Report

August 2015

Conditions for Persons Held in Police Detention Facilities

Society for Community Organization

Hong Kong

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1. INTRODUCTION

An investigation was conducted into the conditions of the police detention facilities in Hong Kong between March and June 2015. The investigation was triggered by large amount of complaints received by Society for the Community Organization (SoCO) from the persons held in police custody. All complainants had undergone in-depth interviews concerning current conditions at the police detention facilities. Evidence from Hong Kong Police and Security Bureau was also sought.

This report outlines the findings of the investigation. Relevant international and Hong Kong laws related to the treatment of the arrested persons and conditions at the police detention cells are examined. The report concludes that conditions are not only below international and Hong Kong standards, but amount to infringements of human rights of detained persons. Recommendations conclude the report.

2. BACKGROUND

A society's level of civilization can be judged by how it treats people detained in custody. [1] These are persons who, for whatever legally sanctioned reason, are compulsorily deprived of liberty by the State and to whom the State owes a duty of care for their safety, security and well-being.[2]

Despite the fact that every year a large number of persons are detained in police cells, little is known about who is detained in them, for what reasons, the circumstances they are held in and the conditions they experience.[3] There are no statistics published on a

[1] Australia, Ombudsman Victoria and Office of Police Integrity, *Conditions for Persons in Custody:Report July 2006* <http://www.parliament.vic.gov.au/papers/govpub/VPARL2003-06No215.pdf> Executive Summary at 14 July 2015.
[2] Ibid.
[3] C Hounmenou, *Standards for Monitoring Human Rights of People in Police Lockups* (2010) Center for Social Policy and Research, Jane Addams College of Social Work, University of Illinois at Chicago <https://www.uic.edu/jaddams/college/research_public_service/files/StandardsforMonitoringHumanRightsforPeople_2.pdf> at 5 August 2015.

regular basis. Nor are police cells subject to regular external scrutiny or annual reporting. There are no official visitors of police cells as there are in the prison system.[4] Further, in opposition to prisons, conditions and treatment of detainees in police detention facilities do not appear to be of great interest to the research community.[5]

Mostly invisible to the public eye, police cells are seen as a temporary facility and are not generally given the attention it deserves as an important part of the custodial chain. As a result, it has become a weak link in the criminal justice process[6] where detained persons' human rights are infringed.[7]

Prisoners are typically held in police stations for very short periods, usually not longer than 48 hours. For a variety of reasons, however, situations in which prisoners are held in police detention cells for very long periods are not unusual.[8] Therefore, it is important that these facilities comply with the standards set in both local and international law for the holding of incarcerated persons.[9]

2.1. Overview of the Police Custodial System in Hong Kong

There are 67 police report rooms all over Hong Kong.[10] Of these 33 have designated cell facilities.[11] In 2014, 33,679 people were arrested by uniformed police.[12] Generally, majority of the arrested persons would be detained in police detention cells. For example, in 2008 out of 41,220 arrested persons,[13] total of 34,700 were detained in police detention facilities.[14]

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[4] Ibid.
[5] C Hounmenou, *Standards for Monitoring Human Rights of People in Police Lockups: Potential Roles of Community-Based Organizations* (2011) Center for Social Policy and Research, Jane Addams College of Social Work, University of Illinois at Chicago <https://www.uic.edu/jaddams/college/research_public_service/files/StandardsforMonitoringHumanRightsforPeople_2.pdf> at 28 July 2015.
[6] Amanda Dissel & Kindiza Ngubeni, 'The Conditions of Custody: Police Holding Cells' (2000) 19 *Crime and Conflict* 34.
[7] Society for Community Organization, *Conditions at Police Cells,* Position paper (2009).
[8] Dissel, above n 6, 35.
[9] Ibid.
[10] Hong Kong, Police Force, *Police Review: Annual Review 2014* <http://www.police.gov.hk/info/review/2014/tc/index.html> at 14 August 2015.
[11] Hong Kong Police Force, Letter from Commissioner of Police to SoCO, 'Capacity in police cells' from 19th of November 2009.
[12] Hong Kong Police Force, above n10.
[13] Ibid.
[14] Hong Kong Police Force, Letter from Commissioner of Police to SoCO, 'Inquiry about police stations' from 2nd June 2009.

Hong Kong Police does not maintain statistics on the duration of detention of persons held in police station cell.[15] It is stipulated in the *Police General Orders* (PGO) that once an arrest is made, the detained person shall forthwith be taken to the officer-in-charge of a police station, i.e. the Duty Officer covering the area in which the arrest was made. [16] The arrested person is then processed in this police station and should there be a need to detain the arrested person overnight, the arrested person will be detained in police station with the designated cell facilities.[17]

Individual cell capacity of each detention facility in Hong Kong is based on the premise that a detained person requires a bench/bed for sleeping that is a minimum of two metres in length.[18] Total capacity for holding detainees in all 33 police stations with detention facilities in Hong Kong is 1,354 (864 for male detainees and 490 for female detainees).[19]

The table below gives an example of capacity for holding detainees in five police stations with designated detention facilities. Availability of cells for men and women in each station is shown, as well as a number of detention cells in each police station, approximate size of those cells and maximum capacity per cell. [20]

	Police Station (Number of cells)	**Individual Cell Size (Approx.)**		**Total Holding Capacity**		**Maximum Capacity (per cell)**	
1.	Yau Ma Tei Police Station (5 male cells only)	Male	3.6m X 3m	Male	5	Male	1
		Female	NA	Female	NA	Female	NA
2.	Western Police Station (5 male and 3 female cells)	Male	3.3m X 3m	Male	13	Male	1 X 1 4 X 3
		Female	3.3m X 3m	Female	9	Female	3
3.	Shamshuipo Police Station (6 male cells only)	Male	3.7m X 6.3m	Male	18	Male	2 X 1 4 X 4
		Female	NA	Female	NA	Female	NA
4.	Yuen Long Police station (7 male and 4 female cells)	Male	4.4m X 4.1m	Male	7	Male	1
		Femlae	4.4m X 4.1m	Female	4	Female	1
		Male	4.2m X 3.2m	Male	27	Male	3

[15] Ibid.
[16] Police General Orders O, 49-01-2.
[17] SoCO, above n 7.
[18] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT),*The CPT standards: "Substantive" sections of the CPT's General Report,* 2006.
[19] Hong Kong Police Force, above n11.
[20] Ibid.

5.	Central Police Station (9 male and 14 female cells)	Female	5.9m X 2.8m	Female	42	Female	3

2.2. SoCO's Previous Investigation

SoCO has previously conducted an investigation into the conditions and treatment of persons held in police cells. The treatment of detainees in police cells was found to be much worse than that in the detention centres run by the Immigration Department or Correctional Services Department.[21] The investigation revealed various infringements of the detained person's human rights. The main concerns about custodial arrangements in police cells included:

- difficulties for detainees to maintain personal hygiene;
- unsuitable physical conditions of the police cells;
- infringement of right to health; and
- no protection of privacy.[22]

Various recommendations have been proposed to the Hong Kong government to improve the situation. Following the report, there was Detention Facility Upgrade programme in police stations around Hong Kong.

