

**The Hong Kong Special Administrative Region (HKSAR) Government's
Response to the List of Issues adopted by
the United Nations Committee against Torture
in relation to the sixth periodic report of the People's Republic of China**

Part Two: Hong Kong, China

Article 1 – Defining “torture”

Article 4 – Making acts of torture offences under the criminal law

1. In the light of the Committee's previous recommendations (paras. 5 and 6), please provide updated information on steps taken or envisaged to adopt 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 all public officials or other persons acting in an official capacity;

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

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

1.1 Section 2(1) of the Crimes (Torture) Ordinance (Chapter 427 of the Laws of Hong Kong) defines “public official” as including “any person holding in Hong Kong an office described in the Schedule”, which refers to an office in the Hong Kong Police Force (“Police”), the Customs and Excise Department (“C&ED”), the Correctional Services Department (“CSD”), the Independent Commission Against Corruption (“ICAC”) and the Immigration Department (“ImmD”). The aim of the Ordinance is to cover officials normally involved in the custody or treatment of individuals under any form of arrest, detention or imprisonment. Nevertheless, the use of the word “includes” in the definition of “public official” in section 2(1) makes it clear that a person not holding an office described in the Schedule may nevertheless be a “public official” (or a “person acting in an official capacity”) for the purposes of the offence of torture.

1.2 Section 3(1) of the Ordinance makes it an offence for a public official or a person acting in an official capacity to intentionally inflict severe pain or suffering on another in the performance or purported performance of his or her official duties. The conduct amounting to the offence of torture is wide in scope and is not limited by the purpose of the act committed by the perpetrator or whether it is based on discrimination.

1.3 It is necessary to provide for a defence in section 3(4) by providing that the accused shall have a defence if he can prove that he had lawful authority, justification or excuse for the conduct in respect of which he is charged. The defence of “lawful authority, justification or excuse” is intended to cover matters such as the use of reasonable force to restrain a violent prisoner or to treat a patient. It is not intended to cover – nor would the courts be asked to interpret them as authorising – conduct intrinsically equivalent to torture as defined in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Convention”).

Article 2 – Legislative, administrative, judicial or other measures to prevent acts of torture

2. Please provide information on steps taken or envisaged to establish a fully independent national human rights institution in conformity with the Paris Principles. Please also update the Committee whether the Hong Kong Special Administrative Region (HKSAR) 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 (CCPR/C/CHN-HKG/CO/3, para. 7).

2.1 Human rights are fully protected by law in the HKSAR. The legislative safeguards are enshrined in the Basic Law, the Hong Kong Bill of Rights Ordinance (Chapter 383) and other relevant ordinances. These are buttressed by the rule of law and an independent judiciary. There is also an existing institutional framework of statutory organisations which help promote and safeguard various rights, including the Equal Opportunities Commission, the Privacy Commissioner for Personal Data, The Ombudsman, and legal aid services. The HKSAR Government’s performance in promoting and safeguarding human rights is open to public scrutiny through regular reports to the United Nations and is under the constant scrutiny of the Legislative Council of the HKSAR, the media and various non-governmental human rights organisations. The HKSAR Government considers that the existing mechanism has worked well and that there is no need for establishing a statutory human rights institution in addition to or to duplicate the existing mechanism.

2.2 The HKSAR Government has continued to put more statutory organisations under the jurisdiction of The Ombudsman. For example, the Competition Commission has been added to Schedule 1 to The Ombudsman Ordinance (Chapter 397) since the former’s establishment in January 2013. In addition, the HKSAR Government plans to put a number of proposed statutory organisations under the purview of The Ombudsman, e.g. the Independent Insurance Authority and the Property Management Services Authority.

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 which were allegedly not allowed access to lawyers and were not provided with food and water for several hours before being released without charge.

3.1 According to current procedures and guidelines, every arrested person will, as soon as possible, be informed that they are under arrest, together with the factual grounds and the reason for the arrest. A notice listing the rights of a detained person will also be served on each and every detained person.

3.2 Every detained person in police custody have various rights, including: (a) the right to be supplied with adequate food, refreshment and drinking water; (b) the right to communicate with friends and relatives; (c) the right to request that a friend or relative be notified of their detention; (d) the right to receive medical attention; (e) the right to request for a list of solicitors; and (f) the right to have a solicitor or barrister present during any interview with the Police, etc. In any case when a person in police detention so requests or if a Duty Officer considers that the detainee is in need of medical attention due to sickness or injury, the duty officer shall send the detainee to the nearest government hospital or clinic and inform the medical officer of his medical history, medication or symptoms. Regarding medication of detainees, the Police permit only their taking of medicines approved by a government medical officer according to the prescribed dosage and frequency.

3.3 During the public meeting following the public procession on 1 July 2014, participants illegally blockaded vehicular carriageways and the Police arrested 511 persons. The Police handled the arrestees in accordance with established protocol.

3.4 All protesters were allowed access to lawyers and the Police had not refused any request for legal representation. As a large number of persons were arrested in the operation and some legal representatives were unable to provide details of the arrested persons they intended to visit, considerable time was needed to process various requests. According to Police records, 39 legal representatives met with the arrested persons for a total of 233 times under the Police's arrangements.

3.5 Food and water were also timely provided to the arrested persons.

4. With reference to para. 16.34 of the periodic report, 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 to adopt 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);

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

(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 and steps taken to ensure that victims of trafficking are not deported on the grounds of being illegal immigrants; and

(e) Efforts taken to ensure bilateral, regional and international cooperation to prevent trafficking and any plans to extend the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) to HKSAR.

4.1 The HKSAR attaches great importance to combating trafficking. To this end, the HKSAR Government has all along spared no effort in cooperating closely with our counterparts in fighting the crime.

4.2 The robust enforcement of our law enforcement agencies ("LEAs") is underpinned by our existing legislation. The successful prosecution in past cases testifies to the effectiveness of our prevailing legal framework. Over the past five years, we have prosecuted eight human trafficking syndicates and the arrestees were sentenced to up to 36 months' imprisonment.

4.3 LEAs have taken diversified measures, against human trafficking such as enhanced cooperation with overseas LEAs, intelligence gathering (including monitoring signs of child sex tourism) and closer liaison with non-governmental organisations ("NGOs"). The Police have also refined its data processing mechanism to capture reported and detected criminal cases with victims who are foreign domestic helpers ("FDHs"). LEAs have enhanced

training for frontline officers in the areas of human trafficking and victim identification.

4.4 The HKSAR Government is committed to protecting the rights of FDHs in the HKSAR. Details on protecting the rights and benefits of FDHs may be found in paragraphs 27.1 to 27.4 below.

4.5 Although there are no international conventions on human trafficking that apply to the HKSAR, our legislation taken as a whole prohibits the constituent elements of the conduct referred to as “trafficking in persons” in the Palermo Protocol. Some major developments and initiatives in our scheme of actions against human trafficking are highlighted –

- (a) The Department of Justice has developed an integrated approach to deal with human trafficking cases in a comprehensive, consistent and compassionate manner. The Prosecution Code issued by the Department provides guidelines to prosecutors on how to deal with cases involving human trafficking and exploitation which is defined in line with the Palermo Protocol. Prosecutors are also advised to make reference to applicable international standards and practices concerning human trafficking in identifying victims of trafficking.
- (b) Enhanced cooperation with international and local NGOs, such as the Mekong Club (activist against human trafficking), PathFinders (assists female migrant workers in need), RainLily (against sexual violence), Eden Ministry (against sexual abuse) and Hong Kong Federation of Women Lawyers (improving the well-being of women and children), etc.
- (c) Enhanced training for frontline officers of LEAs in victim identification. The Police have advanced its specialised package on human trafficking in 2013. ImmD has included subjects on human trafficking in the induction courses for newly recruited staff.
- (d) We provide diversified assistance and protection to human trafficking and forced labour victims including urgent intervention, counselling and other support services. Government-funded services including shelter, food, medical services, protection services, and counselling are available to victims of human trafficking if deemed appropriate. They are provided free of charge by way of government subsidy. In suitable cases, an

immunity from prosecution (usually with suitable conditions attached) may be granted by the Department of Justice in favour of illegal immigrants, overstayers and others who may otherwise be guilty of an offence but simultaneously identified to be human trafficking victims, in order to protect them to testify as a prosecution witness in the prosecution of those complicit in crime syndicates in the HKSAR.

- (e) Government departments have maintained a close working relationship with various overseas consulates, foreign and Mainland law enforcement agencies and actively participate in various international conferences and workshops to learn best practices and share intelligence and experience with overseas counterparts. For example, Hong Kong is a member of the Asia-Pacific Consultations on Refugees, Displaced Persons and Migrants, the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, and the Interpol.

4.6 Human trafficking is not tolerated in the HKSAR. The HKSAR Government will continue to be vigilant and to cooperate closely with our law enforcement partners in the region and overseas to prevent and combat human trafficking activities.

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 legislation that governs sexual offences, and in particular whether (a) sexual offences against children and persons with intellectual disabilities have been included; and (b) the definition of rape is brought in line with international standards. Please provide further information on the measures taken to strengthen the practical implementation of the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189). In this context, please update the Committee on (a) the number of complaints received concerning acts of domestic and gender-based violence, investigations of such complaints, sentences handed down and compensation provided to victims; (b) comprehensive assistance provided to victims, including legal assistance during court proceedings; (c) the occupation rate of shelters for victims of violence; and (d) the number and type of protective measures provided out of the total requested. In addition, please provide updated information on the progress obtained through the Central Domestic Violence Database. 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. 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, police and other workers.

Sexual offences

5.1 Children and persons with intellectual disabilities are protected from sexual exploitation by current laws such as section 125 (intercourse with mentally incapacitated person) and section 128 (abduction of mentally incapacitated person from parent or guardian for sexual act) of the Crimes Ordinance (Chapter 200).

5.2 The Review of Sexual Offences Sub-committee has been formed under the Law Reform Commission to review the law relating to sexual and related offences in the HKSAR. The first two parts of the comprehensive review are respectively on: (a) offences based on sexual autonomy (i.e. rape and other non-consensual sexual offences); and (b) offences based on the protective principle (i.e. offences against children and mentally incapacitated persons and offences involving abuse of a position of trust). In September 2012, the Sub-committee published a consultation paper on the first part, which included proposals on the creation of a newly-defined offence of rape and the creation of a range of other non-consensual sexual offences. The Sub-committee proposed that any reform of the substantive law on sexual offences should be guided by a set of guiding principles, including: (a) clarity of the law; (b) respect for sexual autonomy; (c) the protective principle; (d) gender neutrality; (e) avoidance of distinctions based on sexual orientation; and (f) adherence to the Basic Law, the Hong Kong Bill of Rights Ordinance and the provisions of the International Covenant on Civil and Political Rights as applied to the HKSAR. The Sub-committee also proposed that the offence of rape should cover penile penetration of the vagina, anus or mouth of another, and the new legislation should provide that, for the purposes of any sexual offence, a penis should include a surgically constructed penis and a vagina should include the vulva and a surgically constructed vagina (together with a surgically constructed vulva). The consultation was concluded in February 2013. The review is ongoing.

