



**Submission to LegCo Panel on Security on the Hearing
of the Hong Kong Special Administrative Region's third report under the
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment
or Punishment
7 June 2016**

1. The United Nations Committee against Torture published the concluding observations with respect to the implementation of the UNCAT in Hong Kong in February 2016.¹ The Committee expressed concerns on various issues. It requested the Hong Kong Government to provide follow-up information in response to the Committee's recommendations on paragraphs 7(b) (non-refoulement mechanism), 9 (complaint mechanism) and 13 (legal safeguards of detainees) by 9 December 2016.
2. Amnesty International Hong Kong urges the Hong Kong Government to expeditiously provide a timetable and plan for the implementation of the concluding observations.

The Chief Executive claimed that he had considered withdrawing from the UNCAT

3. In January, a month after the UN Committee published its unedited concluding observations, CY Leung, the Chief Executive claimed in a press conference, that he considered withdrawing from the UNCAT in response to the rise in number of torture claimants in Hong Kong.² In March, Ambrose Lee Siu-kwong, former Secretary for Security and currently one of the Hong Kong deputies to the National People's Congress suggested to the Central Government that they might consult the Hong Kong government on whether the Hong Kong government considered withdrawing from the UNCAT.³
4. Lai Tung Kwok, Secretary for Security, clarified that the government was not planning to withdraw from the UNCAT, during a meeting in LegCo this April. "The HKSAR Government introduced the USM for the purposes of complying with the Convention against Torture (the Convention), the Hong Kong Bill of Rights Ordinance (Cap. 383), the Immigration Ordinance

¹ UN Committee against Torture. *Concluding observations on the fifth periodic report of china with respect to Hong Kong, China*. CAT/C/CHN-HKG/CO/5. 3 February 2016. Advance Unedited Version released in December 2015.

² Responding the questions on UNCAT CY Leung: Thanks, Oriental Daily (回應「酷刑聲請」問題 梁振英：多謝東方日報), Mingpao instant news, 13 Jan 2016

³ Lee Siu-kwong suggests Beijing to consult HK examining possibility to withdraw from UNCAT (李少光倡京詢港 研退酷刑公約), Mingpao, 12 March 2016

(Cap. 115), and the rulings of the Court of Final Appeal. Even if a reservation made to Article 3 of the Convention or the Convention itself does not apply to Hong Kong, this does not absolve the Hong Kong Government from having to screen non-refoulement claims pursuant to the requirements of our laws and court rulings. As such, for the purpose of our comprehensive review, we have no plans to consider such measures as requesting the Central People's Government to declare that the Convention does not apply to the HKSAR or to make a reservation to certain provisions of the Convention."⁴

5. AIHK believes, the suggestion of withdrawing from the UNCAT, proposed by the Chief Executive and former principal official, shows lack of human rights consciousness and commitment. In our view withdrawing from the UNCAT does not absolve the Hong Kong government's responsibility to screen non-refoulement claims, protect individuals from torture and other ill-treatment and non-refoulement. These responsibilities are also enshrined in article 7 of the International Covenant on Civil and Political Rights (ICCPR), article 3 of the Hong Kong Bill of Rights and article 39 of the Basic Law. The Court of Final Appeal has also held that the screening procedure of torture claims should attain high standards of fairness⁵ and the right not to be "subjected to cruel, inhuman or degrading treatment or punishment". These rights stated in article 3 of the Hong Kong Bill of Rights are non-derogable and absolute.⁶ The admonition to withdraw from the UNCAT, is a huge regression, undermining Hongkongers' human rights protection, which also would result in Hong Kong losing a platform for international analysis.
6. Although Lai Tung Kwok, Secretary for Security, stated in a LegCo meeting that the Government did not plan to withdraw from the UNCAT, the Chief Executive has yet to clarify his stance. AIHK requests the Chief Executive to provide clarification on his statement and guarantee compliance with the UNCAT and Hong Kong's international obligations. The Government should also truthfully explain this matter to the UNCAT in a follow-up report.

Fundamental legal safeguards of detainees

7. The UN Committee against Torture wrote in its concluding observations that the Hong Kong Government "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 be informed of the reasons for arrest and the

⁴ "LCQ18: Comprehensive review of strategy of handling non-refoulement claims", Government press release, 2016-4-13

⁵ *Secretary for Security v. Sakthevel Prabakar*. FACV 16/2003. 8 June 2004.

