

**Hong Kong Human Rights Commission
Society for Community Organization**

**Report
to the United Nations
Committee Against Torture
on the Second Report by
Hong Kong Special Administrative Region
under Article 19 of the Convention Against
Torture and Other Cruel, Inhuman or
Degrading Treatment or Punishment
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CHAPTER I

INTRODUCTION

1. The Hong Kong Human Rights Commission is a coalition of Hong Kong non-governmental organizations, which concerns the development of Hong Kong human rights situation. We consider it important to submit alternative information to your Committee apart from the governmental report.
2. The report we submit is the second periodic report after Hong Kong's handover of sovereignty in 1997 and the report is submitted under the People's Republic of China. We call on the Committee to pay attention to the situation of Hong Kong and the applicability of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Hong Kong.
3. The Hong Kong Human Rights Commission has for many years been concerned about the issue of police brutality and the lack of an independent complaint mechanism against the abuse of power in law enforcement agency. The issues have been addressed to UN treaty bodies. We hope the Committee can pay special attention to it. Moreover, the increasing number of torture claimants who receive inadequate protection should receive sufficient attention from the public. Besides, after or even before the handover, there are more and more social and economic activities between Mainland China and Hong Kong, thus the extradition arrangement between two places and the monitoring of mutual assistance in relation to crimes of torture deserve more concern.
4. This report will focus on the following issues: treatment of the torture claimants, police brutality, complaint and monitoring mechanism of the disciplinary force, extradition arrangement between Hong Kong and the Mainland. Recommendations are suggested. We hope the Committee will examine these issues thoroughly and urge the government to take immediate and effective measures.

CHAPTER II RECOMMENDATIONS

5. The Hong Kong SAR Government should establish an independent complaint mechanism to replace the Complaint against Police Office to receive and investigate complaints not only against police, but also complaints against officers of other disciplinary forces. Furthermore, another separate and higher authority, such as IPCC, should be empowered with statutory power to handle requests for review and subsequent re-investigation.
6. The Hong Kong SAR Government should establish an independent department to handle complaints against all the disciplinary forces. Saying that the existing systems work well is merely an excuse. The government should get rid of the crux of the defect: self-investigation and the lack of impartiality.
7. The Hong Kong SAR Government should order the disciplinary forces to regularly publicize the statistics of complaints, including nature of complaints, result of investigations, and performance pledge of handling complaints, respective disciplinary actions for each substantiated complaint as well as formal mechanism for a better public monitoring mechanism.
8. The Hong Kong SAR Government should implement those recommendations made by the Law Reform Commission on the process of arrest and detention procedures in order to prevent torture and amend the respective ordinances as soon as possible.
9. The Chinese Government should take effective measures to prevent all disciplinary forces from violating the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
10. The Hong Kong SAR Government should establish a more concrete bilateral agreement with Mainland China in handling of those fugitive offenders and sentenced persons, including offenders who may receive death penalty and it should be established soon.

11. The extradition agreement should be in line with the articles stated in the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and other Cruel, Inhuman Treatment or Degrading treatment or Punishment.
12. The inter-departmental working group of the Hong Kong SAR Government should be strengthened and carry out functions of coordinating different services and policies, advocate for a clear direction and provide guideline for various department to improve the situation with regards to the Convention against Torture and other Cruel, Inhuman Treatment or Degrading treatment or Punishment.
13. The Hong Kong government should sign the Convention Relating to the Status of Refugees (the Refugee Convention) and formulate a coherent and comprehensive asylum policy to deal with aspects of immigration, refugee status determination, food, accommodation, education and health.
14. The HKSAR government should set up a fair refugee status determination procedure to assess claims under the Convention Relating to the Status of Refugees.
15. The HKSAR government should amend the Immigration Ordinance so that asylum seekers and refugees are not liable to be detained for overstaying or not possessing valid travel documents.
16. Legal aid should be available for the screening procedures under the Refugee Convention and the Convention Against Torture.
17. The government should ensure that UNHCR-HK observes its procedural guidelines for refugee status determination.
18. The HKSAR government should prevent abuse and maltreatment of asylum seekers and CAT-claimants in detention and provide training to detention staff.

CHAPTER III

POLICE POWER AND POLICE BRUTALITY

Strong Police Power brings serious Police Brutality

19. The Hong Kong SAR Government is one of the cities with the highest police ratio (1 police officer to 221 citizens) with more than 31,500 police officers (increased from 27,314 in 1994 to 31,688 in 2006) keeping public order in a city of six million people. Police officers are vested with great power to maintain social order. They can stop people to check their identity cards, detain people, search and seize premises. They are also empowered by the existing laws to control public assemblies and associations. Unfortunately, police always abuse their power, by torturing and threatening the safety of citizens. According to a survey by the Hong Kong University, the public generally think that police abuse their power. This general belief implies that the problem of police abusive use of power has become more and more serious. Judging from the observations of social workers, most abuse of police powers fall on the grassroots and marginal groups.

20. The Complaint Against Police Office (CAPO), which is part of the police system dealing with the complaints against police, regularly receives more than 500 cases concerning police assault, which has continuously been the top three among various complaints (see Table 1). The number of complaints presented cannot reflect the real situation. It is just the tip of the iceberg. There are speculations that the number of the unreported cases is three to four times more as the complainants may be threatened, intimidated by the police or have already lost confidence in the complaint mechanism. Many cases have been hidden up. The hidden situation has become more serious in the past three years, which can be explained by the change of police complaint mechanism at the operational level. Some victims give up complaining after police persuasion or their apathy towards an ineffective complaint mechanism. However, the Hong Kong SAR Government has not carried out any study to uncover the problem, nor has it set up any competent and independent complaint mechanism or monitoring body to handle these complaints.

Article 2 Prevention of Torture

21. Article 2 obliges States parties take effective measures to prevent torture from occurring, specifying that no circumstances whatsoever can justify torture. However, the police force can exercise its power to give inhumane and degrading treatments if not torture to the marginal groups and grassroots of the society. This abuse of police powers can be easily found within new immigrants, street sleepers and cage-dwellers.

Vulnerable groups most easily disturbed by the police

a. Street sleepers and cage-dwellers

22. Firstly, street sleepers and cage-dwellers¹ are the most vulnerable groups to be abused by the police. According to the estimation by Society for Community Organization, there were around 1,000 street sleepers in Hong Kong scattering around the urban slum areas in Kowloon. They were frequently checked, searched and interrogated by police. Police acted rudely and showed no respect to them.

b. New immigrants from Mainland China

23. Being checked, searched and interrogated by the police is not uncommon among new immigrants from Mainland China. According to Article 54 of the Police Force Ordinance (PFO), police officers can stop, search and arrest any person if the officers find them “acting in a suspicious manner” and “with a reasonable doubt”. However, both phrases have long been used as excuses for the police to perform unnecessary checks and searches to the citizens. What “reasonable doubt” means is unclear and whether the doubt is reasonable is always questionable. The system of Identity Card check originates from the Immigration Ordinance to prevent illegal immigrants from China from flooding into Hong Kong. In return, PFO acts as a mean for deliberate checks and searches citizens. From the observations of social workers, new immigrants from Mainland China are easily suspected as illegal immigrants and they are frequently disturbed by the police with checking and searching in public and assaulted to admit confessions. Worse still, as some

¹ Cage-dwellers are the poor citizens, including singletons and elderly, who lives in the small cubical bedspace apartments (commonly known as cagehome). The living condition of cagehome was extremely poor and it was the refuge of the lowliest people of the society.

new immigrants from Mainland China are not familiar with local legislation, the police officer will threaten them and oppress them to plead guilty for the sake of convenience. It is not only a kind of institutional discrimination but also perversion of the court of justice. (Appendix 1)

c. Low-income families living at urban slums

24. Even the youngsters living in urban slums can also easily be the victim of police brutality. Wu Shu-bun, a young man living at urban slum was arrested on September 1997 as he had been the subject of a complaint by the owner of a beauty salon. When he was detained at the police station, it was alleged that he was taken to an interview room and made to assume the “empty chair” position while holding a plastic bottle in his mouth. Also, he was kicked in his genitals and kneed in the legs. Worse still, on the second occasion, while he was placed under arrest and taken to a police station, he was seriously beaten about the head with a stack of papers, elbowed in the back of the neck and punched in the face by two police officers. The case can reflect that those young suspects can also be the victim of police wrongful act. (Appendix 2)

d. Protestors and demonstrators of social actions

25. Protestors and demonstrators frequently encounter police brutality in the course of exercising their civil rights and the situation has become more serious since 2006. In October 2007, a group of heritage activists protested on the street opposing demolishing historical building. However, they were arrested for obstructing demolition work and the police strip-searched them in inappropriate circumstances and made leering sexual comments. One of the women protesters, a social worker Sin Wai-fong, said a male sergeant had repeated four times the group would be “fully searched” and had made suggestive gestures to her. Ironically, a police spokesman said regular procedures were followed during the arrest and detention of the protesters. Moreover, according to the statistics provided by Security Bureau 41 complaints over strip searches had been received from 2003 to 2007 and not a single complaint was found to be substantiated. It is questionable whether the current mechanism is sufficient to monitor police power in the course of search. (Appendix 3)

e. Sex worker

26. Apart from protesters, sex worker also faced unfair treatment in course of police investigation. According to the statistics provided by Zi-teng in 2007, a local sex-worker concern group, the Police Force has conducted an extensive interview with over 500 sex workers by explaining that the survey is for protecting sex workers from exploitation. All personal information was taken by the Police. However, after the survey was conducted, the police put posters on each building which warns that tenants, occupier and landlords may be prosecuted if the property was used for immoral purpose. Besides, the concern group also received 827 cases of complaint against police in 2007. Furthermore 92 cases of sex workers had been strip-searched, 5 were assaulted, 38 of them were prevented from communicating with outside during detention and 42 of them alleged that they were oppressed to sign on the wrongly recorded confession statement.

f. Ethnic minorities

27. Ethnic minority is another community whose plight was generally ignored by general public. In Hong Kong, over ninety-percent of the population is Chinese and those non-Chinese, such as residents from Southeast Asia are treated badly. They are perceived as the criminal and easily be targeted as suspect in the course of criminal investigation. In July 2007, one Nepalese young man is stopped by the police because of not buckling up safety seat belt. The police called him by using discriminatory words and pulled the young Nepal from the car. After that, over ten police officers arrived and assaulted him. Even if he was hurt and vomited blood for several times, the police was reluctant to send him to hospital.

Ignore to the Law Reform Commission's Recommendations on Arrest and Detention procedures

28. In early 1992, the Law Reform Commission proposed to introduce the English Police and Criminal Evidence Act (PACE) to improve the process of arrest. One of the main purposes of PACE is to shorten the duration of detention and to strengthen the monitoring and protection of the detainees. The existing law is insufficient as it does not have a clear time limit within which a detainee has either to be released or brought before the court. On the contrary, the Act provides a comprehensive, detailed scheme of time limits in the case of detention without charges. It suggests that the police should not hold a suspect for more than 24

hours without charging him unless the court approves under close-door hearing and the detainee has a lawyer has his representative. It can lower the chances of detainees being assaulted by the police and increases supervision in preventing assaults and torture.

29. Moreover, the Law Reform Commission suggests that a better arrangement should exist in the course of strip search. For example, a detainee could be strip-searched only if officers had reasonable doubt instead of “if need be”, and a striped-search could be conducted only if the police officer of the rank of superintendent or above has reasonable doubt that the detainee possesses the drug, which is harmful to himself or other persons, or possessing dangerous drugs. The full record of strip-search should be prepared by law.

30. However, these useful recommendations had totally been ignored by the Hong Kong SAR Government and postponed with an excuse that the implementation of those recommendations was too complicated. For more than 16 years, the Hong Kong SAR Government has shown little response to those recommendations. For example, as far as strip-search guidelines was concerned, the Government decided to amend it only after widespread criticism against the unreasonable strip-search of heritage activists (Appendix 4).

31. As the Government’s report admitted, the recommendation concerning a statutory time limit on the length of detention without charge is still under consideration after 16 years. The police should introduce those long delayed improvement measures recommended by the Law Reform Commission as soon as possible.