Comprehensive assistance provided to victims

5.3 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.

5.4 At present, there are a total of 65 Integrated Family Service Centres

(“IFSCs”) and two Integrated Services Centres (“ISCs”) over the territory providing a spectrum of preventive, supportive and remedial services. Each IFSC/ISC serves a well-defined geographical service area under the guiding principles of easy access, early identification, integrated services and partnership. IFSCs/ISCs provide integrated services for individuals and families according to their needs as assessed, which may include family life education, parent-child activities, enquiry services, volunteer training, outreaching services, groups and programmes, counselling services, service referrals, etc.

5.5 There are currently 11 Family and Child Protective Services Units (“FCPSUs”) under SWD. They are specialised units manned by experienced social workers that handle spouse/cohabitant battering and child abuse cases and provide statutory protection for children. They provide a co-ordinated package of one-stop services and arrangement of various services for victims, their families and batterers in domestic violence cases, and help them tide over the difficult period, lessen trauma associated with violence and live a new life. Social workers of FCPSUs perform the role of a case manager to coordinate a wide range of services and assistance including crisis intervention, short-term accommodation at refuge centres or other crisis centres, counselling, clinical psychological services, medical treatment, housing assistance, financial assistance, etc. FCPSUs would also provide outreaching and crisis intervention services for the victims and his/her family members so as to reduce the trauma brought by the abuse incident. Social workers would comprehensively assess the emotion, psychological and family situation of the victims and arrange counselling (individually or in a group), clinical psychological service and support services to them and their families according to their needs. If necessary, social workers would provide statutory protection to the child victims.

5.6 There are five refuge centres for women with 260 places in the HKSAR, providing short-term accommodation service for victims of domestic violence. There is also a Multi-purpose Crisis Intervention and Support Centre (the “CEASE Centre”) to provide crisis intervention and support services including 80 places of short-term accommodation service to victims of sexual violence and individuals/families facing domestic violence or in crisis.

5.7 To strengthen support for victims of domestic violence, including those involved in the legal proceedings, SWD has launched the Victim Support Programme for Victims of Family Violence since June 2010. The Programme provides emotional support and information on community support services (e.g. legal aid services, accommodation, medical and childcare services, etc.) and the relevant legal proceedings to the victims. If necessary, the victims will be

accompanied by social workers or volunteers to attend court hearings and go through the legal proceedings.

The occupation rate of shelters for victims of violence

5.8 The five refuge centres for women currently provide a total of 260 residential places while the CEASE Centre also provides 80 residential places. The average utilisation rate of the above 6 centres in 2012-13, 2013-14 and 2014-15 were 85%, 102% and 94% respectively. In recent years, there is a rise in the utilisation rate of the refuge centres. Nevertheless, spare space and related support are always available in individual refuge centres to cater for unforeseen/transient extra service demands. Moreover, the refuge centres and CEASE Centre are flexible in admission and have set up a mutual referral mechanism to better meet the needs of victims. SWD will continue to keep in view the utilisation of the above centres and the needs of victims, and review the need for additional residential places.

Protective measures

5.9 To facilitate intervention at an earlier stage, the HKSAR Government has taken various preventive measures to identify the vulnerable families and provide assistance as early as possible before their problems escalate into more serious incidents. For instance –

- (a) SWD has since early 2007 launched a Family Support Programme (“FSP”) to increase contacts with needy families who are reluctant to seek help. Under the FSP, through telephone contacts, home visits and other outreaching programmes, families with members at risk of domestic violence or psychiatric problems and those with problems of social isolation, are connected to various support services available and are encouraged to receive services to prevent further deterioration of their problems. Volunteers including those with personal experience in overcoming family problems or crises are recruited and trained to contact these families and encourage them to receive appropriate support services with a view to preventing the problems from deteriorating.
- (b) Comprehensive Child Development Service (“CCDS”) has been launched in phases since July 2005. CCDS aims to identify and meet, at an early stage, the varied health and social needs of children aged between 0 and 5 and those of their families. It uses Maternal and Child Health Centres, public hospitals, IFSCs/ISCs and pre-primary institutions as platforms to identify at-risk

pregnant women, mothers with postnatal depression, families with psychosocial needs, and pre-primary children with health, developmental and behavioural problems. Children and families in need are referred to appropriate service units for follow-up. In August 2013, CCDS was extended to all districts.

5.10 SWD also set up in June 2011 a standing Child Fatality Review Mechanism following the successful experience of a three-year pilot project to review child death cases to work out strategies for prevention of avoidable child death.

5.11 SWD will continue to provide training at both central and district levels to social workers and other professionals in dealing with domestic violence and to enhance their skills in risk assessment, crisis intervention and post-trauma counselling. In 2014-15, SWD has provided 145 training programmes to about 7 100 frontline professionals to enhance their knowledge and skills in handling domestic and sexual violence cases.

Statistics

5.12 According to our central domestic violence database known as the Central Information System on Spouse/Cohabitant Battering Cases and Sexual Violence Cases, the number of new spouse/cohabitant battering cases reported to SWD in 2012, 2013 and 2014 were 2 734, 3 836 and 3 917 respectively. According to the statistics of SWD's Child Protection Registry, the number of newly reported child abuse cases in 2012, 2013 and 2014 were 894, 963 and 856 respectively.

Increasing of public awareness and guidelines for professionals

5.13 SWD launches the "Strengthening Families and Combating Violence" publicity campaign every year to organise territory-wide and district-based publicity and public education programmes to arouse public awareness (including women and girls with disabilities) of the importance of family solidarity, prevention of child abuse and domestic violence as well as to encourage people in need to seek help.

5.14 SWD has also developed a website of Support for Victims of Child Abuse, Spouse/Cohabitant Battering and Sexual Violence to help victims understand their rights, protection provided by the law and support services available in the community.

5.15 To assist the professionals concerned in handling each case in a

holistic manner, SWD has, in consultation with the relevant departments and organisations, developed multi-disciplinary guidelines, namely the “Procedural Guide for Handling Intimate Partner Violence Cases” and the “Procedural Guide for Handling Child Abuse Cases”, to assist the frontline professionals in handling child abuse and spouse/cohabitant battering cases in a professional and effective manner.

5.16 The Prosecution Code of the Department of Justice provides guidelines to prosecutors on how to deal with domestic violence cases. Prosecutors must have regard to the “Guidelines for Prosecuting Domestic Violence Cases” issued by the Prosecutions Division of the Department. In prosecuting domestic violence cases, the prosecution must consider the safety of the victim, any children and other persons involved, the situation of the family and the likely effect of any prosecution on its members.

Article 3 – Torture as a ground for refusal to expel, return or extradite

6. According to information before the Committee, the HKSAR has established a new “Unified Screening Mechanism” for assessing claims on the grounds of (a) torture under the Convention; (b) torture and other forms of ill-treatment under art. 3 of the Hong Kong Bill of Rights Ordinance; and (c) persecution in accordance with art. 33 of the 1951 Convention relating to the Status of Refugees. Please provide detailed information on:

- (a) The new mechanism and its practical implementation since its inception.:
- (b) The Court of First Instance judgments in the cases of *Ubamaka Edward Wilson v Secretary for Security and another* (FACV 15/2011) and *C and Ors v Director of Immigration and another* (FACV 18-20/2011);
- (c) Criteria in place for assessment, including whether a person seeking protection must first overstay their visa and be liable to removal from HKSAR before they are eligible to file a claim, and prioritization of claims. Which safeguards are applied to ensure that the threshold for recognizing a substantial risk is not inappropriately high and how does HKSAR 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 HKSAR has enacted the Immigration (Amendment) Bill in 2012 (Ordinance No. 23 of 2012). Please provide detailed information on the content of the legislation and its practical implementation since it came into force. In particular, please (a) clarify whether the Ordinance applies to all grounds for “non-refoulement” mentioned in para. 6 above; (b) clarify to what extent the Ordinance provides for legal aid

to 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, including the Torture Claims Appeal Board. Please also provide updated information on support and services available for victims of torture.

8. With reference to para. 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 expelled;
- (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; and
- (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 services. 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 on steps taken or envisaged to incorporate the provision contained in article 3 of the Convention under the Crimes (Torture) Ordinance? Are there any plans of HKSAR to revise its position and extend to HKSAR the application of the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol and to establish effective post-return monitoring mechanisms?

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 conditions of places where asylum-seekers and/or irregular migrants are detained. Do they have access to prompt and free health services as well as to a lawyer? Are families with children above one year of age held in separate facilities? Please also provide information on the concrete steps 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 (CRC/C/CHN/CO/3-4, para. 84). Are there any specific guidelines for the treatment of asylum-seeking or refugee children?

6.1 Issues 6 to 10 are inter-related and our consolidated reply is set out below.

“No asylum” policy and non-refoulement protection

6.2 Foreigners who smuggled into the HKSAR, and visitors who overstayed their limit of stay allowed by ImmD or who were refused entry upon arrival (collectively “illegal immigrants” below) are liable to be removed from the HKSAR by law. To safeguard immigration control and for public interest, they should be removed as soon as practicable.

6.3 However, pursuant to Article 3(1) of the Convention and multiple local court rulings since 2004, ImmD will not remove those illegal immigrants to another country where they would face a genuine and personal risk of being subjected to ill-treatments including, inter alia, torture, cruel, inhuman or degrading treatment or punishment (“CIDTP”) and persecution, etc. Moreover, court rulings mandate that if an illegal immigrant alleges that he would face such risks upon removal, then he cannot be removed unless such risks were assessed by ImmD to be unsubstantiated under procedures which meet high standards of fairness.

6.4 The 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol have never applied to the HKSAR, and illegal immigrants seeking non-refoulement in the HKSAR are not to be treated as “asylum seekers” or “refugees”. The HKSAR Government has a long-established policy of not granting asylum, and not determining or recognising refugee status.

