. However, the Committee - reiterating its concern expressed in the previous concluding observations - emphasizes that the Convention does not authorize any possible defense for acts of torture.

The HKSAR should consider abolishing the defense contained in section 3 (4) of the Crimes (Torture) Ordinance; to this end, the State party could, for instance, incorporate article 1 of the Convention into its Basic Law, as it has done with article 7 of the International Covenant on Civil and Political Rights.

Refugees and non-return to torture

7. While the Committee appreciates the cooperation of HKSAR authorities with UNHCR to ensure respect for the principle of non-refoulement and protection of

refugees and asylum seekers, it is still concerned that there is no legal regime governing asylum and establishing a fair and efficient refugee status determination procedure. The Committee is also concerned that there are no plans to extend to HKSAR the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol.

The HKSAR should:

- a) incorporate the provisions contained in article 3 of the Convention under the Crimes (Torture) Ordinance;
- b) consider adopting a legal regime on asylum establishing a comprehensive and effective procedure to examine thoroughly, when determining the applicability of its obligations under article 3 of the Convention, the merits of each individual case;
- c) ensure that adequate mechanisms for the review of the decision are in place for each person subject to removal, expulsion or extradition;
- d) increase protection, including recovery and reintegration, to trafficked persons, especially women and children, who should be treated as victims and not criminalized;
- e) ensure effective post-return monitoring arrangements; and
- f) consider the extension of the 1951 Refugee Convention and 1967 Protocol to Hong Kong.

Transfer of fugitive offenders/sentenced persons

8. The Committee notes the discussion between HKSAR and the mainland of China with respect to arrangement for the transfer of fugitive offenders and sentenced persons as well as that "death penalty safeguards" have been included in the draft arrangement.

If resorting to the use of "death penalty safeguards" in the surrender of fugitive offenders/sentenced persons, the HKSAR should provide the Committee, in its next report, with information on number of cases where "surrender" or removals subject to safeguards or guarantees have occurred in the reporting period; with information on the HKSAR's minimum requirements for these safeguards; the measures of subsequent monitoring undertaken by HKSAR in such cases as well as the legal enforceability of these safeguards.

Training

9. The Committee welcomes that the "Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (Istanbul Protocol) is distributed among relevant professionals. While noting the information that there is a general awareness among health care professionals in relation to signs that are suggestive of abuse or even torture, the Committee stresses the importance of more specific training programs for medical doctors and other health professionals to detect and document signs of torture, as well as training in gender sensitive treatment in judicial and medical institutions.

The HKSAR should ensure that health care professionals are equipped with the necessary training and information to recognize and detect signs and features that may suggest the occurrence of torture, as well as to provide gender sensitive treatment in legal and medical institutions.

Strip search and body cavity search

10. The Committee notes the new Police guidelines in force from 1 July 2008 on the handling of searches of detainees in police custody. While welcoming that, under this revised procedure, a designated officer has to justify the scope and conduct of a search based on objective and identifiable criteria, the Committee is concerned at:

- a) the Police Commissioner's determination that every person in police custody has to be searched every time he or she enters a detention facility maintained by the police, making body searches automatic for all individuals in police custody, irrespective of whether or not there is any objective justification thereto;
- b) allegations of abusive strip searches, including in facilities of the Immigration Department and of the Correctional Services Department; and
- c) allegations of the routine practice of conducting body cavity searches of those entering in prison, despite the fact that Rule 9 of the Hong Kong prison rules only provides for the possibility of conducting such searches.

The HKSAR should:

- a) **ensure that strip searches for persons in police custody are limited to cases where there is a reasonable and clear justification; if carried out, the search has to be conducted with the least intrusive means and in full conformity with article 16 of the Convention; an independent mechanism to monitor those searches, upon request of the detainee, should also be provided;**
- b) **establish precise and strict guidelines regulating the strip searches conducted by all law-enforcement officials, including those from the Immigration and Correctional Services Department; if these guidelines are already in place, they should be strictly abided by and their observance consistently monitored; records of searches should be made and all abuses**

committed should be thoroughly investigated and, if substantiated, punished; and

- c) seek alternate methods to body cavity search for routine screening of prisoners; if such search has to be conducted, it must be only as a last resort and should be performed by trained health personnel and with due regard for the individual's privacy and dignity.**

Police operations

11. The Committee welcomes the information provided by the delegation that the Police has reviewed and revised, in late 2007, the guidelines for the conduct of officers engaging in police operations in the context of prostitution-related offences. However, the Committee is concerned at the allegations of routine police abuses of persons during such operations.

HKSAR authorities should thoroughly investigate all allegations of abuses committed during police operations in the context of prostitution-related offences which, if substantiated, should be appropriately prosecuted and punished. The HKSAR should also tackle, including through training and awareness-raising activities, all existing attitudes suggesting that such abuses may be condoned.

Independent investigation of police misconduct

12. The Committee welcomes the enactment of the Independent Police Complaints Council (IPCC) Ordinance on 12 July 2008 converting the IPCC into a statutory body, as previously recommended by this Committee. However, the Committee is concerned that, while the statutory framework has reinforced the independent role of the IPCC, the latter only has advisory and oversight functions to monitor and review the activity of the Complaints Against Police Office (CAPO), which is still - in fact - the body responsible for handling and investigating complaints of police misconduct. In this respect, the Committee also notes with concern the information that - despite the considerable number of reportable complaints filed with the CAPO - a small percentage of them were considered as substantiated and only in one case an officer has been prosecuted and convicted of a criminal offence.

The HKSAR should continue to take steps to establish a fully independent mechanism mandated to receive and investigate complaints on police misconduct. This body should be equipped with the necessary human and financial resources and have the executive authority to formulate binding recommendations in respect of investigations conducted and findings regarding such complaints, in line with the requirements of Article 12 of the convention.