2.3. Detention Facilities Upgrade Programme

Detention Facility Upgrade programme took place between January 2010 and December 2011.[23] Renovations were focused on improving the following areas: privacy of detained persons; physical features of detention cells; personal hygiene of detained persons; and health and welfare of detained persons. A total of 16 improvement measures were promised to be implemented by the Hong Kong government, and included:[24]

- one person per cell policy;

[21] Joshua But, 'Police Cell Conditions under Fire', *South China Morning Post* 2 November 2009 <http://www.scmp.com/article/697136/police-cell-conditions-under-fire> at 16 August 2015.
[22] SoCO, above n7.
[23] *Abid Saeed v Secretary for Justice, Secretary for Security, Director of Immigration and Commissioner of Police* (2011) DCCJ 562 [120].
[24] Government Secretariat, Letter to the Legislative Council, 'Conditions of Detention Facilities at Police Stations' from 23 June 2010.

- provision of personal hygiene kits (toothbrush, toothpaste, towel and liquid soap), facemasks, wet tissue, box tissue, hand sanitizers and sanitary napkins;
- installation of wall clock in cell corridors;
- provision of mattresses integrated with pillow;
- installation of electric fans in cell corridors;
- raise height of existing toilet privacy walls;
- conversion of in-cell toilet flush system;
- installation of hot water shower and privacy door;
- re-painting of police detention facilities;
- provision of special dietary meals upon request;
- provision of Bible and Koran upon request; and
- provision of replacement clothes or shoes upon request. [25]

As police stations were constructed over different periods with varying standards at the time, the improvement measures in older police stations were subject to physical constraints imposed by the building design.[26] However, the Police Force committed to taking forward the improvement measures as soon as practicable.[27]

3. CURRENT CONDITIONS AT THE POLICE CELLS

SoCO's 2015 project focuses on the current conditions of the police detention facilities after the 2010-2011 upgrade programme. The purpose of the project is to ascertain whether custodial arrangements for detained persons have improved, deteriorated or remained unchanged.

The investigation was triggered by an overwhelming amount of complaints received by SoCO between March and June 2015. Within 3 months, SoCO received 39 individual complaints relating to the conditions in the police cells from persons held in police detention facilities during 2014-2015. The complainants were aged between 18-83

[25] Hong Kong Police Force, Letter from Commissioner of Police to SoCO, 'Meeting about Police Station Cells' from 19th of March 2010.
[26] Hong Kong Police Force, Letter from Commissioner of Police to SoCO, 'Research about detention conditions' from 12th of February 2009.
[27] Hong Kong Police Force, above n 25.

years old, were held at various police detention facilities across Hong Kong, and came from various backgrounds (Hong Kong, Macau, China, Kenya, Zimbabwe, UK, Bangladesh, India, Pakistan, Nigeria, Colombia, Philippines, Uganda and USA).

While detainees accounts of deprivations, mistreatment, inadequate conditions and complaints have a tendency to be denied or discounted as untrue,[28] SoCO, nevertheless, believes that the views of detained persons should be heard. Opportunities were provided for this to occur. All complainants had undergone in-depth interviews concerning current conditions at the police cells. Consistency in nature of complaints, observations and accounts of unsuitable conditions added value to the complaints brought to SoCO's attention.

It should be noted at this point that at the time of the completion of this report, SoCO had not received a satisfactory response from the Hong Kong Police Force and Security Bureau regarding conditions in the police detention facilities. A request to visit police station detention facilities, following renovations, was sent to the Hong Kong Police Force on 27 March 2015. The request has been denied due to operational reasons and protection of privacy of detainees. Request to review decision was submitted to the Commissioner of Police on 23 April 2015, but was unsuccessful and visit was denied.

On 9 April 2015, Hong Kong Police Force proposed that instead written replies to any enquires relating to the detention facilities will be provided to SoCO. Accordingly, on 28 April 2015, SoCO wrote to the Commissioner of Police with 27 enquiries relating to specific procedure in relation to vulnerable detained persons inside police cells, physical conditions of the police cells, access to medical care and use of force inside police detention facilities. With great disappointment, SoCO did not receive a satisfactory reply to any of the enquiries. Only a brief 4-sentence summary of current Hong Kong laws and procedures was received on 16 June 2015. SoCO complained to the Commissioner of Police of the lack of a response and is currently still awaiting a reply to the full list of enquiries.

[28] Ombudsman Victoria and Office of Police Integrity, above n 1.

The same list of enquiries was also sent to the Secretary for Security on 8 May 2015. To the date of this report SoCO has not received a reply.

Findings obtained by SoCO indicate that there are major systemic issues relating to the conditions in police custody, which are not being adequately addressed by the Hong Kong government. The concerns raised by SoCO in 2009 have been ignored and promised improvement measures have not been fully implemented. The conditions are still not only below international standards, but amount to infringements of human rights of detained persons.

3.1. Recent Findings

The investigation has identified a number of areas of concern about custodial arrangements in police cells. Key findings include:

- unsuitable physical conditions of the police detention facilities;
- long stays for persons in police cells;
- difficulties for detained persons to maintain personal hygiene;
- police brutality;
- deficiencies in provision of medical care;
- failure to inform detained persons of their rights; and
- inability to notify relatives of the arrest.

Unsuitable Physical Conditions

Detained persons were generally required to sleep on the concrete bench. No pillows or mattresses were provided, only one blanket per person and more blankets if requested. This has led to body pain when sleeping and blankets have been reported to be dirty. Every complainant informed us that blankets provided were not enough to keep them warm (during winter period) or provide comfortable sleep.

Detainees reported of unhygienic conditions and that the cells were dirty and smelly. There was no air-conditioning, heating, fans, washbasins, windows, natural daylight or fresh air inside the police cells. No clock was viewable from the cell, which left detainees disorientated and it was not possible to know the time, besides from guessing

from the type of food given. None of the complainants had access to exercise yards during the entire confinement, and therefore no exercise was offered.

There was no drinking water available inside the cell and detained persons were forced to ask police officers for water every time they felt thirsty. Some complained that it took over an hour to receive water, and then only a single small cup was brought. Some police officers would pretend not to hear or just reply: 'I can't hear you!' Many detainees, even though they were thirsty, did not ask for water at all due to the police attitudes. Some complainants explained that police officers would get angry or rude every time they ask for water:

> 'They would be angry at me every time I ask, so I just stopped asking.'
> 'They are so rude. Many times I ask again and again but they just don't care.'
> 'They asked me to wait because they are busy, but never came back. After, I didn't ask anymore.'

Some reported to have not received water during the entire time of their confinement.

Generally detained persons were fed three times a day, but there also were many complainants who were only fed once or twice a day. One detained woman reported: 'I was arrested around 1.00 pm. Even though I asked, I was not given any food until next morning. Then I only received bread and water.' Majority of detainees described the quality of food as bad or terrible and portions small or very small. All of the complainants reported that given food did not keep them from being hungry. In addition, 6 complainants followed specific religious diet, but upon request only 1 detainee was provided with meal that complied with the diet.

Further, out of all complainants 5 requested religious texts (Bible or Koran). Only 2 were provided with the copies of requested texts. No explanation for refusal was provided to others.