6.5 The HKSAR is a very densely populated city with long coastlines, a liberal visa regime and a regional transportation hub, making us particularly vulnerable to the ill-effects of illegal immigration. We must maintain effective immigration control to safeguard the livelihood and employment opportunities of local workers, including preventing illegal immigrants from seeking to enter and effectively removing them. By experience, any sign (however tenuous) of potential relaxation in the HKSAR Government’s attitude towards illegal immigrants could mislead would-be migrants into believing that they may seek to enter and remain here, bringing to the HKSAR a significant risk of mass influx of illegal immigrants which will greatly jeopardise public safety and social stability.

Screening for non-refoulement claims

6.6 As a result of the Court of Final Appeal (“CFA”)’s decision in *Secretary for Security v Sakthivel Prabakar* (2004) 7 HKCFAR 187, ImmD put in place administrative procedures to determine claims by illegal immigrants that they are in danger of being subjected to torture pursuant to Article 3(1) of the Convention.

6.7 Following the decision of the Court of First Instance in *FB v Director of Immigration* [2008] HKCFI 1069, the HKSAR Government introduced an enhanced administrative screening mechanism in December 2009. These enhanced procedures were subsequently codified by the Immigration (Amendment) Ordinance 2012 to ensure that procedures to screen torture claims¹ would meet high standards of fairness. The mechanism comprises three main steps –

- (a) claimants to set out the basis of their claims by completing claim forms;
- (b) claimants to attend screening interviews with immigration officers to answer questions relating to their claims; and
- (c) the immigration officer who has interviewed the claimant to decide the claim having regard to all relevant considerations, and to inform claimant of the decision and reasons in writing.

6.8 Any claimant aggrieved by ImmD’s decision may appeal to the Torture Claims Appeal Board (“TCAB”), comprising members with judicial background (former judges or magistrates).

6.9 Publicly-funded legal assistance has been made available to claimants since 2009 through the Duty Lawyer Service, which maintains a roster of 480 barristers and solicitors (as at May 2015) who have received relevant training to provide legal assistance to claimants during the entire screening process.

6.10 In December 2012, the CFA ruled in *Ubamaka Edward Wilson v Secretary for Security* (2012) 15 HKCFAR 743 that the right not to be subjected to CIDTP enshrined in Article 3 of the Hong Kong Bill of Rights (“HKBOR”)² is absolute and non-derogable and the HKSAR Government must not remove a

¹ Claims to resist removal to another country pursuant to Article 3(1) of the Convention.

² Article 3 of the Hong Kong Bill of Rights incorporates into the law of Hong Kong Article 7 of the International Covenant on Civil and Political Rights. The provisions of the Covenant as applied to Hong Kong remains in force after China’s resumption of the exercise of sovereignty over Hong Kong on 1 July 1997.

foreigner to a country where he has a genuine and substantial risk of being subjected to CIDTP, however objectionable his conduct or character may be.

6.11 Then in March 2013, the CFA ruled in *C & Others v Director of Immigration* (2013) 16 HKCFAR 280 that so long as the Director of Immigration takes into consideration a person's claimed fear of persecution as a relevant factor in deciding whether or not to remove the person to another country, the Director is required to make an independent assessment as to whether the claimed fear of persecution is well-founded before executing such removal³.

6.12 In March 2014, the HKSAR Government commenced operating a unified screening mechanism ("USM") to screen claims by illegal immigrants resisting removal to another country on all applicable grounds ("non-refoulement claims"). Procedures of USM follow the statutory mechanism for torture claims in operation since December 2012 (see above). Claimants aggrieved by ImmD's decision under USM may continue to appeal to TCAB.

6.13 A non-refoulement claim would be substantiated if there are substantial grounds for believing that the claimant would be in danger of being subjected to ill-treatments including, *inter alia*, torture, CIDTP and persecution, etc. if he was removed to a risk country. In determining each claim, the case officer will take into account all relevant considerations, including the facts and supporting evidence submitted by the claimant and country of origin information, as well as local and overseas jurisprudence. In *Ubamaka*, the CFA ruled that a claimant who invokes protection against CIDTP must establish that he faces a genuine and substantial risk of being subjected to ill-treatment which attains a "minimum level of severity".

6.14 USM procedures are published on ImmD's departmental website. Translated copies are available at ImmD's Recognizance Reporting Offices.

6.15 The objective of USM is to decide whether an illegal immigrant may (and should) be removed to another country immediately, or whether removal should be temporarily withheld until his claimed risks cease to exist. Generally, the persons not subject or liable to removal (e.g. those legally

³ Prior to this decision, the HKSAR Government maintained, on humanitarian grounds, a practice of withholding removal of foreigners who had applied to the United Nations High Commissioner for Refugees ("UNHCR") for recognition of their refugee status in the HKSAR, despite the HKSAR Government's prevailing long-established policy of not determining anyone's refugee status and not granting asylum. However, UNHCR has ceased asylum screening in the HKSAR after commencement of USM.

remaining in the HKSAR) should not need to, and therefore may not make non-refoulement claims. This position is consistent with the Court of Appeal's ruling in *BK & CH v Director of Immigration* [2011] HKCA 85.

Medical examination and claimants with special needs

6.16 If the physical or mental condition of a claimant is in dispute and is relevant to the consideration of a claim, a medical examination conducted by qualified medical practitioners may be arranged.

6.17 ImmD's case officers also received suitable training to attend to special needs of vulnerable claimants as necessary⁴. Claimants are reminded from time to time that, if they wish to have their claims processed expeditiously or have any special needs for their screening, they should approach ImmD to make such a request.

6.18 The concerned medical practitioners and decision makers have received training courses on torture claims/non-refoulement claims conducted by relevant experts⁵. The training programmes covered topics such as the Istanbul Protocol⁶, the UNHCR Procedural Standards, psychological evidence of violence and handling of survivors of violence and claimants with special needs including minors/children.

Caseload

6.19 Since 2014, there has been an influx of non-ethnic Chinese illegal immigrants ("NECIIs") and an increase in the number of overstaying visitors resisting removal to another country by making non-refoulement claims (NECIIs up by 270%; overstayers up by 40%). The number of non-refoulement claimants pending screening has increased from around 6 700 in March 2014 to 9 900 by end of May 2015, and it continues to grow.

6.20 Key features of claimants (details at **Annex**) are as follows –

⁴ Examples of assistance that may be arranged by ImmD include: female case officers for those female claimants who alleged to have been sexually abused or so requested on religious grounds; relative/guardian to accompany minors or incapacitated claimants in interview(s); barrier-free access for disabled claimants; extra accommodation when interviewing children, elderly, or the infirmed; assistance from a social worker or other trained professionals where necessary, etc.

⁵ Including medical experts from the Department of Health and the Hospital Authority, representatives from the UNHCR, the United Kingdom Border Agency (now replaced by the UK Visas and Immigration of the Home Office) and other overseas competent experts.

⁶ Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- (a) Over 80% came from South or Southeast Asia, with Pakistan (20%), India (19%), Vietnam (15%), Bangladesh (13%) and Indonesia (11%) ranking the top five;
- (b) 43% entered the HKSAR illegally; 50% entered legally but overstayed. The remaining 7% were mostly refused landing upon arrival;
- (c) 70% did not seek to lodge a claim to resist being removed until they were intercepted or arrested by the Police or ImmD. Overall, claimants had remained in the HKSAR for 13 months on average before lodging a claim. For overstayers, the average is 19 months; and
- (d) 75% of claimants are male and 95% are adults above the age of 18. 94% came to the HKSAR on their own (not accompanied by any family member).

6.21 The HKSAR Government's estimated expenditure arising from the screening of non-refoulement claims and provision of various support to claimants amounts to HK\$644 million in 2015-16 financial year (an increase of 21% from the previous year).

Review of USM procedures

6.22 The HKSAR Government has recently reviewed the procedures of USM. Having consulted the legal professional bodies and the Legislative Council, we will introduce measures in the next few months to shorten screening time and optimise use of existing resources by all parties⁷ within the existing legislative and procedural framework.

Detention policy of illegal immigrants

6.23 While the Immigration Ordinance (Chapter 115) empowers ImmD to detain illegal immigrants pending removal, such power must be exercised in accordance with relevant laws and policies. CFA ruled in *Ghulam Rbani v Director of Immigration* (2014) 17 HKCFAR 138 that ImmD may continue to detain an illegal immigrant only if it is believed that he can be removed within a

⁷ These measures include: (a) simplifying the claim form; (b) ceasing to provide claimants with their personal records which are manifestly irrelevant to their claims, e.g. documents relating to the claimant's detention in the HKSAR, or relating to crimes committed by the claimant in the HKSAR; (c) advancing actions to schedule screening interviews; and (d) enhancing management of legal costs.

reasonable period. Other factors that ImmD will consider include whether the detainee presents a threat to public safety and personal factors such as fitness of the person for detention. ImmD's detention policy is publicly accessible on its departmental website. All detention cases are reviewed on a regular basis.

6.24 As at end of May 2015, 422 illegal immigrants (including 62 non-refoulement claimants) were being detained. 99% of non-refoulement claimants are released on recognizance pending determination of their claims.

6.25 Pursuant to the Immigration (Treatment of Detainees) Order, (Chapter 115, sub. leg. E), all detainees are provided with adequate facilities such as food, water, accommodation, shower and exercise, etc. Every detainee will be informed of their rights⁸ upon admission. Detainees who feel sick will receive proper medical treatment. Detainees are free to consult with a solicitor or barrister in private if so required.

6.26 Normally ImmD will not detain a minor illegal immigrant unless with strong reasons⁹. If detention is necessary, the minor will, pursuant to the Immigration (Places of Detention) Order (Chapter 115, sub. leg. B), be admitted into the Tuen Mun Children and Juvenile Home operated by SWD which will provide proper care and guidance. As at end of May 2015, no minor was detained by ImmD.

Article 5 – Establishment of jurisdiction

Article 6 – Powers of detention

Article 7 – Prosecution of offenders who are not to be extradited

Article 8 – Extradition arrangements

Article 9 – Mutual assistance in relation to crimes of torture

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 China-Mainland and HKSAR for the transfer of fugitive offenders or sentenced persons. Please also clarify whether resort is made to the use of "death penalty safeguards". If so, please provide the Committee with detailed information on the number of cases where "surrender" or removals subject to safeguards or guarantees have occurred in the reporting period; on the HKSAR's minimum requirements for these safeguards; the measures of subsequent monitoring undertaken by HKSAR in such cases as well as legal

⁸ Their rights are set out in a Notice on Detention Policy and a Notice of Detention which are served on detainees upon admission.

⁹ For example, where there is reason to believe that the minor will abscond with the assistance of another person, the minor will soon be removed, or the minor is unaccompanied and would not be properly taken care of otherwise.

enforceability of these safeguards.

