

## **Submission to Constitutional and Mainland Affairs Bureau on the Hong Kong Special Administrative Region's fourth report under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

31 March 2021

### **Introduction**

Amnesty International Hong Kong (AIHK) is submitting this briefing in response to the Hong Kong Special Administrative Region (HKSAR) government's invitation for public views on its fourth report under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

This submission sets out some of Amnesty International's key concerns and recommendations related to the implementation of the CAT by the HKSAR government. It highlights our concerns with regards to legal safeguards against torture and other ill-treatment (Article 2); non-refoulement (Article 3); criminalizing acts of torture (Article 4); guidelines and education for law enforcement (Article 10); arrest, detention, and imprisonment (Article 11); independent complaint mechanism and impartial investigation into torture allegations (Articles 12, 13 and 14), and prevention of torture (Article 16).

### **Legal safeguards against torture and ill-treatment (Article 2)**

#### Removal of existing judicial oversight

Under Article 60 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (NSL), the Office for Safeguarding National Security of the Central People's Government and its staff do not fall under HKSAR jurisdiction. The law also authorizes additional secrecy around the operation of the national security agencies in Hong Kong and could exempt them from fulfilling existing obligations of the HKSAR government to respect, protect and fulfil human rights as stipulated in Hong Kong laws.

Without explicit guarantee in the law that these agencies and their personnel will be bound by existing state obligations to respect, protect and fulfil human rights as stipulated in Hong Kong laws, it may become difficult or impossible to hold them accountable for any human rights violations, including torture and other ill-treatment committed by any central government national security office and grant remedies in respect of these violations.

Article 55-57 of the NSL also allows suspects to be moved to mainland China, handled within the mainland’s criminal justice system and tried under mainland law. Being charged with a national security crime on the mainland can lead to arbitrary or even secret detention.<sup>1</sup> If individuals are placed under “residential surveillance in a designated location”, investigators can hold them outside the formal detention system for periods up to six months.

Recommendation:

- Amend the National Security Law to ensure that where sufficient, admissible evidence exists, those suspected of committing the crime of torture or other acts of ill-treatment should be prosecuted in proceedings that meet international standards of fairness, or subjected to disciplinary or other appropriate action.

### Pre-trial detention under the NSL

Article 42 of the NSL stipulates that individuals suspected of violating the NSL are to be denied bail unless there are sufficient grounds for believing that they “will not continue to commit acts endangering national security”. This reversal of the presumption of bail runs counter to the normal practice in criminal prosecutions in Hong Kong and to international human rights law.

Jimmy Lai, the owner of pro-democracy newspaper *Apple Daily*, was held in detention after being charged with fraud on 3 December 2020. Lai appealed against the refusal of bail and was granted bail on 23 December. As conditions of the bail, Lai was placed under house arrest and banned from taking media interviews, using social media, publishing articles and meeting foreign officials.<sup>2</sup> Lai was placed in detention again on 31 December 2020 after the Court of Final Appeal partly granted leave for the prosecution’s application to appeal against Lai’s bail, reportedly on the grounds that the court should make safeguarding national security a top priority when considering bail.<sup>3</sup> The court revoked his bail on 18 February 2021.<sup>4</sup>

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<sup>1</sup> Amnesty International, “Hong Kong’s national security law: 10 things you need to know” ([Press Release](#), 17 July 2020).

<sup>2</sup> Brian Wong, “Hong Kong media tycoon Jimmy Lai has arguable case and bail conditions were met, High court judge says”, *South China Morning Post*, 29 December 2020, [www.scmp.com/news/hong-kong/law-and-crime/article/3115723/hong-kong-media-tycoon-jimmy-lai-has-arguable-case-and](http://www.scmp.com/news/hong-kong/law-and-crime/article/3115723/hong-kong-media-tycoon-jimmy-lai-has-arguable-case-and)

<sup>3</sup> Brian Wong and Tony Cheung, “Hong Kong national security law: media tycoon Jimmy Lai sent back behind bars as top court allows prosecutors to appeal against release on HK\$10 million bail”, *South China Morning Post*, 31 December 2020, [www.scmp.com/news/hong-kong/politics/article/3115991/hong-kong-national-security-law-jimmy-lai-back-custody](http://www.scmp.com/news/hong-kong/politics/article/3115991/hong-kong-national-security-law-jimmy-lai-back-custody)

