**Society for Community Organization Press release**

13 November 2015

On 9th November 2015 the government finally released its reply to the List of Issues issued by the United Nations Committee Against Torture (the Committee). The reply of the government has been issued only 9 days before the hearing in Geneva.

The List of Issues were issued on 15 June 2015 to the Hong Kong government in relation to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention). The Reply to the List of Issues is part of the exam Hong Kong is taking regarding its performance in relation to fulfilling its human rights obligations. Referring to the UN exam questions (‘List of Issues’), Hong Kong is to answer whether it has taken “effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory” in accordance with the definition of torture in Article 1; and to prevent, cruel, inhumane or degrading treatment of punishment, as defined in Article 16.

Overall the government’s reply is disappointing. Several exam questions are a repetition from the last hearing, but it seems the government has not done its homework and prepared for the exam. The answer from the government is the same, despite the fact that the Committee has pointed out in its previous concluding observations that the answer does not comply with the Convention.

Examples:

1. The List of Issues asks for steps taken to ensure that the government abolishes any possible defence for the crime of torture.

- The government states that it is necessary to provide a defence, if the accused had lawful authority or justification.

2. The List of Issues reiterates its concern for a lack of a national human rights institution.

- The government doesn’t answer the question, and avoids it by stating that there are different institutional mechanisms to overlook human rights.

An important question relates to the use of solitary confinement. We will look at each question and see whether the HK government has replied sufficiently. Question number 17 is:

***Please provide information to what extent HKSAR uses solitary confinement in detention and medical settings, including the number of persons placed in solitary confinement and the duration of such confinement during the reporting period. Please also indicate the regime applicable regarding the imposition and use of restraints and solitary confinement. In particular, please include information on the safeguards, such as medical examination before, during and after these measures, and due process rights which apply for use of restraint and solitary confinement.***

We will take each question in turn:

***Please provide information to what extent HKSAR uses solitary confinement in detention and medical settings, including the number of persons placed in solitary confinement and the duration of such confinement during the reporting period.***

The government’s reply reflects the lack of adequate monitoring of the extent of solitary confinement. It contains statistics for 2012-14. However, SoCO also has statistics from 2000 onwards. Held together the following picture emerges:

***Table 1. Statistics on the use of solitary confinement 2000-14 with yearly average. The figures in for 2012-14 were provided in the Reply to List of Issues.***

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Year** | **Rule 58** (awaiting disciplinary hearings) | **Rule 63(1)(b)** (Punish-ment for prisoners found guilty in disciplinary hearings) | **Rule 68B** (removal from association) | **Rule 68** (temporary confinement of refractory or violent prisoner) | **Rule 68A** (Medical officer ordering prisoner to protected room) | **Total**  **yearly average** | **Daily average prison population** |
| **2000** | No record | 2000-2008: 3428 | No record | No record | No record | 3428\* |  |
| **2001** | 3428\* |  |
| **2002** | 3428\* |  |
| **2003** | 3428\* |  |
| **2004** | 3428\* |  |
| **2005** | 3428\* | 12 390 |
| **2006** | 2006-2008:  626 | 4054\* | 11 849 |
| **2007** | 4054\* | 11 601 |
| **2008** | 4054\* | 10 882 |
| **2009** | 3744 | 3000  (7 days on average) | 1452  Duration see note 1 | 8196 | 10 615 |
| **2010** | 3360 | 1668  Duration see note 1 | 8028 | 10 196 |
| **2011** | 3648 | 1740  Duration see note 1 | 8388 | 9 702 |
| **2012** | 3360 | 2508 | 1671  Duration see note 1 | 7538 | 9 285 |
| **2013** | No record | 2423 | 1382 | 3805\* | 9 240 |
| **2014** | No record | 2715 | 1417  Duration:  63%: 72 hours or less  35% between 72 hours-4 months | 4132\* | 8 830 |

\*Important data is missing to make up the total.

Note 1:

For 2009-2012 under prison rule 68B regarding the duration of solitary confinement, the percentage of cases were the following:

60%: 72 hrs or less

30% 72 hrs – 1month

10% more than 1 month

3 cases 4 months or more[[1]](#footnote-1)

There are a number of observations to be made from the above table:

**1. Data doesn’t cover full reporting period**

According to the government’s report[[2]](#footnote-2) the report updates the Committee on developments since the second report submitted in February 2006 and also responds to the Committee’s Concluding Observations of 19 January 2009. Thus the government is supposed to provide information about solitary confinement since 2006. However, interestingly, the government has only submitted data for 2012-14.

**2. Government didn’t submit data for Prison Rules 68 and 68A**

The government did not supply any data in relation to the use of solitary confinement under Prison Rule 68, which concerns temporary confinement of a refractory or violent prisoner. As for Prison Rule 68A, it gives the medical officer authority ordering prisoner to a protected room to ensure no harm or hardship to himself or other prisoner.

Both rules are administrative measures, does not require a medical officer to certify fitness for isolation; does not have any time limit, appeal mechanism or regular review. The complete lack of data is of great concern to SoCO. It reflects the fact that the government does not have a full picture of the use of solitary confinement.