11.1 Discussion on a surrender of fugitive offender arrangement between Mainland China and the HKSAR is ongoing.

11.2 Discussion between the HKSAR Government and the Mainland authorities on the arrangement on transfer of sentenced persons is ongoing.

12. Since the consideration of the previous periodic report, please provide information on cases, if any, where HKSAR authorities rejected a request for extradition of a person alleged to have committed any offences under the Convention, and thus engaged in their own prosecution as a result. Please also provide information on cases in which mutual assistance was requested by or from HKSAR. Please include the results of such requests.

12.1 The HKSAR has not made or received any such surrender (extradition) requests, or made or received any requests for mutual legal assistance with regard to a person alleged to have committed any offences under the Convention.

Article 10 – Education and information on the prohibition of torture

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

13.1 All staff members of CSD have to follow the Prisons Ordinance (Chapter 234) and the Prison Rules (Chapter 234, sub. leg. A) when discharging their duties. These laws are in line with the relevant international standards and treaties. Relevant training is provided to raise staff awareness about these standards and treaties.

13.2 Newly recruited staff of CSD have to go through intensive training programmes of 23 to 26 weeks. The programmes include, among other courses, five 45-minute training sessions on a series of local laws and international standards regarding prisoner treatment. They cover concepts and knowledge of international standards related to the treatment of children in custody/care and gender- and culture-sensitive treatment, as well as non-coercive investigation techniques. CSD also provides development training courses on these concepts and knowledge to its serving staff.

13.3 ImmD provides training programmes on the treatment of detainees for its staff, including training on the Rules and Directions for the Questioning of Suspects and Taking of Statements, the rights and privileges of detainees, and the Hong Kong Bill of Rights Ordinance. All ImmD staff are required to undergo these programmes during their induction training. More targeted training will be provided when staff are deployed to different posts.

13.4 The Judiciary has all along been providing training for Judges and Judicial Officers (“JJOs”) with a view to keeping them abreast of developments in different areas of law including human rights law, and enhancing their judicial skills and knowledge to meet the ever-increasing court operational needs. Over the past five years (2010 to 2014), more than 20 training activities covering human rights topics have been organised or arranged with local and overseas organisations for participation of JJOs. Examples include international conferences entitled “Cross-Border Family Law Issues and the Well-Being of the Child” and “Hague Child Abduction Convention: Sixth meeting of the Special Commission”; talks with focus on extradition and human rights; a training programme on “Vulnerable Witness Handling”; a sharing session among JJOs, social workers and police officers on handling domestic violence cases; and visits to LEAs, reception centre and addiction treatment centre. Evaluation has been conducted through post-training reports or questionnaires to assess the effectiveness of individual training activities.

13.5 The Police provide training for new recruits and serving officers on a wide range of topics including anti-torture and anti-discrimination legislation in the HKSAR, and important values such as respect for the rights of members of the public, fairness, impartiality, compassion and professionalism, etc., in order to ensure that police officers will have adequate awareness of human rights and equal opportunities.

13.6 With regard to the use of force, police officers are trained to apply the principle of proportionality in the use of force when it is absolutely necessary to do so for a lawful purpose. There are stringent Police guidelines for the use of force in that police officers shall, before using force and when

circumstances permit, give warning of their intention to use force, and the persons involved shall be given every opportunity, whenever practicable, to obey police orders. The force to be used by the Police shall be the minimum force necessary for achieving a lawful purpose. Police officers shall exercise a high level of restraint at all times in the use of force. The use of force shall cease once the purpose of which has been achieved.

14. With reference to paragraph 10.10 of the State party report, please expand on the specific training programme on the “Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (Istanbul Protocol) for officers of the Immigration Department and healthcare professionals. Is training on the Istanbul Protocol also conducted for 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 in how to identify and examine victims of torture? Please provide details on (1) how many health care professionals have been trained; (2) how many days of training have been conducted; (3) who has trained them; and (4) how many victims of torture and ill-treatment have been identified by health care professionals, in particular prison doctors, and other relevant professionals during the reporting period. Please also indicate whether training in gender-sensitive treatment for healthcare professionals is carried out.

14.1 ImmD provides ample training and support, including training on the Istanbul Protocol, for staff responsible for assessing non-refoulement claims. These courses are taught by experienced officers, all of whom have received a three-day training on the Istanbul Protocol conducted by overseas experts. These courses cover –

- (a) international requirements under the Istanbul Protocol;
- (b) international standards and domestic legislation on the prohibition of torture and ill-treatment;
- (c) investigation of torture allegations; and
- (d) physical and psychological evidence of torture and ill-treatment.

14.2 Medical professionals from the Department of Health (“DH”) and the Hospital Authority (“HA”) attended the following training programmes –

- (a) 10 doctors of Forensic Pathology Service of the DH and 16 healthcare professionals from the HA (including psychiatric

doctors, psychiatric nurses and allied health professionals) attended a training programme on the Istanbul Protocol by Dr. Nora SVEAASS and Dr. Birgit Nanki Johanne LIE from 27 to 29 August 2012.

- (b) 5 doctors of Forensic Pathology Service of the DH attended the training programme organised by the Office of the UNHCR from 13 to 15 January 2015.

14.3 With regard to gender-sensitive treatment, gender considerations are an integral part of basic medical training. Doctors are trained to be gender-sensitive and are trained in effective communication skills.

Article 11 – Review of interrogation rules, instructions, methods and practices for custody and treatment of persons arrested or detained

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

15.1 The penal population by sex, age and places of residence, as well as the occupancy rate of the correctional institutions in the HKSAR from 2012 to 2014 are set out in the tables below:

Penal Population by Sex (as at the end of the year)			
Year	Male	Female	Total
2012	7 521	1 776	9 297
2013	7 260	1 779	9 039
2014	6 690	1 607	8 297

Penal Population by Age (as at the end of the year)			
Year	Under 21 years	21 years and above	Total
2012	877	8 420	9 297
2013	918	8 121	9 039
2014	712	7 585	8 297

Penal Population by Places of Residence (as at the end of the year)			
Year	Local	Other Places	Total
2012	6 714	2 583	9 297
2013	6 653	2 386	9 039

2014	6 014	2 283	8 297
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Occupancy Rate of Correctional Institutions (as at the end of the year)	
Year	Occupancy Rate
2012	80.7%
2013	79.9%
2014	76.6%

15.2 The Castle Peak Bay Immigration Centre (“CIC”) is an immigration detention facility for immigration offenders (18 years old or above) who are awaiting repatriation/removal/deportation in accordance with the Immigration Ordinance. It has a maximum holding capacity of 500 persons. The average occupancy rate of the CIC in 2014 was 80.2%. ImmD does not maintain other breakdown statistics mentioned in the question.

15.3 The Ma Tau Kok Detention Centre is another immigration facility for transitional holding of detainees pending inquiry or prior to repatriation, court hearing or transfer to other detention facilities. The centre has a maximum holding capacity of 87 persons. The average occupancy rate of the centre in 2014 was 44.3%. ImmD does not maintain other breakdown as mentioned in the question.

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.

16.1 All police detention facilities are in good condition, regularly cleaned and maintained, and well ventilated with adequate lighting. Clocks, cell benches, privacy walls around toilets, hot shower facilities with privacy doors, washing facilities and adequate electric fans, etc., are provided. Meals and drinking water may be requested at any time; clean blankets, clean clothes and sanitary items such as toothbrushes, soaps and towels, etc., are available upon request. In addition, special measures are in place to cater for the religious needs of ethnic minorities under police custody, such as the provision of religious texts and a directional sign for prayer.

16.2 To ensure the safety of detained persons and others who may come into contact with them and at the same time provide appropriate safeguards to the rights of detained persons, a custody search will be conducted on all persons to be detained in police detention facilities. In order to prevent any form of violence, torture and ill-treatment in detention facilities, Duty Officers have

been designated at each Police detention facility who are responsible for the day-to-day inspection of the conditions in the detention facility. Duty Officers and supervising officers of different ranks will conduct regular and surprise inspections of these facilities to look after the welfare and needs of detainees. Detainees can, at any time, approach Duty Officers or any police officer to raise any matter or lodge any complaint, including complaints on violence, torture or ill-treatment. Complaints will be recorded and Duty Officers will take appropriate action. At the same time, the Police will endeavour to ensure that the principle of single-cell occupancy be followed as far as available accommodation allows to prevent any potential risk of violence among detainees.

17. Please provide information to what extent HKSAR uses solitary confinement in detention and medical settings, including the number of persons placed in solitary confinement and the duration of such confinement during the reporting period. Please also indicate the regime applicable regarding the imposition and use of restraints and solitary confinement. In particular, please include information on the safeguards, such as medical examination before, during and after these measures, and due process rights which apply for use of restraint and solitary confinement.

CSD

17.1 In accordance with the Prison Rules, CSD has the authority to order individual persons in custody (“PICs”) to be segregated or removed from association for different reasons, such as where the PIC has been reported for an offence and pending adjudication; the PIC shows refractory or violent behaviours; or the PIC has been ordered by a Medical Officer to be confined in a protected room to prevent him from causing harm or hardship to himself or other persons.

17.2 The numbers of disciplinary cases involving PICs punished by separate confinement and cases involving PICs removed from association with other PICs in the past three years are listed below:

Year	Disciplinary cases involving PICs punished by separate confinement	Cases involving PICs removed from association with other PICs ¹⁰
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¹⁰ More than 50% of these cases involve PICs suspected of concealing dangerous drugs in their bodies. Nearly 10% of the cases involve PICs who themselves apply for removal from association in view of their own circumstances such as special criminal background.

2012	2 508	1 671
2013	2 423	1 382
2014	2 715	1 417 ¹¹

17.3 Mechanical restraints shall not be used by CSD as a punishment or for any purpose except for one of the purposes specified in Rule 67 of the Prison Rules such as preventing a PIC from injuring himself or others or damaging property (in which case notice must be given to one of the visiting justices of the period and the Medical Officer who may make recommendations as to how the PIC should be treated). Under Rule 67(4) of the Prison Rules, no prisoner may be kept under mechanical restraint longer than is necessary, or for a longer period than 24 hours unless upon the written order of a visiting justice of the period and the Commissioner of Correctional Services.