<sup>4</sup> Candice Chau, “Hong Kong media tycoon Jimmy Lai again refused bail over alleged national security law violations”, *Hong Kong Free Press*, 19 February 2021, [hongkongfp.com/2021/02/19/hong-kong-media-tycoon-jimmy-lai-again-refused-bail-over-alleged-national-security-law-violations](http://hongkongfp.com/2021/02/19/hong-kong-media-tycoon-jimmy-lai-again-refused-bail-over-alleged-national-security-law-violations)

A majority of the 47 pro-democracy lawmakers and activists charged with “conspiracy to subversion” under the NSL were also rejected bail on 4 March 2020 after a four-day hearing with insufficient time to rest, meaning they are already serving lengthy jail time before the trial based on hypothetical threats to national security.<sup>5</sup>

The presumption that a person charged with a criminal offence will not be detained pending trial is closely linked to both the presumption of innocence and the right to liberty.<sup>6</sup> The extremely high threshold for bail under the NSL puts individuals remanded under that law at risk of unjustified and, in fact, prolonged pre-trial detention, which should be the exception under international law.

Recommendation:

- Amend or remove clauses in the NSL that place the burden on the defence to establish that pre-trial detention is unnecessary and disproportionate.

### **Non-refoulement (Article 3)**

#### Claim acceptance and refoulement

As of 30 April 2020, only 179 (1.016%) of the 17,618 non-refoulement claims determined by the Immigration Department were held to be substantiated.<sup>7</sup>

The UN Committee Against Torture (the Committee) expressed concern in 2016 that the government only entertains claims of non-refoulement from individuals who overstayed their visas. This forces individuals to breach the condition of stay and risk being returned and lack access to humanitarian assistance for education, housing and food. The amount of humanitarian assistance given to asylum seekers has not been adjusted since 2014. The HKSAR government also denies non-refoulement claimants the right to work. As a result, asylum seekers are forced to live in destitute conditions for an extended period of time without any means to improve their quality of life. This can amount to cruel treatment.

Recommendations:

- Uphold obligations to protect individuals from torture and other ill-treatment, including by respecting the principle of non-refoulement;

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<sup>5</sup> Amnesty International, “Hong Kong: Prosecution of opposition figures an unprecedented attack on human rights” ([Press Release](#), 4 March 2021).

<sup>6</sup> Amnesty International, *Fair Trial Manual* (Index: POL 30/002/2014), p. 61.

<sup>7</sup> Government of the Hong Kong SAR, “LCQ9: Non-refoulement claims”, press release, 20 May 2020, [www.info.gov.hk/gia/general/202007/02/P2020070200869.htm](http://www.info.gov.hk/gia/general/202007/02/P2020070200869.htm)

- Request that the Central Government extends the 1951 Convention relating to the Status of Refugees and its 1967 Protocol to the HKSAR.

### Detention of asylum seekers

Hong Kong continues to detain non-refoulement claimants. Based on government data, the Refugee Concern Network found that the Hong Kong Immigration Department detained more than 10,000 individuals every year from 2010 to 2020.<sup>8</sup>

The UN Refugee Agency (UNHCR) has stated that the detention of asylum-seekers is “inherently undesirable”.<sup>9</sup> Amnesty International believes that detention solely for immigration purposes is only allowed in the most exceptional of circumstances and that a presumption against such detention exists. Amnesty International opposes migration-related detention where resorted to solely on the grounds of sovereignty and the power to control a state’s borders and the deterrent power of detention against irregular entry or stay. Amnesty International also opposes migration-related detention for the sole purpose of determining the elements on which an individual’s claim to asylum is based.

### Recommendation:

- Immediately cease the use of detention solely for immigration purposes, including for determining the elements on which an individual’s claim to asylum is based, unless in the most exceptional of circumstances, namely to prevent an objective risk of absconding, to verify identity or to ensure compliance with a deportation order, only for a period as long as is necessary, and implement a presumption against such detention in law and practice.