Difficulties to Maintain Personal Hygiene

Persons held in police custody were not able to maintain personal hygiene, including the ability to shave and to be presentable, even for the court appearances. None of the complainants were provided with spare clothes during the entire confinement period. None of the complainants were provided with toilet articles necessary for health and cleanliness, such as a clean towel, liquid soap, shaving kit, face masks or box tissue. The majority reported that they were not allowed to brush their teeth or shower during the entire time in police station (some for as long as 6 days). All complainants were not allowed to have shower and received responses from police officers such as: 'This is not your home!' or 'You are a criminal.' One detained woman shares:

> 'I was locked in police cell for 6 days without shower, without any medication and without allowing me to make a phone call to my loved ones and inform them I was missing and in a police cell. It is very poor equality 19th century treatment. They treat you as guilty straight away. It is not what you expect in HK.'

As there is no washbasin in the cells, detainees were not able to wash their hands after using the toilet and would also have to eat without the chance to wash their hands. Detainees reported that they were not provided with enough of toilet paper or sanitary wear (for women).

Long Stays

Majority of the complainants were held in police detention cells on average between 2-3 days. However, 4 complainants were detained in police cell for 4 days, and 2 complainants for as long as 6 days.

Police Brutality

Complainants described police officers' attitudes as abusive, unfriendly and rude. In many cases police used some kind of physical force. Two detainees share: 'Police officers beat me in my face, stomach, back, chest and pulled my hair. Still now have permanent injury on my leg, my fingers, my forehead.' 'The police punched me in the stomach and kicked my back. They also slapped my head and face.'

It is worth noting, that 7 out of 13 detainees requested medical attention because of the police beating. One 73 years old detainee was beaten during arrest, punched in the stomach and suffered a heart attack as a result.

Some complained that intimidation was also used during police interrogations: 'They beat me and threatened to arrest my wife unless I plead guilty.' Majority of the complainants did not feel safe in the police cell. One detainee shares:

> 'Because police beat me so many times, I did not feel safe. I am scared of them. They do unfair things with us so I hope one day they will pay for it. How can they protect public if they are criminals themselves? Police in HK are crime supporters and put charge on innocent persons and crime is becoming more uncontrolled and public get no justice. I hope my God heard my voice. Before we think Hong Kong is safe country, but now we know reality of police.'

Deficiencies in Provision of Medical Care

Amongst the complainants systematic refusal of requests to see a doctor is observed. Out of all complainants, 13 requested to see a doctor and only 2 were allowed.

One of the complainants was severely beaten by the police during the interrogation. After numerous requests, he was only allowed to see a doctor the next day, but was threaten by police officers to not say anything about the beating.

Another 68-year-old detained woman asked for her prescribed medicine as she is suffering from hyper-tension, but was denied. When she was finally taken to the hospital the next day, her blood pressure was 198/115. She recalls: 'I was in shock at the whole experience. I was admitted to hospital in order to contain lower blood pressure due to being denied of my medicine.'

The complainants, who were refused the medical attention, did not receive any reasonable explanation. One detained woman shared: 'After I asked, the police woman refused to take me to the hospital and told me because I am a criminal.'

Notification to Relatives

Less than half of the detainees were allowed to make phone call and let their loved ones know that they have been detained in the police cell. No reasonable explanations were given for refusal to others.

Right to Information

Many were not informed of their rights upon being arrested. A few who were given notice to persons in custody, either could not understand what was written on it due to the language barrier or were given the notice after the police interrogation. Almost all foreign complainants were forced to sign documents in a language they don't understand and detriment themselves in the future court proceedings. One detainee recalls:

> 'During arrest police officers lied to me. Made me sign documents, but did not explain to me. And now I know about the right to make a phone call. But they didn't let me call my family or friends.'

4. LEGAL FRAMEWORK

Below are outlined some of the most relevant international and Hong Kong laws related to the treatment of the incarcerated persons and conditions at the police detention cells.[29] Overview of these laws is particularly important in that it provides an understanding on the minimum satisfactory standards on conditions of cells.[30]

[29] Association for the Prevention of Torture, *Monitoring Police Custody - A practical guide* (2013) < http://www.apt.ch/content/files_res/monitoring-police-custody_en.pdf> at 6 August 2015.
[30] Oliver C Ruppel & Angelique L Groenewaldt, *Conditions of police cells in Namibia* (2008) Human Rights and Documentation Centre, University of Namibia < http://www.kas.de/wf/doc/kas_14189-544-1-30.pdf> at 14 May 2015.

4.1. International Standards Relating to Police Powers and Police Custody

Torture and other ill-treatment

'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'

United Nations International Covenant on Civil and Political Rights (ICCPR), Art. 7

'No exceptional circumstances whatsoever … may be invoked as a justification of torture. An order from a superior officer or a public authority may not be invoked as a justification of torture.'

United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), Art. 2

'No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.'

United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (BPP), Principle 6

'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.'

ICCPR, Art. 10 (1)

'In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.'

United Nations Code of Conduct for Law Enforcement Officials (CCLEO), Art. 2

'No law enforcement official may inflict, instigate or tolerate any act of torture or

other cruel, inhuman or degrading treatment or punishment.'

CCLEO, Art. 5

'Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.'

UNCAT, Art. 10(1)

Use of force

'Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.'

CCLEO, Art. 3

'Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.'

United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF), §4

"Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;

(b) Minimize damage and injury, and respect and preserve human life;

(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;

(d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment."

BPUFF, §5

‘Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.’

BPUFF, §15

Interrogations

‘Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.’

UNCAT, Art. 11

‘(1) It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.
(2) No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment.’

BPP, Principle 21

Length of police custody

“Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention which, in any case, should not exceed a period of 48 hours. They should accordingly be transferred to a pre-trial facility under a different authority at once, after which no further unsupervised contact with the interrogators or investigators should be permitted.”

Report by the United Nations Special Rapporteur on Torture (SRT), UN Doc. E/CN.4/2003/68, §26

Further, Human Rights Council states, "any person arrested has to be brought 'promptly' before a judge to exercise judicial power. More precise time-limits are fixed by law in most States parties and, in the view of the Committee, delays must not exceed a few days."

Human Rights Council General Comment N°8 (16) on Art. 9 ICCPR, §2

Information on rights

'Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints.

(United Nations) Standard Minimum Rules for the Treatment of Prisoners (SMR), §35

'Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.'

BPP, Principle 13

'A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands.'

BPP, Principle 14

Notification of deprivation of liberty to relatives or a third party

'An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends.'

SMR, §92

Access to doctor

'A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary.

BPP, Principles 24

4.2. Hong Kong Standards

In Hong Kong the main documents that regulate the conditions in police station cells are *Force Procedural Manual* (FPM), PGO and *Police Force Ordinance*. The *Hong Kong Bill of Rights Ordinance*[31] article 6 has domesticated ICCPR article 10(1) and mentions the respect for the dignity of the person. Article 14 states that no person shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.

PGO are made by the Commissioner of Police under section 46 of the *Police Force Ordinance*, Cap. 232.[32] PGOs are mandatory and non-compliance will make an officer liable to disciplinary action.[33]

FPM contains information, advice and guidelines on procedures. An officer not complying with FPM should be given suitable advice or guidance. Recurrent or blatant disregard for FPM renders an officer liable to disciplinary action.[34] It is important to note, that unlike PGO, FPM are not available to the general public.