ImmD

17.4 In accordance with Rule 13 of Schedule 1 to the Immigration (Treatment of Detainees) Order (Chapter 115, sub. leg. E) –

- (1) a detainee who-
 - (a) disobeys a lawful order of an officer;
 - (b) commits any assault;
 - (c) wilfully disfigures or damages any part of the CIC or any property which is not his own;
 - (d) commits any nuisance; or
 - (e) contravenes or aids or abets the contravention of any of the rules in the Order,

may, after due inquiry and upon being afforded an opportunity to exculpate himself, be separately confined by order of the officer in charge of the CIC for a period not exceeding 7 days; and

- (2) where in the opinion of the officer in charge of the CIC, it is desirable either in the interests of a detainee or in the interests of good order in the CIC that a detainee should be separately confined, he may be so confined by order of the officer, but not for more than 7 days without his consent.

17.5 In 2014, 51 detainees were ordered to be separately confined in the

¹¹ 63% of the PICs involved were removed from association for a period not exceeding 72 hours, 35% between 72 hours to 4 months.

CIC for one to six days under the said Rule. Any detainee who complains of or appears to be suffering from sickness or injury must be provided with adequate medical attention at the CIC.

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, 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, location of detention and detaining agency, reason for detention and on the justification used by the police or prison official who ordered the search to be conducted and 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 substantiated, have the perpetrators been punished?

(b) The complaints mechanisms made available to detainees who have been subjected to strip and 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;

(c) The measures taken to limit the use of strip or body cavity searches to the greatest possible extent and to reduce the need to conduct manual body cavity searches, such as the use of radiation X-ray body scanners. 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, and include information on any independent mechanisms established to monitor these searches;

(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 the searching of 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".

18.1 Relevant information is provided by concerned Government departments as follows.

18.2 For CSD –

- (a) To ensure good order in correctional institutions and maintain a "drug-free" custodial environment, CSD is committed to adopting preventive measures to intercept the smuggling of drugs and unauthorised articles into the institutions. Measures including

strip or body cavity search conducted by CSD are based on the relevant provisions of the Prison Rules. For instance, every PIC shall be searched on admission and subsequently as the officers in charge may direct, and all unauthorised articles shall be taken from him.

As strip or body cavity search on PICs upon admission is a part of the daily routine duties of staff, CSD has not kept the relevant statistics. All such searches must be authorised by the Superintendent or other officers in charge and properly recorded. In addition to searches conducted upon admission, CSD conducted a total of 8 111 strip searches on PICs in the past three years (2012-2014). CSD has not received any operational complaint on strip or body cavity search over the past three years (2012-2014).

- (b) Every PIC in the HKSAR has unrestricted access to both internal and external complaint channels. Internally, prisoners are free to lodge complaints with the prison management, inspecting senior officers from CSD Headquarters, or the Complaints Investigation Unit (“CIU”). CIU is an independent establishment for handling and investigating all complaints in the strictest confidence within its purview.

Externally, PICs can express their grievances in writing to the Chief Executive, Executive Councillors, Legislative Councillors, Justices of the Peace (“JPs”), District Councillors, the Commissioner of ICAC, The Ombudsman and the Equal Opportunities Commission. Also, PICs can make requests or complaints personally to the visiting JPs who visit prisons regularly.

Upon admission, all PICs will be issued with an information booklet on making complaints. Such information is also posted at prominent locations at all institutions. For enquiries, they may approach the Rehabilitation Officers of CSD.

- (c) Since 2012, CSD has gradually introduced low radiation X-ray body scanners to examine body cavities of newly admitted PICs. All reception centres will be equipped with X-ray body scanners to replace manual body cavity searches by 2016.
- (d) Medical Officers and correctional officers with nursing qualifications are responsible to provide basic healthcare services

for PICs. Where necessary, they may search the body cavity of a PIC in order to look for any unauthorised articles possessed by the PIC. For instance, rectal search on PICs may be conducted by a CSD officer with nursing qualification under the authorisation of a Medical Officer and in the presence of another CSD officer. If a PIC is physically unfit to undergo rectal search, such as having serious haemorrhoids, rectum cancer, just after having a major surgery or having abnormal mental conditions, he will be diagnosed by the institutional Medical Officer who will give appropriate advice. In sum, CSD will make appropriate arrangements for individual cases having regard to the physical and psychological conditions of the person in custody concerned as well as security intelligence.

18.3 For ImmD –

- (a) Figures of persons searched by ImmD involving removal of underwear or other relevant methods in the past five years are as follows –

Year	Lifting underwear for examination / Partial removal of underwear / Complete removal of clothing ¹²
2010	4 043
2011	4 460
2012	4 513
2013	4 952
2014	5 015

ImmD does not perform any body cavity search.

- (b) Complaints against members of ImmD about abuse of authority or maltreatment can be made to the Director of Immigration and are investigated promptly in accordance with procedures in the Immigration Service Standing Orders. To ensure that complaints will be processed in a fair and just manner, ImmD has its own mechanism to handle complaints lodged by the person(s) being searched.
- (c) ImmD has procedures and guidelines on body searches to prevent

¹² The majority of the figures involved general searches conducted by immigration officers on detainees upon their entering of the immigration detention centres.

unnecessary searches and to safeguard the rights of the persons to be searched. Such procedures and guidelines ensure that officers, in exercising their power of body search under the law, will apply the “rationality” and “proportionality” principles in determining the scope of each search.

- (d) Body searches target numerous types of articles. For metallic articles, ImmD has introduced metal detectors to detect potentially hazardous metallic substances or any crime-related metallic exhibits concealed by the person being searched. Despite that, body search by removal of clothing is still required from time to time. ImmD would continue to monitor the relevant technological development and, having regard to the actual needs, introduce appropriate equipment to assist in conducting body searches. Moreover, ImmD would review their body search procedures, guidelines and record-keeping requirements from time to time to ensure effective discharge of their statutory functions, while also safeguarding the rights of the persons being searched.

18.4 For the Police –

- (a) The Police do not maintain a breakdown of the requested figures. However, the Police maintain the following figures on body searches conducted on detainees –

Year	Non-removal of clothing	Removal of clothing	Removal of underwear - Lifting Underwear for Examination	Removal of underwear - Partial Removal of Underwear	Removal of underwear - Complete Removal of Underwear
2013	42 025	7 010	2 114	323	165
2014	38 091	6 460	1 816	206	160
2015 (as at March 2015)	9 949	1 710	460	47	28

The scope of a custody search is determined having regard to the prevailing circumstances and shall be proportionate to such circumstances and justifiable. The following factors will be considered –

- (i) offence(s) committed;
- (ii) criminal record(s);

- (iii) level of violence exhibited during offence and upon arrest;
- (iv) suicidal tendency exhibited;
- (v) previous record(s) of self-harm, if known;
- (vi) demeanour following arrest and case processing.

There were two complaints made to the Complaints Against Police Office (“CAPO”) concerning “Unwarranted Strip Search” in 2013 but no such complaint was received in 2014 and 2015 (as at 31 May 2015). After investigation, one of the complaints made in 2013 was classified as “Unsubstantiated” while investigation of the other complaint is still ongoing.

- (b) In accordance with existing procedures, after being arrested, all detainees would be brought before the Duty Officer of the police station who has the duty to ensure that the arrest and detention of any person in police custody are lawful and to fulfill the duty of care owed to the persons in police custody. A detainee or his/her representative could lodge a complaint in relation to the conduct of police officers to the Duty Officer or to the CAPO directly. After being released from police custody, a person could still lodge a complaint against police.
- (c) A Duty Officer, or an officer authorised by him, will search the detainee prior to being detained in a police detention facility. The Duty Officer will determine the scope of the custody search in accordance with the criteria mentioned in (a) and explain the reasons to the detainee. If the detainee has any concerns/objections regarding the search, he may bring these to the attention of the Duty Officer. The Duty Officer will reconsider his decision. Supervisory officers will review records to ensure that officers concerned comply with the search procedures and to take actions on any non-compliance of searches guidelines.

As far as metallic articles are concerned, the Police introduced metal detectors in 2008 to find out whether the persons being searched conceal any potentially hazardous metallic substances or any crime-related metallic exhibits.

- (d) If it is reasonably suspected that a person being searched has concealed any article within their body, Police will refer the person to a government hospital for a body cavity search to be conducted by an authorised medical practitioner.

- (e) Detained persons with special needs include the following –
- (i) Detained persons under the age of 16;
 - (ii) Detained persons who are or suspected to be mentally incapacitated;
 - (iii) Detained persons with physical disabilities;
 - (iv) Detained persons with physical communication difficulties e.g. those who are hearing or visually impaired;
 - (v) Detained transsexuals and transvestites.

An appropriate adult in respect of a detained person is defined as –

- (i) a relative, guardian or other person responsible for care or custody of that person;
- (ii) someone who has experience of dealing with a person with a particular special need, but who is neither a police officer nor employed by Police, such as a social worker; or
- (iii) failing either of the above, some other responsible adult who is neither a police officer nor employed by the Police.

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 steps have been taken to ensure the protection of such persons? Has there been any investigation into allegations and, if substantiated, have those responsible been held accountable?

19.1 The Police have stringent regulatory measures and guidelines for anti-vice operation to prevent abuse. The extent of body contact involved is limited to what is necessary to achieve the purpose of the operation. Once the objective is achieved, the body contact must cease. Police's guidelines reinforce the key principle that in the process of gathering evidence, police officers undertaking undercover operations are not allowed to receive oral sex or sexual intercourse service offered by sex workers.

19.2 Police officers involving in undercover anti-vice operations are carefully selected having regard to their psychological condition, integrity, etc. to ensure that they are suitable for the tasks. They are also required to strictly comply with relevant Police's internal guidelines. Before each operation, the officer-in-charge of an operation will brief the undercover officer in detail, including the plan and objective of the operation, as well as specific instructions

regarding the permitted extent of body contact, if any. After the conclusion of each operation, officers acting as agents must report to the handling officer on the details of the operations. All relevant information has to be faithfully recorded and will be adduced as evidence in court, if prosecutions are instituted.

19.3 There is no specified complaint category for capturing complaints arising from anti-vice operation. In 2013, there were 15 cases where complainants registered their occupation as sex workers, and 15 and 8 cases in 2014 and 2015 (up to 31 May) respectively. It should be noted that these figures do not reflect the nature of the complaints or whether the substance are related to anti-vice operation.

19.4 Among the above, no cases are classified as “Substantiated”, while investigation of 7 cases is still ongoing.

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

CSD

20.1 Under normal circumstances, CSD identifies the gender of PICs according to their identity documents. Treatment including accommodation and searching will be arranged in accordance with the gender identified on such documents. If a PIC requests for special arrangements other than the general treatment, it will be considered by the penal management according to individual merits and the expert advice of Medical Officers, Clinical Psychologists and/or Psychiatrists.

20.2 In general, transgender PICs are accommodated in the Vulnerable Prisoner Unit of Siu Lam Psychiatric Centre to protect them from being physically or sexually harassed or assaulted by other PICs.