**3. The government does not collect regular statistics on solitary confinement**

**Number of cases**

The government itself has admitted it doesn’t regularly collect statistics on solitary confinement in a letter to SoCO. However, in its reply to the List of Issues, no mention of the lack of regular collection of statistics is mentioned.

SoCO has received a reply from the government on 31/12/14 regarding appeals against solitary confinement. It has stated it does not keep such records.

On 15/10/15, upon another inquiry, where SoCO asked for further updates on solitary confinement, no statistics whatsoever were provided.

As one may observe from the table, there are lots of statistics which the government doesn’t collect. Thus the government does not know the complete number of people placed in solitary confinement each year.

**Duration of solitary confinement**

Secondly, the List of Issues has asked about the duration of solitary confinement. The only information supplied to the Committee relates to Rule 68B in 2014. No statistics in relation to all the other fields have been submitted. Thus information regarding duration of solitary confinement under each Prison Rule for the reporting period is missing.

***Please also indicate the regime applicable regarding the imposition and use of restraints and solitary confinement.***

The reply does inform about the use of mechanical restraints. However, it does not provide a full picture of the regime regarding the authority to order persons in custody to solitary confinement. It does not specify under which rules of the Prison Rules that a person can be confined in a special unit cell.

The reply does not refer to any international standards or comments by different international bodies. In fact following standards apply:

The UN Committee Against Torture (CAT) has criticized isolation practices in different countries and has recommended that **“the use of solitary confinement be abolished** [….] or at least that it should be strictly and specifically regulated by law (maximum duration, etc.) and that judicial supervision should be introduced”[[3]](#footnote-3).

Other international standards and recommendations agree that the use of solitary confinement should be reduced. The Istanbul Statement of the Use and Effect of Solitary Confinement adopted on 9 December 2007 states that **solitary confinement should only be used in exceptional cases, that it should only be used as a last resort, and that the duration of solitary confinement should be as short as possible**[[4]](#footnote-4).

According to the International Covenant on Civil and Political Rights (ICCPR) (Article 10(1)) “[all] persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” In addition, Article 7 of the ICCPR provides that: “[no] one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, on one shall be subjected without his free consent to medical or scientific experimentation.”

The Human Rights Committee has commented that “solitary confinement is a harsh penalty with serious psychological consequences and is justifiable only in case of urgent need; the use of solitary confinement other than in exceptional circumstances and for limited periods is inconsistent with [ICCPR]” and that it may amount to torture or cruel, inhuman or degrading treatment or punishment[[5]](#footnote-5).

The European Court of Human Rights has ruled that solitary confinement must be ordered only in exceptional circumstances and that there must exist genuine grounds for confinement, both at the beginning and during each extension of the order. Also, as time goes by and the confinement is prolonged, the statement of reasons should be increasingly detailed and compelling. Lastly, there should be a system of regular monitoring to ensure that the measures remain appropriate as time goes on[[6]](#footnote-6)

***In particular, please include information on the safeguards, such as medical examination before, during and after these measures, and due process rights which apply for use of restraint and solitary confinement.***

No information has been supplied by the government.

There is no information regarding medical examination before, during or after the use of solitary confinement.

Indeed SoCO’s analysis of the relevant prison rules reveal the following:

1. **Administrative**: Most of the rules permit the use of solitary confinement as a purely administrative decision and by discretion of the Superintendent, except for Rule 63(b). No hearings or written detailed reasons for special unit confinement are required. Especially Rule 68B provides for wide discretion to the Superintendent to place a prisoner in isolation since “good order”, “discipline”, and “interest of prisoner” are rather vague terms and provides for the risk of arbitrary use of the rules.
2. **Judicial oversight:** None of the rules requires judicial oversight for placing a person in solitary confinement, except for Rule 63(b), which requires a disciplinary hearing. However, the hearing is internal and not conducted by an independent judicial body. No legal representation is allowed.
3. **Medical certification:** Some of the rules do not require the medical officer to certify that the prisoner it fit for removal and that daily visits from a medical officer will be conducted (Rules 58, 68, 68A). No rules specify that a mental health specialist should monitor the isolation.
4. **Time limit:** Only rule 63(b), where solitary confinement can be imposed as a punishment, specifies an upper time limit of 28 days. All the other rules do not have any upper time limit for isolating a prisoner.
5. **Appeal:** Only Rule 63(b) has a formal appeals procedure if a prisoner wants to appeal the results of the disciplinary hearing. The appeals mechanism is not independent however.
6. **Regular review:** Only Rule 68B includes a Board of Review to review the cases on a monthly basis. However, the Board of Review is not independent.

**Conclusion:**

1. The government is supposed to provide information about solitary confinement since 2006. However, interestingly, the government has only submitted data for 2012-14.