Accesses to Medical Care

[31] The *Hong Kong Bill of Rights Ordinance* came into operation on 8 June 1991.
[32] *Police Force Ordinance* (PGO), 1-02.
[33] PGO, 1-02-4.
[34] PGO, 1-03.

‘In any case when a person in police custody so requests or when it appears to a Duty Officer that such person is in need of medical attention, due to sickness or an injury, the Duty Officer shall complete a Pol. 42 (Rev.), or a Pol. 42A in the case of any alleged assault by police, and send it together with the person to the nearest Government hospital or clinic.’

PGO, 49-12-1

'Persons who on arrest have prescribed drugs or other medication in their possession shall be referred to the nearest Government clinic or hospital through the Duty Officer.’

PGO, 49-36

Toilet and Shower

‘In a station where toilet, shower and washing facilities are not provided within each cell, a detained person shall normally be permitted to use such other facilities as may be available upon request, subject to the discretion of the Duty Officer. The detained person is to be properly guarded whilst absent from the cell for this purpose.’

PGO, 49-6-12

Notification of deprivation of liberty to relatives or a third party

‘All persons in custody, including foreign nationals, are entitled to the right to communicate with a relative, friend, legal counsel or representatives from the consulate or the relevant authority of the person’s home country.’

PGO, 49 -01 -11

5. CONDITIONS IN CUSTODY - A QUESTION OF STANDARD

Overview of the Hong Kong standards and United Nations conventions and protocols sets very clear elements of satisfactory conditions in custody. The following seven areas of standards could be considered for monitoring human rights of people in police lockups:[35] 1) detainee safety; 2) detainee accommodation; 3) detainee medical/mental

[35] Hounmenou, above n 3.

health**;** 4) food; 5) detainee psychological well-being; 6) detainee discipline and restraint; and 7) awareness of police officers about detainees' human rights.[36]

Detainee safety

Police shall take steps to ensure detainees' safety and wellbeing. Officers shall be held strictly responsible for the safe custody of the detainees under their care and this responsibility is theirs at all times.[37]

Detainee accommodation

All accommodation provided for the use of detainees shall meet all requirements of health. The physical conditions of the detention cells shall provide for the humane treatment of detainees. Detainees should be provided with an appropriate standard of accommodation that ensures the respect of their human rights, and balances individual rights with the rights of others.[38]

Detainee medical/mental health

Detainees shall be held in a clean environment that enables them to maintain self-respect and provides for their physical and mental health, and well-being.[39]

Food

Detainees shall be provided with quality food that takes into account individual religious or dietary needs, is of good nutritional value, and is well prepared and presented.[40]

Detainee psychological well-being

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person. Persons in detention shall be subject to treatment appropriate to their unconvicted status. They

[36] Ibid.
[37] Hounmenou, above n 5.
[38] Ibid.
[39] Ibid.
[40] Hounmenou, above n 3.

shall not be discriminated against and are provided equal protection under the law. Detainees must be protected from torture and cruel, inhuman treatment.[41]

Detainee discipline and restraint

Detainees should be protected from degrading treatment or punishment. The degree of force used should be the minimum required to control or manage detainees' behaviour. Force should be used as a means of control, and not as a method of punishment.[42]

Awareness of police staff about detainees' right

Police officers responsible for a lockup facility must be trained about its operations, its policies, and the human rights of detainees.[43]

The following standards regarding treatment of detainees in police cells are also widely used overseas, particularly in USA, United Kingdom, European Union, Australia, and some African countries. [44]

6. COMPARATIVE REVIEW – UNITED KINGDOM

Below is the brief overview of the United Kingdom (UK) police custodial system. It is evident that UK guidelines contain much more detailed protection of detainee rights. It shows that legal framework in Hong Kong is not up to date with the developments in the UK.[45]

6.1. Stricter Laws and Precise Guidelines

There are three useful instruments in the UK that can be mentioned. These are:

- *The Code of practice for the detention, treatment and questioning of persons by police officers (Code C) under the Police and Criminal Evidence Act 1984* (PACE Code C), which came into force on 1 February 2008.

[41] Ibid.
[42] Ibid.
[43] Association for the Prevention of Torture, above n 29.
[44] Hounmenou, above n 5.
[45] SoCO, above n 7.

- *'Police Buildings Design Guide - Custody - Policy Document'* (PD) published in July 2009 by the Home Office.[46]
- *'Guidance on the safer detention & handling of persons in police custody'* (PCG), published in 2006, produced by the National Centre for Policing Excellence.

Some of the most relevant provisions from those instruments are mentioned below, to provide comparative overview with the Hong Kong instruments. More detailed and mandatory language is evident in the UK provisions:

- **Showering facilities** must be provided off each cell corridor. (PD, 1.04.04.02)
- **Clothing:** All custody suites should have an adequate supply of replacement clothing to ensure that the detainee's dignity is maintained and that basic warmth and welfare needs are met (PCG, 6.6.3).
- **Hand wash:** Access to hand washing facilities while in custody is a legal requirement. Having washing facilities within the cell can reduce the supervision work burden on custody staff. Hand wash units are recessed to reduce the risk of suicide. (PD, 1.04.04.01).
- **Toilet paper** is a potential risk, but the risk can be minimised by supplying a number of single sheets when required. The additional needs of people with bowel disease or if they are menstruating should be taken into account on an individual basis (PCG, 7.8.4).
- **Space per person**: Not more than one detainee should be detained in each cell (PACE Code C, 8.1).
- Each cell must be designated for the custody of one person only (PD, 1.04.04.01).
- Cells must be at least 7 m^2 in area (PD, 1.04.04.01).
- Toilet facilities must be provided in each cell (PD, 1.04.04.01).
- **Ventilation:** Cells in use must be adequately heated, cleaned and ventilated (PACE Code C, 8.2).

[46] The document has been produced through partnership involving police construction professionals, operational custody police officers working together with the Home Office and is endorsed by 47 UK Police Forces.