ImmD

20.3 ImmD shall ensure that frontline staff are thoroughly familiar with the existing anti-discrimination laws and principles. ImmD shall, having regard to the functional and operational needs, provide training for new recruits or frontline staff on relevant policies, issue appropriate guidelines and heighten their sensitivity so that they will discharge duties and responsibilities based on the principles of fairness, justice and impartiality, respect human rights, maintain the required standard of conduct, and serve the community with fairness and compassion.

20.4 On the handling of transgender persons, ImmD staff shall make arrangements and offer assistance as appropriate according to actual circumstances and the needs of law enforcement. For example, ImmD staff shall, in accordance with relevant legislation and departmental guidelines, arrange a body search to be conducted by an officer of the same sex, but due consideration will also be given to the person's preferred gender and wishes.

20.5 Besides, suitable custodial arrangements for transgender persons in custody will be made with due regard to their wishes and best interest. For example, ImmD staff will seek the consent of transgender persons to put them in custody separate from the others for their best interest.

Police

20.6 The Police identify the gender of members of the public on the basis of the gender indicated on their identity documents.

20.7 Police officers will search transgender persons in a practical and reasonable manner with due regard to dignity and privacy. The transgender person will be searched by a police officer in the presence of a witnessing officer. Where the person has requested the presence of an appropriate adult, the custody search shall be, where practicable, conducted in the presence of such an appropriate adult. The appropriate adult can then provide assistance and support to the person as well as safeguard such person's welfare. In addition, Police will endeavour to ensure that the principle of single-cell occupancy is followed, in accordance with the special needs of the person.

21. Please inform the Committee whether guidelines have been established for law enforcement officials in relation to demonstrations, including on the use of force and crowd control.
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21.1 Residents of the HKSAR enjoy freedom of and right to peaceful assembly, procession and demonstration. It has been the Police's established policy to strike a balance between facilitating all lawful and peaceful public meetings and processions, reducing the impact of such meetings and processions on the community and other road users, and ensuring public order and public safety. The Police have been urging participants of these public order events to remain law-abiding, peaceful and orderly when expressing their views and refrain from behaviours that are violent or detrimental to public order.

21.2 In handling public order events, the Police will conduct a holistic risk assessment and work out the overall strategies and contingency plans, and,

having regard to the circumstances at the time, deploy manpower flexibly and implement crowd management measures in order to safeguard public safety and maintain public order.

21.3 There are stringent Police guidelines for the use of force in that police officers shall, before using force and when circumstances permit, give warning of their intention to use force, and the persons involved shall be given every opportunity, whenever practicable, to obey police orders. The force to be used by the Police shall be the minimum force necessary for achieving a lawful purpose. Police officers shall exercise a high level of restraint at all times in the use of force. The use of force shall cease once the purpose has been achieved.

Article 12 – Prompt and impartial investigation of torture

Article 13 – Right of complaint

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

22.1 When expressing their views, persons participating in public meetings, protests or processions must abide by the law and must not wilfully disrupt public order. The Police have the responsibility to take necessary measures against any unlawful behaviour.

22.2 As mentioned in paragraph 21.3 above, there are stringent Police guidelines on the use of force. During the “Occupy Movement” (or the so-called “Umbrella Movement”) last year, some protesters illegally blockaded major trunk roads on a large scale and violently charged Police cordon lines, while other protesters harassed and assaulted other members of the public. The Police gave advices and warnings to the protesters, including the display of warning banners to urge the protesters to express their views in a peaceful and rational manner. Yet, the persons concerned refused to obey such advices or

warnings. The Police, in order to maintain public order and ensure public safety, had no alternative but to use the minimum level of force when confronted with violent acts and to arrest the persons concerned.

22.3 During the illegal “Occupy Movement”, 955 persons were arrested by the Police for various alleged offences, and another 48 persons were arrested by the Police afterwards.

22.4 Complaints received in relation to Police’s handling of the illegal “Occupy Movement” are being handled by the CAPO and their investigation findings will be submitted to the Independent Police Complaints Council (“IPCC”) for review.

22.5 In relation to the incident on 15 October 2014 in which a man was allegedly assaulted by police officers, the seven police officers concerned have already been interdicted and arrested. The Police have received legal advice in respect of the case from the Department of Justice and are taking follow-up actions in accordance with the legal advice.

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

(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 (CAPO) in the reporting period, the number of such complaints resulting in investigations, the number of investigations that led to prosecutions and, if substantiated, to convictions of perpetrators, and on punishments provided to those convicted, as well as reparations, including compensation, provided;

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

(d) The checks and balances in place to ensure that the complaints lodged with the CAPO are handled thoroughly, fairly and impartially. In particular, please clarify the measures in place to ensure that complaints are not coerced by police or other officials into withdrawing or dropping their complaints. How is the independence of CAPO 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 (IPCC) and the reasons for this;

(f) Statistics on the rates of participation in the Interviewing Witnesses Scheme of the IPCC and any efforts made to increase such participation;

(g) How members of the IPCC are appointed and what the criteria for selection

are. With reference to para. 13.6 of the periodic report, please also clarify the information provided that members of the IPCC are drawn from a wide spectrum of the community;

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

(i) The number of scheduled and surprise observation of CAPO's investigations and prison visits carried out by the IPCC during the reporting period.

23.1 Relevant information is provided as follows –

- (a) In 2009, the Independent Police Complaints Council Ordinance (Chapter 604) came into effect. It clearly sets out the role, functions and powers of the IPCC in the police complaints handling system, as well as the obligations of the Police to comply with the requirements made by IPCC under the Ordinance. It also provides a statutory basis for a two-tier police complaints system to ensure that complaints on police misconduct will be handled by an independent and fair mechanism.

As the first tier of the system, the CAPO is responsible for receiving and investigating complaints lodged by members of the public against members of the Police. Its operation is independent from other Police formations to ensure its impartiality and fairness.

The second tier of the system is the statutory IPCC which observes, monitors and reviews CAPO's handling and investigation of complaints. The IPCC currently has 28 members, all of whom are non-officials directly appointed by the Chief Executive from a wide spectrum of the society. The IPCC Secretariat, responsible for the day-to-day operation of the IPCC, is staffed by officers directly recruited by the IPCC. Under the IPCC Ordinance, the CAPO is obliged to submit a detailed investigation report on each reportable complaint to the IPCC for examination. If any doubt arises in relation to any aspect of CAPO's investigation or findings during the review of an investigation report and the relevant materials, the IPCC may ask the CAPO for clarification or further information. If the IPCC is not satisfied with the result of a CAPO investigation, it may request CAPO to reinvestigate the complaint, and may also bring the case to the personal attention to

the Chief Executive.

- (b) Under the current police complaints system, there is no specific category for torture or ill-treatment. Therefore, the Police do not have the relevant figures.
- (c) The purpose of a complaint investigation is to establish the facts about the incident in question and to make an objective assessment of the incident in light of the facts so established. It is important that the investigation is considered by both the complainee and complainant to have been fairly and impartially carried out. Complaint investigation is carried out based on the evidence available.

The IPCC Ordinance specifies 11 classifications of complaints. Accordingly, if the investigation revealed sufficient reliable evidence to support the allegation, it will be classified as “Substantiated”. If the identity of the complainee cannot be ascertained, or it has not been possible to obtain the cooperation of the complainant to proceed with the complaint investigation, the complaint will be classified as “Not Pursuable”. The classification of “Withdrawn” refers to a case whereby the complainant does not wish to pursue the complaint.

- (d) The IPCC Ordinance provides the IPCC with a statutory basis and an independent status with necessary powers to observe and monitor the CAPO’s investigation, so as to ensure that complaint cases are handled thoroughly, fairly and impartially.

Under section 20 of the IPCC Ordinance, in the course of examining CAPO’s investigation report, the IPCC may interview any person, including a complainant, a witness or a police officer, who is or may be able to provide information or assistance to IPCC in relation to the report.

Another “Check and Balance” is the IPCC Observer Scheme, under which IPCC members and a wider pool of Observers can undertake, on a scheduled or surprise basis, observations of the interviews and collection of evidence conducted by the Police during investigation of complaints.

- (e) If the IPCC is not satisfied with the result of a CAPO investigation, it may ask the CAPO for clarification, re-investigation, or change

in the classification of findings. The number of queries or suggestions raised by the IPCC with CAPO in the past three years are 938 (2012-13), 802 (2013-14) and 727 (2014-15) respectively.

- (f) In the past three years (2012-13, 2013-14 and 2014-15), a total of 19 persons (including 6 civilians and 13 police officers) have been invited to attend interviews with the IPCC, of which 17 (including 6 civilians and 11 police officers) have accepted the invitations. The two police officers who declined the interview invitations were invited to be interviewed as witnesses. They had retired from the Police before being invited.
- (g) In accordance with section 5 of the IPCC Ordinance, the IPCC consists of one Chairman, 3 Vice-chairmen and not less than 8 other members appointed by the Chief Executive. Neither a person who holds an office of emolument, whether permanent or temporary, in a Government bureau or department nor a person who was a member of the Police is eligible for appointment to the IPCC.

Same as other advisory and statutory bodies, the HKSAR Government makes appointments to the IPCC on the basis of merit, taking into account a candidate's ability, expertise, experience, integrity and commitment to public service and with due regard to the functions and nature of business of the bodies concerned. Members of the IPCC come from a wide spectrum of the community, including representatives from the political sector, legal profession, medical profession, education and social welfare services, and the business sector. The three Vice-chairmen are Members of the Legislative Council.

- (h) The IPCC Members carry out their statutory duties with the support of the IPCC Secretariat, which currently has 51 members of staff, directly and independently recruited by the IPCC.

Members have to attend regular and irregular meetings for discharging their statutory duties. In the past three years, the attendance rates of these meetings are as follows –

- (i) Quarterly In-House Meeting: 82.11% (2012-13), 80.21% (2013-14) and 84.00% (2014-15);
- (ii) Quarterly Joint Meeting with the Police: 75.71% (2012-13),

87.50% (2013-14) and 86.00% (2014-15);

(iii) Monthly Publicity and Survey Committee Meeting: 65.00% (2012-13), 58.93% (2013-14) and 55.56% (2014-15);

(iv) Management Committee Meeting: 64.10% (2012-13), 69.70% (2013-14) and 73.08% (2014-15);

(v) Serious Complaints Committee Meeting: 64.29% (2012-13), 57.69% (2013-14) and 50.00% (2014-15); and

(vi) Operations Advisory Committee Meeting (set up in July 2014): 82.61% (2014-15).