### Treatment of asylum seekers in detention

In June 2020, at least 28 detainees started a hunger strike to protest the dire detention conditions of their confinement and prolonged periods of detention.<sup>10</sup>

According to information Amnesty International collected from immigration detainees held at the Castle Peak Bay Immigration Centre (CIC) and civil society groups, detainees face

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<sup>8</sup> Refugee Concern Network, *Submissions to the Bills Committee on Immigration (Amendment) Bill 2020*, February 2021, [www.justicecentre.org.hk/framework/uploads/2021/02/Refugee-Concern-Network-Submissions-on-the-Immigration-Amendment-Bill-2020.pdf](http://www.justicecentre.org.hk/framework/uploads/2021/02/Refugee-Concern-Network-Submissions-on-the-Immigration-Amendment-Bill-2020.pdf)

<sup>9</sup> UNHCR, *Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum Seekers and Alternatives to Detention* (2012), para 5.

<sup>10</sup> Rachel Wong, “Hong Kong gov’t officials walk out as district council debates alleged abuses at immigration centre”, *Hong Kong Free Press*, 7 October 2020, [hongkongfp.com/2020/10/07/hong-kong-govt-officials-walk-out-as-district-council-debates-alleged-abuses-at-immigration-centre](http://hongkongfp.com/2020/10/07/hong-kong-govt-officials-walk-out-as-district-council-debates-alleged-abuses-at-immigration-centre)

indefinite detention periods, health risks and treatment that may amount to a violation of the prohibition of torture and other ill-treatment. Some detainees complained that CIC only provided painkillers for their chronic illnesses and refused to send unwell detainees to public hospitals for essential medical treatment. In at least one case, officers even allegedly coerced unwell detainees to sign letters stating that they did not need medication. In response to questions about a case of a woman detainee being strip-searched in the presence of a male doctor, the representative of the Immigration Department said in a meeting with lawmakers on 28 July that they would hire a woman doctor in two years' time.<sup>11</sup> Currently, there is no woman duty medical officer at CIC.

The failure to provide adequate healthcare to detainees may violate the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

Some individuals are detained at CIC because they are in the process of seeking non-refoulement protection in Hong Kong. Currently, Section 37ZK of the Immigration Ordinance (Cap 115) is used to justify prolonged detention of protection claimants with no judicial oversight. Amnesty International opposes migration-related detention for the sole purpose of determining the elements on which an individual's claim to asylum is based. Alternative non-custodial measures that comply with the principles of legality, necessity and proportionality, such as reporting requirements, must be explicitly considered before resorting to the immigration detention of migrants.

Recommendation:

- Immediately stop denying detainees access to adequate health care and, where specialist or any other treatment is not available within detention facilities, ensure that detainees are transferred to specialized institutions or hospitals.

## **Criminalizing acts of torture (Article 4)**

### Exploitation of migrant domestic workers

In its last Concluding Observations, the Committee expressed concern about numerous cases of exploitation of migrant domestic workers and called for the HKSAR government to take effective measures to punish forced labour offenders.<sup>12</sup> Migrant domestic workers continue to face a high risk of forced labour in Hong Kong. In addition, research by

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<sup>11</sup> Amnesty International Hong Kong, *Open letter*, 4 August 2020, [www.amnesty.org.hk/wp-content/uploads/2021/03/INHUMANE-CONDITIONS-AT-CASTLE-PEAK-BAY-IMMIGRATION-CENTRE-NOT-IN-LINE-WITH-INTERNATIONAL-LAWS-AND-STANDARDS.pdf](http://www.amnesty.org.hk/wp-content/uploads/2021/03/INHUMANE-CONDITIONS-AT-CASTLE-PEAK-BAY-IMMIGRATION-CENTRE-NOT-IN-LINE-WITH-INTERNATIONAL-LAWS-AND-STANDARDS.pdf)

<sup>12</sup> Concluding observations of UN Committee against Torture: Hong Kong, UN Doc. CAT/C/CHN-HKG/CO/5 (2016), para. 21.

Amnesty International shows that many migrant domestic workers are heavily indebted due to illegal and excessive agency fees.<sup>13</sup>

The “Two-Week Rule”, which stipulates that migrant domestic workers must find new employment or leave Hong Kong within two weeks after an employment contract ends, along with the requirement that migrant domestic workers must live with their employers, increases the risk of them suffering human and labour rights abuses. Employers often subject them to physical or verbal abuse; restrict their freedom of movement; prohibit them from practicing their faith; pay them less than the statutory Minimum Allowable Wage; deny them adequate rest periods; and arbitrarily terminate their contracts, often in collusion with employment agencies.

Recommendation:

- Take concrete and immediate actions to repeal or amend laws and regulations that foster abuse and exploitation of migrant domestic workers, including the “Two-Week Rule” and legislation that force migrant workers to live with their employers and excludes them from the Minimum Wage Ordinance (Cap 608).