Ignore to the Recommendations of the United Nations Human Rights Committee (UNHRC)

32. According to its concluding observations on the Hong Kong SAR, the United Nations Human Rights Committee of the International Covenant on Civil and Political Rights (ICCPR) concluded that the existing police complaint mechanism has not the power to ensure proper and effective investigation of complaints. It has already urged the Hong Kong SAR Government to establish an independent complaint mechanism. Moreover, it urged the Hong Kong SAR Government to enforce those recommendations by the Law Reform Commission on arrest and detention procedures. The Committee had urged and condemned the Hong Kong SAR Government twice for not taking full measures with respect to those

suggestions. This is not in line with the State party's obligation towards those recommendations and disrespects the United Nations as a monitoring body in the global society.

Enforcement of Crime (Torture) Ordinance

33. The Crime (Torture) Ordinance aims at avoiding the abuse of power in governmental departments. Since its enactment in 1993, not a single case has been recorded while police officers are always charged with the respective offense. However, it does not mean that no torture takes place in Hong Kong. Even if some police officers are proven to have used unreasonable force to inflict pain on citizens, they will be charged with common assault other than crimes defined in Crime (Torture) Ordinance. The Crime is defined narrowly as only those acts that “inflict severe pain or suffering on other”, but not other cruel, inhumane and degrading treatment or punishment. Legislation and application are limited in comparison with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Article 12 Prompt and Impartial Investigation &

Article 13 Access of the Torture Victims to the Complaint Authority

34. As mentioned before, all complaints against police are handled by CAPO. CAPO and its supervisory agency, the IPCC, are the two only formal bodies for checking police misbehavior. Even after the handover, Hong Kong still does not have any *de facto* independent statutory body monitoring the law enforcement agencies.

Lack of Independent and Credible Police Complaint Mechanism

35. Although a huge sum has been spent on advertisements boosting the image of the Hong Kong Police Force, the problem of police brutality and its abusive use of power remain serious in the entire society. As mentioned earlier, in the past years there have been many cases, where the Hong Kong Police Force has brutally and barbarically interference into peaceful public processions and meetings.

36. Unfortunately, this unfavorable condition has not been resolved by the current complaint mechanism. Indeed, as a part of the police system, CAPO has long been criticized for its lack of credibility. It functions within the Police Complaints and Internal Investigations Branch. The whole branch is commanded by a Chief

Superintendent of Police who reports directly to the Director of Management and Inspection Services in Police Headquarters. Officers working in CAPO came from the police force and will return to their posts in future. A conflict of interest is obvious and thus the fairness of the judgment is questionable.

37. The number of allegations against police officers has decreased in the past two years (Table 1), which the Police Force may explain by improvements in police conduct and behavior. However, a more plausible explanation might be that the general public distrusts the complaint mechanism and has given up lodging complaints even though the Police Force continues its malpractices and misconduct.
38. The complaints about abusive use of power by the police remain common and an independent complaint mechanism to investigate the complaints has been urged by various sectors of the community. Indeed, the Complaints against Police Office (CAPO) have long been criticized for lack of credibility because it is a part of the police system. The independence and fairness of officers working in CAPO is questionable, as they come from the police force and will return to their posts in future. In fact, many complaints have been dropped due to the lack of evidence (Table 2).
39. In fact, a further analysis of the results of the investigations is discouraging. For example, between year 2000 and 2007, the percentage of allegations which were found to be substantiated / substantiated other than reported decreased from 4.0% in 2002 to 2.3% in 2007 (Table 2, 3). In addition, in view of the defect of the complaint investigation mechanism, the withdrawal rate kept on increasing. In 2000, the percentage of cases which was finally withdrawn was 38.3%. This jumped to 43.7% in 2003 and reached the peak at 51.4% in 2007. The figures reveal that the general public is reluctant to use the present complaint system and that institutional reform is necessary to create legitimacy and enhance public confidence.
40. The decreasing trend in the number of allegations can be explained by the ineffective complaint investigation mechanism. Thus the institutional defects of the current police complaint monitoring mechanism remain serious.
41. Until now, all cases investigated by CAPO have to be scrutinized and recorded by the Independent Police Complaints Council (IPCC). The IPCC has commented

that police employed excessive power in the above mentioned cases, and it has raised a number of suggestions, such as asking the police “to avoid tactics which may reasonably give rise to the perception that the rights of freedom of expression and of assembly and demonstration are being unnecessarily curtailed”. However, the IPCC is not a statutory organization, so the recommendations are not binding and they have not been followed up the by the Police Force. (Table 4)

42. In June 2007, the Security Bureau of the Government proposed an Independent Police Complaints Council Bill, which turns the IPCC into a statutory body. The proposed Bill does not delegate the IPCC any investigative powers for complaints. As a result, the monitoring function of the IPCC is not substantial, which makes the mechanism ineffective. Worse still, the power of appointing the observers in the Observers Scheme² was still under the hand of the Chief Executive, which still limits its independent role as an effective complaint watchdog.
43. Lastly, in the proposed Bill, the implementation of the recommendations of the IPCC to the police force cannot be guaranteed as they are still not legally binding. Thus it is not compulsory for the Police Force to comply with the recommendations. Thus, even though the IPCC is proposed to be a statutory body, in the absence of the power of investigation, the monitoring mechanism is still handicapped.
44. Most of the allegations against police have limited evidence. Since most complaints involve only the complainant and the police officer(s), and usually without collaboration from a third party, cross-questioning is essential to discover contradiction of evidence.
45. Even though CAPO decided the allegation as substantiated (or partly substantiated), yet no hearing will be held for the complainant and the accused to cross-question each other. The result is that many cases are classified as unsubstantiated merely because no third party witnesses are present.
46. Worse still, CAPO is in charge of the whole process of investigation and the members of Independent Police Complaints Council (IPCC) merely receive the report submitted by the CAPO. After studying the report, it is subsequently correspondence flow between CAPO and IPCC to clarify doubts. However, in this

² The Observers Scheme was started in 1996 under which IPCC members and currently some 70 lay persons appointed by the Secretary for Security may participate in scheduled or surprise observations of the interviews and scene visits conducted by the CAPO during investigations.

face-to-face situation, only officers can present, the complainants and the accused cannot attend. The fairness is really in question.

Lenient punishment to substantiated allegations

47. Another weakness of the system is the lenient punishment in police brutality cases. Even if the complaint is found to be substantiated, the disciplinary proceedings and internal action taken by the police force are really non-severe, such as warnings with entry in record of services, advice given to officers, etc. From 2004 to 2006, there are no any criminal proceedings taken by the police respectively (see Table 4).
48. In fact, the IPCC member had openly criticized the lenient punishment, which makes the monitoring mechanism ineffective. According to the report released by the IPCC, one complaint was lodged in 2006 that the police sergeant of the Central Transport Prosecution Unit was mistakenly written in his prosecution record against a driver. Although the allegation of neglect of duty was finally amended from “not substantiated” to “substantiated”, only a verbal warning was given to the police officer being complained. (Appendix 5)
49. The above phenomenon clearly reflects the existing complaint system is unable to carry out a prompt and impartial investigation of acts of torture. Also, victims’ right to complaint is totally exploited by the handicapped complaining mechanism.

Lack of Competent and Powerful Monitoring Body

50. Independent Police Complaints Council (IPCC) (formerly known as Police Complaints Council (PCC)) is a formal body to monitor and review the investigations conducted by the Complaint Against Police Officer (CAPO). However, it does not have any statutory power and hence their recommendations and decisions are without any binding power.
51. Although IPCC accuses the police of employing excessive power to those substantiated complaints, and raises a number of suggestions, there is no mechanism to ensure the implementation of these recommendations. On average, near one-third of the recommendations rendered by IPCC were not accepted by CAPO from 2003 to 2006. (Table 5) The IPCC members had also openly commented on the powerlessness of IPCC in handling complaints about police.

52. Also, the police force would always get rid of disclosing all the information related to police brutality for IPCC monitor. According to the internal information released by the Police Force, the number of civil lawsuits against the police officer is on average 13 per year between year 2003 to 2007. Most of the cases were settled out of the court and the annual public expenditure was around 4.4 million Hong Kong dollars. The IPCC member commented that the Police Force needed not disclose the information of the court cases, which make the monitoring work more difficult. For better monitoring, the Police Force should report each case to IPCC so that it can actively identify the implications for each court case to review current police guidelines. (Appendix 6)
53. Apart from the absence of statutory power, IPCC can not supervise CAPO or deal with complaints effectively because of the following reasons:
- i) All members of IPCC are appointed by the Chief Executive.
 - ii) The secretariats are not employed independently by IPCC but assigned from government officials
 - iii) Under the existing observers' scheme, members of IPCC are not allowed to walk-in randomly to the police station to observe investigation. Moreover, the frequency of observation visit is very low.
 - iv) CAPO is not liable to hand in all complaints to IPCC, IPCC does not receive complete information, some severe complaints and problems are covered.
 - v) The Chief Executive ignores the IPCC's recommendations. This can be viewed from the case in which police used loudspeakers to broadcast a Beethoven symphony at the demonstration venue to override the shouts and voice of the peaceful demonstration on July 1, 1999. Though IPCC has decided that the police acted inappropriately in this case, the Chief Executive and CAPO have not taken any measure to amend this abuse of police powers.
54. Consequently, IPCC cannot monitor CAPO effectively. This can be reflected from the low rate of participation in both Interviewing Witnesses Scheme (IWS) and Observer Schemes (OS). In IWS, IPCC members may interview witnesses to clarify unclear points of the reports. After each interview, a report is submitted to the full Council which will follow up with CAPO on the panel's recommendations. However, the frequency of interviewing is extremely low. In fact, out of thousands of allegations from the year 2003 to 2006, no witness was interviewed by the IPCC under the Scheme. (Table 6)

55. Worse still, in the OS, IPCC members can observe CAPO's investigation through schedule or surprised observation, but the number of visits is exceptionally low. In 2006, only 317 observations (138 for Informal Resolution and 179 for others) were arranged under the Scheme, which composed of less than 10% of the total number of allegations. All IPCC members are appointed and voluntarily participated in IPCC. They do not usually have much time for thorough checking.
56. For many decades, groups from various backgrounds have requested for an independent CAPO and statutory power for IPCC. The Legislative Council passed a motion asking the Hong Kong SAR Government to separate CAPO from the police force since April 1993. However, the police force and the Security Branch (now Security Bureau) just shut their eyes to these demands. They even claimed that an independent CAPO would be harmful to the police morale. This is an excuse for banning amendments as it is irrelevant to the police morale. It just reflects the police's preference in protecting the interest of their staff rather than social justice. The excuse of harming the police morale has been also employed to withdraw the bill for empowering IPCC.
57. Moreover, the Hong Kong SAR Government rejects the proposal of sending a non-police investigator by the IPCC. It can at most accept a non-police observer to handle complaints. It clearly shows that the police force try hard to prevent any outsiders from intervening CAPO, thus to keep it as a close and partial body.
58. In general, the complainants can request for reviewing results or re-investigation if they are not satisfied with the results. However, not only the examination of the requests for review but also the task of subsequent re-investigation are decided and carried out by the hands of CAPO. As CAPO, which is a part of the police force, is the only body that investigates the complaints, it is not surprising to see that most requests have not been accepted.

The Independent Police Complaint Council Bill flawed

59. After continuous effort, the Government decided to make the IPCC as a statutory body in 2007. However, there are many flaws of the Independent Police Complaints Council Bill and the problems are as followings:
- No investigation power was delegated to the IPCC for investigating those complaints against the police.

- Not every amendment of Police General Order, Force Procedural Manual, Headquarter Order, Handbook of CAPO required the endorsement and permission of the IPCC, only a significant amendment, which was solely interpreted by the Police Force was required.
- The Police Commissioner has discretion to invoke his legal professional privilege and decide if the IPCC can see the information as he deems fit, which hampers the IPCC's access to information pertinent to discharging its function of examining CAPO's investigation and handling of a complaint.
- A very broad exceptional circumstances which the Commissioner of Police could be exempted from compliance with the IPCC's requirements, such as to provide information relating to a reportable complaint, to investigate a complaint and to compile and submit to the Council statistics of the types of complainants.
- Absence of statutory requirement that the Commissioner of Police has to provide brief descriptions of non-reportable complaints and explanations to support such categorization, which may undermine certain serious complaints which should be reported in its nature.
- All members participated into the Observer Scheme were appointed by the Chief Executive instead of the IPCC.

