



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

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Committee against Torture

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List of issues prior to the submission of the fifth periodic report of the Hong Kong Special Administrative Region (CAT/C/HKG/5)*

Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations

Articles 1 and 4

1. In light of the Committee's previous concluding observations (paras. 5 and 6),¹ has the definition of torture contained in article 1 of the Convention been fully incorporated into domestic law, including discrimination of any kind? Has the Hong Kong Special Administrative Region (HKSAR) considered adopting a more inclusive definition of the term "public official" under Section 2 (1) of the Crimes (Torture) Ordinance in the definition of torture as to clearly include all acts inflicted by or at the instigation of or with the consent or acquiescence of all public officials or other persons acting in an official capacity? In addition, please provide information on the steps taken toward the abolishment of the defense contained in section 3 (4) of the Crimes (Torture) Ordinance.

2. Please clarify the status of the Convention in the domestic legal system. Have the rights contained in the Convention been invoked by domestic courts, either as a ground for a case or as interpretative guidance for legal norms.

* The present list of issues was adopted by the Committee at its forty-fifth session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies to this list of issues will constitute the next periodic report under article 19 of the Convention.

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

Article 2²

3. Please provide information on the legal aid system implemented in HKSAR, including on the criteria for eligibility, functioning and financing of the system.

4. Please provide information on the measures taken or envisaged to strengthen the efforts of HKSAR, including allocated resources, in adequately preventing, combating and punishing all forms of violence against women and children, inter alia, domestic violence and trafficking. What progress has been obtained through the Enhanced Central Domestic Violence Database? In light of the Committee's previous concluding observations (para. 13), please elaborate on the measures taken:

(a) To fully implement the Domestic Violence Ordinance which took effect in August 2008. What are the types of compensation and protection provided to victims of domestic violence, and what are the relevant procedures?

(b) To address domestic violence through policy and social measures. Is there a domestic programme to combat and prevent violence against women? What is its content?

(c) To investigate all allegations of domestic violence.

(d) To develop domestic public-information and awareness-raising campaigns and stimulate broader public discussions in order to address attitudes and stereotypes that may lead to violence against women.

Article 3

5. With reference to the Committee's previous concluding observations (para. 7) and further to the HKSAR's follow-up replies (CAT/C/HKG/CO/4/Add.1, paras. 4-7), please provide information on:

(a) Progress made in introducing legislation to provide for a statutory mechanism for the handling of torture claims based on article 3 of the Convention. When is this legislation expected to be adopted, if not yet adopted? Please also provide detailed information on the legislation itself, including information on any cases that have been petitioned under it, if the legislation has already been implemented.

(b) Any other measures taken or envisaged to bring domestic legislation and policy into conformity with article 3 of the Convention, thereby preventing any persons from being expelled, returned or extradited outside HKSAR where there are substantial grounds for believing that they would be in danger of being subject to torture. Please comment on reports that the Immigration Ordinance does not accord foreigners the right to have asylum claims recognized, including comments on procedures that will be or have been implemented to distinguish asylum/refugee claims based on torture and those based on other grounds.

² The issues raised under article 2 could also imply different articles of the Convention, including but not limited to article 16. As stated in general comment No. 2 (CAT/C/GC/2), paragraph 3, "the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter "ill-treatment") under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. [...] In practice, the definitional threshold between ill-treatment and torture is often not clear." See further chapter V of the same general comment.

(c) The situation of children and women asylum-seekers and refugees in HKSAR. Please provide updated information on:

i. The number of reported cases of trafficking as well as the number of such cases which have resulted in the alleged trafficked person being deported on grounds of illegal immigration;

ii. Criteria used to identify victims of trafficking and the steps taken to ensure that victims of trafficking are not deported on the grounds of being illegal immigrants;

iii. Procedures in place to make victims aware of their right to apply for legal alternatives to deportation; and

iv. Support and services provided by HKSAR to victims of torture, including examples of support provided for them, figures on the number of victims who received services, and duration of the provision of each type of service.

(d) The measures taken or envisaged to guarantee the rights of asylum-seekers to information, interpretation, legal assistance and judicial remedies.

(e) The measures in place for the protection of asylum-seekers and refugees, including protection from arbitrary detention, access to food, medical assistance and education, and ability to work while asylum claims are pending. Please comment on whether the new legislation will address these issues.

(f) The number of cases in which individuals have based asylum or refugee requests on torture claims, as well as information on the number of cases where refugee or asylum status have been granted.

(g) The measures taken to strengthen cooperation with UNHCR, in particular in the formulation of a clear and coherent asylum policy based on the principle of non-discrimination.

(h) Change in HKSAR's view, if any, on the extension of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol to HKSAR (CERD/C/CHN/CO/10-13, para. 29).