Domestic violence

13. The Committee, while noting with appreciation the efforts taken by HKSAR to eradicate domestic violence, is concerned at the high incidence of domestic violence in HKSAR.

The HKSAR should:

- a) thoroughly investigate all allegations of domestic violence which, if substantiated, should be appropriately prosecuted and punished;
- b) strengthen its efforts to address domestic violence through legislative, policy and social measures;
- c) develop national public information and awareness-raising campaigns and stimulate broader public discussions in order to address attitudes and stereotypes that may lead to violence against women; and
- d) provide further information on this issue in its next periodic report, including on the progress obtained through the forthcoming Enhanced Central Domestic Violence Database.

14. The Committee encourages the HKSAR to complete the process to give effect to the provisions of the Optional Protocol on the sale of children, child prostitution and child pornography, so to allow the extension of its application to HKSAR.

15. The HKSAR should widely disseminate its report, its replies to the list of issues, the summary records of the meetings and the concluding observations of the Committee, in appropriate languages, through official websites, the media and non-governmental organizations.

16. The Committee invites the HKSAR to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.5.

17. The Committee requests that the HKSAR provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 10 and 12 above.

18. The HKSAR is invited to submit its next periodic report, which will be included in China's fifth periodic report, by 21 November 2012.

Recommendations of the Committee Against Torture and the Administration's initial views

Summary of recommendations of the Committee	Administration's initial views
<p>1. The HKSAR should consider adopting a more inclusive definition of the term "public official" in the definition of torture and to ensure that the definition comprises all the elements contained in article 1, including discrimination of any kind.</p>	<p>Section 2(1) of the Ordinance defines "public official" as including officials in five law enforcement agencies (i.e. the Police, the Customs and Excise Department, the Correctional Services Department, the Independent Commission Against Corruption, and the Immigration Department). Further, the prohibition in section 3 of the Ordinance extends to persons "acting in an official capacity" as well as "public officials".</p>
<p>2. The HKSAR should consider abolishing the defence contained in section 3(4) of the Crimes (Torture) Ordinance.</p>	<p>A defence of "lawful authority, justification or excuse" is necessary as the definition of torture in section 3(1) of the Ordinance goes wider than that in Article 1 of the Convention. The defence is to cover matters such as the reasonable use of force to restrain a violent prisoner.</p>
<p>3. The HKSAR should :</p> <ul style="list-style-type: none"> a) incorporate the provisions contained in article 3 of the Convention under the Crimes (Torture) Ordinance; b) consider adopting a legal regime on asylum establishing a comprehensive and effective procedure to examine thoroughly the merits of 	<p>a) - b) The Government is considering the need for a legislative regime for handling torture claimants and cover the non-refoulement principle under article 3 of the Convention. We will consult the Panel when we have a clear proposal.</p> <p>c) Decisions relating to removal and deportation of persons</p>

Summary of recommendations of the Committee	Administration's initial views
<p>each individual case when determining the applicability of its obligations under article 3 of the Convention;</p> <ul style="list-style-type: none">c) ensure adequate mechanism for the review of the decision are in place for each person subject to removal, expulsion or extradition;d) increase protection to trafficked persons;e) ensure effective post-return monitoring arrangements; andf) consider extending the 1951 Refugee Convention and 1967 Protocol to Hong Kong.	<p>are subject to the appeal or review mechanisms established by law, e.g. the Immigration Tribunal, and judicial review proceedings.</p> <p>As regards extradition, the process of considering a request for surrender is subject to stringent controls both by the court and the Administration under the Fugitive Offenders Ordinance (Cap. 503).</p> <ul style="list-style-type: none">d) The Government provides various support and assistance to victims of trafficking during their presence in Hong Kong. The assistance is provided on individual case merits, and may include accommodation, medical, counselling and other necessary support. In addition, the administration will liaise closely with the relevant authorities in home countries of the victims upon their return concerning their safety, recovery and reintegration.e) The administration shall conduct research on the effectiveness of similar arrangements in other jurisdictions, and consider whether and how we may apply such arrangements locally.f) We will continue with our endeavours to implement the Convention Against Torture which presents a fast growing commitment to Hong Kong. There is no plan to seek

Summary of recommendations of the Committee	Administration's initial views
	extension of the Refugee Convention to Hong Kong.
<p>4. If resorting to the use of "death penalty safeguards" in the surrender of fugitive offenders/sentenced persons, the HKSAR should provide the Committee, in its next report, with information on number of cases where "surrender" or removal subject to safeguards or guarantees have occurred in the next reporting period; with information on the HKSAR's minimum requirements for these safeguards; the measures of subsequent monitoring undertaken by HKSAR in such cases as well as the legal enforceability of these safeguards.</p>	<p>In relation to surrender of fugitive offenders, where a person is wanted for prosecution in respect of an offence punishable with death in the requesting jurisdiction, Hong Kong will, in accordance with section 13(5) of the Fugitive Offenders Ordinance (Cap. 503), seek an assurance from the requesting party that death penalty punishment will not be imposed on that person or, if so imposed, will not be carried out.</p> <p>In respect of transfer of sentenced persons (TSP), pursuant to the provisions of the Transfer of Sentenced Persons Ordinance (Cap. 513) and all relevant bilateral agreements we have signed with overseas jurisdictions, the HKSAR Government would not issue an outward warrant for the transfer of a sentenced person who is serving a prison sentence in Hong Kong back to his "home" country without the consent of the sentenced person himself/herself. As voluntary consent on the part of the sentenced person is a necessary condition for any transfer to proceed, the issue of "death penalty safeguards" does not arise in the context of TSP.</p>
<p>5. The HKSAR should ensure that health care professionals are equipped with the necessary training and information to recognize and detect signs and</p>	Hospital Authority and Department of Health take note of the recommendation of the Committee and will consider necessary improvement on the training for doctors and