- (i) The number of scheduled and surprise observations of CAPO's investigations and visits to the premises of CSD carried out by the IPCC during the reporting period was as follows –

Year	Number of notifications of CAPO's investigations received by IPCC	Number of observations of CAPO's investigations conducted by IPCC	Number of pre-arranged observations of CAPO's investigations	Number of surprise observations of CAPO's investigations	Number of visits conducted in premises under CSD
2012-13	2980	2012 (67.5%)	1667	345	71
2013-14	2971	2471 (83.2%)	2128	343	117
2014-15	2847	2259 (79.3%)	2242	17	62

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 (CIU)/ Complaints Committee, (b) the Immigration Department, (c) the Customs and Excise Department, and (d) Independent Commission against Corruption Complaints Committee, as well as the results of investigations and the number of disciplinary, civil and/or criminal proceedings initiated and concluded. Please indicate whether HKSAR is considering establishing independent complaint mechanisms in the above mentioned law enforcement departments.

C&ED

24.1 Complaints of torture fall outside the investigation purview of C&ED. Upon receipt of complaints of such nature, C&ED will refer them to the Police for further investigation.

24.2 C&ED received 21 complaints of assault between 2012 and 2014. 17 of them were found unsubstantiated after police investigation while four are still under investigation by the ICAC or the Police.

24.3 No C&ED officers were subject to any disciplinary, civil or criminal proceeding in relation to the above complaints.

CSD

24.4 In 2014, CSD’s Complaints Investigation Unit received 94 complaints from persons in custody and members of the public. During the year, CSD’s Complaints Committee examined 87 complaints, among which two were substantiated. None of these cases were related to torture or ill-treatment.

ImmD

24.5 Between June 2012 and June 2015 (since the last report), ImmD has not received any complaints as mentioned.

24.6 ImmD has procedures in place including a review mechanism to ensure all complaints are considered fairly and objectively.

ICAC

24.7 The ICAC Complaints Committee monitors, and where it considers appropriate to review, the handling by ICAC of non-criminal complaints by anyone against ICAC and officers of ICAC. Please refer to the following tables for the updated figures on complaints and allegations against ICAC and its officers. All complaints in the years being reported were not related to torture.

Year	No. of complaints received	Total no. of allegations received	Category of allegation (%)			
			Misconduct	Abuse of power	Neglect of duties	Inadequacy of ICAC procedures
2012	19	57	53	14	28	5
2013	31	86	44	15	37	4
2014	16	66	47	5	45	3

Year	No. of complaints considered	No. of complaints either substantiated or partially substantiated

2012	22	2
2013	21	5
2014	21	4

Article 14 – Legal redress for victims of torture and an enforceable right to fair and adequate compensation

25. With reference to para. 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 made, the number granted, the amounts awarded and those actually paid in each case. Please also include updated and detailed information on the rehabilitation programmes, including medical and psychological assistance provided to victims of torture and other ill-treatment.

25.1 Victims of torture or ill-treatment may complain to the relevant authorities, who will carry out a full and impartial investigation as to whether or not the alleged perpetrator has committed a criminal offence and prosecuted accordingly. In addition, the court has the power to order a convicted offender to compensate the victim under the Criminal Procedure Ordinance (Chapter 221). They may also seek compensation under the Criminal and Law Enforcement Injuries Compensation Scheme which provides financial assistance both to those who are injured, disabled or killed as a result of crime of violence and to those who are accidentally injured, disabled or killed by a law enforcement officer using a weapon in the execution of his duty, and to their dependants in case of death in both situations. In 2013-14, a total of HK\$5.18 million was paid out under the Scheme to 207 cases.

25.2 They also have the right to seek redress by way of civil proceedings under appropriate circumstances, including applying to the courts for judicial review or bringing civil actions, and such civil redress is not conditional upon the existence of a criminal conviction. In *Abid Saeed v Secretary for Justice* [2015] 1 HKLRD 1030, the plaintiff claimed damages for unlawful detention, unlawful handcuffing and unlawful strip searches conducted on him during the period of detention. The Court held that aggravated damages may be awarded where there were humiliating circumstances at the time of the arrest or during the period of detention or those responsible for the arrest or detention had behaved in a “high-handed, insulting, malicious or oppressive manner”.

25.3 The Court found that the strip searches done against the plaintiff during the period of detention amounted to trespass to the person at common

law, and the unlawful strip searches constituted cruel, inhuman or degrading treatment, contrary to Article 3 of the HKBOR, and interfered with his right to be treated with humanity and with respect for dignity, contrary to Article 6(1) of the HKBOR. The Court awarded HK\$100,000 for unlawful detention, HK\$30,000 for unlawful handcuffing and HK\$80,000 for unlawful strip searches as damages.

25.4 The HKSAR Government provides medical and psychological assistance to victims of torture or ill-treatment, where appropriate, to assist their recovery and rehabilitation.

25.5 The HKSAR Government's policy objective is to help persons with disabilities develop their capabilities as well as to build a barrier-free living environment with a view to enabling persons with disabilities to participate in full both in social life and personal growth, and enjoy equal opportunities.

25.6 To address the distinctive needs of persons with different type and level of disabilities, the HKSAR Government implements multi-pronged initiatives to meet their needs. It provides a wide range of rehabilitation services which include pre-school rehabilitation, special education, vocational rehabilitation, day care, community support, vocational rehabilitation and rehabilitation care services.

25.7 The HKSAR Government has been allocating additional resources to strengthen the rehabilitation services. The overall recurrent expenditure for supporting persons with disabilities has increased from HK\$16.6 billion in 2007-08¹³ to HK\$26.6 billion in 2014-15, representing an increase of 60%.

Article 16 – Prevention of other acts of cruel, inhuman or degrading treatment or punishment

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. Please also provide information on efforts to promote positive, non-violent and participatory forms of child-rearing and discipline and to raise awareness about harmful effects of corporal punishment, as recommended by the Human Rights Committee (CCPR/C/CHN-HKG/CO/3, para. 16).

¹³ The United Nations Convention on the Rights of Persons with Disabilities has been extended to the HKSAR since August 2008.

26.1 There are provisions under the Child Care Services Regulations (Chapter 243, sub. leg. A) which prohibit corporal punishment of children in childcare centres and mutual help childcare centres. According to section 27 of the Offences against the Person Ordinance (Chapter 212), it is unlawful for a person over the age of 16, including a parent, who has the custody, charge or care of a child or young person under the age of 16, to wilfully assault or ill-treat the child or young person, or cause such child or young person to be assaulted, or ill-treated in a manner likely to cause such child or young person unnecessary suffering or injury to his health.

26.2 Under the subvention system of SWD, the subvented day child care services (including the afore-said centres) and residential child care services are required to take all reasonable steps to protect service users from abuse, including physical abuse. In case these service providers encounter suspected child abuse incidents, they should handle the incidents pursuant to the Procedure Guide for Handling Child Abuse Cases.

26.3 Besides legal protection, to safeguard the well-being of children, SWD and NGOs provide a range of preventive, supportive and remedial welfare services, including public education, parent education, support groups, counselling services, etc. to enhance the parents' knowledge on the physical and psychological development of children, effective parenting skills, communication skills, emotion and stress management as well as dealing with children's behavioural problem.

26.4 SWD launches the "Strengthening Families and Combating Violence" publicity campaign every year to organise territory-wide and district-based publicity and public education programmes to arouse public awareness of the importance of family solidarity, prevention of child abuse and domestic violence as well as to encourage people in need to seek help. The publicity activities in recent years included promoting, through the means of publicity videos, animations and posters, the message that corporal punishment and verbal abuse should not be used during the course of child discipline, and that domestic violence not only harms the victims but may also cause lasting psychological damages to the children seriously affecting their personality development and growth.

26.5 The Family Life Education Resource Centre of SWD provides a wide variety of multi-media resource materials on loan to the HKSAR Government departments and NGOs for running family life education programmes with a view to enhancing family functioning, strengthening family relationship and preventing family breakdown.

27. With reference to the recommendations of the Human Rights Committee (CCPR/C/CHN-HKG/CO/3, para. 21), the Committee on the Elimination of Discrimination against Women (CEDAW/C/CHN/CO/7-8, para. 65) and 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 whether HKSAR considers repealing the “two-week rule”, whereby migrant domestic workers have to leave the territory within two weeks upon termination of their contracts, as well as 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 HKSAR.

Protecting the rights and benefits of FDHs

27.1 The HKSAR Government is committed to safeguarding the rights and benefits of over 335 000 FDHs in the HKSAR, who are mostly women from the Philippines and Indonesia. FDHs receive full and equal protection under the Employment Ordinance (Chapter 57). They are further protected by the Standard Employment Contract prescribed by the HKSAR Government under which they enjoy a Minimum Allowable Wage, free accommodation, free meals (or food allowance), free medical treatment, free return passage, etc. The HKSAR Government will not tolerate any illegal acts, and will take stringent enforcement and prosecution action against any malpractice. Various promotional and publicity efforts have been undertaken by the Labour Department (“LD”) in raising FDHs’ awareness of their statutory and contractual rights, as well as the channels for seeking assistance if and where necessary, including producing practical guides, videos, leaflets and posters in the mother languages of FDHs, staging roving exhibitions, organising briefings, and placing advertisements in local Filipino and Indonesian newspapers to promote the relevant provisions of the Employment Ordinance. Relevant publicity materials in the mother languages of FDHs are also disseminated through the Consulates-General (“CGs”) concerned, FDH groups, NGOs and government offices including District Offices of the Home Affairs Department and ImmD, as well as uploaded to the LD’s website so that FDHs may gain access to them anytime, even before their arrival in the HKSAR. Information packs on their statutory and contractual rights together with channels for seeking assistance are distributed to newly-arrived FDHs through an NGO at the Hong Kong International Airport to educate FDHs about their rights immediately upon their arrival.

27.2 Since 2014, LD has stepped up its promotional and educational efforts to enhance FDHs' awareness about their employment rights and benefits. For example, LD arranges publicity videos in FDHs' mother languages be screened at the video walls outside Victoria Park and Urban Council Centenary Garden when many FDHs gather during rest days. More information kiosks are staged at some popular gathering places of FDHs during rest days for screening publicity videos and distributing information packs. While the on-going publicity continues to focus on employment rights and benefits, LD also includes in the publicity materials messages on how FDHs should deal with situations involving intrusion of their personal safety and confiscation of their identity documents by third parties, as well as Government channels for them to seek redress. Advertisements containing these messages are regularly placed at local Filipino and Indonesian newspapers. A handy card in the mother languages of FDHs on their employment rights and complaint channels is produced and widely distributed to FDHs to enhance their awareness in this regard.