⁶ *Ubamaka Edward Wilson v. Secretary for Security and another*. FACV 15/2011. 21 December 2012.

nature of any charges against them" and to "inform promptly a close relative or a third party concerning their arrest" . The Committee also asked the Hong Kong government to "adopt effective measures to ensure compliance with its legally prescribed procedures of arrest and monitor the compliance of public officials with the legal safeguards. The Committee requested the Hong Kong Government to submit a follow-up report by 9 December 2016. (Para 13)

8. The current practice of the Police Force in handling persons with intellectual disability and mental incapacity has shown its lack of human rights sensitivity. The fact that the Police Force has not publicized the related policies and guidelines⁷ needs immediate correction. For example, in May 2015, police wrongfully arrested a 30-year-old male with moderate intellectual disability and autism as a suspect in a murder in Sha Tin Mei Lam Estate. The Police Force took statements with leading questions in the absence of his family members.⁸ Such acts raised concerns that the Police Force did not follow the guidelines of "as far as practicable, interview or have a statement taken by police officers in the presence of appropriate adults".⁹ After the incident, the authority claimed to have set up a task force to review the related policy and investigation guidelines.¹⁰ During the Mong Kok clashes in the Lunar New Year 2016, once again the police arrested a person with mild intellectual disability for incitement to riot. The charges were later withdrawn. There are reports saying that a family member who showed the police the detainee's Registration Card for People with Disabilities" and requested access to the detainee was simply asked to leave. The detainee's family members were also not informed that the detainee was sent to attend a magistrates' court hearing.¹¹ This case reflects the Police Force's insensitivity in handling persons with

⁷ AIHK's Submission to LegCo Panel on Welfare Service on Procedures for Handling Cases Involving Persons with Disabilities or Persons with Special Needs, 13 June 2015. (國際特赦組織香港分會就「執法機關處理殘疾人士或有特別需要人士(包括精神上無行為能力人士)的程序以及社會福利制度就上述人士的法律相關事務向他們提供的支援」向立法會福利事務委員會之意見書)

⁸ "Leading questions shown by statement's audio record. Family members lodged complaint and hoped for policy changes", Hong Kong Inmedia. 13 May 2015. (〈口供錄音揭警引導 智障男家屬續投訴 望改善制度〉) "Police should make a public apology for wrongful arrest, says by family members of the arrested person of intellectual disability", Apple Daily, 10 May 2015. (〈智障男無辜被控誤殺家屬：警引導認罪 擬提訴訟促公開道歉〉)

⁹ Security Bureau, Hong Kong Police Force, "Procedures for Handling Cases Involving Persons with Disabilities or Persons with Special Needs" • LC Paper No. CB(2)1695/14-15(01), 13 June 2015, Section 4.

¹⁰ Ibid, Section 11

¹¹ Police ignoring human rights. Refuse to allow Mong Kok riot intellectually disabled suspect from meeting family members (警漠視權益拒旺角騷亂智障被告見家屬), Next Magazine, 2 March, 2016

intellectual disabilities.

9. AIHK urges the Hong Kong Government to publicly explain to the UN and the general public in the follow-up report, regarding the review and progress of reforms in the police's procedures and guidelines for handling persons with intellectual disabilities and those who are mentally incapacitated. These reforms should include adopting procedures to ensure that intellectually disabled or mentally incapacitated persons are accompanied by "appropriate adults" and have access to lawyers. AIHK also urges the authority to consult disability rights concerns groups, professional groups and the Equal Opportunities Commission in a timely manner.

To publicize the Police General Orders and guidelines on the use of force

10. The Hong Kong Government should also publicize the internal guidelines and procedures for the Police Force when arresting, interrogating and taking statements from mentally incapacitated persons¹², in order to facilitate public monitoring.
11. The Committee also recommended that the Hong Kong Government "publicize the Police General Orders and related guidelines on the use of force and make sure that they are in compliance with international standards". AIHK urges the authority to publicize these guidelines, in order to allow public monitoring. (Para 15(d))

Urge for legislation regulating arrest, questioning and detention procedures

12. The Hong Kong Government should regulate the procedures of police arrest, questioning and detention through legislation with reference to the Report on Arrest by the Law Reform Commission of Hong Kong in 1992 as well as PACE in the United Kingdom in order to strengthen human rights protection in Hong Kong.

Police complaints mechanism

13. The UN Committee against Torture has repeatedly expressed its concerns on Hong Kong's police complaints mechanism. In its concluding observations, the Committee remains concerned that "investigations of police complaints continue to be conducted the by Complaints Against Police Office (CAPO) and that the Independent Police Complaints Council (IPCC) still has no power to conduct investigations on its own. The Committee urges the Hong Kong government to "consider establishing a

¹² Police Guidelines for taking statements have stated clearly that no leading questions should be adopted. Specific sections explaining procedures for handling intellectually disabled person(警錄口供規則列明不應引導答話 專門章節講解涉智障人士程序), Ming Pao, 16, May, 2015

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 requested the Hong Kong Government to submit a follow-up report by 9 December 2016. (Para 9)