Articles 5 and 7

6. Since the consideration of the previous report, please indicate whether the HKSAR has rejected, for any reason, any request for extradition of an individual suspected of having committed an offence of torture, and has started prosecution proceedings as a result. If so, please provide information on the status and outcome of such proceedings.

7. With reference to the Committee's previous concluding observations (para. 8), please provide up-to-date information on the discussion between HKSAR and China with respect to arrangements for the transfer of fugitive offenders and sentenced persons. If resorting to the use of "death penalty safeguards" in the surrender of fugitive offenders or sentenced persons, please provide information on:

(a) The number of cases where "surrender" or removals subject to safeguards or guarantees have occurred during the reporting period;

(b) The HKSAR's minimum requirements for these safeguards;

(c) The measures of subsequent monitoring undertaken by HKSAR in such cases as well as the legal enforceability of these safeguards.

8. Please provide information on domestic legislation establishing universal jurisdiction over the offence of torture and examples of current practice in this respect.

Article 10

9. In light of the Committee's previous concluding observations (para. 9) and further to the information provided in the updated Core Document (HRI/CORE/CHN/2010 (HKG), paras. 65-72), please provide information on the instruction and training provided for:

(a) Law enforcement personnel at all levels with respect to the treatment of detainees and the non-refoulement obligation of article 3, as well as on the absolute nature of the prohibition of torture. Please provide information on training in areas such as non-coercive and non-violent investigatory techniques and gender-sensitive training in legal and medical institutions.

(b) Medical personnel involved with detainees on the guidelines to detect and document signs of torture and ill-treatment in accordance with international standards, such as those outlined in the Istanbul Protocol. Does such training also cover issues with regard to treatment and rehabilitation of victims of torture? What safeguards are in place to ensure that medical personnel are not subject to police intimidation and are able to examine victims independently of the police?

(c) Judges and lawyers on the specific obligations under the Convention, especially in the training courses provided by the Judicial Studies Board.

10. Please indicate if the HKSAR has developed a methodology to assess the effectiveness and impact of training/educational programmes on the reduction of cases of torture, violence and ill-treatment, and if so, please provide information on the content and implementation of such methodology, as well as on the results of the implemented measures.

Article 11

11. Please provide information on any new interrogation rules, instructions, methods and practices, as well as arrangements for the custody of persons subject to any form of arrest, detention or imprisonment, that may have been introduced since the consideration of the last periodic report, and the frequency with which they are reviewed, with a view to preventing any cases of torture or ill-treatment.

12. With reference to the Committee's previous concluding observations (para. 10) and further to the HKSAR's follow-up replies (CAT/C/HKG/CO/4/Add.1, paras. 8-16):

(a) Please provide information on the practical steps taken to ensure effective monitoring of compliance by law enforcement officials with the guidelines on search of detainees and prisoners.

(b) Please provide information on the procedural requirements for a strip search, including the process involved in reviewing the order for a strip or body-cavity search such as whether the review of the order takes place prior to the search to approve it and whether any measures are in place to keep officials accountable to these procedures.

(c) Please elaborate on the reasons and the scope of a strip search recorded in the Police's Communal Information System (CIS).

(d) Please provide detailed information on the number of cases in 2008, 2009 and 2010 in which strip or body-cavity searches were conducted on detainees,

disaggregated by gender, location of detention and detaining agency (Police, Immigration Department, Correctional Services), reason for detention, including the reasoning or justification used by the relevant police or prison official who ordered the strip or body-cavity search to be conducted.

(e) Please provide information on the oversight mechanisms in place to ensure that detainees are aware of their right to complain, as well as to ensure that those who do complain are not subject to retribution by police, immigration or detention officials who carried out the strip or body-cavity search.

(f) Please provide information on the number of cases in which individuals have submitted complaints relating to the strip or body-cavity search process (disaggregated by age, gender, location of detention and detaining agency), as well as information on the number of such complaints that have led to investigations, and with what outcomes for the alleged perpetrator and the victim. Has there been any case where criminal offences are involved?

(g) Please provide information on the measures in place to limit the use of invasive strip or body-cavity searches to the greatest extent possible. Please also update the Committee on the measures taken to adopt and implement measures to reduce the need to conduct manual body-cavity searches, such as the use of radiographic equipment.

13. Please provide up-dated information on the number of imprisoned children and the occupancy rate of the accommodation capacities for children, since consideration of the previous periodic report. Regarding juvenile detention facilities, please elaborate on measures taken to ensure that children deprived of their liberty are kept separate from adults, and that children are further held in separate facilities by age-group. In that regard, is the HKSAR considering withdrawing all reservations with regard to the Convention on the Rights of the Child (CRC/C/CHN/CO/2, paras. 8-9), especially its article 37(c)?