Summary of recommendations of the Committee	Administration's initial views
<p>features that may suggest the occurrence of torture, as well as to provide gender sensitive treatment in legal and medical institutions.</p>	<p>nurses working in Accident and Emergency Departments, custody wards and correctional institutions to facilitate the detection of the signs of torture.</p>
<p>6. The HKSAR should :</p> <ul style="list-style-type: none">a) ensure that strip searches for persons in police custody are limited to cases where there is a reasonable and clear justification; if carried out, the search has to be conducted with the least intrusive means and in full conformity with article 16 of the Convention; an independent mechanism to monitor those searches, upon request of the detainee, should also be provided;b) establish precise and strict guidelines regulating the strip searches conducted by all law-enforcement officials, including those from the Immigration and Correctional Services Department; if these guidelines are already in place, they should be strictly abided by and their observance consistently monitored; record of searches should be made and all abuses committed should be investigated and, if substantiated, punished; andc) seek alternate methods to body cavity search for routine screening of prisoners; if such search has to be conducted, it must be only as a last resort and	<p>a) and b) Under the new Police guidelines on the handling of searches of detainees, a search involving removal of underwear should not be conducted on detainees routinely but only in circumstances with strong justifications.</p> <p>Specific procedural requirements are in place to ensure that searches involving the removal of underwear are carried out under restrictive conditions. For instance, the responsible police officers should not require a detained person to remove all of his clothes at the same time; the officer should complete a search as quickly as practicable; and the search is conducted in an area that provides reasonable privacy. The immediate supervisor of the Duty Officer (who decides on the scope of the custody search to be carried out) is required to audit the records of all searches on detainees entered into the Force's Communal Information System (CIS). The searching officer is required to record the reasons for and the scope of any search conducted on a detainee in police custody.</p> <p>Under the current arrangement, a detainee may raise his</p>

Summary of recommendations of the Committee	Administration's initial views
<p>should be performed by trained health personnel and with due regard for the individual's privacy and dignity.</p>	<p>concerns, if any, about a search for consideration by the Duty Officer. The Duty Officer's decision, together with his reasoning and/or any other actions taken, will be conveyed to the detained person and recorded in the CIS. Should a detained person feel aggrieved by the search, he may lodge a complaint with the Complaints Against Police Office (CAPO), and CAPO's investigation is subject to the scrutiny of the Independent Police Complaints Council. A police officer is subject to disciplinary action in the event of any misconduct. Where criminal offences are involved, prosecution action may be taken.</p> <p>Other law enforcement agencies (LEAs) have also established precise and strict guidelines for conducting body searches to ensure that a detainee or prisoner does not have any item of evidence; any unauthorized possession; or any weapon or article with which he might injure himself or others, or use to effect an escape. Apart from standard searches required to be conducted on prisoners under routine procedures of the Correctional Services Department (in which record is made only if any unauthorized articles is found), the LEAs generally keep records on searches conducted on detainees, including the reason(s) for a search and other necessary details. Law enforcement officers who fail to comply with the relevant guidelines will be liable to disciplinary actions, and if crimes are involved,</p>

Summary of recommendations of the Committee	Administration's initial views
	<p>prosecutions would be taken where appropriate. Anybody who feels aggrieved by a search conducted by law enforcement officers may lodge a complaint through various channels, e.g. internal complaint channel of the LEAs, Members of the Legislative Council, The Ombudsman or the visiting Justices of the Peace. The relevant authorities will investigate into the complaints and take actions as appropriate.</p> <p>c) For the maintenance of prison order and discipline, it is necessary to conduct body cavity search on all prisoners on admission to ensure that no drugs are smuggled into prison. Under the current practice, rectal search is conducted by a Medical Officer or a CSD officer with nursing training. In accordance with Rule 9 of the Prison Rules, the searching of a prisoner 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. CSD will continue to explore alternative methods for body cavity search.</p>
<p>7. HKSAR authorities should thoroughly investigate all allegations of abuses committed during police operations in the context of prostitution-related offences which, if substantiated, should be appropriately prosecuted and punished. The</p>	<p>The Police management does not condone any abuses committed by police officers during anti-vice undercover operations. All police officers participating in undercover operations are required to fully comply with internal guidelines designed for this purpose, and the conduct of</p>

Summary of recommendations of the Committee	Administration's initial views
<p>HKSAR should also tackle, including through training and awareness-raising activities, all existing attitudes suggesting that such abuses may be condoned.</p>	<p>these undercover operations is subject to supervision.</p> <p>Any person who feels aggrieved by police actions may lodge a complaint. All complaints against police officers will be thoroughly investigated. If any allegations of abuse of authority is substantiated, the police officer concerned will be subject to disciplinary action. Depending on the circumstances, criminal prosecution may result.</p> <p>Integrity and respect for the rights of members of the public are among the core values of the Police Force and have been widely promoted within the Force over the years. The Police will continue their efforts in this regard.</p>
<p>8. The HKSAR should continue to take steps to establish a fully independent mechanism mandated to receive and investigate complaints on police misconduct. This body should be equipped with the necessary human and financial resources and have the executive authority to formulate binding recommendations in respect of investigations conducted and findings regarding such complaints.</p>	<p>All complaints are handled and investigated by the Complaints Against Police Office (CAPO), and the results of CAPO's investigations are subject to the monitoring and scrutiny of the Independent Police Complaints Council (IPCC). With the enactment of the IPCC Ordinance in July 2008, the two-tier police complaint system has been codified and the IPCC will be put on a statutory basis, thus enhancing the transparency of this system. The Ordinance sets out the functions and powers of the IPCC in monitoring CAPO's investigation of police complaints and imposes a statutory duty on the Police to comply with the requests of the Council. All members of the IPCC are non-officials</p>