IPCC remains a toothless tiger with three "No"s

14. Currently, CAPO is responsible for handling citizens' complaints against police officers. Yet, it is indeed a branch of the Police Force so there is doubt regarding conflict of interest when police investigate themselves. Although the IPCC is a statutory body, it remains a body with three "No"s, no power to investigate on its own, no power to lay down a verdict and no power to lay down punishment. The IPCC can only reply to an investigation done by CAPO and review its decision. The powers of the IPCC are limited. This undermines its ability to monitor the Police Force and makes it difficult to hold the police accountable, prevent the Police Force from abusing its power, and handle complaints regarding torture, inhuman or degrading treatment. It is reported that from 2009 to 2013, the IPCC narrated 5,864 cases of police violence, only two of which were corroborated by CAPO.¹³ The Committee was aware that regarding complaints during the Occupy Movement, CAPO submitted 151 investigation reports of unsubstantiated cases to the IPCC. But there is a lack of information with regard to the outcome of 47 of the 151 cases which are not endorsed by the IPCC.
15. Moreover, the composition and appointment of the IPCC does not comply with the Paris Principles, namely the principle of independence and pluralism. The IPCC chairperson and members are all appointed by the Chief Executive. The selection process is opaque and lacks public participation.¹⁴ Besides, the Independent Police Complaints Council Ordinance (Chapter 604) does not require the chairperson or members of the IPCC to have knowledge, expertise and commitment to human rights protection. Nor does it require them to be publicly acknowledged to have the ability to monitor the power of police fairly and independently.¹⁵

¹³ "5864 complaints lodged to IPCC on assault. Only 2 substantiated cases". (監警接 5,864 警毆打投訴 僅兩宗證屬實 民權組織：事主舉證難度高) Apple Daily. 2 August 2015.

¹⁴ Independent Police Complaints Council Public Opinion Survey 2015. Public Opinion Programme, The University of Hong Kong. 29 June 2015.

¹⁵ "The Civil groups disappointed by the re-appointment of current IPCC chief" (郭琳廣續掌監警兩年 民間團體失望), MingPao. 28 May 2016. "Lawmakers doubt about the political neutrality of the new IPCC chief" (議員質疑郭琳廣背景影響監警會中立性), Now News. 30 May 2014. "6 pro-establishment politicians appointed to IPCC". (建制派 6 人入局 監警會再染紅) Apple Daily. 25 December 2014.

16. For the above problems, AIHK urges the Hong Kong Government to provide a timeline for implementing the UN Committee's recommendation and to provide the IPCC with the power to investigate, to lay down verdicts and to lay down punishment, so that it could monitor the Police Force independently and effectively. AIHK also urges the Government to reform the selection process of the IPCC Chairperson and members, so that it would comply with the Paris Principles, namely the principles of independence and pluralism.

Non-refoulement claimants

17. The government said that the delay in lodging claims was one of the causes of "the continued and worsened influx of claims".¹⁶ However, it is pointed out by the Committee 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 this period expires in order to register with the USM and access rehabilitation and humanitarian assistance." (Para 6)
18. The Committee is also concerned that "the lack of recognition of refugee status to USM claimants denies them access to legal work, compelling them to live on in-kind assistance below the poverty line for long periods of time (art. 3)". (Para 6)
19. The Hong Kong government should not link equivocal crime statistics to non-refoulement claimants, as it makes claimants more vulnerable to inhuman and degrading treatment.
20. AIHK also makes the following recommendations to the Security Bureau and the Immigration Department on improving the efficiency and transparency of the Universal Screening Mechanism (USM), as well as adhering to the standards set forth by the Committee against Torture: (Para 7)
- a) Evaluate the effectiveness and adequacy of information on seeking asylum provided by the Hong Kong government, including proactive consultations with non-governmental organizations;
 - b) Publish redacted versions of the decisions of the Torture Claims Appeal Board;
 - c) Evaluate training provided to Duty Lawyers and Barristers with supervision and participation from the public and legal professionals with relevant experience;
 - d) Evaluate training materials provided by the Immigration Department on the

¹⁶ Legislative Council Panel on Security Comprehensive review of the strategy of handling non-refoulement claims. LC Paper No. CB(2)648/15-16(05). Para 3.