Recommendations

60. The Hong Kong SAR Government should establish an independent police complaint mechanism to replace the Complaint against Police Office in receiving and investigating complaints about police. The authority is not only embedded with the power of observation, but also the power of investigation of every allegation to handle those complaints. The recommendations of the monitoring body should be legally binding on the law enforcement agency so as to increase the protection on citizens.
61. As regards to the newly proposed bill of the Independent Police Complaint Council, the Hong Kong SAR Government should carry out the following amendments:
 - An investigation power should be delegated to the IPCC for investigating those complaints against the police.
 - Every amendment of the Police General Order, Force Procedural Manual, Headquarter Order as well as Handbook of CAPO requires the endorsement and permission of the IPCC
 - The discretionary power of Police Commissioner to invoke his legal professional

privilege and decide if the IPCC can see the information as he deems fit should be abolished. As a result, the obstacles of IPCC's access to information pertinent to discharging its function of examining CAPO's investigation and handling of a complaint can be avoided.

- A narrow exceptional circumstance, in which the Commissioner of Police could be exempted from compliance with the IPCC's requirements, should be introduced and a time limit should be imposed. It can enhance the Police Force to provide information relating to a reportable complaint and to compile relevant statistics of the types of complainants to the IPCC for an effective monitoring.
- A statutory requirement that requires the Commissioner of Police to provide brief descriptions of non-reportable complaints and explanations to support such categorization should be introduced for a comprehensive complaint monitoring function.
- All members participating in the Observer Scheme should be appointed by the IPCC itself instead of that of the Hong Kong SAR Government for the purpose of transparency and independence.

62. The Hong Kong SAR Government should implement those recommendations made by the Law Reform Commission on the process of arrest and detention procedures in order to prevent torture and abuse of police powers as soon as possible.

63. The Hong Kong SAR Government should invite competent personnel to provide human rights education to the police officers to educate them to stop abusing their power and exerting torture to the grassroots and marginal groups.

Table 1: Nature of Allegations Endorsed by the IPCC (Independent Police Complaints Council) between the years 2000 and 2007

	2000 (% of total)	2001 (% of total)	2002 (% of total)	2003 (% of total)	2004 (% of total)	2005 (% of total)	2006 (% of total)	2007 (% of total)
A. Assault	1,182 (19.9)	926 (15.2)	802 (12.9)	714 (11.4)	776 (13.3)	710 (15.1)	532 (15.1)	587 (13.5)
B. Misconduct / Improper Manner / Offensive Language	2,075 (35.0)	2,315 (37.9)	2,414 (38.9)	2,314 (37.0)	2,105 (36.1)	1,817 (38.7)	1,293 (36.8)	1,539 (35.5)
C. Neglect of Duty	1,503 (25.3)	1,741 (28.5)	1,847 (29.7)	2,212 (35.3)	1,983 (34.0)	1,412 (30.1)	1,144 (32.5)	1,551 (35.7)
D. Unnecessary Use of Authority	531 (8.9)	536 (8.8)	556 (8.9)	532 (8.5)	482 (8.3)	344 (7.3)	237 (6.7)	277 (6.4)
E. Fabrication of Evidence	328 (5.5)	309 (5.1)	277 (4.5)	230 (3.7)	243 (4.2)	201 (4.3)	143 (4.1)	146 (3.4)
F. Threat	249 (4.2)	195 (3.2)	251 (4.0)	204 (3.3)	197 (3.4)	182 (3.9)	152 (4.3)	227 (5.2)
G. Other Offences	41 (0.7)	40 (0.7)	30 (0.5)	19 (0.3)	33 (0.6)	11 (0.2)	7 (0.2)	4 (0.1)
H. Police Procedures	25 (0.4)	41 (0.7)	36 (0.6)	37 (0.6)	18 (0.3)	18 (0.4)	10 (0.3)	10 (0.2)
Total no. of allegations	5,934 (100.0)	6,103 (100.0)	6,213 (100.0)	6,262 (100.0)	5,837 (100.0)	4,695 (100.0)	3,518 (100.0)	4,341 (100.0)

Table 2: Results of Investigations Endorsed by the IPCC between the years 2000 and 2007

	2000 (% of total)	2001 (% of total)	2002 (% of total)	2003 (% of total)	2004 (% of total)	2005 (% of total)	2006 (% of total)	2007 (% of total)
A. Substantiated / Substantiated Other Than Reported	221 (3.7)	241 (3.9)	246 (4.0)	265 (4.2)	253 (4.3)	145 (3.1)	100 (2.8)	100 (2.3)
B. Not Fully Substantiated	54 (0.9)	30 (0.5)	19 (0.3)	21 (0.3)	14 (0.2)	8 (0.2)	4 (0.1)	5 (0.1)
C. Unsubstantiated	1,087 (18.3)	1,123 (18.4)	986 (15.9)	1,040 (16.6)	1,070 (18.3)	854 (18.2)	610 (17.3)	769 (17.7)
D. False	470 (7.9)	383 (6.3)	354 (5.7)	255 (4.1)	296 (5.1)	244 (5.2)	187 (5.3)	160 (3.7)
E. No Fault	374 (6.3)	478 (7.8)	397 (6.4)	395 (6.3)	410 (7.0)	271 (5.8)	152 (4.3)	148 (3.4)
F. Curtailed	30 (0.5)	4 (0.1)	16 (0.3)	12 (0.2)	5 (0.1)	25 (0.5)	7 (0.2)	1 (0.1)
G. Withdrawn / Not Pursuable	2,273 (38.3)	2,353 (38.6)	2,526 (40.7)	2,735 (43.7)	2,570 (44.0)	2,246 (47.8)	1,719 (48.9)	2,232 (51.4)
H. Informal Resolution	1,425 (24.0)	1,491 (24.4)	1,669 (26.9)	1,539 (24.6)	1,219 (20.9)	902 (19.2)	739 (21.0)	926 (21.3)
Total no. of allegations	5,934 (100.0)	6,103 (100.0)	6,213 (100.0)	6,262 (100.0)	5,837 (100.0)	4,695 (100.0)	3,518 (100.0)	4,341 (100.0)

Table 3: Substantiation Rates in Relation to Fully Investigated Allegations for the year 2003 to 2007

Results	No. of Allegations					Percentage to Total No. of Fully Investigated Allegations				
	2003	2004	2005	2006	2007	2003	2004	2005	2006	2007
Substantiated	113	108	66	40	36	5.7%	5.3%	4.3%	3.8%	3.1%
Substantiated other than reported	152	145	79	60	64	7.7%	7.1%	5.3%	5.7%	5.4%
Not fully substantiated	21	14	8	4	5	1.1%	0.7%	0.5%	0.4%	0.4%
Total	286	267	153	104	105	14.5%	13.1%	10.1%	9.9%	8.9%
Total no. of fully investigated cases	1976	2043	1522	1035	1182					

Table 4: Lenient punishment to substantiated allegations from 1996 to 1998

Year	2001	2002	2003	2004	2005	2006
Criminal proceedings instituted	3	10	1	0	0	0
Disciplinary proceedings instituted	13	21	32	9	19	9
Action by Formation Commander (such as warning with entry in record of services, advice given to officers)	279	272	267	296	154	105
No. of cases found substantiated (including other than report)	295	303	300	305	173	144

Table 5: Points raised by IPCC were rejected by CAPO from 2003 to 2006

Year	2003	2004	2005	2006
Number of points raised by IPCC	687	660	541	829
Points rejected by CAPO (%)	258 (37.6%)	248 (37.6%)	160 (29.6%)	264 (31.8%)

Table 6: Number of observations under Observer Scheme and interviews conducted under Interviewing Witness Scheme from 2003 to 2006

Year	2003	2004	2005	2006
Number of Observations under Observer Scheme (OS)	231	319	327	317
Number of Interviews conducted under Interviewing Witness Scheme (IWS)	0	0	0	0

Source: Annual Report of the Independent Police Complaints Council (IPCC) from the year 2003 to 2007

CHAPTER IV

POWER MONITORING OF OTHER DISCIPLINARY FORCE

Article 12 Prompt and Impartial Investigation &

Article 13 Access of the Torture Victims to the Complaint Authority

64. Apart from the police force, the other disciplinary forces, including Immigration Department, Correctional Services Department, Customs and Excise Department as well as Independent Commission Against Corruption, also have their own complaint mechanism with similar defects, i.e. self-investigation and lack of impartiality. The situation even worse as some disciplinary forces lack of any formal office to handle complaints.

Immigration Department lack of complaint office

65. The Immigration Department is one of the best examples which illustrate the lack of a comprehensive complaint monitoring mechanism. According to official statistics, Immigration Department exercised more than 37,000 times of stop, over 8,500 times of search, near 15,000 times of arrest, over 16,500 times of detention as well as 15,500 times of prosecution per year. However, the Department did not establish any formal channel of handling complaints.(Table 7)

Table 7: Number of different kinds of law enforcement and litigation by Immigration Department from 2004/05 to 2006/07

Nature	2004-2005	2005-2006	2006-2007
Stop	42 595	38 017 (-10.7%)	37 281 (-1.9%)
Search	9 791	8 846 (-9.7%)	8 543 (-3.4%)
Arrest	20 867	18 077 (-13.4%)	14 944(-17.3%)
Detention	20 580	19 183 (-6.8%)	16 719 (-12.8%)
Prosecution	20 737	18 908 (-8.8%)	15 522 (-17.9%)
Removal			
Removal Orders executed	771	896 (+16.2%)	584 (-34.8%)
Number of persons repatriated	25 572	22 561 (-11.8%)	17 742 (-21.4%)
Deportation Orders executed	696	698 (+0.3%)	650 (-6.9%)

Source: Annual Report of the Immigration Department for the year 2006.

66. The Immigration Department did not treat citizens' complaints seriously, which can be reflected in the lack of any formal complaint channel. All the complaints against immigration officers were handled by Customer Services Unit of the Management Audit Section which is under the line management of the Service Management Division. The main duty of the Customer Services Unit is to receive, monitor and review complaints from the community. All investigated complaints are further analyzed by the Complaints Review Working Party, headed by Assistant Director (Management and Support) with officers of the Service Management Division and the Management Audit Section as appointed members, which gives advice on whether the complaints are justified and recommends improvements where necessary.
67. All parties are the staff of the Immigration Department and the statistics of the complaints, including nature of allegations, duration of investigation, and categorization of result of the complaint as well as any review mechanism are not disclosed to general public. Such 'close-door mechanism' is not transparent and not accountable for the public. Worse still, all investigations of complaint are solely conducted by the officials of the Immigration Department, which means that the process and result of investigation would not be reliable. Moreover, there is no any independent mechanism, like the Independent Police Complaint Council, for reviewing the case or even further channel for appealing the case.
68. Due to the lack of publicity and no formal complaint channel, the number of complaints against immigration officer is few in comparing with that of the police officer. In the past four years, the number of complaint cases decreased from 207 in 2003 to 113 in 2006 and the percentage of the substantiated complaint cases also decreased from 22.7% in 2003 to 17.7% in 2006 (Table 8). It does not mean that the service of Immigration Department is very good. The low rate of complaints can also be explained by low public awareness of complaint channel and mistrust of the self-investigation mechanism. Worse still, the Immigration Department did not keep a comprehensive record of complaints. The Department has been asked to disclose the statistics of cases in each year but the categories provided are poor and doubtful. (Table 9)

Table 8: Number of complaints and the percentage of substantiated complaint cases against immigration officer for the year 2003 to 2006

Year	Number of complaint cases received	Number of substantiated complaints	Percentage of substantiated complaints to all complaints (%)
2003	207	47	22.7%
2004	152	36	23.7%
2005	161	27	16.8%
2006	113	20	17.7%

Table 9: Nature of complaints against Immigration Officers for the year 2003 to 2005

Year	Service standard	Procedure and policy	Both service standard and procedure as well as policy
2003	167	16	24
2004	130	8	14
2005	147	8	6

69. In fact, the situation of immigration officer brutality is hidden. According to the frontline experience from the Society for Community Organization (SoCO) and the Voice of the Rights of Asylum Seekers and Refugees, a concern group of the rights of asylum seekers, asylum seekers and torture claimants have received different forms of inhumane and degrading treatment in the course of detention by Immigration Department. Some of the respondents said that they were stripped in front of fellow asylum seekers and officers who insulted them and joked during body searches. They were racially discriminated and denied medical care and psychological counseling and only given Panadol, a popular drug for headache healing, for all types of medical complaints. (Appendix 7)

70. According to the Prison Rules Chapter 234 (Subsidiary legislation) (“the Prison Rules”) every prisoner shall have ample facilities to make complaints and the superintendent shall take all the necessary steps to redress all grievances so far as is possible (para. 95). However, according to the survey conducted by SoCO, as many as 54.9% of the detainees interviewed actually complained when they were in detention. Of these 52.6% were threatened by the staff when they made complaints, such as threatening that they would not be given any food or that their detention length would be increased. Some were threatened that they would be locked up in a special unit or be taken to the mental hospital. Thirdly, 36.4% claim to have been punished by the staff for complaining. Among those who claim to have been punished for complaining, 54.5% were taken to a special unit while

27.3% were taken to a mental hospital. 9.1% were given injections, 2 people (18.2%) were beaten.³

71. Worse still, as those complainants are pending decision from immigration department, they will worry that lodging complaint will have an adverse effect on their case, which also hindered their motivation to lodge complaint. Hence, a more independent and effective complaint mechanism should be introduced.

