

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

**Concluding observations of the Committee against Torture**  
*(Extracts for follow-up)*

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

(...)

**C. Principal subjects concerns and recommendations**

(...)

**Refugees and non-return to torture**

7. While the Committee appreciates the cooperation of HKSAR authorities with UNHCR to ensure respect for the principle of non-refoulement and protection of refugees and asylum seekers, it is still concerned that there is no legal regime governing asylum and establishing a fair and efficient refugee status determination procedure. The Committee is also concerned that there are no plans to extend to HKSAR the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol.

**The HKSAR should:**

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

(...)

### **Strip search and body cavity search**

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

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

#### **The HKSAR should:**

**a) ensure that strip searches for persons in police custody are limited to cases where there is a reasonable and clear justification; if carried out, the search has to be conducted with the least intrusive means and in full conformity with article 16 of the Convention; an independent mechanism to monitor those searches, upon request of the detainee, should also be provided;**

**b) establish precise and strict guidelines regulating the strip searches conducted by all law-enforcement officials, including those from the Immigration and Correctional Services Department; if these guidelines are already in place, they should be strictly abided by and their observance consistently monitored; records of searches should be made and all abuses committed should be thoroughly investigated and, if substantiated, punished; and**

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

(...)

### **Independent investigation of police misconduct**

12. The Committee welcomes the enactment of the Independent Police Complaints Council (IPCC) Ordinance on 12 July 2008 converting the IPCC into a statutory body, as previously recommended by this Committee. However, the

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

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

(...)

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

(...)

-----