### Human trafficking

Hong Kong’s anti-trafficking laws are limited to trafficking “for the purpose of prostitution” and only in cases that involve transnational movement. Although the Committee recommended the government to make necessary legislative amendments to adopt the definition of trafficking provided for in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), the Court of Final Appeal ruled that the HKSAR government does not need to pass bespoke legislation that affords protection against human trafficking. In January 2020, the court ruled that domestic law (Article 4, Hong Kong Bill of Rights) prohibits forced labour but not human trafficking in general,<sup>14</sup> and that it “cannot be said that the patchwork of offences available to the [HKSAR government] is inadequate to provide practical and effective protection” against forced labour and other rights under Article 4 of the Hong Kong Bill of Rights.<sup>15</sup>

Amnesty International and local human rights groups have called for broader anti-trafficking protections that comply with the definition set forth in the Palermo Protocol, supplementing the UN Convention against Transnational Organized Crime.

Recommendations:

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<sup>13</sup> Amnesty International, *Exploited for profit, failed by governments: Indonesian Migrant Domestic Workers Trafficked to Hong Kong* (Index: ASA 17/029/2013), p. 62 ; Amnesty International, *Abusive labour migration policies: submission to the UN Committee on Migrant Workers’ Day of General Discussion on Workplace Exploitation and Workplace Protection* (Index: IOR 42/002/2014).

<sup>14</sup> *Zn v. Secretary for Justice & 3 Others* (FACV4/2019), Hong Kong Court of Final Appeal (2020) para. 85.

<sup>15</sup> *Zn v. Secretary for Justice & 3 Others* (FACV4/2019), Hong Kong Court of Final Appeal (2020) para. 118.

- Pursue with the Central Government in Beijing the extension of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol, ratified by the People’s Republic of China in 2010) to the Hong Kong Special Administrative Region, and subsequently incorporate its provisions into Hong Kong law and implement it in policy and practice;
- Adopt a comprehensive law on prevention, prosecution and protection to combat human trafficking and forced labour.

## Guidelines and education for law enforcement (Article 10)

### Transparency of the Police General Orders and other internal guidelines

The Committee recommended that the government publicize the Police General Orders and related guidelines on the use of force and make sure that they follow international standards.<sup>16</sup> However, some of these guidelines, including Chapter 29 of the Orders (“the use of force and firearms”) remain undisclosed to the public. In 2019, it was reported that the Hong Kong Police Force had amended the Force Procedures Manual to expand the options of weapons to use in response to “violent attacks” and “strong resistance” and relax internal guidelines on the use of lethal force.<sup>17</sup> The new guidelines reportedly no longer require police officers to ascertain an individual’s intent to cause death or serious injury before using lethal force.<sup>18</sup> The public could not scrutinize the changes as the police refused to publicize the manual.<sup>19</sup>

### Recommendations:

- Provide public transparency and scrutiny of guidelines and procedures on the police use of force;
- Ensure that the law and regulations governing the use of force by law enforcement officials are in line with international law and standards and that all law enforcement officials are properly trained accordingly.

<sup>16</sup> Concluding observations of UN Committee against Torture: Hong Kong, UN Doc. CAT/C/CHN-HKG/CO/5 (2016), para. 21.

<sup>17</sup> Clifford Lo and Christy Leung, “Hong Kong police guidelines on live rounds usage relaxed earlier this year, with options of anti-riot weapons expanded”, *South China Morning Post*, 3 October 2019, [www.scmp.com/news/hong-kong/law-and-crime/article/3031465/hong-kong-police-guidelines-live-rounds-usage-relaxed](http://www.scmp.com/news/hong-kong/law-and-crime/article/3031465/hong-kong-police-guidelines-live-rounds-usage-relaxed)

<sup>18</sup> Clifford Lo and Christy Leung, “Hong Kong police guidelines on live rounds usage relaxed earlier this year, with options of anti-riot weapons expanded”, *South China Morning Post*, 3 October 2019, [www.scmp.com/news/hong-kong/law-and-crime/article/3031465/hong-kong-police-guidelines-live-rounds-usage-relaxed](http://www.scmp.com/news/hong-kong/law-and-crime/article/3031465/hong-kong-police-guidelines-live-rounds-usage-relaxed)

