

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

Concluding observations of the Committee against Torture
(Extracts for follow-up of CAT/C/CHN-HKG/CO/5)

HONG KONG, CHINA

(...)

C. Principal subjects of concern and recommendations

(...)

Pending follow-up issues from the previous reporting cycle

6. The Committee notes with appreciation the compliance of Hong Kong, China with the follow-up procedure. While appreciating some positive legislative (see para. 4 (a) above) and administrative (see para. 5 (b) above) measures, the Committee notes with concern that, according to the data provided by Hong Kong, China, from December 2009 to May 2015, only 32 non-refoulement claims out of 6,628 were considered substantiated, which is indicative of a distinctly high threshold for granting protection. The Committee also takes into account reports on the difficulties claimants face in accessing the decisions of the Torture Claims Appeal Board, which are not published, thereby impeding the effective preparation of their cases. Furthermore, the Committee is concerned at the plans to fast-track the system to address the large backlog of pending applications (of which there are currently more than 10,000), since such a measure may negatively impact the fairness and thoroughness of the screening procedure. It notes with concern the position of Hong Kong, China that the extension to it of the 1951 Convention relating to the Status of Refugees “would subject its immigration regime to abuses and thus undermine public interest”, which prima facie portrays all claimants in need of protection as abusers of the system. In that regard, the Committee is concerned that claims of non-refoulement are not entertained unless the person concerned has overstayed his or her visa and becomes officially “illegal”, forcing potential victims of torture to wait until that period expires in order to register with the unified screening mechanism and gain access to rehabilitation and humanitarian assistance. The Committee also notes with concern that, by failing to give refugee status to unified screening mechanism claimants, it denies them access to legal work, thereby compelling them to live on in-kind assistance below the poverty line for long periods of time (art. 3).

7. The Committee calls on Hong Kong, China to review the non-refoulement claim screening procedure in order to ensure that persons in need of international protection, including those fleeing indiscriminate violence, are fully protected against refoulement. In particular, Hong Kong, China should:

(...)

(b) Enhance the fairness and transparency of the screening process by, inter alia, ensuring that non-refoulement claims are thoroughly and individually examined; allowing sufficient time for claimants to fully indicate the reasons for their application and to obtain and present crucial evidence, such as their own medical expert evidence; and publishing redacted versions of the decisions of the Torture Claims Appeal Board;

(...)

8. Recalling its previous recommendation (see CAT/C/HKG/CO/4, para. 12), the Committee remains concerned that investigations of police complaints continue to be conducted by the Complaints Against Police Office, which is a separate division of the police force. It is also concerned that the Independent Police Complaints Council remains an advisory and oversight body of the investigations of the Complaints Office, with no power to conduct investigations on its own. The Committee regrets the failure of Hong Kong, China to provide complete statistical data with regard to the number of complaints of torture or ill-treatment (including police abuse) received by the Complaints Office in the reporting period, as well as on the outcome of those complaints. It also remains concerned at the lack of an independent and effective mechanism for lodging complaints without fear of reprisals within the detention facilities under the police department, the immigration department or the correctional services department (arts. 12 and 13).

9. **The Committee reiterates its previous recommendation that Hong Kong, China consider establishing a fully independent mechanism mandated to receive and investigate complaints against all officials and ensure that there is no institutional or hierarchical relationship between the investigators of that particular body and the suspected perpetrators of the acts that form the basis of a complaint. The Committee also urges Hong Kong, China to:**

(a) Ensure that the Prosecutor's office is duly informed of all the allegations of torture or ill-treatment received by that particular body and launch investigations on its own initiative whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed;

(b) Guarantee that alleged perpetrators of torture and ill-treatment are immediately suspended from duty for the duration of the investigation, subject to the observance of the principle of presumption of innocence;

(c) Establish confidential complaints mechanisms in all places of detention to facilitate the submission of complaints by victims of torture and ill-treatment to the investigating body, including for obtaining medical evidence in support of their allegations, and to ensure in practice that complainants are protected against any reprisals as a consequence of their complaint or any evidence given;

(d) **Ensure that the suspected perpetrators are duly prosecuted, tried and, if found guilty, punished in a manner that is commensurate with the gravity of their acts.**

(...)

Detention and fundamental legal safeguards

12. The Committee is concerned at consistent reports of massive detentions of persons in the context of demonstrations and the alleged restrictions to the detainees' legal safeguards. In that regard, the Committee takes note of the information provided by Hong Kong, China that 511 persons were arrested in connection with an assembly that followed an annual march on 1 July 2014, and is concerned at information that only 39 lawyers met with the arrestees during their detention (arts. 2 and 16).

13. **Hong Kong, China should ensure that all detainees are afforded in practice all fundamental legal safeguards from the very outset of their deprivation of liberty, including the right to be assisted by a lawyer without delay; to have immediate access to examination and treatment by independent doctors, without conditioning such access on the permission of officials; to be informed of the reasons for arrest and the nature of any charges against them; to be registered at the place of detention; to inform promptly a close relative or a third party concerning their arrest; and to be brought before a judge without delay. Hong Kong, China should adopt effective measures to ensure compliance with its legally prescribed procedures of arrest and monitor the compliance of public officials with the legal safeguards. It should also ensure that those who are suspected of not complying with the legal guarantees or of arresting persons without justifiable reason are investigated and, if found guilty, duly sanctioned.**

(...)

Follow-up procedure

30. **The Committee requests Hong Kong, China to provide, by 9 December 2016, information on follow-up to the Committee's recommendations in paragraphs 7 (b), 9 and 13. In that context, Hong Kong, China is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.**

(...)