72. Even if the victims decided to lodge complaint, they did not even have any follow-up reply. Society for Community Organization, a local human rights organization which has been following up human rights violation cases, has referred more than 10 cases of complaints against asylum seekers since 2005 but only the Immigration Department only replied on 1 to 2 cases after three years. It is doubtful whether the Department takes those complaints seriously and has any performance pledge for handling and follow-up complaints.

Other Disciplinary Forces also lack of a comprehensive complaint mechanism

73. The similar inadequacies also exist in other disciplinary forces. As far as the complaints related to Correctional Services Department is concerned, all complaints from prisoners are referred to the Department's Complaints Investigation Unit (CIU). All the staff of the Unit is the internal staff of the Correctional Services Department and their independency is doubtful. It will also hinder the credibility and reliability of the investigation, which can be explained by the extremely low rate of substantiated among those complaints.⁴

74. The similar situation can also be found in Customs and Excise Department which 224 complaints of assault were received in the period of 1998 to 2004. However, all were found unsubstantiated after police's investigations.

³ Executive Summary of Research on the Condition of asylum seekers and refugees in detention centres, Society for Community Organization (May 2007).

⁴ According to official figures, the Complaints Investigation Unit received 214 complaints from inmates in 2004, 199 complaints were examined by the Department's Complaints Committee of which only 4 were substantiated.

Recommendations

75. In view of the fundamental unfairness of the existing complaint mechanism, the Hong Kong SAR Government should establish an independent department to handle complaints against all the disciplinary forces. Saying that the existing systems work well is merely an excuse. The government should get rid of the crux of the defect: self-investigation and the lack of impartiality.
76. The Hong Kong SAR Government should order the disciplinary forces to regularly publicize the statistics of complaints, including nature of complaints, result of investigations, and performance pledge of handling complaints, respective disciplinary actions for each substantiated complaint as well as formal mechanism for a better public monitoring mechanism.

CHAPTER V

ABSENCE OF EXTRADITION ARRANGMENTS BETWEEN HONG KONG SAR AND CHINA

77. The booming social and economic activities among Hong Kong SAR and other countries have led to an increase of cross-country crimes. In order to handle those cross-country offenders, the Hong Kong SAR has established bilateral agreements with different countries on the surrender of fugitive offenders. Due to the open door policy, there is an increase in communication between the People's Republic of China (PRC) and Hong Kong SAR in all walks of life. The number of cross-border offenders also increases. However, the Hong Kong SAR Government shows no interest in establishing any rendition agreement with the PRC Government as soon as possible in dealing with cases of fugitive offenders, let alone the offenders who committed serious crimes such as torture.

Article 8: Extradition Arrangement

78. Article 8 obliges the State parties to establish extradition arrangements for persons suspected of torture, including attempted torture or participated into torture. The Hong Kong SAR Government has established a network of bilateral agreements on the surrender of fugitive offenders as well as transfer of sentenced persons with many countries.⁵ However, the Hong Kong SAR fails to establish any bilateral agreement with the People's Republic of China to extradite fugitive offenders.

Article 3: Torture as a ground for refusal to expel, return and extradite

79. In Hong Kong, the capital punishment was abolished in April 1993 with the enactment of the Crimes (Amendment) Ordinances 1993. Under Section 2 of the Offences against the Person Ordinance (Cap. 212), the death sentence for murder is replaced by mandatory life imprisonment, which is the highest penalty in Hong Kong. The abolition of death penalty is consistent with the right to life, which has

⁵ At present, the Hong Kong SAR had established the **Surrender of Fugitive Offenders Agreements** with the following countries (as at 6 November 2007):

Australia, Canada, India, Indonesia, Korea, R.O., Malaysia, Netherlands, New Zealand, Philippines, Portugal, Singapore. In addition, the Hong Kong SAR had signed the agreements with Finland, Germany and Ireland but have not yet come into force.

Besides, the Hong Kong SAR had established the **Transfer of Sentenced Persons Agreements** with the following countries (as at 30 April 2007):

Australia, Italy, Philippines, Portugal, Sri Lanka, Thailand, United Kingdom and United States of America. In addition, the Hong Kong SAR had signed the agreements with Belgium and France but has not yet come into force.

also been assured by Article 6 of the International Covenant of Civil and Political Rights (ICCPR). Death penalty is one kind of torture and the course of execution brings harsh, severe physical pain as well as mental suffering. However, it still exists in the legal system of the PRC. In the absence of any formal legal mechanism to regulate the transfer of sentenced persons as well as fugitive offenders, it is worrying that those persons may receive torture after being sent back to the mainland China.

80. According to the speech of Mrs. Regina IP, the former Secretary for Security, Hong Kong SAR Government cannot reject extraditing offenders to the countries where they have to face death penalty. Otherwise, Hong Kong SAR will become a “paradise for crimes”. The concept behind such argument towards death penalty is clearly different from that of the British Government before the handover. Moreover, the Hong Kong SAR Government argues that although the United Nations have established some agreements on the surrender of fugitive offenders, each State can choose to sign them selectively. Also, the Hong Kong SAR Government still cannot have any consolidated agreement with the PRC regarding this issue. It is learnt that the two sides initiated discussions on the arrangements for the transfer of sentenced persons since March 2000. However, no public consultation had been conducted and no any further progress of reaching agreements.

81. As a result, no fugitive offenders and sentenced persons can be extradited between the PRC and the Hong Kong SAR under a formal mechanism. It reflects that the Hong Kong SAR Government does not concern the offenders’ right to life by keeping them away from death penalty and torture.

Article 9: Mutual assistance in relation to crimes of torture

82. According to Article 9(1), the State Parties should assist one another in the proceedings of criminal offences relating to acts of torture. To tackle cross-border criminal activities, it is a common practice to sign an agreement on mutual legal assistance between Hong Kong and different countries. As 1 February 2008, the Hong Kong had signed 22 bilateral agreements on mutual legal assistance in criminal matters.⁶ However, there is no such agreement established between the

⁶ At present, the Hong Kong SAR had established the **Mutual Legal Assistance Agreements** with the following countries (as at 1 February 2008): Australia, Belgium, Canada, Denmark, France, Israel, Korea, R.O., Malaysia, Netherlands, New Zealand, Philippines, Poland, Portugal, Singapore, Switzerland,

mainland China and Hong Kong.

83. In fact, it is essential to have a legal basis to formalize the law enforcement between countries. The mutual legal assistance agreements, which legalize the enforcement power of disciplinary force as well as administration by legislation, can facilitate the judiciary to monitor the exercise of power and protect the basic human rights of an individual.

84. The agreements generally cover the following areas, including:

- (a) identifying and locating persons;
- (b) serving of documents;
- (c) the obtaining of evidence, articles or documents, including the execution of letters rogatory;
- (d) executing requests for search and seizure;
- (e) facilitating the personal appearance of witnesses;
- (f) effecting the temporary transfer of persons in custody to appear as witnesses;
- (g) obtaining production of judicial or official records;
- (h) tracing, restraining, forfeiting and confiscating property used in or derived from criminal activities and the proceeds of criminal activities;
- (i) providing information, documents and records;
- (j) delivery of property, including lending of exhibits; and
- (k) other assistance consistent with the objects of this Agreement which is not inconsistent with the law of the Requested Party.

85. In view of the closer economic relation and exchange Hong Kong and the mainland China, the number of cross-border crimes has kept on increasing and the number is comparatively higher than that of other countries. However, there is no agreement between the mainland China and the Hong Kong SAR on mutual legal assistance in criminal matters. This is not a matter of necessity in daily investigation but also the legal obligation. According to Article 95 of the Basic Law, the Hong Kong SAR may, through consultations and in accordance with law, maintain juridical relations with the judicial organs of other parts of the country, and they may render assistance to each other.

86. However, the Hong Kong SAR Government argued that the police authorities of both sides do, in fact, provide mutual assistance in accordance with Interpol

Ukraine, United Kingdom, United States of America. In addition, the Hong Kong SAR had signed the agreements with Finland, Germany, Ireland and Italy but has not yet come into force.

practice. However, the Interpol mechanism is under the administrative arrangement between two sides and lack of statutory control. The agreement can enhance the judiciary to regulate the power exercised by the authority in order to safeguard the procedural fairness. In addition, if saying that the Interpol practice is sufficient, it would be doubtful why Hong Kong has to sign the mutual legal assistance agreements with more than 20 countries.

The problem of cross-border law enforcement by mainland officials

87. In fact, the lack of formal mutual assistance in criminal matters leads to many problems and anxiety. In June 2004, seven public security officers coming from the mainland China were suspected to carry out special duty in Hong Kong. Four of the mainland public officers, who parked their car outside the private villa, conducted covert surveillance against one Hong Kong residents and was reported to Hong Kong Police Force. When the local police officers carried out investigation, those mainlanders disclosed their identity as public security officer working Hong Kong. Nevertheless, the Hong Kong police arrested them no matter their identity of mainland officials. The Legislative Councilor, Mr. To Kun-sun James, criticized that the problem of cross-border law enforcement between Hong Kong and the mainland China seriously violated the principle of “One Country, Two Systems” and infringed the concept of the rule of law in Hong Kong. It is urged that both governments should strictly comply with its own jurisdiction and avoid similar happening. (Appendix 8)

88. Ridiculously, the Hong Kong Government gave up prosecuting the mainland officers due to the lack of sufficient evidence, which seriously undermined the rule of law and weakened the jurisdiction of Hong Kong. It reflects that the mutual criminal legal assistance between Hong Kong and the mainland China becoming more essential.

Recommendations

89. The Hong Kong SAR Government should establish concrete bilateral agreements with the Mainland China in handling of fugitive offenders and sentenced persons, including those who may receive death penalty. Moreover, the extradition agreement should be in line with the Articles stated in the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

90. The Hong Kong SAR Government should establish a bilateral agreement with the Mainland China on mutual legal assistance in criminal matters in order to delegate a legal basis and regulate the cross-border criminal investigation activities.

CHAPTER VI

NO PROTECTION UNDER THE REFUGEE CONVENTION

Refugee Convention not signed by HKSAR

Article 2: Legislative measures to prevent acts of torture

91. There are currently 1,777⁷ in Hong Kong who seek asylum under the International Convention Relating to the Status of Refugees (Refugee Convention). Of these 16% are women, and 3% are children. The UNHCR has granted 112 people refugee status. In addition to the Refugee Convention, people who escape their countries and seek refuge in Hong Kong may also seek protection under the Convention Against Torture (CAT). The screening of these cases is made by the Hong Kong Immigration Department. There are currently **1,583** claimants under the Convention Against Torture.
92. While China and Macao have already ratified the Convention Relating to the Status of Refugees, which now already have 145 States Parties, the Convention has not yet been extended to Hong Kong. The lack of any refugee law means that asylum seekers are left without any basic means of living, including food and shelter and are subject to detention and deportation.
93. In the concluding observations of the Committee on Economic Social and Cultural Rights (E/C.12/1/Add.107) May 2005, the Committee expressed concern "that HKSAR lacks a clear asylum policy and that the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, to which China is a party, are not extended to HKSAR. In particular, the Committee regrets the position of the HKSAR that it does not foresee any necessity to have the Convention and the Protocol extended to its territorial jurisdiction."

UNHCR-Hong Kong violates procedural standards

94. Currently there is no refugee status determination system set up by the Hong Kong government to deal with their claims, and the government says that it has no obligation to set up such a system and relies on the United Nations High Commissioner for Refugees to process their claims. However, the UNHCR does not provide adequate protection to asylum seekers and in fact UNHCR only accepted 10% of the asylum seekers as refugees during 2005. This figure is highly

⁷ Figure provided by UNHCR Hong Kong office March 2008.

disturbing and many asylum seekers are rejected without having access to a fair refugee status determination mechanism.