Summary of recommendations of the Committee	Administration's initial views
	<p>appointed from a wide cross-section of the community, and the Vice-Chairmen are customarily appointed from among Members of the Legislative Council. The Administration has given notice under the IPCC Ordinance for the IPCC to commence operation as a statutory body on 1 April 2009. The Administration will continue to ensure that the statutory IPCC will have appropriate resources to effectively perform its functions.</p>
<p>9. The HKSAR should :</p> <ul style="list-style-type: none">a) thoroughly investigate all allegations of domestic violence which, if substantiated, should be appropriately prosecuted and punished;b) strengthen its efforts to address domestic violence through legislative, policy and social measures;c) develop national public information and awareness-raising campaigns and stimulate broader public discussions in order to address attitudes and stereotypes that may lead to violence against women; andd) provide further information on this issue in its next periodic report, including on the progress obtained through the forthcoming Enhanced Central Domestic Violence Database.	<p>The Government is committed to preventing and tackling domestic violence. On the legislative front, we have recently amended the Domestic Violence Ordinance (DVO) to further strengthen the protection for victims of domestic violence. Among others, the scope of the Ordinance has been greatly expanded, from covering molestation between married couples and heterosexual cohabitants, to cover also former spouse/cohabitants, as well as immediate and extended family members.</p> <p>Our criminal law sanctions all acts of violence, irrespective of the relationships between the abusers and the victims, and independent of where the violent acts occur. The Police will handle all domestic violence reports professionally, and conduct thorough investigations according to the circumstances of each report. Where there is sufficient evidence of an offence, the Police will</p>

Summary of recommendations of the Committee	Administration's initial views
	<p>take firm and decisive actions to effect arrest and prosecution. The prosecuting authorities also accord priorities at all stages of proceedings, and implement various measures to facilitate fast-tracking of cases involving vulnerable witness.</p> <p>In addition to legal protection, the Social Welfare Department (SWD) offers a wide range of preventive, supportive and specialised services to help victims of domestic violence and families in need. Additional resources have also been allocated to enhance services in this regard in recent years, including –</p> <ul style="list-style-type: none">■ strengthening social work manpower;■ enhancing the 24-hour hotline service of SWD;■ increasing the capacity and support services of refuge centres for women;■ setting up of a new multi-purpose crisis intervention and support centre (the CEASE Centre) serving victims of sexual violence and domestic violence;■ launching a family support programme to reach out to vulnerable families for early intervention;■ sustaining efforts in publicity and public education to increase public awareness on the domestic violence problem and the legal remedies and

Summary of recommendations of the Committee	Administration's initial views
	<p>services available;</p> <ul style="list-style-type: none">■ enhancing the training of relevant frontline professionals etc; and■ strengthening clinical psychological support for victims of domestic violence, particularly children witnessing domestic violence. <p>In particular, SWD has since 2002 launched a territory-wide and district-based publicity campaign on "Strengthening Families and Combating Violence" to enhance public awareness of the serious impact of domestic violence, encourage families in need to seek help, and promote the concept of neighbourhood watch. With the advice of the Women's Commission, the Government will continue to carry out public education activities to enhance gender sensitivity and awareness among the general public on women's issues so as to remove gender stereotype and prejudice.</p>

United Nations

CAT/C/CHN-HKG/Q/5



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

**List of issues in relation to the fifth periodic report
of Hong Kong, China***

Articles 1 and 4

1. In the light of the Committee's previous recommendations (paras. 5 and 6),¹ please provide updated information on steps taken or envisaged for the adoption of a definition of torture that is compatible with article 1 of the Convention, and in particular to:

(a) Adopt a more inclusive definition of the term "public official" in the definition of torture so as to clearly include all acts inflicted by or at the instigation of or with the consent or acquiescence of any public official or other person acting in an official capacity;²

(b) Ensure that the definition comprises all elements contained in article 1, including discrimination of any kind;³

(c) Recognize the non-derogable character of the prohibition of torture⁴ and abolish any possible defence for the crime of torture.⁵

* Adopted by the Committee at its fifty-fourth session (20 April–15 May 2015).

¹ Paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee and published under the symbol CAT/C/HKG/CO/4.

² See CAT/C/HKG/CO/4, para. 5; CCPR/C/CHN-HKG/CO/3, para. 8; CAT/C/39/Add.2, paras. 96 and 97; and CAT/C/CHN-HKG/5, paras. 1.3 and 1.4, with reference to paras. 60 and 61 of the previous periodic report (CAT/C/HKG/4). See also CAT/C/HKG/Q/4/Add.1, para. 8.

³ See CAT/C/HKG/CO/4, para. 5; CCPR/C/CHN-HKG/CO/3, para. 8; and CAT/C/CHN-HKG/5, para. 1.5.

⁴ See CCPR/C/CHN-HKG/CO/3, para. 8.

⁵ See CAT/C/HKG/CO/4, para. 6; CCPR/C/CHN-HKG/CO/3, para. 8; CAT/C/39/Add.2, paras. 99–101 and 107; and CAT/C/CHN-HKG/5, paras. 1.5 and 1.6.

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Please recycle



Article 2⁶

2. Please provide information on steps taken or envisaged for the establishment of a fully independent national human rights institution in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). Please also update the Committee about whether Hong Kong, China has taken steps to strengthen the mandate and the independence of existing bodies, including the Ombudsman and the Equal Opportunities Commission, as recommended by the Human Rights Committee (see CCPR/C/CHN-HKG/CO/3, para. 7).