- **Temperature** within the custody envelope, will be permitted to rise to, but not exceed 25°C with an external temperature of 30°C. If the external temperature rises above 30°C the internal temperature will be controlled to maintain a 5°C differential. This is to be achieved by the most energy efficient means. Within the staff areas the temperature may be permitted to rise to, but not exceed 28°C (check with force policy) with an external temperature of 30°C. Maximum 8 days at 28 °C (PD, 3.02.05).
- Cell temperature is capable of being maintained within the required conditions (PD, 1.04.04.01)
- **Bedding:** Blankets, mattresses, pillow and other bedding shall be of reasonable standard and in a clean and sanitary condition (PACE Code C, 8.3)
- Accommodation for the storage of mattresses, blankets and linen must normally be provided at the entrance of each cell corridor. Clean and soiled linen must be separated by storage in different rooms (PD, 1.04.04.04)
- Blankets should be checked and cleaned prior to being used by another detainee. Blankets should be collected when the detainee no longer requires them and should never be left in a cell when a detainee is moved or released (PCG, 7.8.2)
- **Day light:** All cells must have natural daylight (PD, 1.04.04.01). Not all sleeping detainees need to be woken up when the officers are monitoring cells. The guide distinguishes between 4 levels of observation, each determined by the risk assessment of each detainee. For instance, if there is no reasonable foreseeable risk, staff need not wake a sleeping detainee (level 1 General observation). On the other hand a level 3 (intermittent observation) requires that the detainee is visited and roused every 30 minutes. This is for those being suspected of being intoxicated through drinks or drugs or whose level of consciousness causes concern (figure 3, p. 83). The level of observation if determined for each individual detainee. (PCG, 7)
- **Clinical attention:** Even if the detainee does not make any request for clinical attention the custody officer must make sure a detainee receives appropriate clinical attention as soon as reasonable practicable (PACE Code C, 9.5).
- Custody officers must make an assessment of the health of the detainee upon arrival such as asking whether the detainee has any illness, if they are taking medicine etc. (PCG, 6.4)

- The custody officer must ensure that appropriate clinical attention is given as soon as practicable. (PCG, 6.4)
- **Exercise:** Detainees are entitled to brief daily outdoor exercise where practicable (PACE Codes of Practice, Code C Notes for guidance 3a and PACE Codes of Practice, Code C, 8.7)
- The provision of exercise is a PACE requirement, but the provision of an exercise yard is a force policy decision. A safe and secure area for a detainee to experience natural light and fresh air outside the cell (PD, l.04.04.07).
- **Drinking water:** Hand wash units can be fitted with a drinking water supply (PD, l.04.04.01).
- **Shower:** Though the detainee must be supervised, they must be able to shower with a reasonable level of privacy. They must not be at all visible to any other detainees showering. The shower door must be a decency door with open areas above and below allowing sufficient vision to prevent self harm. The door must be lockable only by the custodian (PD, 2.06.04).
- **Toilet privacy**: It is a general requirement in the UK that there is only one person per cell. However, if there is more than one person in the cell it is possible to a certain extent to protect the privacy of people using toilet. Through our correspondence with a Senior Technical Standards Manager of the UK Home office, the following solution has been suggested:

    - Increase the toilet wall height, to give a sense of privacy.
    - As there are concerns about self-harm, it should be possible for the duty officers to look behind the toilet wall. This could be done by mounting a polycarbonate hemispherical mirror on the ceiling to give staff vision into hidden parts of the cell. To reduce the vision from other detainees a frosted adhesive vinyl patch could be stuck to the mirror so that the WC area is not visible from the bench. Depending in the cell layout this should not interfere with proper vision from the cell door.

- **Information about rights:** Notices of entitlements, including visits, reasonable standards of physical comfort, adequate food and drink, access to toilet and

washing facilities, clothing, medical attention and exercise where practicable should be available in translated versions (PACE Code C, 3, Notes for guidance 3A-3B).

6.2. Monitoring of Police Detention Facilities

In countries such as England and Wales, The Netherlands, Hungary, South Africa and Northern Ireland there are independent monitoring schemes to police stations to prevent ill-treatment of detainee.[47] These schemes were established in 1986 in England and Wales, 1988 in the Netherlands, 1996 in Hungary, 1993 in South Africa, and 1991 in Northern Ireland.[48]

In UK the Independent Custody Visiting Association (ICVA) is composed of unpaid members of the public who are appointed as lay visitors to police stations in their communities.[49]

Further, under the scrutiny requirements of the United Nations Optional Protocol to the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), UK ensures regular and independent inspection of all places of detention. [50] To meet this requirement Her Majesty's Inspectorate of Constabulary (HMIC) and Her Majesty's Inspectorate of Prisons (HMIP) have established a programme of inspections of custody conditions in all police forces, at an average of 12 inspections per year. [51] Each year will be a mix of announced and unannounced inspections – with individual reports for each inspection and periodic thematic reports (those covering a particular subject or theme across more than one force) on emerging trends or findings of particular importance. The inspections look not only at the

[47] Association for the Prevention of Torture, *The Impact of External Visiting of Police Stations on Prevention of Torture and Ill-Treatment* (1999) <http://www.apt.ch/content/files_res/External%20Visiting%20of%20Police%20Stations.pdf > at 9 August 2015.
[48] Association for the Prevention of Torture, above n 29.
[49] SoCO, above n 7.
[50] Her Majesty's Inspectorate of Constabulary, *Joint inspection of police custody facilities* (2008) <https://www.justiceinspectorates.gov.uk/hmic/our-work/joint-inspections/joint-inspection-of-police-custody-facilities/> at 3 August 2015.
[51] Ibid.

implementation of statutory requirements, but also at the conditions of detention and the treatment of detainees.[52]

Both the ICVA and the HMIP are independent of the police force.[53] Following the model of the OPCAT, both the HMIP and the ICVA have access to all parts of the custody including cells, detention rooms, charging areas, washing facilities, kitchen or preparation areas and medical rooms.[54] They have access to information to verify blankets, bedding, furnishings and cells are clean, and that ventilation systems, cell bells and toilet flushing mechanisms are working properly.[55] They also have access to detainees, to interview them on the conditions and treatment of their detention in sight but out of hearing of the escorting officer. Within two months of the HMIP's publication, institutions must submit action plans to address the problems raised in their reports.[56]

7. OBSERVATIONS

SoCO's recent findings clearly indicate violations of the human rights of the detained persons. The UNCAT defines torture as the intentional infliction of severe pain or suffering, whether mental or physical; the pain or suffering must be inflicted for a specific purpose, such as obtaining information or a confession from the victim or a third party, or to punish, intimidate or coerce the victim or a third party, or for discrimination of any kind.[57]

Therefore, torture can take very different forms, including beatings, restraints and the use of force, intimidation, deprivation of food, sleep or communication.[58] Police cells poor conditions and violations of detained persons human rights may amount to torture, or to cruel, inhuman or degrading treatment or punishment under certain circumstances.[59]

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[52] Ibid.
[53] Her Majesty's Inspectorate of Constabulary, *Expectations for Police Custody* (2008) <https://www.justiceinspectorates.gov.uk/hmic/media/police-custody-expectations-leaflet-20120118.pdf> at 27 August 2015.
[54] Ibid.
[55] Her Majesty's Inspectorate of Constabulary, above n 50.
[56] Ibid.
[57] UNCAT, Art.1.
[58] Association for the Prevention of Torture, above n 29.
[59] SoCO, above n 7.

It appears that the cause of some violations, such as long stays, lay in clear breaches of Hong Kong and international laws and indicate to police officers not doing their job. While other breaches, such as refusal of medical care, may rather point out to structural problems and lack of precise guidelines and resources.

It occurs that police do not view themselves as custodians at all – they perceive their crime-fighting role as central.[60] Officers identify with being keepers of the peace, preventing crime and enhancing community safety. They do not want or like dealing with angry, bored detainees in very confined conditions with minimum access to services.[61] Perhaps, such misconception of the role of the police leads to problems like not bringing drinking water when requested, provision of religious texts, insufficient provision of meals, etc. Though, it may also indicate to lack of precise guidelines.