95. In March 2006 the UN Human Rights Committee asked the HKSAR to establish an appropriate mechanism to assess the risks faced by individuals expressing fears of being victims of grave human rights violations in the locations to which they may be returned. The committee is thus concerned about the absence of adequate legal protection and has asked the government to set up its own mechanism. However, the government has turned a blind eye to the recommendations of the Human Rights Committee and in fact it has stated that it has a firm policy of not granting asylum.

96. The need for the government to urgently set up its own mechanism is shown in the results of our survey of 100 asylum seekers called “Survey of the UNHCR HK’s Refugee Status Determination Mechanism” (July 2006). It reveals severe problems of the UNHCR’s system and that the HK UNHCR does not observe the *Procedural Standards for Refugee Status Determination under the UNHCR’s Mandate* published September 2005.

Main findings of the survey

97. According to UNHCR guidelines, applicants may be accompanied by a legal representative during the interviews. However, in 91% of cases, UNHCR never informed the asylum seekers about this right, and UNHCR never allows lawyers to be present during the interviews. This seriously infringes on the right to legal representation.

98. The UNHCR guidelines instruct the interviewers to provide adequate time to the asylum seekers to present their cases. However, the UNHCR rejects cases even though the applicants did not get enough time to present their case. In fact 61% of the asylum seekers say that they were not allowed to make a full account of what happened to them in their country.

99. The survey shows that many asylum seekers were highly unsatisfied with the interpretation. 41% of the respondents felt that the interpreter only summed up what they said. The bad quality of interpretation denies the asylum seekers the opportunity to clearly explain their claims and to make a well-presented claim.

100. According to the UNHCR guidelines, the interviewer should read back major important points of the interview transcripts. However, 88% were not asked to agree on the major points of the interview and 98% were not given a copy of the interview transcripts. Thus the applicant has no access to check whether the UNHCR makes a faithful recording of his account of what happened.
101. According to UNHCR guidelines, rejection letters should permit the rejected applicant to understand the details of the reasons why he has been rejected, so that he is able to make an appeal focusing on relevant facts and issues. However, in 81% of cases the respondent did not receive a detailed written reply about the reasons for refusal of his case. The practice of the UNHCR is to simply give a verbal explanation. However, it is highly difficult to make an informed appeal based on a verbal explanation from the UNHCR. The results show that 64% say it was difficult to make an appeal because they couldn't remember all the reasons for the rejection.
102. According to UNHCR guidelines, the interview should be conducted in a non-confrontational manner. However, the attitude of the interviewers reveals a hostile environment in which 72% of the applicants say that they felt uncomfortable during the interviews. The hostile environment makes the asylum seekers uncomfortable making their claims and many feel as if they are being interrogated.
103. According to the guidelines, UNHCR should have a procedure to receive and respond to complaints. However, it seems that no systematic mechanism is in place to deal with such complaints. 37% had made a complaint, but of these 69% did not get any reply from the UNHCR about the complaint. The lack of any complaints mechanism makes it difficult for asylum seekers to have their cases reassessed if any procedural unfairness has taken place.
104. According to the guidelines, initial decisions made by the UNHCR should be issued within one month following the interviews. However, many have to wait for a long time before getting the results from the UNHCR. 43% had to wait for 7 months or above before they got the first rejection and as many as 22% had to wait between 13-24 months after the appeal before they got a second rejection.

No Legal aid for asylum seekers and torture claimants

105. No legal aid is granted to asylum seekers, refugees or torture claimants. This applies both regarding the refugee status determination procedures and the

Convention Against Torture (CAT) procedures. Thus asylum seekers have to rely on the goodwill of pro-bono lawyers. However, only few lawyers are able to take up their cases. The lack of legal aid effectively means that asylum seekers and CAT claimants do not have legal representation for the screening of their cases. This, in addition to the procedural problems of the UNHCR, leads to a high number of rejected cases. So far none of the CAT cases have been successful and only 10% of the UNHCR cases are accepted.

Recommendations

106. The Hong Kong government should immediately sign the Convention Relating to the Status of Refugees and formulate a coherent and comprehensive asylum policy to deal with aspects of immigration, refugee status determination, food, accommodation, education and health.
107. The government should set up a fair screening procedure to assess claims under the Convention Relating to the Status of Refugees
108. The government should ensure that UNHCR-HK observes its procedural guidelines for refugee status determination.
109. Legal aid should be available for the screening procedures under the Refugee Convention and the Convention Against Torture.

CHAPTER VII

ASYLUM SEEKERS TREATED AS ILLEGAL IMMIGRANTS

No valid identity documents

110. At the moment asylum seekers are basically illegal immigrants when their visas expire. If they approach the Immigration Department to extend their visas or get recognizance they are often rejected and will be asked to leave Hong Kong, which they are unable to. Furthermore most asylum seekers are afraid to contact the Immigration Department as they are most often detained. Thus they are left without any valid identity documents recognized by the government.
111. Those who do get identity documents because they somehow had to contact the Immigration Department are on recognizance. However, the recognizance is nothing more than recognition by the HKSAR that the refugee is an offender for overstaying and enjoys no rights. The recognizance states that they are detained or liable to be detained. Although carrying the recognizance letter, the Immigration Department may still charge them for overstay. Thus this stance essentially amounts to non-recognition, which is against all international humanitarian standards.
112. Lastly, in recent months there has been a change to the practice of the UNHCR-HK office which has created great confusion and fear among asylum seekers. While in the past each asylum seeker was issued an asylum seeker certificate, that included name, country, photo and case number, this practice has been now abandoned leaving asylum seekers without any documents to prove their asylum seeker identity. All they have now is in fact is a paper with an appointment date. The paper does not reveal that it has been issued by the UNHCR nor the identity of the holder besides from a case number.

Detention

113. Asylum seekers and torture claimants are arbitrarily detained. The Immigration Ordinance does not have specific provisions to protect asylum seekers, and basically treat asylum seekers as regular overstayers. Thus the Immigration Ordinance doesn't comply with article 28 and 41 of the Basic Law of Hong Kong which protects non-residents against arbitrary or unlawful arrest, detention or imprisonment. Furthermore the Bill of Rights Ordinance (Part III,

para. 11) does not cover immigration legislation as regards persons not having the right to enter and remain in Hong Kong. Around 200 asylum seekers or CAT-claimants are currently detained.

Domestic violence and rape left unreported

114. The fear of detention results in the fact that female asylum seekers, who are victims of violence or harassment (including sexual and domestic violence) in Hong Kong do not dare to report the case to the police. In 2005, UNHCR received around 5 claims of rape and domestic violence, which occurred in Hong Kong. However, UNHCR reports that the majority of victims, although counseled about the possibility to lodge complaints, choose not to do so mainly for fear of arrest by the police. Thereby asylum seekers are easy targets of rape and domestic violence, and furthermore the perpetrator goes unpunished, and the victims are left without any proper channels for counseling. Lastly, without proper protection the victim may live in continued fear of being further subject to victimization.

115. Furthermore there are no shelters to which female asylum seekers and refugee victims of violence can safely be sent to and cared for. At the moment the victims are solely dependent on NGOs and UNHCR. NGOs and UNHCR have had to find accommodation for the victims in which they could hide.

116. The government should immediately protect women asylum seekers against prosecution and provide protection under the law against sexual and domestic violence.

No adequate protection against *refoulement* under CAT

Article 3 No refoulement

117. The Hong Kong government ignores its obligations to set up a screening procedure to process asylum claims, and has left it to the UNHCR. However, while such claims are being assessed there is no protection against *refoulement* through the UNHCR procedure. Only some protection against *refoulement* is only given to people who make claims of torture at the Immigration Department under the Convention Against Torture (CAT). However yet, the CAT procedure is wrought with problems and offers no adequate protection against deportation.

118. There is no adequate legal protection against *refoulement*. The procedures under CAT are non-statutory and The Crimes (Torture) Ordinance does not specifically incorporate the principle of non-refoulement. Additionally the definition of “torture” is inconsistent with the definition in the Convention Against Torture.
119. Secondly, the determination procedure only allows two weeks for claimants to make petitions against the determination to the Chief Executive. Two weeks however, is not sufficient time for claimants to make appeals. Even UNHCR allows 1 month to make appeals. Third, The Bill of Rights (article 9) does not confer a right of review in respect of a decision to deport a person not having the right of abode in Hong Kong or a right to be represented for this purpose before a competent authority.
120. In addition to the above mentioned problems, in fact most victims of torture are deterred from making a CAT claim at the Immigration Department, since, if they are overstayers, they are usually detained.

Recommendations

121. The Hong Kong SAR Government should amend the Immigration Ordinance so that asylum seekers and refugees are not liable to be detained on account of their illegal entry or presence, provided they present themselves without delay to the authorities and show good cause for their illegal entry of presence.
122. The Hong Kong SAR Government should provide asylum seekers, CAT claimants and refugees with valid identity papers.
123. The government should immediately protect women asylum seekers against prosecution and provide protection under the law against sexual and domestic violence.
124. The Hong Kong SAR Government should amend The Crimes (Torture) Ordinance so that it incorporates the principle of *non-refoulement*.

CHAPTER VIII

DETENTION CONDITIONS OF ASYLUM SEEKERS

Article 11 Systematic review of practices to prevent cases of torture

Article 13 Access of the Torture Victims to the Complaint Authority

125. Many asylum seekers and claimants of torture, who have been detained by the Immigration Department or the Correctional Services Department, have complained that they were ill-treated during detention. In May 2007 SoCO published a research about the detention conditions of asylum seekers. Below is a summary of the main results:
126. According to the survey, 75% of the former detainees were detained for overstaying while 7.8% were detained for illegal entrance. Although nearly all of them had a UNHCR letter at hand when arrested, the police/Immigration Department did not recognize the letter and detained them anyhow. (The lack of awareness about the background of asylum seekers is shown in the fact that 62.7% told that the staff tried to persuade them to voluntarily return to their own country, despite the fact that they had a UNHCR or CAT claim)
127. According to the UNHCR Guidelines there are negative effects of detention on the psychological well being of those detained and that alternatives should be considered (guideline 7). The results from the survey confirmed that detention of the asylum seekers had led to conditions, which were not present before detention. Thus 48.0% said they had difficulty in sleeping, 47.1% said they experienced depression or anxiety, 49.0% had more headaches, 27.5% had more flashback and 13.7% (7 people) actually thought of attempting suicide.
128. When asked about whether detention caused any difficulties to their claims 85.4% felt that it was difficult to provide evidence to support their case because they could not contact their friends and relatives so it was very difficult for them to arrange enough documents to support their case. Also only 18.8% were able to get information about what was going on with their UNHCR case.
129. Many asylum seekers have been detained for a long period of time. 35.2% were detained for 1-3 months. 21.6% were detained for 6-12 months. 15.7% were detained for 1 year or above. In fact one person was detained for 2 years or above. Only 17.6% were detained for 1 month or less.

130. According to the Immigration Service (Treatment of Detained Persons) Order Chapter 331 C, a detainee shall be afforded reasonable opportunity to communicate with a legal adviser (section 4).
131. The survey reveals that it is very difficult for asylum seeking detainees to gain access to lawyers. Only 4 out of the 51 respondents were helped by Legal Aid, while private lawyers helped others, usually on a pro bono basis. 57.1% of the respondents felt that it was difficult for them to contact a lawyer, and many (74.5%) felt that the time given to them to make a call to lawyers was too short.
132. According to the Prison Rules Chapter 234 (Subsidiary legislation) (“the Prison Rules”) every prisoner shall have ample facilities to make complaints and the superintendent shall take all the necessary steps to redress all grievances so far as is possible (para. 95).
133. As many as 54.9% of the detainees actually complained when they were in detention. Of these 52.6% were threatened by the staff when they made complaints, such as threatening that they would not be given any food or that their detention length would be increased. Some were threatened that they would be locked up in a special unit or be taken to the mental hospital.
134. Thirdly, 36.4% claim to have been punished by the staff for complaining. Among those who claim to have been punished for complaining 54.5% were taken to a special unit while 27.3% were taken to a mental hospital. 9.1% were given injections, 2 people (18.2%) were beaten.
135. According to the Prison Rules para. 9(2) the searching of a prisoner shall be conducted with due regard to the decency and self-respect. The survey revealed that many detainees felt that the detention staff did not respect them during body search. The respondents were insulted (34%) and joked (36.2%) about their private parts by the officers. Many believe that this is due to widespread racial discrimination in the detention centres. In fact half of the respondents actually feel that they were discriminated because of their race and 44.9% reported to have been insulted by staff.