3. Please update the Committee on the measures taken and the procedures in place to ensure that, in law and in practice, all persons deprived of their liberty are guaranteed the right to be informed of the reason for their arrest, to have access to a lawyer of their choice, to contact family members and to promptly receive an independent medical examination. Please also comment on reports before the Committee that following the annual Hong Kong march on 1 July 2014 more than 500 protesters were arrested, some of whom were allegedly not allowed access to a lawyer and were not provided with food and water for several hours, before being released without charge.

4. With reference to the periodic report (CAT/C/CHN-HKG/5, para. 16.34), please provide updated information on:

(a) The number of complaints, investigations and prosecutions (specifying the offences), convictions, and sentences handed down for the crime of trafficking, disaggregated by year and by the victims' sex, age, and ethnic origin or nationality, as well as the types of protection and compensation provided to victims during the period in question;

(b) Any steps taken or envisaged for the adoption of comprehensive anti-trafficking legislation and any efforts to address the root causes of trafficking in persons, in particular women and children, as recommended by the Committee on the Elimination of Discrimination against Women (CEDAW/C/CHN/CO/7-8, para. 57);⁷

(c) Policies and procedures to identify victims of trafficking, in particular child victims;⁸

(d) The protection, support and assistance provided to victims of trafficking, including on safeguards to ensure that they are treated as victims and not criminalized,⁹ and steps taken to ensure that victims of trafficking are not deported on the grounds of being illegal immigrants;¹⁰

(e) Efforts made to ensure bilateral, regional and international cooperation to prevent trafficking,¹¹ and any plans to extend the Protocol to Prevent, Suppress and Punish

⁶ The issues raised under article 2 could also be addressed under other articles of the Convention, including article 16. Paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties reads: "The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter 'ill-treatment') under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. ... In practice, the definitional threshold between ill-treatment and torture is often not clear." See also chapter V of the same general comment.

⁷ See CEDAW/C/CHN/CO/7-8, paras. 56 and 57 (a) and (d).

⁸ See CRC/C/CHN/CO/3-4, paras. 45 (d) and 46 (d); and CCPR/C/CHN-HKG/CO/3, para. 20.

⁹ See CAT/C/HKG/CO/4, para. 7 (d); and CRC/C/CHN/CO/3-4, para. 45 (e).

¹⁰ See follow-up letter of 29 October 2010 sent to the State party, requesting clarification.

¹¹ See CEDAW/C/CHN/CO/7-8, para. 57 (c).

Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), to Hong Kong, China.¹²

5. Pursuant to the recommendation of the Committee on the Elimination of Discrimination against Women (CEDAW/C/CHN/CO/7-8, para. 55), please provide information on the status of the reform of the legislation governing sexual offences,¹³ and in particular indicate whether (a) sexual offences against children¹⁴ and persons with intellectual disabilities have been included; and (b) the definition of rape has been brought into line with international standards.¹⁵ Please provide further information on the measures taken to strengthen the practical implementation of the Domestic and Cohabitation Relationships Violence Ordinance (chap. 189).¹⁶ In this context, please update the Committee on (a) the number of complaints received concerning acts of domestic and gender-based violence, the investigations into such complaints, the sentences handed down and the compensation provided to victims; (b) comprehensive assistance provided to victims, including legal assistance during court proceedings; (c) the occupancy rate of shelters for victims of violence;¹⁷ and (d) the number and type of protective measures provided out of the total requested. In addition, please provide updated information on the progress made in reducing domestic violence through use of the Central Domestic Violence Database.¹⁸ With regard to the information provided in paragraphs 16.17 and 16.28 of the periodic report, please expand on the measures taken to increase public awareness about domestic violence, including domestic violence against women and girls with disabilities.¹⁹ In particular, please indicate what policies and awareness campaigns have been developed, to what extent they have been implemented, and the guidelines in place for prosecutors, the police and other workers.

Article 3

6. According to information before the Committee, Hong Kong, China has established a new unified screening mechanism for assessing claims on the grounds of (a) torture as defined in the Convention; (b) torture and other forms of ill-treatment as defined in article 3 of the Hong Kong Bill of Rights Ordinance; and (c) persecution as defined in article 33 of the Convention relating to the Status of Refugees, of 1951.²⁰ Please provide detailed information on:

- (a) The new mechanism and its practical implementation since its inception;
- (b) The Court of First Instance judgements in the cases of *Ubamaka Edward Wilson v. Secretary for Security and another* (FACV 15/2011) and *C and others v. Director of Immigration and another* (FACV 18-20/2011);
- (c) The criteria in place for assessment, including whether a person seeking protection must first overstay their visa and be liable for removal from Hong Kong, China before they are eligible to file a claim, and the prioritization of claims. What safeguards are

¹² Ibid., paras. 56 and 57 (d); and CCPR/C/CHN-HKG/CO/3, para. 20.

¹³ See also CAT/C/CHN-HKG/5, para. 16.9.

¹⁴ See CRC/C/CHN/CO/3-4, para. 46 (d).

¹⁵ See CEDAW/C/CHN/CO/7-8, para. 55.

¹⁶ See CAT/C/CHN-HKG/5, para. 16.13; and CCPR/C/CHN-HKG/CO/3, para. 18.

¹⁷ See CAT/C/CHN-HKG/5, paras. 16.18–16.21.

¹⁸ See CAT/C/HKG/CO/4, para. 13 (d); and CAT/C/CHN-HKG/5, paras. 16.10 and 16.12.

