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Excellency,

In my capacity as Rapporteur for Follow-up on Conclusions and Recommendations of the United Nations Committee against Torture, I refer to the examination of the report of Hong Kong Special Administrative Region ("HKSAR"), forming part of the fourth periodic report of China (CAT/C/HKG/4) by this Committee at its 844th and 846th meetings, held on 7 and 10 November 2008 (CAT/C/SR.844 and 846). The Committee adopted its Concluding Observations (CAT/C/HKG/CO/4), in which it requested that further information be provided within a year in relation to the specific issues of concern listed in paragraphs 7, 10, and 12.

On behalf of the Committee, allow me to express appreciation for your letter of 7 January 2010 (CAT/C/HKG/CO/4/Add.1) providing your Government's comments on the above-mentioned paragraphs. I have reviewed your response with care, and as Rapporteur on Follow-up, I would be grateful for clarification on the following matters, where sufficient information has not yet been provided to complete an analysis of the progress made regarding implementation of aspects of the Convention.

In paragraph 7, the Committee expressed its concern over the lack of a legal regime governing asylum and establishing a fair and efficient process for refugee status determination. The Committee is pleased to note the information provided indicating that HKSAR plans to introduce legislation to "provide a statutory mechanism for the handling of torture claims based on Article 3 of the Convention." The Committee would be grateful to receive updated information on the status of this legislation—has it been adopted yet, and if not, when does HKSAR foresee it will enter into force? In addition, please provide detailed information on the legislation itself, as well as information on any cases that have been petitioned under it, if the legislation has already been implemented. Updated information on the number of cases in which individuals have based asylum or refugee requests on torture claims, as well as information on the number of such cases where refugee or asylum status have been granted, would be appreciated.

The Committee would also be grateful for clarification as to whether the new legislation will have any impact on the Immigration Ordinance—in particular, will foreigners have the right to have their asylum claims recognized under the new law, and if not, what procedure will be or has been implemented to distinguish asylum/refugee claims based on fear of torture upon refoulement with those based on other grounds.

.../...

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Please also clarify to what extent, if any, the new legislation will provide for legal aid to asylum seekers and refugees as well as the protections in place for such persons, particularly in light of information before the Committee which indicates that there have been cases of asylum seekers and refugees being arbitrarily detained; having limited access to food, medical assistance and education; and being prohibited from working while their asylum claims are pending. Will/are any of these issues addressed under the new legislation and what mechanisms are in place to inform asylum seekers/refugees of these rights and protections?

The Committee is pleased to note the support and services provided by HKSAR to victims of torture and would appreciate receiving further information about these, including figures on the number of victims that received services and the type of services offered—including rehabilitation and the duration of the provision of each type of service.

The Committee appreciates the information provided with regard to the cases of trafficking in HKSAR and would be grateful to receive updated information on 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 the grounds of illegal immigration. In addition, the Committee would appreciate information on the 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. Furthermore, are victims made aware of their right to apply for legal alternatives to deportation?

The Committee notes with regret the information provided regarding HKSAR's position on the 1951 Refugee Convention and its 1967 Protocol as well as its conviction "not to grant asylum." In this regard, the Committee reiterates its recommendation that the Government consider extending these important international treaties to HKSAR so as to provide the fullest protection possible for refugees and asylum seekers, and to ensure an effective system is in place to ensure that victims of torture and ill-treatment, including trafficking, are not returned to countries where they may face a risk of torture as required by article 3 of the Convention Against Torture.

With regard to the Committee's concerns in paragraph 10 regarding the use of strip searches and body cavity searches by police and prison officials, the Committee appreciates the information provided on the current restrictions and regulations involved in implementing these procedures. The Committee would be grateful to receive 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, and relevant information on the justification used by the relevant police or prison official who ordered the strip or body cavity search to be conducted. The Committee would also appreciate further clarification as to the process involved in reviewing the order for a strip or body cavity search, including clarification on information provided in paragraph 9 of HKSAR's response, which indicates that the Duty Supervisor is required to audit the records for all searches involving the removal of underwear. Please clarify whether this audit takes place prior to the search to approve it, or after the fact. Please also provide the Committee with 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 measures taken to adopt and implement measures to reduce the need to conduct manual body cavity searches, such as the use of radiographic equipment, as mentioned in paragraph 16 of your response.

In paragraph 12 of the Concluding Observations, the Committee expressed its concern over the lack of a fully independent mechanism to receive and investigate complaints of police misconduct, in line with article 12 of the Convention. The Committee is grateful for the information provided by the State party, but remains concerned that (a) the Independent Police Complaints Council (IPCC), despite its statutory status, lacks sufficient resources to be a fully effective oversight mechanism, and additionally (b) it has only an advisory function over the Complaints Against Police Officers (CAPO) which is mandated to receive and investigate complaints of police misconduct. In this regard, the Committee would appreciate receiving detailed information 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 prosecutions of perpetrators, the number of prosecutions that led to convictions of perpetrators, and detailed information on the punishments provided to those convicted as well as the reparations or compensation provided to complainants in these cases. Please include information on the reasons cases have been determined "not pursuable"; the criteria that are used to determine whether a claim is unsubstantiated; and the reasons 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

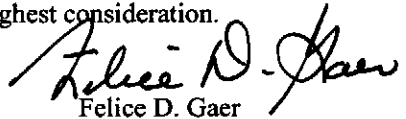
into withdrawing or dropping their complaints, as has been reported according to information before the Committee. Furthermore, of these complaints submitted to and investigated by CAPO, how many were not endorsed by the IPCC, and what were the reasons for this? Please provide information as to any steps 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, creating a potential for conflicts of interest.

Please also clarify whether the above-mentioned complaints mechanisms are the same ones made available to detainees who have been subjected to strip and body cavity searches who may be aggrieved, and how detainees are made aware of their right to complain, as well as to ensure that those who do complain do not fear retribution by police, immigration, or detention officials. Please disaggregate the information on the number of complaints submitted to these mechanisms by grievance, so as to indicate the number of complaints that have been submitted by detainees as a result of strip and body cavity searches, as well as information on the number of such complaints that led to investigations, and with what outcomes for the alleged perpetrators and victims.

The Committee is also concerned over reports on the low participation in the Interviewing Witnesses Scheme of the IPCC—an important part of the IPCC's monitoring and oversight function. In this regard, please provide information on efforts made to increase participation by witnesses as well as statistics on the rates of participation by witnesses. Please also provide detailed information on the resources—monetary or otherwise—provided to members of the IPCC who are reportedly appointed and participate in the Council on a voluntary basis. What measures are in place to ensure that members of the IPCC have the time and resources necessary to effectively carry out the mandate of this body? Please also elaborate on any mandatory attendance requirements that may be in place for IPCC members. Similarly, please provide the Committee with detailed 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.

Upon receipt of additional information, the Committee will be able to assess whether further information may be required. The Committee looks forward to pursuing the constructive dialogue it has started with the authorities of HKSAR on the implementation of the Convention, and in this context, to receiving clarification to its follow-up questions.

Accept, Excellency, the assurances of my highest consideration.



Felice D. Gaer

Rapporteur for Follow-up on Conclusions and Recommendations
Committee against Torture