136. The UNHCR Guidelines emphasizes the need for psychological counseling where appropriate (Guideline 10) and that there should also be an initial screening of all asylum seekers at the outset to identify trauma and torture victims (guideline 10(I)). However, in 77.3% of cases, the asylum seekers were not asked by the staff if they had been tortured before they were put in detention.
137. Secondly, the medical care in detention is far from sufficient. 45 of the former detainees had asked to see a doctor, but many (59.0%) had to wait for a long time before a doctor arrived to see him, and 5.3% never saw a doctor. As many as 55.3% claim that they were given wrong medicine. Many respondents said that the doctor would usually just give panadol for any kind of problems, and that no thorough examination is given. Indeed several asylum seekers have explained that there were several meters between the patient and the doctor throughout consultation.
138. There was a lot of dissatisfaction with the living conditions in the detention centers/police stations. 10 respondents had experienced at least one night where they were not provided with any bed. Those, however, who did have beds reported about the beds being dirty, hard and uncomfortable, and 7.8% (4 people) were not given blankets.
139. Regarding showers, 60.8% could not shower everyday. Some reported that they could take a shower just once in ten days or even less. The problem with shower was faced by 14 respondents at Ma Tau Kok detention centre and 8 respondents at police stations. Also, 14.5% said that the toothbrushes provided were used or dirty.
140. Reports of sleeping on the floor, bad hygiene arrangements, and punishment for making complaints are common. The government has no culturally sensitive services nor does it seem to provide any kind of training for against racial discrimination.

Recommendations

141. The Hong Kong SAR Government should prevent abuse and maltreatment of asylum seekers and CAT-claimants in detention.
142. The Hong Kong SAR Government should ensure that there is an independent

and impartial complaints mechanism. Complaints should be promptly dealt with and replied to without undue delay. The detained shall not suffer any prejudice or punishment for making a request or a complaint.

143. The Hong Kong SAR Government should improve access to and the quality of health services, including mental health services, to detained asylum seekers. Medical personnel should receive specialized training in caring for asylum seekers, which includes identifying and responding to survivors of torture and persecution, and addressing their psychosocial needs.
144. The Hong Kong SAR Government should improve access to legal services for asylum seekers. In providing legal, medical and other services, the government shall ensure that adequate interpretation services are readily available.
145. The Hong Kong SAR Government should ensure humane conditions of detention, both in police stations, airports and detention centres. This includes bedding, blankets, adequate and nutritious food, bathing facilities, toiletries and clothing.
146. The Hong Kong SAR Government should provide racial sensitivity training to frontline officers when dealing with asylum seekers. Training related to the special situation and needs of asylum seekers should also be provided.

Schizophrenic blames police phobia for acts

Schizophrenic blames police phobia for acts

.....
Yvonne Tsui and Loretta Fong

A paranoid schizophrenic told a court yesterday how his phobia of police caused him to swallow a thermometer, chomp on a notebook and bang his head on a wall.

Wu Shu-bun, 30, who claimed to have developed the mental condition after being assaulted by police officers, was giving evidence in the Court of First Instance to support a claim for up to HK\$3 million in damages from the force.

He told Mr Justice Jeremy Poon Shiu-chor his problems began after he was arrested on suspicion of sexually harassing beauty salon employees 10 years ago, and was kicked in the groin and kneed in the leg.

On February 5, 1998, he was at home with a fever and his father gave him a thermometer. When he looked through the window and saw two policemen walk past, he had an urge to swallow the thermometer.

"My father saw me swallow the thermometer," Mr Wu said. "He immediately turned me upside down to help me to vomit."

His father made a police report,

but when officers arrived at his Hung Hom home, the situation worsened.

"When they arrived, I bit into a notebook and smashed my head against the wall."

Mr Wu was treated at Queen Elizabeth Hospital and later Kwai Chung Hospital until March 26.

In 2000, a superintendent of the Complaints Against Police Office telephoned his father and said there was no hope of substantiating Mr Wu's claims.

Feeling upset, he went outside. Seeing a policeman, he became scared and walked away.

"That policeman intercepted me and asked for my identity card. I was very scared. I pushed him away."

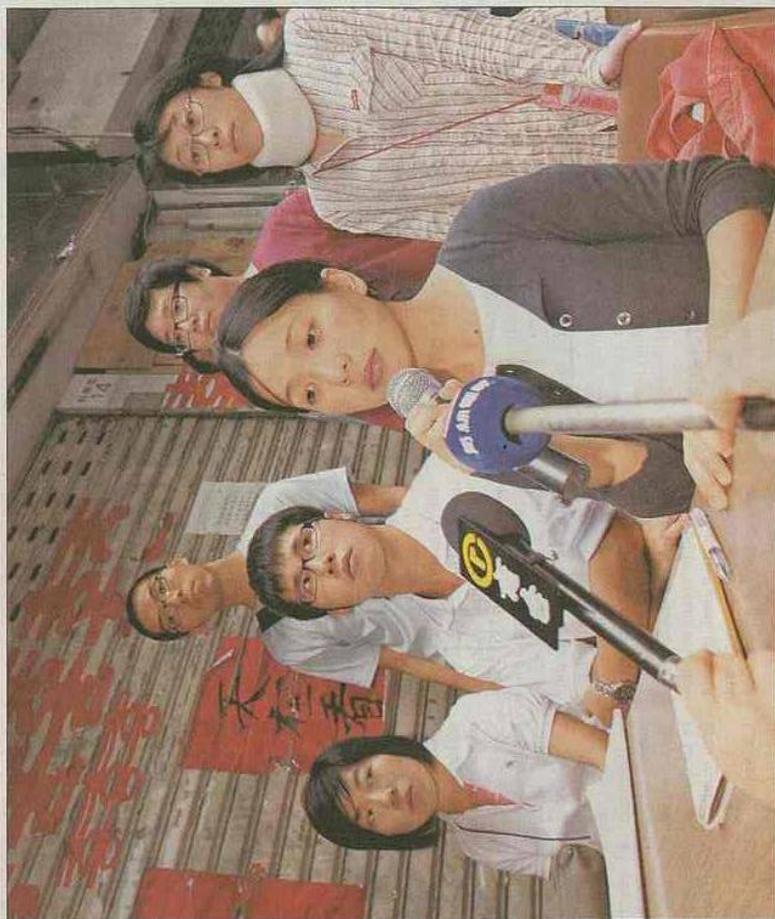
Mr Wu said a group of policemen arrived later at the scene when he was putting up a struggle. He was subdued and handcuffed for allegedly attacking a police officer.

"One of the policemen hit my left eye with a baton, and I was already handcuffed at that time."

He told the court that he was taken to the police station and was later told he was not guilty of an offence.

The hearing continues today.

Outrage as activists forced to strip during search in police cells



Describing their harrowing strip-searches after their arrests are, front from left, Mak Ka-luin, Wong Ho-yn and Sin Wai-song.

Outrage as activists forced to strip during search in police cells

Una So

Fifteen people arrested last Friday for obstructing demolition work on Wedding Card Street say police strip-searched them in inappropriate circumstances and made leering sexual comments.

One of the women protesters said a male officer was present when she was strip-searched and had made suggestive comments.

The officer also made several visits to the female cell during their incarceration.

In addition, a male protester was strip-searched twice and was asked to lift his genitals during one inspection.

Several human rights activists say they are appalled at the allegations and want an open investigation.

But a police spokesman said regular procedures were followed during the arrest and detention of the protesters.

The 15, aged from 17 to 41, last Friday clashed with the police when trying to prevent buildings along Lee Tung Street, also known as Wedding Card Street, from being demolished. They were taken to North Point police station.

Some claim they were treated roughly when thrown into police vans and at least one person suffered neck injuries.

Three men and four women said they were strip-searched that night.

One, social worker Sim Wai-fong, said a male sergeant had repeated four

times the group would be "fully searched" and had made suggestive gestures to her.

He also went into the female block to deliver food.

She said she was strip-searched in presence of two female officers in a cage-like cell during which she was asked to kneel down and then stand up.

She said after she had dressed herself, she noticed a male sergeant with a moustache standing about a meter away and looking her straight in the eyes.

When Sin asked the two female officers what the sergeant was doing there, they kept silent.

"I was scared and angry," Sin said. "It was done in front of so many officers and no one said anything."

Wong Ho-yn, one of the hunger strikers during the Queen's Pier saga, said he was strip-searched twice, and was instructed to lift his genitals.

University student Mak Ka-tui said she felt humiliated when she was told to get down on all fours after she had stripped and then to lift her buttocks for inspection.

In all, seven of the 15 protesters went through the so-called "full search." They were locked up for one night before being released on bail.

Only after they had compared notes the following day did they realize their treatment was far from the standard.

Hong Kong Human Rights Monitor director Law Yuk-kai said it would be horrifying if police stations turn out to

be dangerous places as police officers are supposed to protect the public. "These stations were built with taxpayers' money and now bad apples in the force are using them to harass arrested people," he said.

"If the claims are proven, this incident may further erode the public's confidence in the police."

He said the key to the truth lay in preserving the tapes of all closed-circuit cameras inside the station at the time

as these may help to identify the particular officer being accused. The protesters are seeking legal advice on whether to file complaints and are seeking help from Legco.

Cyd Ho Sau-lan from Civic Action demanded a full and transparent investigation and said filing complaints would only lead to the police investigating themselves.

She said the Legco would be the best place to find the truth.

"This is outrageous," Ho said. "There were so many people at the station and no one knew about this. This matter has to be brought out into the open."

Earlier yesterday, the protesters pleaded not guilty at the Eastern Magistrate's Court to obstructing the police.

The case has been adjourned to November 23 for a pretrial review. una.so@singtaonews.com

South China Morning Post 南華早報

CITY4 | CITY | By Colleen Lee

Further changes on strip-searches urged

Further changes on strip-searches urged

Colleen Lee

Legislators are dissatisfied with revised police guidelines on strip-searches and have called for clarification from the government.

At a Legislative Council security panel meeting yesterday, many lawmakers voiced disappointment over the revised guidelines.

Under internal police guidelines, there is no specific requirement for law enforcers to record the reason for and extent of a body search.

But the revised guidelines will state that duty officers have to record the reason for searching a detainee, and the extent of the search.

The amendments were made after the public and lawmakers accused the police of strip-searching Wan Chai heritage activists who were detained in October.

Civic Party legislator Audrey Eu Yuet-mee yesterday urged police to list the circumstances under which strip-searches could be carried out on detainees under the Police General Order.

Assistant Commissioner for police support Austin Kerrigan said they would examine Ms Eu's suggestion and would add one to two examples of circumstances under which

strip-searches might be conducted under the guidelines.

But he said the extent of a search was case-specific and depended on circumstances. At present, the police station duty officer is responsible for authorising such a search.

Principal assistant secretary for security Apollonia Liu Lee Ho-kei said duty officers were station sergeants with more than a decade's experience.

They should be able to make a good judgment on the extent of a search, she said.

But lawmaker James To Kun-sun, of the Democratic Party, said strip-searches should be authorised by law enforcers of higher rank, such as chief superintendents and senior superintendents. Mr To also urged police to revise their guidelines so detainees could be strip-searched only if officers had reasonable doubt, and not under the current rule of "if need be".

Ms Liu said duty officers would make judgments based on different circumstances and their experience.

Lawmaker Philip Wong Yu-hong, of the commercial sector, called on police to use hi-tech devices to check if detainees were carrying weapons or other dangerous articles, instead of carrying out strip-searches.