<sup>19</sup> Holmes Chan, “Hong Kong police relaxed guidelines for using lethal force a day before officer shot student—reports”, *Hong Kong Free Press*, 3 October 2019, [hongkongfp.com/2019/10/03/hong-kong-police-relaxed-guidelines-using-lethal-force-day-officer-shot-student-reports/](http://hongkongfp.com/2019/10/03/hong-kong-police-relaxed-guidelines-using-lethal-force-day-officer-shot-student-reports/)

## Arrest, detention and imprisonment (Article 11)

### Torture and other ill-treatment in custody

Amnesty International has found evidence of torture and other ill-treatment in detention. In several cases, protesters detained during the 2019 protests. In multiple instances, the abuse appears to have been meted out as “punishment” for talking back or appearing uncooperative.<sup>20</sup> There have also been allegations of police officers sexually harassing detained protesters and strip-searching protesters in a humiliating and unnecessary manner.<sup>21</sup> In media reports, young offenders also complained about the humiliation and other ill-treatment they received in correctional facilities, including physical punishment and being barred from going to the toilet, slapped and insulted by correctional officers.<sup>22</sup>

The Committee expressed concern that existing vague regulations allow correctional service authorities to place individuals under solitary confinement for prolonged periods, which the authorities can renew without limit. Solitary confinement is further prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures and must never be imposed on children and women who are pregnant or have young children. In violation of international standards and recommendations from the Committee, it is reported that individuals remanded and in prison were held in solitary confinement.<sup>23</sup> Prolonged solitary confinement can violate the prohibition of torture and other ill-treatment.

### Recommendations:

- Ensure that individuals in detention are protected from coerced “confessions”, torture and other ill-treatment;
- Publicly disclose comprehensive information on the use of solitary confinement;
- Ensure that people in custody are not subjected to prolonged solitary confinement and never impose additional security measures on them without assessing whether they are absolutely, necessary and proportionate;
- Amend all relevant laws, regulations and policies to ensure that the use of solitary confinement is imposed only on the basis of a court decision setting time limits and

<sup>20</sup> Amnesty International, “Hong Kong: Arbitrary arrests, brutal beatings and other torture in police detention revealed” ([Press Release](#), 19 September 2019).

<sup>21</sup> Amnesty International, “Sexual violence against Hong Kong protesters – what’s going on?” ([Blog](#), 20 December 2019).

<sup>22</sup> 林裕華鄭秋玲邱靖汶陳宇軒, “50 少年犯控訴: 把我們當狗一樣 懲教人員嚴正澄清” (Cruel treatment of detainees: the outcry of 50 juvenile offenders” HK01.com, 9 August 2017, [bit.ly/3cmkyyy](#) ; Angela Siu, Kristy Tong and Fiona Chan, “Rough justice: Former juvenile offenders speak of abuse behind bars, and a broken complaints system”, *Hong Kong Free Press*, 19 November 2017, [hongkongfp.com/2017/11/19/rough-justice-former-juvenile-offenders-speak-abuse-behind-bars-broken-complaints-system](#)

<sup>23</sup> “Hong Kong Activist Agnes Chow Moved to Top Security Prison: Report”, *Radio Free Asia*, 1 January 2020, [www.rfa.org/english/news/china/hongkong-agneschow-01012021125427.html](#); Candace Chau, “Hong Kong activist Joshua Wong ‘held in solitary confinement’”, *Hong Kong Free Press*, 25 November 2020, [hongkongfp.com/2020/11/25/hong-kong-activist-joshua-wong-held-in-solitary-confinement/](#); “Hong Kong activist Joshua Wong writes about ‘challenging’ life in solitary confinement”, *Apple Daily*, 7 March 2021, [hk.appledaily.com/news/20210307/2ZU6LJG355E5ZII5QG7D4M3VYQ](#);

not for groups that under international law are excluded from this type of detention, and also that concrete steps are taken to minimize the harmful effects of solitary confinement on the individual by ensuring that they have access to adequate exercise, social and mental stimulation and that their health is regularly monitored.