The reality is that police officers have a substantial custodial role, even though it is often downplayed or overlooked.[62] Police cells in Hong Kong are frequently and extensively used to detain people and constitute a significant and integral component of Hong Kong's custodial system.

In addition, abuses of power by the police can occur for many reasons, not least because using force in accordance with the principle of proportionality[63] is not an easy task.[64] Human rights violations may result from a flawed assessment of a given situation. Abuses can also occur when individual police officers take advantage of their powers by exercising excessive force to intimidate, extort information or for other reasons.[65] It can also be – and this is the most challenging situation – because there is a culture of impunity in a given context: in such cases, police officers who perpetrate human rights violations know that they will not be prosecuted or disciplined.[66]

[60] Ombudsman Victoria and Office of Police Integrity, above n 1.
[61] Ibid.
[62] Ibid.
[63] Principle of proportionality: it should not affect human rights in a way that is disproportionate to the aim. https://www.icrc.org/eng/assets/files/other/icrc-002-0809.pdf
[64] Association for the Prevention of Torture, above n 29.

[65] Ibid.
[66] Ibid.

Further, Hong Kong legal systems, like other common law jurisdictions, rely heavily on confessions. Therefore, individuals arrested by the police are at greater risk of torture and other ill-treatment. Confession-based approaches pose a greater threat to detainees. This is because confession-based approaches often indirectly encourage unlawful practices and contribute to a culture of abuse within the police. [67]

While FPM and PGO do provide some protection of detainees' rights, they seriously lack detail leaving too much discretion to officers. Clearer guidelines could be useful for the treatment of detainees, as in UK.[68] However, having the appropriate laws is one part of the problem, but ensuring that those laws are upheld is a completely different standard that calls for appropriate safeguards and independent monitoring scheme.

8. CONCLUSIONS AND RECOMMENDATIONS

8.1. Independent Monitoring

Preventing ill-treatment of people in the care of the State before it happens is a humane, sensible and cost-effective proposition.[69] One of the best ways to prevent torture is to establish a system of independent monitoring and inspection of all places of detention that addresses system-wide issues and work constructively with detaining authorities to improve conditions.[70] In countries such as UK, The Netherlands, Hungary, South Africa and Northern Ireland there are independent monitoring schemes to police stations to prevent ill-treatment of detainee.[71]

Regular unannounced independent visits to police cells are an important oversight mechanism over the police. It is also an important means of establishing transparency and community faith that the police are not abusing their powers or infringing the human rights of those in their care.[72] These regular visits can serve a preventative function through ensuring that policies are adhered to at station level. They can be an

[67] Ibid.
[68] SoCO, above n 7.
[69] Ombudsman Victoria and Office of Police Integrity, above n 1.
[70] Her Majesty's Inspectorate of Constabulary, *The welfare of vulnerable people in police custody* (2015) < http://www.justiceinspectorates.gov.uk/hmic/wp-content/uploads/the-welfare-of-vulnerable-people-in-police-custody.pdf> at 22 July 2015.
[71] Hounmenou, above n 3.
[72] Association for the Prevention of Torture, above n 29.

important source of information on the ongoing problems at police stations.[73]

Currently, there are no institutions in Hong Kong that are allowed to monitor conditions in police stations. Justices of Peace, Ombudsman, NGOs and international bodies do not have any formal statutory power to monitor police stations.[74] Further, Hong Kong is not party to the OPCAT, which was adopted in 2002. As of July 2015, OPCAT has 75 signatories and 79 parties.[75] By being a party to the OPCAT, there could be a system of regular visits by an international body, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture. The mandate of the subcommittee is to conduct visits, provide advice and recommendations. It also offers training and technical assistance to governments.[76] However, Hong Kong is not a party to the OPCAT, and thus there is not international monitoring body to monitor the treatment of people under police custody.

Recommendations

- **Establish an independent monitoring body to increase accountability of the Police. The monitoring body should have access to all parts of the custody area including cells, detention rooms, charging areas, washing facilities, kitchens and medical rooms. Also they should have access to detainees and be able to interview them.**

- **Delegate the power of independent monitoring of police station cells to Ombudsman, JP or someone other governmental body.**

- **Sign the OPCAT, a treaty that is based on preventing torture through the monitoring and transparency of places of detention.**

8.2. Training

[73] Dissel, above n 6, 34.
[74] SoCO, above n 7.
[75] Ibid.
[76] Ibid.

The police are responsible for ensuring the security and safety of individuals through enforcing the law.[77] Under international law, police officers are obliged to fully respect human rights, but they are also obligated to protect human rights against violations. In essence, their key functions call on them to be active agents for the enjoyment of human rights: a positive understanding of the police's role in this regard is important for fostering the type of constructive change. [78]

Protecting detainee's human rights should be the fundamental ethical value of those working in police stations.[79] This basic overriding principle is clearly stated in Article 10 of the ICCPR: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." Above all, torture and cruel, inhuman or degrading treatment or punishment are absolutely prohibited and cannot be justified under any circumstances.

Findings indicate that police officers do not receive appropriate training on the management of people in custody, yet they are required to care for hundreds of detained suspects every month. This requires a certain amount of knowledge and skill, as it should not merely involve a lock-up function.[80]

Recommendations

- **All police officers dealing with the detention and custody of people should receive regular training on their role as protectors of human rights. NGOs should be allowed to actively participate in such training sessions.**

- **Regular workshops or training sessions for police officers to share good practices in custodial management and to help promote consistency across all police stations should be held regularly.**

[77] Association of Chief Police Officers, *Guidance on the safer detention and handling of persons in police custody* (National Policing Improvement Agency, United Kingdon, 2nd ed, 2012).
[78] Association for the Prevention of Torture, above n 29.
[79] Ibid.
[80] Dissel, above n 6, 35.

- **Strict procedures must be in place to ensure that whenever force is used, whether at the time of arrest or during police custody, that it is not excessive.**

- **Make FPM available to the general public.**

8.3. Complaints Mechanism

Effective complaints mechanisms are key components of any professional and accountable police institution.[81] Complaints can cover a wide variety of issues relating to police conduct, ranging from allegations of human rights violations to inadequate work performance. Ideally, there should be a totally independent police complaints body.[82]

Complaints Against Police Office (CAPO) is a unit within the Hong Kong Police Force that handles complaints against police officers.[83] The Independent Police Complaints Council (IPCC) is an independent body established under the Independent Police Complaints Council Ordinance (Cap. 604, Laws of Hong Kong) to observe and to monitor the review by CAPO of complaints against members of the Police Force. [84]

It is important to note, that this two-tier system in which CAPO investigates complaints made by the public against its members and IPCC monitors those investigations does not provide satisfactory complaints mechanism.[85] CAPO suffers from the lack of independence and IPCC does not have any investigation power, so that complaints by detainees are handled independently and impartiality is not guaranteed.[86]

Further, if one looks at this disciplinary system of the Police is it evident that the power of punishment lies with tribunals or authorities which consist of members of the police force, such as inspectors, superintendents, senior police officers, force discipline officers, Commissioner of Police, or at the highest level the Chief Executive.[87]

[81] Association for the Prevention of Torture, above n 29.
[82] Ibid.
[83] SoCO, above n 7.
[84] Ibid.
[85] Ibid.
[86] Ibid.
[87] Ibid.