27.3 LD has also stepped up collaboration with FDHs' home countries in promoting and safeguarding the employment rights and benefits of FDHs in the HKSAR. An inter-departmental regular liaison mechanism with both the Indonesian and Philippines CGs has been set up respectively since 2014, under which the governments discuss matters requiring mutual attention concerning FDHs; exchange information about problematic employment agencies ("EAs"), employers and FDHs for follow-up actions by relevant government authorities; and coordinate promotional efforts. LD has also joined the Welcome Programme organised by the Indonesian CG, the regular briefings organised by the Philippines CG for newly-arrived FDHs starting from June 2014, and the major social/ cultural events organised by CGs for their nationals in the HKSAR to provide FDHs with information on their employment rights and channels for seeking redress while working in the HKSAR. This has received positive feedback from FDHs.

27.4 FDHs who feel aggrieved are encouraged to report their cases to the relevant authorities immediately. Like local employees, FDHs receive full and equal protection under the Employment Ordinance, and have free access to the conciliation and consultation services provided by LD. The HKSAR Government will take appropriate follow-up actions immediately upon receipt of complaints. Where there is sufficient evidence, the HKSAR Government will not hesitate to prosecute the employers and/or EAs who have abused or exploited their helpers in contravention of the law. Some of the offences created by Part XII of the Employment Ordinance which regulates the operation of EAs are punishable by a maximum fine of HK\$50,000. In addition, LD may revoke the licences of EAs on justifiable grounds such as overcharging of

commission from job-seekers. To strengthen the monitoring of EAs, LD has increased manpower to conduct more inspections of EAs and is in the course of drafting a Code of Practice for the industry to tighten the regulation of EAs.

“Live-in Requirement”

27.5 As in many other jurisdictions, it has been the HKSAR Government’s established policy that priority in employment is accorded to the local workforce, and importation of workers is only allowed where there is proven manpower shortage in certain trades that cannot be filled by local workers. In accordance with this principle, FDHs have been imported since the early 1970’s to meet the acute shortfall of local live-in domestic workers. The “live-in requirement” is the cornerstone of and prerequisite for the policy of importing FDHs in the HKSAR and it has been clearly specified in the Standard Employment Contract (“SEC”) for FDHs.

27.6 Apart from the above cardinal policy considerations, the employers’ affordability in providing separate accommodation to their FDHs, the additional medical costs, insurance and other risks by allowing FDHs to live out as well as issues such as the additional pressure on private housing and public transportation, etc. should also be taken into account. The HKSAR Government considers it necessary to retain the “live-in requirement” and the relevant requirements specified in SEC for FDHs.

“Two-week rule”

27.7 Under the existing policy, FDHs must leave the HKSAR upon completion of their contract or within two weeks from the date of termination of their contract, whichever is earlier. The main purpose of the “two-week rule” is to allow sufficient time for FDHs to prepare for their departure; it is not to facilitate them to find new employers. The same requirement also applies to foreign workers who are hired from overseas to work here under other labour importation schemes. The policy does not preclude FDHs from applying to work here again after returning to their place of origin. The cost of the return flight is fully borne by the FDH employer as stipulated under the SEC for employment of FDHs.

27.8 Appropriate flexibility is allowed under the present arrangement. Where the employer is unable to continue with the contract due to external transfer, migration, death or financial reason, or where there is evidence suggesting that the FDH has been abused or exploited, discretion may be exercised to permit the FDH concerned to change employer in the HKSAR without having to return to their place of origin.

27.9 If the employers are found to have breached the terms of SEC or have exploited the FDH which in turn resulted in the early termination of the employment contract, their future application for FDH will not be approved.

27.10 The personal safety of any person in the HKSAR (including FDHs) is protected by law. Any allegation of abuse or exploitation will be taken seriously by the HKSAR Government. FDHs who are abused or assaulted by their employers or others are advised to contact the Police and report any unlawful acts as soon as possible.

27.11 The “two-week rule” is necessary for maintaining effective immigration control and helps to prevent FDHs from deliberately breaching contract for changing employers or taking up illegal work in the HKSAR after contract termination. We have no plans to change this effective immigration control measure.

27.12 In 2012, 2013 and 2014, the Police received respectively 40, 37 and 38 reports of wounding and serious assault cases involving FDHs attacked by their employers, and 60, 64 and 57 reports of wounding and serious assault cases involving FDHs attacked by other people.

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

28.1 To follow up on the judgment of the CFA in the case of *W v Registrar of Marriages* (2013) 16 HKCFAR 112, the HKSAR Government has set up the Inter-departmental Working Group on Gender Recognition (“IWG”) to consider legislation and incidental administrative measures that may be required to protect the rights of transsexual persons in the HKSAR in all legal contexts, and to make recommendations for reform as appropriate.

28.2 The scope of the IWG’s study includes both recognition and post-recognition issues. As regards recognition issues, the IWG is reviewing issues such as various options for a gender recognition scheme, the qualification criteria and the application procedure. Medical and evidential requirements, including whether a transsexual person who has not yet completed full sex re-assignment surgery should be allowed to change his or her sex, are amongst the issues to be considered by the IWG. As for post-recognition issues, the IWG is reviewing all the existing legislative provisions and administrative measures in the HKSAR which may be affected by legal gender recognition, so that any required legislative or procedural reform can be followed up by the

HKSAR Government.

28.3 The IWG commenced its work in January 2014. It has held 11 official meetings to-date with further official meetings planned for 2015. In addition, the IWG has held nine informal meetings so far, to consult medical experts, leading academics, transsexual groups and other stakeholders. The IWG will continue to consult widely in the course of its work. It will also issue one or more consultation papers to gather the views of interested parties and the public generally before finalising its recommendations to the HKSAR Government.

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

29.1 The HA conducts around 50 operations on patients under the age of 18 with Disorders of Sex Development (“DSD”) annually. The HA has not compiled any statistics on children born with DSD.

Other issues

30. Please provide updated information on the process to extend the application of the Optional Protocol on the sale of children, child prostitution and child pornography to HKSAR and, if relevant, on the reasons for the delay in doing so.

30.1 The HKSAR has a solid legislative framework to underpin our robust efforts to combat human trafficking, child pornography, child prostitution and child sex tourism. There is no shortage of laws for combating activities involving sexual abuse of children within our territory. The Prevention of Child Pornography Ordinance (Chapter 579) prohibits the production, possession and publication of child pornography. It has amended the Crimes Ordinance (Chapter 200) to prohibit the use, procurement or offer of children for making pornography or for live pornographic performances, to extend the application of certain sexual offence provisions of that Ordinance to acts committed against children outside the HKSAR, and to prohibit the making of arrangements relating to the commission of those acts and the advertisement of such arrangements. The LEAs will continue to maintain close co-operation with partners and counterparts locally and overseas to combat the relevant illegal behaviour.

Non-refoulement claims made and handled since end 2009

Year	Claims made	Claims determined	Claims withdrawn or no further action can be taken	Pending claims (at year end)
End 2009 (commencement of the enhanced administrative mechanism after Court of First Instance judgment on <i>FB</i> case)				6 340
2010 and 2011	3 241	1 146	1 988	6 447
2012	1 174	1 575	1 154	4 892
2013	491	1 813	778	2 792
2014 (January and February)	19	221	89	2 501
<i>From end 2009 to commencement of the USM in March 2014 (sub-total)</i>	4 925	4 755 (Note 1)	4 009	
March 2014 (commencement of the USM)				
(a) Torture claims pending (Note 2)				2 501
(b) Non-refoulement claims lodged by persons whose torture claim had been rejected or withdrawn (Note 3)				2 962
(c) Non-refoulement claims lodged on applicable grounds other than torture (Note 3)				1 236
<i>Sub-total</i>				6 699
2014 (March to December) (after commencement of the USM)				
Non-refoulement claims	4 634	826	889	9 618
2015 (January to May)	1 827	1 047	514	9 884
<i>Sub-total (from commencement of the USM to May 2015)</i>	6 461 (Note 4)	1 873 (Note 5)	1 403	

- Note 1 :* Since the commencement of the enhanced administrative mechanism (at end 2009) to before the commencement of the USM (end of February 2014), 4 755 torture claims have been determined, out of which 24 were substantiated (including 5 substantiated by the TCAB on appeal), 1 682 persons had left the HKSAR, 2 750 had lodged a non-refoulement claim under the USM on other grounds, 299 remained in the HKSAR for other reasons (e.g., imprisoned, pending prosecution, lodged a judicial review, etc.)
- Note 2 :* At the commencement of the USM (March 2014), there were 2 501 pending torture claims, which have become non-refoulement claims under the applicable transitional arrangements.
- Note 3 :* These non-refoulement claims can be screened only after the commencement of the USM.
- Note 4 :* Including 1 294 claims lodged by persons whose torture claim had been rejected or withdrawn (or those who had previously lodged an asylum claim with the UNHCR).
- Note 5 :* Between the commencement of the USM in March 2014 and May 2015, 1 873 non-refoulement claims have been determined, out of which 8 are substantiated (including 2 substantiated by the TCAB on appeal), 286 persons have departed or are pending removal arrangements, 1 441 have lodged an appeal to the TCAB, 138 remain in the HKSAR for other reasons (e.g., imprisoned, pending prosecution, lodged a judicial review, etc.)

Profile of Non-refoulement Claimants

The USM commenced operation on 3 March 2014. Up to 31 May 2015, there were 9 884 outstanding non-refoulement claims in total. An analysis on the particulars of the claimants is as follows:

(a) Sex

Male	75%
Female	25%

(b) Age

Under 18	5%
18 to 30	37%
31 to 40	40%
Above 40	18%

(c) Nationality

Pakistani	20%
Indian	19%
Vietnamese	15%
Bangladeshi	13%
Indonesian	11%
Filipino	4%
Sri Lankan	3%
Nepalese	3%
Nigerian	2%
Gambian	2%
Others	8%

(d) Status in the HKSAR

Overstayers	50%
Entered HK illegally	43%
Others ¹⁴	7%

(e) The time lag between entering the HKSAR and making a claim

Under 3 months	26%
3 to 12 months	33%
13 to 24 months	16%
Above 24 months	23%
Pending clarification	2%

[Note: The average time lag is 19 months for overstayers¹⁵]

¹⁴ Including persons refused entry and persons born in the HKSAR but their right of abode in the HKSAR is not established.

¹⁵ If persons who entered illegally (based on the date on which they claimed to arrive at the HKSAR) are included, the average would be 13 months.