市民投訴警隊飆升 Sharp Rise of Complaints against Police

市民投訴警隊 飆升

行為不當增逾三成 顯處分無阻嚇性

指控	07年1月至2月	今年1月至2月	升幅
疏忽職守	166	183	10.2%
行為不當/ 態度欠佳/ 粗言穢語	115	150	30.4%
毆打	75	80	6.7%
總數	402*	455*	13.2%

*個案總數包括一些其他指控



勞永樂指出，投訴數字上升顯示市民不滿警方執法情況日益增加。



馬維騅表示，今年首兩月數字上升只是季節性問題，不反映全年趨勢。

	2006	2007	升幅
獲通過的一般個案數目	1,311	1,551	18.3%
獲通過的複雜個案數目	803	958	19.3%
獲通過的個案總數	2,114	2,509	18.7%
獲通過的指控總數*	3,518	4,341	23.4%

*一宗個案可能包含超過一個指控

不滿表現 市民愈來愈不滿警隊的執法表現。今年首兩個月，警方投訴警察接獲的投訴個案較去年同期上升一成三，當中以投訴警務人員行為不當的個案升幅最顯著，增幅高逾三成。而負責監察和覆檢警方投訴警察處理過的個案的投訴警察獨立委員會，去年處理的個案也較前年勁升兩成三。獲通過的指控更增至四千多個。警監會成員勞永樂指，數字反映市民不滿警方執法情況日益增加，又批評投訴警察處理部分投訴成立的個案，只作出口頭警告，毫無阻嚇性。

投訴警察數字顯示，今年一、二、三月，警務人員被投訴的個案總數為四百五十五宗，而一貫最多投訴的三大項目，如投訴警員行為不當等全線上升（見表一）。至於警監會○七年處理的個案也大幅上升，獲通過的個案總數增至二千五百宗，較前年上升逾兩成三。獲通過的指控增至四千多個（見表二），當中有一千一百八十多項指控展開全面調查，一百零七宗指控最終被列為「證明屬實」或「未經舉報但證明屬實」。

交警執法準繩度惹關注

除投訴增加外，交通警員執法的準繩度也引起關注。警監會接獲指控指，○六年一名中央交通檢控組警長處理一宗垃圾工人衝出馬路，致令一名電單車司機受傷的個案時，錯把傳票上的罪行列為「身為鐵路使用者的行人，疏忽地危害你本人（即該工人）的安全」。令工人最終被罰。警監會指，該警長列寫該罪行時應同時包含「疏忽地危害本人及他人，即同時危害電單車司機，警長做法明顯錯誤，故建議把「疏忽職守」的指控，由投訴警察署切實的「無法履責」改為「證明屬實」。投訴警察署最終接納建議，向警長作出口頭訓喻。但警監會成員勞永樂指，投訴警察署處理是次投訴時，只向疏忽職守的警長發出口頭警告，明顯是有意縱護同僚的表現，反映投訴警察署的懲罰措施阻嚇性不足，可能是導致今年首兩月及去年全年，警務人員被投訴數字上升的原因之一。

不過，警務處助理處長（服務質素）馬維騅回應稱，○七年投訴數字處於近年低水平，而今年首兩月數字上升只是季節性問題，不反映全年趨勢。



圖：市民投訴警員執法表現的個案飆升。

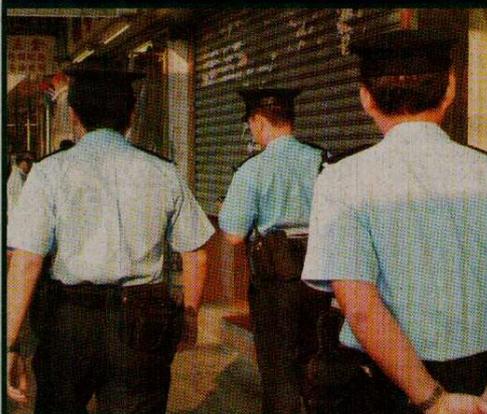
There is an increasing trend of public dissatisfaction on the performance of the police force in the course of law enforcement. According to the recent statistics of the Complaint Against Police Office, the number of allegations of misconduct in the first two months of 2008 was 30% higher than that of the same period in 2007. Dr. Lo Wing Lok, an active member of IPCC, criticizes the punishment on the police officer complained was too lenient and lack of threatening effect.

警隊遭索償 多賠錢和解

Most of the Personal Injury claim against the Police was settled out of court.

四年耗公帑440萬 臭屎密囚免曝光

警隊遭索償 多賠錢和解



黑箱作業 在警監會要求成為法定機構加強監管警隊的呼聲中，爆出警隊涉嫌濫權、濫用武力、砌生豬肉等醜聞，引發受害人的訴訟潮，平均每年有十三宗向警隊民事索償個案，而警方被指「臭屎密囚」，為免事件在審訊中曝光，與索償人庭外和解賠錢了事，過去四年共花去四百四十餘萬元納稅人金錢。有警監會成員更踢爆這些涉及公帑的庭外和解個案，警方將之列為機密，警監會無法從悉箇中詳情及是否恰當，對警方黑箱作業大為不滿。

據警方提供的數字顯示，涉及警員在執行職務期間而引起之民事索償個案數目，於二〇〇三年至二〇〇七年十一月，平均每年約有十三宗，大部分庭外和解。涉及的賠償金額共逾四百四十萬元，其中〇三年佔一百一十多萬元，〇五年達二百五十九萬元（詳見表）。至於經法庭審訊的個案只屬少數，警方並無統計，亦未能提供〇三年前的統計資料，但本報獲悉，單是警方在九九年遭民事索償三宗個案，賠償額即達九十三萬元。

及將投訴個案妥善分類。
「法官判案時，主要依靠認罪口供作為參考。如果疑犯認罪，警方就不用做太多工夫，「嚴刑逼供」由是變得吸引。」香港人權監察總幹事羅沃啟指出，除了便用武力之外，警隊中的不良分子也會以誤導手法欺騙疑犯在口供上簽署，甚至以恐嚇手段威逼疑犯認罪，手法層出不窮；加上「警員之間互相包庇的情況嚴重」，令疑犯無法維護應有權益。

羅沃啟批評警隊「內部監察不足」，又「缺乏獨立監察機制」，而警員在執行職務期間而引致的索償個案，其實是「十分重要的資料，當中可能涉及警員越權，對未來如何防止同類事件發生有參考作用，在這種情況下，警方更應該向警監會交代有關個案的內容。」對警方提出民事索償的個案層面廣泛，而解決索償個案的方法，除經法庭審訊外，亦可由與索償雙方庭外和解。未經法庭審訊之索償個案，即沒有確立警員有否執法不當而引起有關的索償，發言人補充，警員於執行職務期間，會以警隊條例及警察通例為依據。「警隊有監察機制確保人員有效和適當地執行其職務。每一個案均為個別事件，故無需向警員提供特別的指引。」 ■記者羅麗輝、黃裕慶

警員互包庇情況嚴重

消息人士透露，投訴警察課每月都會編訂一份月報，將涉及投訴警察的資料，提交各總區指揮官及主要部門指揮官，例如有組織罪案及三合會調查科、商業罪案調查科等，以敦促各部門主管「腳踏實地」。前線警員執法不當，要用公帑賠償，且警方毋須將索償的原因及協商過程告知警監會，令警監會部分成員深感不滿。

警監會委員湛家雄批評說，庭外和解的個案，除非涉及投訴，否則警方毋須向警監會報告；警監會曾要求警方提供庭外和解的個案資料，但被警方以協議須保密為理由而拒絕，令我們無法在公開、公平、公正的情況下監察警隊。

警方最近須作出賠償的個案

【個案一】
賠償金額：港幣七十五萬元
個案摘要：一名男子被元朗刑事部人員以接贓罪為名拘捕，其後獲無條件釋放。他投訴被警方拘留期間以各種方式將他毆打，逼他認罪，於是循民事途徑索償，要求賠償港幣二百萬元，最後獲賠七十五萬多元。

【個案二】
賠償金額：港幣十萬元
個案摘要：一名男子在梨木樹因藏毒而被捕，經過審訊後獲判無罪。他投訴被警方拘留期間遭受毆打，故提出民事索償，要求賠償港幣二十多萬元，最後獲賠十萬元。

【個案三】
賠償金額：港幣八萬元
個案摘要：一名非法入境者在新界區被捕，被控藏有扳鉗和螺絲起子、抗拒警務人員和非法留港三項控罪，惟首兩項控罪不成立。他被遣返內地之前投訴遭毆打，並成功申請法律援助提出民事索償，最後獲賠港幣八萬元。

投訴警方獨立監察委員會

Independent Police Complaints Commission



警方執行職務須以警隊條例及警察通例為依據。
(資料圖片)

According to the internal information released by the Police Force, the number of civil lawsuits against the police officer is average on 13 per year between year 2003 to 2007. Most of the cases were settled out of the court and the annual public expenditure was around 4.4 million Hong Kong dollars. The IPCC member commented that the Police Force needed not disclose the information of the court cases, which make the monitoring work become more difficult. A local human rights group demanded the Police Force report the situation to the IPCC and actively identified the implications for each court case to review current police guidelines.

南華早報 South China Morning Post

EDT2 | EDT | By SHERRY LEE

Asylum seekers abused in HK, group alleges

Asylum seekers abused in HK, group alleges

Sherry Lee

Asylum seekers face physical and psychological abuse in Hong Kong detention centres as part of government tactics to force them out of the city, a concern group says.

The Society for Community Organisation, after interviewing former inmates from immigration holding centres, said people fleeing political persecution overseas faced "torture" in detention centres where they were held for violating immigration laws.

Most of the 51 inmates interviewed said they were stripped in front of fellow asylum seekers and before officers who insulted them and joked during body searches. Many said they were denied medical care and psychological counselling and were given only Panadol for all types of medical complaints.

Those who objected were sent to prison mental hospitals or into solitary confinement as "revenge", said

the society's organiser, Annie Lin On-nei. "Immigration officers would tell them, 'If you don't like the treatment here, you can go back to your country'," Ms Lin said. "We believe the government is purposely doing this to force the asylum seekers out of Hong Kong."

An immigration spokesman rejected the claims, saying: "Our officers won't tell the asylum seekers this. Also, we don't see them unless on visits for assessing their torture claims."

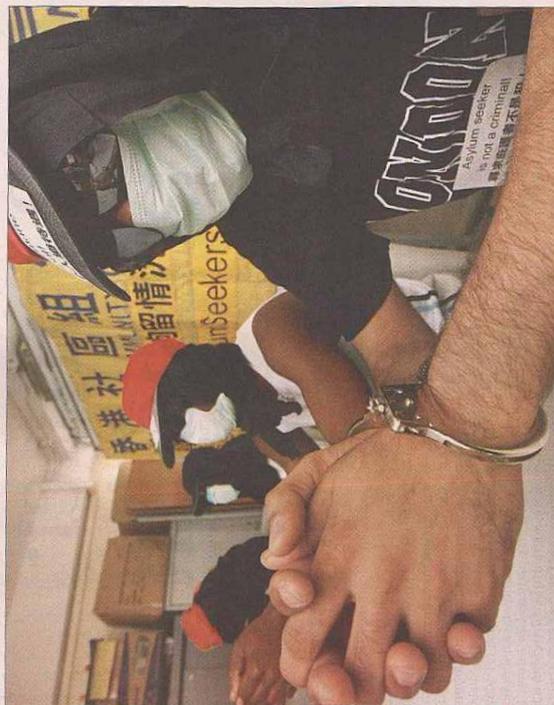
Ms Lin fears the Immigration Department, faced with an increase in the number of torture claimants in Hong Kong from 186 in 2005 to 514 cases last year, will abuse asylum seekers more in detention to force them out. Two hundred asylum seekers are detained in Hong Kong, mostly for overstaying. Most are in Castle Peak Bay Immigration Centre and Ma Tau Kok detention centre. The society urged the government to

adopt a no-detention policy towards asylum seekers.

The Correctional Services Department (CSD) received 75 complaints from asylum seekers and torture claimants from April 2005 to December last year. Of these, 27 were processed and found to be unsubstantiated. The remainder are still being investigated.

Castle Peak Bay is managed by the CSD on the Immigration Department's behalf. A CSD spokeswoman rejected the accusations, saying under the department's rules, inmates "must be treated with kindness and humanity".

African former inmate Saidou, 30, who said he was persecuted in his country for being a member of an opposition party, said he wasn't allowed to shower for three weeks after he objected to having to undergo a body search at Ma Tau Kok detention centre in front of four officers.