- Universal Screening Mechanism with supervision and participation from the public and legal professionals with relevant experience; and
- e) Evaluate the effectiveness of non-refoulement cases screened by the Immigration Department, specifically on whether cases are screened in accordance with the principles and spirit enshrined in the CAT, and whether officers screening non-refoulement cases are familiar with relevant human rights covenants, human rights standards, as well as knowledge in the human rights situations of countries of origin.
21. AIHK also urges the Hong Kong government to adopt the recommendation made by the Committee and to ask the Central Government to extend the 1951 Refugee Convention to Hong Kong in a timely manner. (Paragraph 7)

Transgender and Intersex persons

22. Transgender sex workers are routinely subjected to a host of abusive practices. Upon arrest, they are regularly forced to undergo intrusive and humiliating full-body searches. For transgender women whose identity documents do not match their gender identity, these searches are undertaken by male officers. Most transgender women detainees are initially sent to male detention centres and then transferred to a special unit for detainees with mental illnesses. Prisons do not usually allow transgender detainees to continue hormone treatment, with potentially serious consequences for their health¹⁷.
23. The Hong Kong government should strengthen the training provided to the Hong Kong Police Force, the Hong Kong Immigration Department, and the Hong Kong Correctional Services in accordance with international human rights standards. It should also provide legal and judicial departments with opportunities to attend such training. The training should focus on the appropriate use of force, arbitrary arrest and detention, torture and other ill-treatment (including the physical and sexual abuse of persons in custody), and non-discrimination on the basis of migrant status, gender identity and sexual orientation amongst other things, in line with international law and standards¹⁸.

Trafficking in persons and forced labour of domestic workers

24. The Committee is concerned about the exploitation of migrant domestic workers in Hong Kong, and regrets that the Hong Kong government retains

¹⁷ Amnesty International, *Harmfully Isolated: Criminalizing Sex Work in Hong Kong*, 26th May 2016, p.33-38.

¹⁸ Ibid. p.67.

policies that increase risks of forced labour, such as the live-in requirement and the two-week rule. The committee urges the Hong Kong government to repeal the live-in requirement and the two-week rule in order to protect migrant domestic workers from potential torture and inhuman treatment. The committee also recommends that the Hong Kong government amend legislation to prohibit financial arrangements related to debt bondage with employment agencies and finance companies, as well as to eliminate the mandatory requirement of using employment agencies as intermediaries. (Paragraph 21)

25. The Labour and Welfare Bureau launched the Draft Code of Practice for Employment Agencies on 19 April 2016, which failed to respond to the recommendation made by the Committee on making necessary amendments to the current legislation for combating forced labour.
26. According to Amnesty International's research report, the live-in requirement exposes migrant domestic workers to abuse, exclusion and isolation, increasing their risk of being exploited and harassed¹⁹. The Schedule of Accommodation and Domestic Duties issued by the Immigration Department requires employers to provide FDHs 'suitable accommodation with reasonable privacy'. However, there is currently no legal definition of 'suitable accommodation with reasonable privacy'. There is no way for migrant domestic workers to file complaints without specific legal standards and definitions²⁰.
27. Amnesty International's report also reveals that most Indonesian migrant domestic workers were overcharged by agencies²¹. All respondents to the question on passport confiscation said their identity documents were returned to them only when they left Hong Kong. Migrant domestic workers are often told that they could only get their identity documents back when they had cleared their debts²². The above illustrates that overcharging of agency fees, identity documents confiscation, and bonded labour are rampant in Hong Kong. Yet the current legislations and Code of Practice have failed to regulate employment agencies effectively.

¹⁹ Amnesty International, *Exploited for Profit, Failed by Governments Indonesian Migrant Domestic Workers Trafficked to Hong Kong*, 21 November 2013, p. 60.

²⁰ Hong Kong Confederation of Trade Unions (HKCTU) and Hong Kong Federation of Asian Domestic Workers Unions (FADWU) (2012) *Joint report on Hong Kong Special Administrative Region of the People's Republic of China on the government's application of Migration for Employment Convention (Revised), 1949 (No. 97) (Ratification: 1997)*

²¹ Amnesty International Hong Kong. *Exploited for Profit, Failed by Governments Indonesian Migrant Domestic Workers Trafficked to Hong Kong* (Chinese only). October 2015. (政府失職 模式中介剝削 印尼外傭 頓成販賣人口)

²² Ibid.

28. The 2016 Global Slavery Index ranks Hong Kong as one of the worse places in the world for its response to the problem of modern slavery, forced labour and debt bondage.²³
29. AIHK recommends the Hong Kong government to adopt the recommendations made by the committee, including the amendment of the compulsory live-in requirement and the Minimum Wage Ordinance (Chapter 608) that now excludes migrant domestic workers²⁴.
30. AIHK also recommends that the Hong Kong government vigorously regulate local employment agencies, punish individuals who breach the laws of Hong Kong (including withholding salaries of migrant domestic workers, contract confiscation and identity documents confiscation), and implement criminal punishments when necessary. The Hong Kong government should also, in accordance with Article 25 of the International Labour Organisation Forced Labour Convention (no.29), ensure that the laws clearly define and prohibit forced labour with appropriate and robustly enforced punishments.

²³ Please see <https://s3-ap-southeast-2.amazonaws.com/globalslaveryindex.org-assets/downloads/Global+Slavery+Index+2016.pdf>

²⁴ Supra note 19, p.102