### Abusive law enforcement practices targeting transgender people

Amnesty International research has shown that, among other things, transgender people experience degrading and humiliating treatment in custody in Hong Kong.<sup>24</sup> They are often subject to particularly abusive police practices, including intrusive and humiliating full-body searches carried out, for example, by male officers on transgender women if the identification card of the person in custody gives the gender as male, which also means that transgender women are initially sent to male detention centres. Instead of being sent to detention centres corresponding to their gender identities, transgender persons continue to be placed in isolation or in solitary cells. Prisons do not usually allow transgender detainees to continue hormone treatment, with potentially serious consequences for their health. These issues were challenged in an unsuccessful High Court claim.<sup>25</sup>

#### Recommendation:

- The Hong Kong Police Force, Hong Kong Immigration Department and Hong Kong Correctional Services should develop and implement gender and human rights training for law enforcement officials to ensure that people are not discriminated against or ill-treated in custody because of their sexual orientation or gender identity – including procedures to ensure that transgender individuals have prompt access to hormone therapy as required, that they are detained in a facility consistent with their gender identity and that, if necessary, they are only searched by officers likewise consistent with their gender identity.

### **Independent complaint mechanism and impartial investigation into torture allegations (Articles 12, 13 and 14)**

#### Failure to display identification during police operations

Amnesty International collected evidence showing that, in at least three occasions during dispersal operations on 12 June 2019 in the context of the Anti-Extradition Law Amendments Bill protests, the Special Tactical Squad of the Hong Kong Police Force was

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<sup>24</sup> Amnesty International, *Harmfully isolated: Criminalizing sex work in Hong Kong* (Index: ASA 17/4032/2016), p. 20.

<sup>25</sup> *Luigi Recasa Navarro v The Commissioner of Correctional Services* (HKCFI 2882), High Court (2018).

not wearing visible tags, either with the individual officer's name or with a number identifying them.<sup>26</sup>

Law enforcement officials interacting with the public should wear name tags or personal number tags in order to be individually identifiable. This ensures the full accountability of law enforcement agencies for all their actions. In a judicial review challenging the lack of identification of law enforcement officials during police operations in the protests in 2019, the High Court of Hong Kong echoed the view that identification of police officer is “integral to an effective system of investigation”, which is crucial in ensuring accountability for ill-treatment.<sup>27</sup>

Recommendation:

- Ensure that all law enforcement officials are individually identifiable through name or personal number tags at all times when they are interacting with the public.

### Police complaint mechanism

The Independent Police Complaints Council (IPCC) is institutionally limited in its capacity and ability to carry out an independent, impartial, effective and thorough investigation of human rights violations, including torture and other ill-treatment. The Independent Police Complaints Council Ordinance (Cap. 604) only gives the IPCC power to monitor and oversee the investigation conducted by the Complaints Against Police Office (CAPO). The High Court also ruled that the existing police complaint mechanism fails to meet the requirement of independent investigation as stipulated in the Hong Kong Bill of Rights.<sup>28</sup>

The Committee has repeatedly expressed concern about the fact that investigations of police complaints continue to be conducted by CAPO, which is a division of the police force, and that the IPCC remains only an advisory and oversight body of the investigations carried out by CAPO, with no power to conduct investigations on its own.<sup>29</sup>

The Committee has also expressed concern about “the lack of an independent and effective mechanism for lodging complaints without fear of reprisals within the detention facilities under the police department, immigration department or the correctional services department”.<sup>30</sup>

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<sup>26</sup> Amnesty International, *How not to police a protest: Unlawful use of force by Hong Kong police* (Index: ASA17/0576/2019), p. 15.

<sup>27</sup> *The Hong Kong Journalists Association v. The Commissioner of Police and Another* (HKCFI 2882), High Court (2020), para. 96.

<sup>28</sup> *The Hong Kong Journalists Association v. The Commissioner of Police and Another* (HKCFI 2882), High Court (2020), para. 102.

<sup>29</sup> Concluding observations of UN Committee against Torture: Hong Kong, UN Doc. CAT/C/HKG/CO/4 (2009), para. 12; Concluding observations of UN Committee against Torture: Hong Kong, UN Doc. CAT/C/CHN-HKG/CO/5 (2016), para. 8.

<sup>30</sup> Concluding observations of UN Committee against Torture: Hong Kong, UN Doc. CAT/C/CHN-HKG/CO/5 (2016), para. 8.

## Recommendation:

- Take necessary measures to establish a fully independent mechanism mandated to conduct independent, proper and effective investigations into complaints about the inappropriate use of force or other abuse of power by the police, including ill-treatment of protesters, observers or by-standers, and empowered to formulate binding decisions in respect of investigations conducted and findings regarding such complaints.