Articles 12 and 13

14. Please provide detailed statistical data, disaggregated by crime committed, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, on related investigations, prosecutions, convictions, and on the penal or disciplinary sanctions applied.

15. In light of the Committee's previous concluding observations (para. 11), please provide information and statistics on how many prosecutions have been carried out of police officers or other law enforcement personnel for abuses committed during police operations in the context of prostitution-related offences.

16. In light of the Committee's previous concluding observations (para. 12) and further to the HKSAR's follow-up replies (CAT/C/HKG/CO/4/Add.1, paras. 17-20), please provide updated information on:

(a) Steps taken to establish a fully independent mechanism mandated to receive and investigate complaints on police misconduct and empowered with the executive authority to formulate binding recommendations in respect of investigations conducted and findings regarding such complaints.

(b) The work, functioning, composition and appointment of members of the Independent Police Complaints Council (IPCC). Please comment on reports with respect to the IPCC's lack of independence in investigating complaints, and effectiveness in implementing its recommendations, as well as absenteeism by some members, given that the IPCC only has advisory and oversight functions and all IPCC members are appointed by the Chief Executive to whom the IPCC can make recommendations. In this regard,

please provide information on any steps taken to ensure the credibility and independence of CAPO, particularly given that many of the investigating officers of this body come from the police forces that it is mandated to investigate, which creates a conflict-of-interest potential.

(c) Resources—monetary or otherwise—provided to members of the IPCC who are reportedly appointed to and who participate in the Council on a voluntary basis. Please provide information on measures that are in place to ensure that members of the IPCC have the time and resources necessary to effectively carry out the mandate of the IPCC, including any mandatory attendance requirements.

(d) Efforts made to increase witness participation in the Interviewing Witnesses Scheme of the IPCC, as well as the statistics on witness participation rates.

(e) Statistical data on the number of complaints received by CAPO in 2008, 2009 and 2010, the number of such complaints that resulted in investigations, the number of investigations that led to prosecution of perpetrators, the number of prosecutions that led to convictions and detailed information on the punishments provided to those convicted, as well as the reparation or compensation provided to the complainants in these cases. Please include information on the reasons for which cases have been determined “not pursuable”; the criteria used to determine whether a claim is unsubstantiated; and the reasons for which complaints have been withdrawn. In particular, please clarify what measures are in place to ensure that complainants are not coerced by police or other officials into withdrawing or dropping their complaints.

(f) Please provide information on the number of scheduled and surprise observations of CAPO’s investigations and prison visits carried out by the IPCC in 2008, 2009 and 2010 as well as statistical information on the number of investigations carried out by CAPO in these same years. Please give examples of situations when the IPCC was not satisfied with the result of investigation carried out by the Complaints Against Police Office (CAPO) and asked CAPO to reinvestigate the complaint.

17. Please elaborate on steps taken towards the establishment of a national human rights institution in line with the Paris Principles. What progress has been made to strengthen the Equal Opportunities Commission given that its accreditation status remains “C”, which means non-compliance with the Paris Principles. Please provide detailed information about the role of the Ombudsman Office and the Equal Opportunities Commission in protecting rights contained in the Convention and combating immunity.

18. Are there accessible and child-friendly complaint mechanisms available to children deprived of their liberty in case of ill-treatment and abuse in justice or care institutions?

Article 14

19. Please provide information 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 examination of the last periodic report in 2008. This information should include the number of requests made, the number granted, the amounts of compensation ordered, and those actually provided in each case.

Article 16

20. What safeguards are in place to end the practice of corporal punishment in all settings, including the family and schools?

Other issues

21. Please provide updated information on the measures taken by the HKSAR to respond to any threats of terrorism and please describe if, and how, these anti-terrorism measures have affected human rights safeguards in law and practice, and how it has ensured that the measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005). Please describe the relevant training given to law enforcement officers; the number and types of persons convicted under such legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist measures in law and in practice; whether there are complaints of non-observance of international standards; and the outcome of such complaints.

22. In light of the Committee's previous concluding observations (para. 14), please provide any other information on new measures and developments undertaken to complete the process to give effect to the provisions of the Optional Protocol on the sale of children, child prostitution, and child pornography, so as to allow its application in HKSAR.

General information on the domestic human rights situation, including new measures and developments relating to the implementation of the Convention

23. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the domestic level, that have occurred since the previous periodic report, including any relevant jurisprudential decisions.

24. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the domestic level, since the previous periodic report, including on any domestic human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

25. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the last periodic report in 2008, including the necessary statistical data, as well as on any events that occurred in the HKSAR and are relevant under the Convention.