¹⁹ See CCPR/C/CHN-HKG/CO/3, para. 18.

²⁰ Ibid., para. 9; and CAT/C/CHN-HKG/5, paras. 3.3 and 3.6.

applied to ensure that the threshold for recognizing a substantial risk is not inappropriately high,²¹ and how does Hong Kong, China ensure that the assessment of these risks is conducted in a child-, gender- and culture-sensitive manner? Please also include information on the guidance provided to asylum seekers on the procedure;

(d) Any proposals to enhance the unified screening mechanism.

7. The Committee notes that Hong Kong, China enacted the Immigration (Amendment) Bill in 2012 (Ordinance No. 23 of 2012).²² Please provide detailed information on the content of the legislation and its practical implementation since it came into force.²³ In particular, please (a) clarify whether the Ordinance applies to all grounds for non-refoulement mentioned in paragraph 6 above; (b) clarify the extent to which the Ordinance provides for legal aid for asylum seekers and refugees; (c) expand on the protections in place for such persons and on the mechanisms to inform them of these rights and protections; and (d) provide further information on the review and monitoring mechanisms established,²⁴ including the Torture Claims Appeal Board.²⁵ Please also provide updated information on support and services available for victims of torture.²⁶

8. With reference to paragraph 3.7 of the periodic report, please provide data for the period under review, disaggregated by year, sex, country of origin and age, on the number of:

(a) Asylum requests registered;

(b) Requests for asylum, refugee status or other forms of humanitarian protection that were granted, including, if applicable, the number of cases in which protection was granted in application of the principle of non-refoulement;

(c) Persons extradited or expelled and the countries to which they were sent;

(d) Appeals against expulsion decisions on the basis that applicants might be in danger of being mistreated in their countries of origin, and the results of those appeals;

(e) Victims of torture who received services and the type of services offered, including rehabilitation, and the duration of the provision of each type of service.²⁷ Please also include information on the procedure used to identify victims of torture among asylum seekers.

9. In the light of the Committee's previous concluding observations (para. 7), please inform the Committee about steps taken or envisaged for the incorporation of article 3 of the Convention into the Crimes (Torture) Ordinance.²⁸ Do the authorities of the Special Administrative Region have plans to revise its position and extend to Hong Kong, China the application of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol²⁹ and to establish effective post-return monitoring mechanisms?³⁰

10. Please provide information on the number of asylum seekers and/or irregular migrants in detention and indicate the nature of this detention. Please describe the

²¹ See CAT/C/CHN-HKG/5, para. 3.6; and CCPR/C/CHN-HKG/CO/3, para. 9.

²² See CAT/C/CHN-HKG/5, para. 3.8.

²³ Ibid.

²⁴ See CCPR/C/CHN-HKG/CO/3, para. 9.

²⁵ See CAT/C/HKG/CO/4, para. 7 (c).

²⁶ See follow-up letter of 29 October 2010 sent to the State party, requesting clarification, p. 2.

²⁷ Ibid.

²⁸ See CAT/C/HKG/CO/4, para. 7 (a).

²⁹ See CCPR/C/CHN-HKG/CO/3, para. 9.

³⁰ See CAT/C/HKG/CO/4, para. 7 (a), (e) and (f).

conditions in the places where asylum seekers and/or irregular migrants are detained. Do they have access to prompt and free health services and to a lawyer? Are families who have children over one year of age held in separate facilities?³¹ Please also provide information on the concrete measures taken to cease the administrative practice of detaining asylum-seeking and refugee children and to ensure that these children are provided with accessible and adequate support, as recommended by the Committee on the Rights of the Child (see CRC/C/CHN/CO/3-4, para. 84).³² Are there any specific guidelines for the treatment of asylum-seeking or refugee children?

Articles 5, 6, 7, 8 and 9

11. In the light of the Committee's previous concluding observations (para. 8), please update the Committee on any progress with respect to arrangements between the mainland of China and Hong Kong, China for the transfer of fugitive offenders and sentenced persons.³³ Please also clarify whether "death penalty safeguards" are used. If so, please provide the Committee with detailed information on the number of cases where "surrenders" or removals subject to safeguards or guarantees have occurred in the reporting period; on the Special Administrative Region's minimum requirements for these safeguards; and on the subsequent monitoring measures taken by Hong Kong, China in such cases as well as legal enforceability of the safeguards.³⁴

12. Please provide information on cases since the previous periodic report was considered, if any, where the authorities of Hong Kong, China have rejected a request for the extradition of a person alleged to have committed an offence under the Convention, and have, subsequently, carried out their own prosecution. Please also provide information on cases in which mutual assistance was requested by or from Hong Kong, China. Please include the results of such requests.

Article 10

13. Please provide updated information about the training programmes for prison staff, law enforcement officers, the judiciary, officials dealing with the expulsion, return or extradition of foreigners, and any other professionals involved in the custody, questioning or handling of persons deprived of their liberty under the control of the authorities of Hong Kong, China, on human rights, the treatment of detainees, and measures to prevent torture and ill-treatment. Please specify the frequency, type and effectiveness of the training, and indicate the steps taken to assess its effectiveness. Does the training include international standards related to the treatment of children in custody or care, gender- and culture-sensitive treatment and non-coercive investigation techniques? What efforts are made to train the police on the principle of proportionality when using force, as recommended by the Human Rights Committee (see CCPR/C/CHN-HKG/CO/3, para. 11)? Please also include information on the use of the Convention as a basis for such training.³⁵

14. With reference to paragraph 10.10 of the periodic report, please expand on the specific training programme on the Manual on the Effective Investigation and

³¹ See CAT/C/HKG/Q/4/Add.1, question 11, paras. 51–56.