According to the Police (Discipline) Regulations, Chap 232A, Regulation 3, para 2, it is a disciplinary offence if police officers neglect their duties disciplinary action. Interestingly, it appears that the fact of lodging a complaint rarely resulted in any form of sanctions. For example, in 2014 there were a total of 2275 complaints received by CAPO. Out of these cases 0 police officers were convicted of criminal offences and 0 police officers were found guilty at formal disciplinary proceedings. For 15 officers disciplinary proceedings yet to be conducted and for 97 officers only advice was given.[88]

Recommendations

- **Ensure stricter punishments for police officers for breach of their duties.**
- **Information about complaints mechanisms should be available and displayed in police premises.**

8.4. Physical Conditions

Detention in police custody is supposed to be of short duration; therefore, physical conditions are expected to be more basic than in prisons. Police cells should have natural light and ventilation, and a temperature appropriate to the climate and season.[89] From the received complaints it is evident that police stations are sometimes used for much longer periods than that those deemed acceptable by law, police facilities being, in most cases, inadequate for long- or mid-term detention. On such occasions, physical conditions should be equivalent to the expected minimum standards guaranteed in longer-term pre-trial detention.

Recommendations

- **All police stations with detention facilities must be equipped with a mattress and blankets.**

[88] Hong Kong Police Force, above n 10.
[89] Association for the Prevention of Torture, above n 29.

- **Detainees should have access to drinking water and be provided with food of adequate nutritious value.**

- **Review the condition of all cell complexes in light of the findings of this report. Upgrade cells where necessary. Make report accounting for all improving measures available to general public.**

- **Facilitate access to a set of clean clothes for each detainee either through their own families or friends, or from various welfare services.**

- **Ensure that food quality within police stations is monitored, including random sampling of food.**

- **Wherever possible permit detainees who are there for more than a day access to fresh air for one hour per day.**

8.5. Other Safeguards

Torture must be inflicted by, or with the consent or acquiescence of, State authorities or other persons acting in an official capacity. This is why the powers given to police must be accompanied by a series of safeguards to ensure that they are not applied in a way that amounts to torture or other ill-treatment.[90]

The earliest stages of detention, and especially those involving arrest, interrogation and investigation, are when the risks of torture and other ill-treatment are highest.[91] The risks of abuse in police custody are particularly high during the first few hours of detention: this is the time when detainees are most vulnerable and when officials are under most pressure to secure information from them.[92] Safeguards, especially at the very early stages of detention, are crucial to prevent abuses.

Information on rights

[90] Ibid.
[91] Ibid.
[92] Ibid.

Persons being brought to a police station will often be confused and scared. Their vulnerability should be taken into consideration by police officials in the way information is conveyed. Detainees should be given information on their rights in a language they understand. The information must be provided in simple, clear language. For foreign detainees, information should be provided in the language understood by the detainee.

Recommendations

- **Continue translating "Notice to Persons in Custody" into more languages.**
- **Ensure that all police stations have copies of available translations.**
- **Ensure that information about detainee's rights is displayed in reception areas of all police stations so it is visible to detainees.**

Right to notify relatives

The right to have a family member or third party notified about the fact of arrest, detention, and/or transfer, and about the place of detention, constitutes an essential safeguard against ill-treatment. The notification should be made from the outset of the deprivation of liberty. The SRT recommends that a relative should be informed of the arrest and the place of detention within 18 hours, in all circumstances.[93]

It is important that police personnel are instructed to inform detainees of their right to notify a third party. They should also allow detainees to implement this right. Further, it is important to permit foreigners to contact a relative or the consular post of the state of which they are a national.

Recommendation

Ensure that all detained persons, including foreign nations, allowed to notify their relatives or third parties of their arrest.

[93] General Recommendations of the SRT, UN Doc. E/CN.4/2003/68, 17 December 2002, §8. Available at <http://www2.ohchr.org/english/issues/docs/recommendations.doc>.

Access to doctor

The right of access to a doctor is not only essential for detainees who need medical care, but is also a key safeguard against ill-treatment for anyone held in police custody. It is fundamental that this right be granted from the start of detention.[94] When a person asks for a medical examination, "police officers should not seek to filter such requests".[95] Recording injuries suffered by persons detained by the police is an important safeguard against torture and other ill-treatment.

Recommendations

- **Review procedures for referring detained persons to see a doctor. Ensure that all detained persons have access to medical care.**
- **Ensure availability of doctors or nurses on call at each police station.**

Access to lawyer

Lawyers, by their mere presence in a police station, constitute a safeguard against ill-treatment, particularly during the critical first hours of detention. When abuse has occurred, lawyers can advise detainees about complaint mechanisms and remedies.[96]

The right of access to a lawyer should include the presence of the lawyer during any questioning or interrogation.[97] The SPT has stressed that "the presence of a lawyer during police questioning may not only deter the police from resorting to ill-treatment or other abuses, but may also work as a protection for police officers in case they face unfounded allegations of ill-treatment."[98]

Recommendations

[94] Association for the Prevention of Torture, above n 29.
[95] CPT standards, CPT, CoE Doc. CPT/Inf/E (2002) 1, 2002 (revised 2011), p.11-12, §42. Available at <http://www.cpt.coe.int/En/documents/eng-standards.pdf >.
[96] CPT standards, CPT, CoE Doc. CPT/Inf/E (2002) 1, 2002 (revised 2011), p.11, §41. Available at <http://www.cpt.coe.int/En/documents/eng-standards.pdf >
[97] CPT Standards, p.6, §38; *The Right of Access to Lawyers*, APT, p.8.
[98] Association for the Prevention of Torture, above n 29.

- **Extend Legal Aid scheme to provide legal representation in police stations for persons undergoing interviewing by police officers.**

- **Permit detainees to have a third party (such as trained NGO personnel or paralegals) present during interrogations in police custody.**

Monitoring of police premises

As the use of CCTV (closed-circuit television) in places of deprivation of liberty is relatively recent, existing standards are few in number.[99] However, the practice of using such recording systems is on the rise. In some countries, police stations may have CCTV surveillance systems installed that record everything taking place in the reception area, cells, corridors and other locations.[100]

Recommendation

Install CCTV surveillance systems that record everything taking place in the reception area, cells, corridors and other locations, in all police stations.

9. SUMMARY OF RECOMMENDATIONS

- **Establish an independent monitoring body to increase accountability of the Police. The monitoring body should have access to all parts of the custody area including cells, detention rooms, charging areas, washing facilities, kitchens and medical rooms. Also they should have access to detainees and be able to interview them.**

- **Delegate the power of independent monitoring of police station cells to Ombudsman, JP or someone other governmental body.**

- **Sign the OPCAT, a treaty that is based on preventing torture through the monitoring and transparency of places of detention.**

- **All police officers dealing with the detention and custody of people should receive regular training on their role as protectors of human**

[99] Ibid.
[100] Ibid.

rights. NGOs should be allowed to actively participate in such training sessions.