## Prevention of torture (Article 16)

### Excessive use of force when policing protests and sexual harassment during arrests

Unnecessary or excessive use of force during law enforcement activities can amount to cruel, inhuman or degrading treatment. Since June 2019, Amnesty International has documented an alarming pattern of the Hong Kong Police Force employing reckless and indiscriminate tactics in its policing of protests.<sup>31</sup> The police effectively adopted a zero-tolerance approach for disruptions caused by protesters when policing assemblies. On 12 June 2019, police used tear gas, guns firing rubber bullets, pepper spray and baton charges to disperse a demonstration of largely peaceful protesters near government headquarters, resulting in at least 81 casualties.<sup>32</sup> There was also video footage of police exposing women's underwear during arrests.<sup>33</sup> The Hong Kong Police Force used the violent acts of a small group as a pretext to use unnecessary and excessive force against the vast majority of peaceful protesters.<sup>34</sup>

## Recommendation:

- Ensure that the law and regulations governing the use of force by law enforcement officials are in line with international law and standards, including the UN Basic Principles on the Use of Force and Firearms for Law Enforcement Officials and that all law enforcement officials are properly trained accordingly.

### Abusive preconditions for legal gender recognition

<sup>31</sup> See Amnesty International, *How not to police a protest: Unlawful use of force by Hong Kong police* (Index: ASA 17/0576/2019); Amnesty International, "Hong Kong: Water cannons pose real danger in hands of trigger-happy police" ([Press Release](#), 9 August 2019); Amnesty International, "Hong Kong: Arbitrary arrests, brutal beatings and other torture in police detention revealed" ([Press Release](#), 19 September 2019); Amnesty International Hong Kong, "Hong Kong: Police must defuse campus standoff to avoid more tragedy" ([Press Release](#), 18 November 2019).

<sup>32</sup> Government of the HKSAR, "Hospital Authority clarified unfounded rumours", 13 June 2019, [www.info.gov.hk/gia/general/201906/13/P2019061301082.htm](http://www.info.gov.hk/gia/general/201906/13/P2019061301082.htm); Amnesty International, *How not to police a protest: unlawful use of force by Hong Kong police* (Index: ASA 17/0576/2019), p. 17.

<sup>33</sup> Amnesty International, "Sexual violence against Hong Kong protesters – what's going on?" ([Blog](#), 20 December 2019)

<sup>34</sup> Amnesty International, *How not to police a protest: unlawful use of force by Hong Kong police* (Index: ASA 17/0576/2019), p. 4.

Currently, transgender people are forced to undergo invasive gender-affirming surgery to have their gender legally recognized in Hong Kong which results in sterilization. The Committee in its last observations expressed concern that attaining legal gender recognition in Hong Kong entails abusive prerequisites, such as undergoing gender-affirming surgery.<sup>35</sup> Following a court ruling in 2013, the government established an Inter-departmental Working Group on Gender Recognition in 2017 to study and seek public opinion on establishing a legal gender recognition scheme in Hong Kong setting out the process for changing gender and the rights of transgender people when changing gender.<sup>36</sup> The group has provided no update since its call for submission of public opinion in 2017.<sup>37</sup> There has been no change in the above requirement of surgery, and no gender recognition legislation has been implemented.

Gender legal recognition should not be submitted to mandatory requirements that violate human rights.

Recommendation:

- Set up a quick, accessible and transparent new legal gender recognition procedure that does not include any requirements for medical treatments of any kind as a precondition.

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<sup>35</sup> Concluding observations of UN Committee against Torture: Hong Kong, UN Doc. CAT/C/CHN-HKG/CO/5 (2016), para. 21.

<sup>36</sup> Inter-departmental Working Group on Gender Recognition, "Introduction", [www.iwgr.gov.hk/eng/index.html](http://www.iwgr.gov.hk/eng/index.html)

<sup>37</sup> Amnesty International Hong Kong, *Consultation Paper (Part 1) on Gender Recognition - Submissions by Amnesty International Hong Kong*, [www.amnesty.org.hk/wp-content/uploads/2017/12/Gender-Reg-Submission\\_AIHK\\_Eng\\_28nov2017.pdf](http://www.amnesty.org.hk/wp-content/uploads/2017/12/Gender-Reg-Submission_AIHK_Eng_28nov2017.pdf)