³² See CRC/C/CHN/CO/3-4, para. 84 (a) and (b).

³³ See CAT/C/HKG/CO/4, para. 8; CAT/C/HKG/4, paras. 79 and 80; and CAT/C/HKG/Q/4/Add.1, paras. 87–89.

³⁴ See CAT/C/HKG/CO/4, para. 8; see also CAT/C/CHN-HKG/5, paras. 8.1 and 8.2.

³⁵ See CAT/C/CHN-HKG/5, paras. 10.1–10.5.

Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) for officers of the Immigration Department and health-care professionals.³⁶ Is training on the Istanbul Protocol also provided to other professionals involved in the custody, questioning or handling of persons deprived of their liberty, and have the medical doctors in the prison system received training on how to identify and examine victims of torture? Please provide details on (a) how many health-care professionals have been trained; (b) how many days of training have been held; (c) who has trained them; and (d) how many victims of torture and ill-treatment have been identified by health-care professionals, in particular prison doctors, and by other relevant professionals, during the reporting period. Please also indicate whether health-care professionals receive training in providing gender-sensitive treatment.

Article 11

15. Please provide updated statistics, disaggregated by sex, age and nationality, on the number of pretrial detainees and convicted prisoners and on the occupancy rate of all places of detention.

16. Please provide information on the conditions in police detention centres, and on the measures taken to prevent all forms of violence, torture and ill-treatment in such places. Please include information on measures taken to reduce overcrowding in police detention centres.

17. Please provide information on the extent to which Hong Kong, China uses solitary confinement in detention and medical settings, including on the number of persons placed in solitary confinement and the duration of such confinement, during the reporting period. Please also indicate the regime that is applicable with regard to prescribing and using restraints and solitary confinement. In particular, please include information on the relevant safeguards, such as medical examinations before, during and after these measures, and due process rights that apply in cases where restraint or solitary confinement are used.

18. In the light of the Committee's previous recommendations (para. 10) and with reference to paragraphs 11.5, 11.10 and 11.11 of the periodic report,³⁷ please provide detailed and updated information on:

(a) The number of cases in which strip or body cavity searches were conducted on detainees, disaggregated by year, sex, age, place of detention and detaining agency, and reason for detention. Please also provide updated and detailed information on the justification used by the police or prison official who ordered the search to be carried out, and on the number of complaints that have been submitted by detainees as a result of such searches. Have any investigations into alleged abuses been carried out, and if the allegations have been substantiated, have the perpetrators been punished?

(b) The complaints mechanisms made available to detainees who have been subjected to strip or body cavity searches who may be aggrieved, how detainees are made aware of their right to complain, and measures taken to ensure that those who complain do not fear retribution by police, immigration or detention officials;³⁸

(c) The measures taken to limit, to the greatest extent possible, the use of strip or body cavity searches and to reduce the need to carry out manual body cavity searches,

³⁶ Ibid., para. 10.10.

³⁷ Ibid., para. 11.10.

³⁸ See follow-up letter of 29 October 2010 sent to the State party, requesting clarification.

for example by using low-radiation X-ray body scanners.³⁹ In this context, please clarify the process involved in reviewing the order for a strip or body cavity search, including the role of the duty supervisor,⁴⁰ and include information on any independent mechanisms established to monitor these searches;⁴¹

(d) The general function of the medical officers and nurses involved in body cavity searches. Are they a part of the prison/detention health-care service and thus also responsible for providing treatment to the inmates that they have searched?

(e) The new directive on searches on persons with special needs. Please explain why the directive is limited to children below the age of 16, and the meaning of the term “appropriate adult”.

19. In relation to the Committee’s previous concluding observations (para. 11), please give a detailed account of the measures taken, such as training and awareness-raising activities, to address existing attitudes suggesting that abuses of persons during police operations in the context of prostitution-related offences may be condoned. What concrete measures have been taken to ensure the protection of such persons? Has there been any investigation into allegations of such abuse, and if the allegations have been substantiated, have those responsible been held accountable?⁴²

20. Please provide information on the policies of the Correctional Services Department, the Immigration Department and the police in relation to body searches and detention of transgender persons.

21. Please inform the Committee whether guidelines have been established for law enforcement officials on the subject of demonstrations, including on the use of force⁴³ and on crowd control.

Articles 12 and 13

22. Please comment on reports of police attacks and excessive use of force by the police against peaceful protestors, involving the use of pepper spray, water cannons, batons and tear gas, as was the case during the protests that took place between September and December 2014 in what became known as the “umbrella movement”. In this context, please indicate whether an investigation was opened with regard to the alleged beatings of Ken Tsang by several police officers in the Admiralty protest zone on 15 October 2014. Please also inform the Committee about the number of persons who were arrested during the “umbrella movement”, the length of their detention, whether they had access to lawyers and the number of complaints of torture or ill-treatment. Have any investigations been carried out into the above-mentioned events and have any disciplinary and/or criminal proceedings been opened? If so, and if the allegations have been substantiated, have the perpetrators been punished?

23. In the light of the Committee’s previous recommendations (para. 12),⁴⁴ please provide further information on:

³⁹ See CAT/C/CHN-HKG/5, para. 11.5; and CAT/C/HKG/CO/4, para. 10 (c).

⁴⁰ See follow-up letter of 29 October 2010 sent to the State party, requesting clarification, p. 2.

⁴¹ See CAT/C/HKG/CO/4, para. 10 (a) and (b).

⁴² *Ibid.*, para. 11; and CAT/C/CHN-HKG/5, paras. 13.3 and 13.4.

⁴³ See CCPR/C/CHN-HKG/CO/3, paras. 10 and 11.