- **Regular workshops or training sessions for police officers to share good practices in custodial management and to help promote consistency across all police stations should be held regularly.**

- **Strict procedures must be in place to ensure that whenever force is used, whether at the time of arrest or during police custody, that it is not excessive.**

- **Make FPM available to the general public.**

- **Ensure stricter punishments for police officers for breach of their duties.**

- **Information about complaints mechanisms should be available and displayed in police premises.**

- **All police stations with detention facilities must be equipped with a mattress and blankets.**

- **Detainees should have access to drinking water and be provided with food of adequate nutritious value.**

- **Review the condition of all cell complexes in light of the findings of this report. Upgrade cells where necessary. Make report accounting for all improving measures available to general public.**

- **Facilitate access to a set of clean clothes for each detainee either through their own families or friends, or from various welfare services.**

- **Ensure that food quality within police stations is monitored, including random sampling of food.**

- **Wherever possible permit detainees who are there for more than a day access to fresh air for one hour per day.**

- **Continue translating "Notice to Persons in Custody" into more languages.**

- **Ensure that all police stations have copies of available translations.**

- **Ensure that information about detainee's rights is displayed in reception areas of all police stations so it is visible to detainees.**

- **Ensure that all detained persons, including foreign nations, allowed to notify their relatives or third parties of their arrest.**

- **Review procedures for referring detained persons to see a doctor. Ensure that all detained persons have access to medical care.**
- **Ensure availability of doctors or nurses on call at each police station.**
- **Extend Legal Aid scheme to provide legal representation in police stations for persons undergoing interviewing by police officers.**
- **Permit detainees to have a third party (such as trained NGO personnel or paralegals) present during interrogations in police custody.**
- **Install CCTV surveillance systems that record everything taking place in the reception area, cells, corridors and other locations, in all police stations.**

10. CASES

Case 1

A is a refugee in Hong Kong, trying to escape mistreatment in his own country. When **A** was arrested last year, he was faced with cruelty again - this time in Hong Kong.

A spent 4 days at the police station and was subjected to the police brutality and abuse. He has been pushed, verbally attacked, intimidated and severely beaten by police officers during the arrest, interrogations and at the police station. **A** had attained visible injuries such as broken leg, twisted thumbs, bruises and now permanent scar on his forehead. During 4 days at the police station, **A** was not given any medical attention or simple medications. Despite asking to see a doctor numerous times, **A** was not taken to the hospital, but instead was told not to tell anyone about what happened. It was not until he was transferred to Correctional Centre, he was first arranged to go to the hospital, where he spent 3 days recovering from the cruelty he has received at the police station.

From **A**'s recounts of his time at the police station, terrible conditions of such facilities are also evident. During 4 days, **A** was not provided with any of the items (which HK Government insists are given to all arrested persons who are detained in police stations), such as clean towel, liquid soap, shaving kit, face mask, box tissue. **A** was not even provided with enough toilet paper when he needed to use the toilet. He was not able to

brush his teeth or have shower during the entire time. When he asked police officer why was he not allowed to have shower, he received reply: “This is not your home!”

To sleep, **A** was not given matrass or pillow, but only a dirty blanket, which he had to use to sleep on a concrete slab. It was not enough to keep him warm or provide a comfortable sleep. The cell was described by A as dirty, with no natural light, windows, fan or any fresh air.

A is a Muslim. The food provided at the police station did not satisfy his religious dietary requirements. Furthermore, when he asked for Koran, his request was refused. There was no access to drinking water inside the cell and every time A was thirsty, he had to ask a police officer for some water, which took a very long time to receive and only small amounts of water were provided.

In search for fairness, **A** made complaints to the Ombudsman and CAPO. It has been almost a year since the frightening experience **A** had received at the police station, and it seems that justice is far from being served. Ombudsman had replied to **A** that it is outside of their powers to pursue such claims. CAPO had encouraged **A** to pursue his claim after he is discharged from prison, which in his case could take another year.

Case 2

B is a 45 years old woman from Kenya. After arrest, **B** was not allowed to make a phone call back home and notify her 4 children and 1 grandson about being detained. No information about her rights was provided to **B**.

In police detention cell, **B** was only provided with 2 blankets, which did not provide her with comfortable sleep, nor kept her warm at night. B was not fed during entire period in the police cell. As there was no drinking water available inside, she had to ask police officers every time she felt thirsty. It took about 30 minutes to receive water each time. She was told to stop asking for water. **B** could not understand why police officers did not want her to drink much water. She was not allowed to have shower or brush her teeth during entire period in police cell.

There was no wash basin, electric fan, air-conditioning/heating and windows inside the cell. She did not have access to natural daylight or fresh air. **B** requested for a copy of Bible upon arrest but was refused.

Further, as **B** is diagnosed with ovary cancer, she requested to see a doctor, but she was not allowed. No explanation was provided.

Case 3

C is a 35 years old single mum of an 8 years old girl. Upon arrest, **C** was not able to call home and notify her family of arrest.

During the entire time in police detention, **C** was only fed once a day. She describes the quality of food as terrible and portion very small. She felt hungry all the time. She was not able to wash her hands or provided with wet tissue when served meals. As drinking water was not available inside the cell, she had to request it from police offices. Each time they told her to wait a little, but never came back. After couple attempts she just stopped asking.

C was detained in police station for 4 days, during which she did not shower or brushed her teeth once. None of the personal hygiene items were provided to **C**. Whenever she used toilet, only very small amounts of toilet paper were provided, which was not enough.

During police interrogation, **C** was forced to sign a statement, contrary to what she had said. The police officer simply replied: 'I don't care. That is your problem.' The whole experience was severely traumatic. **C** says that she was treated like 'the most wanted criminal or terrorist.'

11. KEY ABBREVIATIONS

BPP	United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
BPUFF	United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
CAPO	Complaints Against Police Office
CCLEO	United Nations Code of Conduct for Law Enforcement Officials
FPM	Force Procedural Manual
HMIP	Her Majesty's Inspectorate of Prisons
ICCPR	United Nations International Covenant on Civil and Political Rights
ICVA	Independent Custody Visiting Association
IPCC	The Independent Police Complaints Council
OPCAT	United Nations Optional Protocol to the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment
PACE	Police and Criminal Evidence Act 1984
PACE Code C	The Code of practice for the detention, treatment and questioning of persons by police officers (Code C) under the Police and Criminal Evidence Act 1984
PCG	Guidance on the safer detention & handling of persons in police custody
PD	Police Buildings Design Guide - Custody - Policy Document
PGO	Police General Orders
SMR	United Nations Standard Minimum Rules for the Treatment of Prisoners
SRT	United Nations Special Rapporteur on Torture
UNCAT	United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Guidance on the safer detention & handling of persons in police custody

Hong Kong Bill of Rights Ordinance

Police and Criminal Evidence Act 1984 (UK)

Police Buildings Design Guide - Custody - Policy Document (UK)

Police Complaints Council Ordinance (HK)

Police Discipline Regulations (HK)

Police Force Ordinance (HK)

Police General Orders (HK)

11.2. Treaties

United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

United Nations Code of Conduct for Law Enforcement Officials

United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

United Nations International Covenant on Civil and Political Rights

United Nations Optional Protocol to the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment

United Nations Standard Minimum Rules for the Treatment of Prisoners

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