Masked asylum seekers get their message across at a press conference yesterday. Photo: Jonathan Wong

7人行動神秘 市民舉報 港警拘捕公安

Covert actions of 7 officers Hong Kong Police arrested Mainland Police

7人行動神秘 市民舉報
港警拘捕公安

公安被捕經過

1 一輛掛有中港雙牌的寶龍車載着四名男子，停泊在摩星嶺海邊別墅外

2 住警員即地可疑報警

3 警員到場調查時，另一輛日產房車駛至，車上三人均警員假扮公安人員，與報「做嘢」

【本報訊】七名疑係來港執行「特別任務」的內地公安人員，在港島摩星嶺一高尚住宅外形迹可疑被住戶報警「揭牌」。警員到場調查時對方「搶身」直認是公安，惟警員公事公辦將各人拘捕傳審，趕扣查後七人暫准保釋候查。立法會議員譚志源申請將事件為公安執法執法，問題非常嚴重，不但有違一國兩制規定，還大大打擊港人信心及破壞本港的法治精神。 記者：鄭華

自稱公安「做嘢」

難悉，導致公安被捕身份的摩星嶺別墅內預警一住戶。該處居住不少富商名媛，特設建築一古風園林佔上址。由於該別墅位處偏僻及保安森嚴，一且有陌生人在附近出現會極易被住戶發現。

消息指出，兩日前已有人發現兩部均坐滿人及掛有中港雙牌私家車，輪流在別墅外徘徊，似在監視一些人物，住客會向現駐的警員查詢了解及將兩車車牌記下。

現場消息稱，前晚八時，再有住戶發現一輛可疑汽車停泊於別墅外，車上坐有四名形迹可疑，由於情況可疑住戶報警揭牌。

警方迅速率隊趕赴現場，當場截獲一輛可疑寶龍房車，警員調查期間再有一輛坐有三名男子汽車駛至，同時有人報在場圍觀警員自稱公安及被露露「做嘢」。當警員例行向在場疑人查詢證件時，七人據出示警牌證件，繼於他們形迹可疑，警方遂從後座各人胸帶帶出四區警署調查。

消息又稱，一輛疑人執帶帶警員後有人舉報疑人執帶帶警員，並出示「人民警察證」等證件，惟當警員查獲他們在摩星嶺道出現目的及辦理何事，對方僅表示「做人」及拒絕透露辦理何事。

保安局長已獲悉

由於該批可疑人身份敏感特殊，且對「做嘢」一事半口無憑，事件引起神秘感。警方高層處理亦甚為謹慎。昨日港島總警長馬基與西區警署會見被拘查七人，以確實他們身份及來港目的。幸在該場中區聯絡員向內地公安部門查核各人身份。

由於事件高度敏感，保安局長李少光已參加會商研訊。

立法會保安事務委員會主席譚志源稱，多年前海關志一被公安竊劫押送港地搜獲事件後，港府曾向內地高層提議，雙方如有想不謀而合人員應報到對方地方辦案，嚴格來說，公安只可來港旅遊及作正式工作會議等，絕不能私下執行任務。

對於今次事件，譚志源強烈要求當局徹查及與中方聯絡，調查該批人來港目的，並要追究責任以向有關高層施地施壓事件日理。

議員促徹底交代

立法會議員余若薇亦指，竊志一事件已明顯有違一國兩制安排，兩當局事後亦只含糊向立法會交代，至今更不了了之，稱今次公安竊劫執法事件屬實，當向有關高層或向立法會交代清楚。

社區服務局主任何善明指，在竊志一事中已見港府態度軟弱，今次兩局不徹底處理，不排除內地公安竊劫執法事件會陸續在港發生。

In June 2004, seven public security officers coming from the mainland China are suspected to carry out special duty in Hong Kong. Four of the mainland public officers, who parked their car outside the private villa, conducted covert surveillance against one Hong Kong residents and was reported to Hong Kong Police Force. When the local police officers carried out investigation, those mainlanders disclosed their identity as public security officer and worked at Hong Kong. Nevertheless, the Hong Kong police arrested them no matter their identity of mainland officials. The Legislative Councilor, Mr. To Kun-sun James, criticized that the problem of cross-border law enforcement between Hong Kong and the mainland China seriously violated the principle of "One Country, Two Systems" and infringed the concept of the rule of law in Hong Kong. It is urged that both governments should strictly comply with its own jurisdiction and avoid similar happening.

Appendix 9

South China Morning Post 19 February 2008:

“Screening system urged for asylum seekers kept in limbo”.

TUESDAY, FEBRUARY 19, 2008 SOUTH CHINA MORNING POST

Better screening system urged for asylum seekers kept in limbo

SUMP 19/2/08.

Anita Lam

The government should provide a more efficient mechanism for screening asylum seekers – not just for their benefit, but also to ease the burden on taxpayers, a charity organisation said yesterday.

The comments follow a Court of First Instance ruling yesterday that the government had no obligation to screen asylum seekers.

At present, the Hong Kong office of the UN High Commissioner for Refugees is responsible for screening people seeking refugee status in the city. There are about 2,000 such cases pending, many of which have been in the works for years. During this time, the government provides for their accommodation and living.

Dablo, an African who arrived in the city in 2003 to avoid political persecution in his home country, said that what he thought was the beginning of a new life turned out to be a torture of infinite waiting.

“I have been waiting for so long. Every day I sleep and I eat, there is nothing else I can do. I don’t know how much longer I have to wait, but I also can’t go back. I feel like I am nothing,” he said.

The 39-year-old professional applied to the Hong Kong office of the UNHCR in 2003 for refugee status, but after a year of assessment he

received a letter informing him that his application had failed. “No reason was given. They just tell you, ‘You are not credible, we can’t accept your application,’” Dablo said.

He then filed claims of non-repatriation to the Immigration Department based on the grounds that he is a victim of torture. That application is still pending.

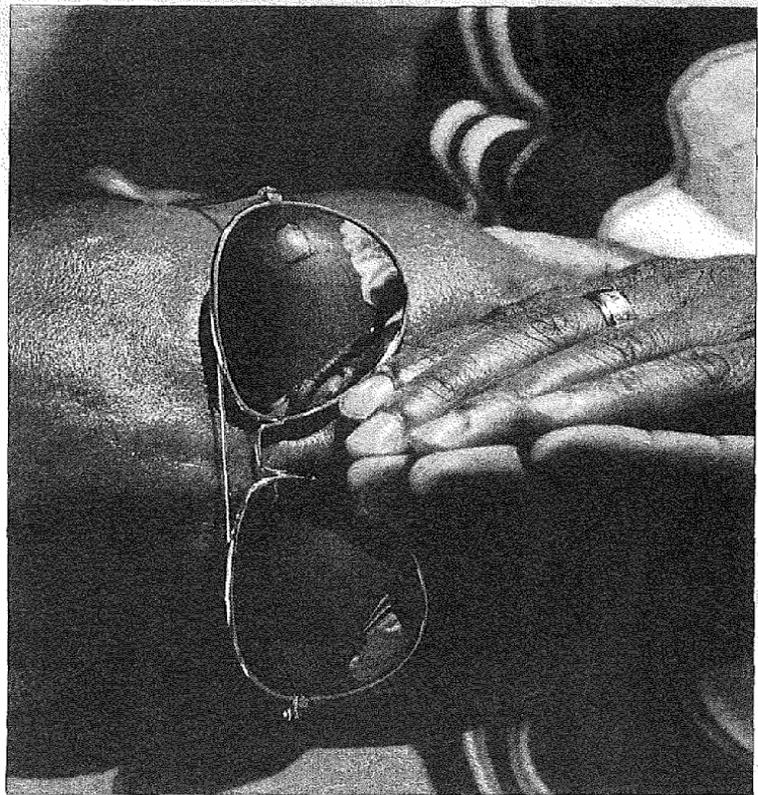
Annie Lin, of the Society for Community Organisation who has been helping asylum seekers, said such cases were not unique.

“The assessment can take years, but the reasons given often contain nothing more than a few lines and it is difficult for the claimants to lodge appeals,” she said.

Even if they seek to appeal, their cases are not heard by a court but by a separate UN committee.

“If the government sets up a formal assessment mechanism, the real refugees would not have to be stuck in the city for long and fake applicants who abuse the system could also be repatriated sooner.”

According to Immigration Department statistics, the number of asylum seekers claiming torture increased from 54 in 2006 to 1,583 last year, with the majority from South Asian and African countries. Many of them lodged their claims only after having been arrested or notified of their removal.



Dablo, an African refugee, had his claim for asylum status rejected, but no reason was given. Photo: Martin Chan

Appendix 10

The Standard 7 May 2007: "Degrading" treatment for asylum seekers"

Monday, May 7, 2007 The Standard

M4 METRO

'Degrading' treatment of asylum seeker

Mimi Lau

An asylum seeker who fled his Central Africa homeland alleging political repression has launched a diatribe against Hong Kong authorities, claiming "inhumane" and "degrading" treatment while under detention.

The 30-year-old man, using the pseudonym Saidou, appeared with five other asylum seekers at a news conference Sunday amid media reports the Immigration Department has identified at least one syndicate that has been systematically smuggling workers into Hong Kong since last year.

Declining to name his home country at the conference arranged by the Society for Community Organization, Saidou said his participation in an opposition political party led him to being tortured by police back home, forcing him to seek protection elsewhere.

He said when he arrived in Hong Kong by plane in 2003, he found the

situation no better. Among his litany of charges against local law enforcement officers, Saidou alleged he was subjected to strip searches in the presence of several officers and placed in solitary confinement at several facilities. He said he was transferred to a facility treating the mentally ill after "a superintendent" at Victoria Prison said he was "emotionally unstable."

Describing his experience as "very disturbing" and "degrading," Saidou felt he was punished for raising complaints with a Justice of Peace during his detention. He claimed he was told by officers: "If you don't like the system here, you can return to your country."

He added: "What I'm asking is, give me the time to process my refugee claims so I can get protection, I'm not here to commit crimes."

According to Saidou, he was subsequently released in September 2005 on recognizance after a doctor at the

mental facility diagnosed him as mentally sound.

Revealing the detention conditions of asylum seekers, based on in-depth interviews with 51 of them from Africa and Southeast Asia, community organizer Annie Lin On-pei said the local detention conditions were so inhumane that many detainees had developed depression and anxiety, and some had even contemplated suicide.

She said 75 percent of 200 foreign-ers under detention are held for overstaying, and 8 percent for illegal entry.

A spokesman for the Immigration Department said Sunday it is investigating at least one syndicate believed to be involved in the trafficking of humans into Hong Kong.

"The number of CAT [Convention Against Torture] claimants has risen by 300 percent since the second half of last year, many of them flocking to Hong Kong via illegal means," the spokesman said.

In the first three months of this year alone, 278 CAT claims were received, compared with 63 during the same period last year.

For the whole of 2006, 614 claims were filed, against 186 in 2005. About 1,300 cases are still being processed, and 15 percent of the claimants remain under detention.

"Many of them would arrive in the mainland and enter Hong Kong by sea. Subsequently, they would apply for refugee status after being caught for overstaying, illegal labor or other criminal offenses," the spokesman said.

According to the spokesman, only 5 percent of the refugees file their claims within two weeks of arrival, while 95 percent wait an average of 17½ months before making their claims.

Due to their lack of urgency in raising their claims, the government believes the foreigners are using asylum as an excuse to prolong their stay in Hong Kong, the spokesman said.

Based on figures from the United Nations High Commissioner for Refugees in Hong Kong, only 10 to 15 percent of asylum seekers are determined as genuine refugees.

The spokesman said they are liaising with the mainland security authorities to form a strategy to fight these syndicates.

The government has tightened the issuing of visas to nationals of at least a dozen countries in the past two years. Among those countries affected by the moves are Pakistan, Angola, Congo and Sri Lanka.

According to Lin, most of the foreigners lodge CAT claims after their applications for refugee status are rejected by the UNHCR in Hong Kong.

"I think it's important not to give a bad name to asylum seekers in Hong Kong just because some of them appear to be illegal immigrants seeking jobs here," she said.

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Introduction to the Hong Kong Human Rights Commission

The Hong Kong Human Rights Commission is a coalition of ten non-governmental organizations including religious, women, community and students groups. It was founded in March 1988.

Though coming from different backgrounds, all groups believe that every man and woman has the inherent rights and dignity. Based on the belief of universal brotherhood and sisterhood, Human Rights Commission considers mutual respect, equality and freedom are the foundations on which a just, peaceful and humane society is to be built.

All these years, Human Rights Commission has endeavored in the protection of human rights for the community. We came to realize that not only does Hong Kong lack a democratic system, through legislation, the local government also inherited from the colonial regime enormous power so as to maintain social control. Thus, members of the Commission wish to gather resources and consolidate civil power to activate public concern and urge the government to improve the human rights situation.

Besides campaigning for the enactment of the Bill of Rights Ordinance and subsequent amendments of laws, the Human Rights Commission has also promoted human rights education through exhibitions, conducting workshops and giving talks to schools and community centers. Public awareness and participation are vital to the development of human rights. Only through the establishment of a culture that respects human rights will its protection be substantial. Though there is an initial achievement after these few years' work, it is still inadequate.

Members of the Hong Kong Human Rights Commission:

Christians for Hong Kong Society
Hong Kong Christian Industrial Committee
Hong Kong Christian Students Movement
Hong Kong Federation of Catholic Students
Hong Kong Federation of Civil Service Union
Hong Kong Social Workers General Union
Hong Kong Woman Christian Council
Justice and Peace Commission of the HK Catholic Diocese
Society for Community Organization
Tsuen Wan Ecumenical Social Service Center

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