2. The government didn’t submit data for Prison Rules 68 and 68A

3. Thus the government does not know the complete number of people placed in solitary confinement each year.

4. Information regarding duration of solitary confinement under each Prison Rule for the reporting period is missing.

5. There’s a lack of a full description of the regime applying to solitary confinement and an analysis in relation to international standards.

6. There’s no information of medical safeguards or due process rights provided to the Committee.

Given the above lack of information, SoCO would deem that the government has **failed** its written exam in relation to the List of Issues in relation to solitary confinement.

It remains to be seen whether the government is able to produce further information at the hearing by the Committee on 17-18 November 2015.

**Recommendations:**

(Referring to the Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment[[7]](#footnote-7)):

1. Develop alternative disciplinary sanctions to avoid the use of solitary confinement

2. Abolish the use of solitary confinement for juveniles and persons with mental disabilities.

3. Indefinite solitary confinement should be abolished.

4. Prolonged solitary confinement, in excess of 15 days, should be subject to an absolute prohibition.

5. Solitary confinement should be used in only very exceptional circumstances, as a last resort, and for as short time as possible.

**Appendix 1**

### Case examples

A:

A is a male prisoner who in 2011 was charged with possession of unauthorized articles. After being charged, he was sent to a special unit (solitary confinement) on administrative grounds. The day after there was a disciplinary hearing, where no legal representative is permitted. He was sentenced to special unit confinement for 21 days. However, after the confinement, he was not released to resume normal association. Instead the CSD continued to confine him administratively in the special unit stating security reasons. He was never told when he would be released. He was not given any written reasons, and his request for a lawyer was rejected. In total he spent more than **100 days** involuntarily in solitary confinement.

B: Tai Lam Centre for Women

B, a female prisoner, spent more than **2 1/2 months** in administrative solitary confinement at the end of December 2011, because of pending police investigations. The police said that if she had not been in prison, she would have been released on bail. They said they didn’t believe it was necessary for her to stay in solitary confinement. The CSD, however, decided to confine her in a special unit on administrative grounds. Before removing her from association she was not granted any right to a hearing or had any legal representative, nor was she given any detailed reasons for being confined in a special unit.

She also believes that she was unfit to stay in a special unit for such a long period of time because she was being treated for heart disease, diabetes and leg problems. While inside the special unit the pain in her legs got worse. The special unit cell had a very low bed and no chair. Because or her swollen legs, sitting on the low bed caused her further pain. Only after 1 month was she given a chair to sit on during daytime.

While in solitary confinement she felt very depressed and even had suicidal thoughts. No mental health specialist came to see her to review whether she was fit to stay in solitary confinement.

##### C: Pik Uk Prison

C is a Canadian citizen who has now already been released from prison and is back in Canada. In early February 2011, he was charged with being in possession of a scale 1 diet food inside the dining hall in Pik Uk Prison. All he had done was **to swap food with another prisoner**, which is very common among prisoners. Although strictly speaking this is not allowed, according to many inmates most guards will turn a blind eye to this practice or just give prisoners a verbal warning. When he requested the Canadian Consulate to be present during the hearing it was declined by the CSD. Also he was not allowed to have any lawyer present.

The adjudicating officer awarded two days’ separate confinement and withdrawal of privileges.

##### D: Lo Wu Correctional Institution

D is a female prisoner in Lo Wu Correctional Institution. She spent 1 day in administrative solitary confinement and was later sentenced to 3 days’ extra sentence because she accidentally **left a prison item in the wrong location**.

Other incidences told by prisoners: Lo Wu Correctional Institution

- A prisoner was sent to the special unit for a few days because she **mixed food in her tea**.

- Another female prisoner was sent to special unit because she **ate some of a fellow inmates’ food.**

- Yet another prisoner was sent to special unit because she was **washing her clothes in her cell.**

(It is was on administrative grounds)

1. Data supplied to SoCO on 21 May 2013 through the Legislative Council Secretariat. [↑](#footnote-ref-1)
2. Sixth Report of the People’s Republic of China under the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment – Part Two: Hong Kong Special Administrative Region, page v (Preamble) [↑](#footnote-ref-2)
3. CAT, Visit report, Denmark, 1. May 1997, para 186, quoted from Peter Scharff Smith (2009). “**Solitary confinement: History, practice, and human rights standards.”** Prison Service Journal 181.

   http://www.hmprisonservice.gov.uk/assets/documents/100043E4solitary\_confinement.pdf [↑](#footnote-ref-3)
4. http://www.univie.ac.at/bimtor/dateien/topic8\_istanbul\_statement\_effects\_solconfinment.pdf [↑](#footnote-ref-4)
5. Human Rights Committee, Concluding Remarks on Denmark. 31/10/2000. CCPR/CO/DNK [↑](#footnote-ref-5)
6. ***Onoufriou v Cyprus*** (Decision adopted on 25 October 2010), at 70. [↑](#footnote-ref-6)
7. United Nations General Assembly. Note by the Secretary- General: Torture and other cruel, inhuman or degrading treatment or punishment. Sixty-sixth session. Item 69 (b) of the provisional agenda (document A/66/268) [↑](#footnote-ref-7)