⁴⁴ See also CCPR/C/CHN-HKG/CO/3, para. 12; and CAT/C/CHN-HKG/5, paras. 13.5–13.9.

(a) Steps taken or envisaged, if any, to establish a fully independent mechanism mandated to receive and investigate complaints on police misconduct;

(b) The number of complaints regarding torture or ill-treatment received by the Complaints Against Police Office during the reporting period, the number of such complaints that resulted in investigations, the number of investigations that led to prosecutions and, if the complaints were substantiated, that led to convictions of perpetrators. Please also provide information on the punishments given to those convicted, and on the reparations, including compensation, provided;

(c) The criteria that are used to determine whether a claim is substantiated or not and the reasons why cases have been determined to be “not pursuable” or have been withdrawn;

(d) The checks and balances in place to ensure that the complaints lodged with the Complaints Against Police Office are handled thoroughly, fairly and impartially.⁴⁵ In particular, please clarify the measures in place to ensure that complainants are not coerced by police or other officials into withdrawing or dropping their complaints. How is the independence of the Complaints Against Police Office ensured so that there is no hierarchy or institutional link between the investigator and the person being investigated?

(e) The number of complaints not endorsed by the Independent Police Complaints Council and the reasons for this;

(f) The statistics on the rates of participation in the Independent Police Complaints Council’s Interviewing Witnesses Scheme and any efforts made to increase such participation;

(g) How members of the Independent Police Complaints Council are appointed and what the criteria for selection are. With reference to paragraph 13.6 of the periodic report, please also clarify the information provided that members of the Independent Police Complaints Council are drawn from a wide spectrum of the community;

(h) The measures in place to ensure that members of the Independent Police Complaints Council have the time, independence and resources necessary to carry out the mandate of this body effectively. In this context, please also elaborate on any mandatory attendance requirements that may be in place for members of the Independent Police Complaints Council;

(i) The number of scheduled and surprise observations of the Complaints Against Police Office’s investigations and prison visits that were carried out by the Independent Police Complaints Council during the reporting period.⁴⁶

24. Please update the Committee on the number of complaints relating to torture or ill-treatment filed with (a) the Correctional Services Department’s Complaints Investigation Unit/Complaints Committee;⁴⁷ (b) the Immigration Department;⁴⁸ (c) the Customs and Excise Department;⁴⁹ and (d) the Complaints Committee of the Independent Commission Against Corruption;⁵⁰ as well as on the results of investigations and on the number of disciplinary, civil and criminal proceedings initiated and concluded. Please indicate

⁴⁵ See CAT/C/CHN-HKG/5, para. 13.7.

⁴⁶ See follow-up letter of 29 October 2010 sent to the State party, requesting clarification.

⁴⁷ See CAT/C/CHN-HKG/5, para. 13.1.

⁴⁸ *Ibid.*, para. 13.10.

⁴⁹ *Ibid.*, para. 13.11.

⁵⁰ *Ibid.*, paras. 13.12–13.14.

whether Hong Kong, China is considering establishing independent complaint mechanisms in the above-mentioned law enforcement departments.

Article 14

25. With reference to paragraph 14.1 of the periodic report, please provide more details on redress and compensation measures, including the means of rehabilitation ordered by the courts and actually provided to victims of torture or their families, since the last periodic report. Please include the number of requests for compensation that were made, the number that were granted, the amounts awarded and those actually paid in each case. Please also include updated and detailed information on the rehabilitation programmes, including the medical and psychological assistance provided to victims of torture and other ill-treatment.⁵¹

Article 16

26. Please indicate the practical steps taken to ensure that corporal punishment of children is explicitly prohibited in all settings, including in the home and in alternative care and day-care settings, and to repeal the “reasonable chastisement” defence.⁵² Please also provide information on efforts to promote positive, non-violent and participatory forms of child-rearing and discipline and to raise awareness about the harmful effects of corporal punishment, as recommended by the Human Rights Committee (see CCPR/C/CHN-HKG/CO/3, para. 16).⁵³

27. With reference to the recommendations of the Human Rights Committee (CCPR/C/CHN-HKG/CO/3, para. 21), of the Committee on the Elimination of Discrimination against Women (CEDAW/C/CHN/CO/7-8, para. 65) and of the Committee on Economic, Social and Cultural Rights (E/C.12/CHN/CO/2, para. 43), please indicate the measures taken to strengthen mechanisms to protect foreign domestic workers, in particular women, from working conditions amounting to forced labour or ill-treatment. What is being done to ensure that abusive employers are held accountable? Please also update the Committee about whether Hong Kong, China is considering repealing the “two-week rule”, whereby migrant domestic workers have to leave the territory within two weeks of the termination of their contracts, and about the requirement for migrant domestic workers to live in the employing household. Please provide statistical data concerning the prevalence of violence against migrant workers in Hong Kong, China.

28. Please inform the Committee about steps taken or envisaged to repeal the mandatory surgery requirements for transsexual persons to gain official gender recognition.

29. Please provide information on cases of surgical and other procedures on intersex children and on the physical and psychological impact on these children. Does Hong Kong, China compile statistics on children born with intersex variations?

Other issues

30. Please provide updated information on the process for extending the application of the Optional Protocol to the Convention on the Rights of the Child on the sale of children,

⁵¹ See CAT/C/HKG/Q/4/Add.1, para. 159.

⁵² See CAT/C/CHN-HKG/5, para. 16.5.

⁵³ See CCPR/C/CHN-HKG/CO/3, para. 16.

child prostitution and child pornography to Hong Kong, China⁵⁴ and, if relevant, on the reasons for the delay in doing so.

⁵⁴ See CAT/C/HKG/Q/4/Add.1, para. 39; and CRC/C/CHN/CO/3-4, para. 90.