

Article 11: Review of interrogation rules, instructions, methods and practices for custody and treatment of persons arrested or detained

11.1 We take the opportunity to inform the Committee of the developments in respect of the rules and practices of the disciplined services and mental hospitals since the submission of the previous report.

Collection of intimate and non-intimate samples from suspects

11.2 As mentioned in paragraph 91 of the previous report, the Police, the Customs and the ICAC have the power to collect intimate and non-intimate samples from suspects for forensic analysis since 2001. The ICAC has established guidelines and procedures for the taking of non-intimate samples from suspects under ICAC investigation and their subsequent handling and disposal. The Customs has also established guidelines and procedures for handling of intimate and non-intimate samples. These guidelines provide safeguards against possible abuses of power by the law enforcement officers.

Correctional Services Department

Search procedures of the CSD

11.3 In accordance with Rules 9 and 10 of the Prison Rules (Cap. 234, sub. leg. A), CSD officers are authorised to conduct searches on prisoners upon the latter's admission into CSD's institutions and at such times subsequently as considered necessary by the officer-in-charge. As an established practice, all prisoners have to be thoroughly searched upon their admission, change of locations within the institution, return from outside locations and at such times when they could possibly come into possession of drugs and other contraband from their contact with outsiders. This is to ensure the safety of prisoners and other persons, and to maintain prison security, order and discipline.

11.4 The principles of proportionality and necessity are enshrined in Rule 9(2) of the Prison Rules, which stipulates that the searching of a prisoner shall be conducted with due regard to decency and self-respect, and in as seemly a manner as is consistent with the necessity of

discovering any concealed articles. Under the established practice, body cavity searches are conducted by trained medical staff (i.e. a medical officer or an officer who is a qualified nurse) of the same sex. The CSD has internal guidelines to assist officers in carrying out searches in an appropriate and consistent manner. The CSD conducts supervisory assessments or inspections regularly to ensure that operational practices are in conformity with the statutory provisions and internal guidelines.

11.5 To reduce manual body cavity searches, the CSD will procure one set of low radiation X-ray body scanner to assist in the search for contrabands concealed in the body of persons in custody, with a view to preventing contrabands (in particular drugs) from being smuggled into correctional institutions. The CSD plans to operate X-ray body scanner at Lai Chi Kok Reception Centre for checking all the inmates newly admitted to the Reception Centre. If the scanner is effective, the CSD will consider procuring more for other institutions.

Legislative amendments to the Criminal Procedure Ordinance (Cap. 221)

11.6 As explained in paragraphs 94 and 95 of the previous report, the Criminal Procedure (Amendment) Ordinance 2004 provides that judges of the Court of First Instance may determine the minimum terms of prisoners who are serving indeterminate sentences and are detained at Executive discretion. Subsequent to the amendment, all 12 prisoners detained at Executive discretion for having committed murder under the age of 18 received determinate sentences from the Court of First Instance. All of them have since served their determinate sentences with the last prisoner discharged in December 2008.

Prevention of suicides

11.7 As at 30 September 2012, the last suicide case happened in August 2010. The CSD has been making every effort to prevent inmate suicide, which includes regular review of the mechanism and strategies for the detection and prevention of suicide in custody from time to time. The most recent review was conducted in 2011. The CSD has since implemented improvement measures including enhanced training to increase staff sensitivity to and awareness of suicidal signs and symptoms,

enhanced mechanism for monitoring and reporting of at-risk cases, refinement of the screening protocol for early screening of inmates for suicidal tendencies, and modifications to the fittings in prison accommodation to make suicide attempts more difficult. The CSD will continue to review the effectiveness of the measures on a regular basis. In 2011, there were 82 self-harm cases involving persons in custody, who were successfully stopped from further self injury by CSD officers.

Police

11.8 The situation remains essentially as explained in paragraph 60 of the initial report.

11.9 In paragraph 10 of the previous Concluding Observations, the Committee raised concern on certain aspects of the Police's procedure in conducting custody search of detainees.

11.10 The Police conducted a review in respect of the custody searches of detainees in early 2008 and introduced substantial enhancement to their guidelines and procedures for handling custody searches of detainees in July 2008. The new arrangements seek to provide better safeguards in respect of the requirements to respect the rights of the detainees and to prevent unnecessary searches. The new guidelines clearly stipulate, among other things, that a search involving the removal of underwear should not be conducted routinely but only in circumstances with strong justifications. The guidelines also provide that when conducting searches involving the removal of clothing, police officers should have due regard to the privacy and dignity of the detained person concerned. For instance, such a search will only be conducted in an area offering privacy not in view of persons other than those officers required to carry out, witness or supervise the custody search. Police officers are required to accurately record all searches conducted on detainees, including the scope of and the reason(s) for the search, in the Police's Communal Information System (CIS). Supervisory officers will review records in the CIS to ensure that officers concerned comply with the search procedures and to take actions on any non-compliance of searches guidelines. Statistics of all searches involving full removal of

underwear are provided for the Panel on Security of the LegCo for information on a quarterly basis.

11.11 To better discharge the Commissioner of Police's duty of care owed to detained persons, the following measures, among others, have been introduced over the past few years:

- (a) the display of a notice to inform detainees of "Conditions and Treatment in Police Detention Facilities" in the corridor outside every cell room;
- (b) the provision of welfare items to persons detained in police custody, e.g. facemasks, boxed tissues, packed wet tissues, sanitary napkins; every refusal to provide such by the Police has to be properly documented in the CIS;
- (c) the introduction of a new directive on the searching of persons with special needs including, but not limited to, persons with physical disabilities, persons under the age of 16, persons with physical communication difficulties. The presence of an appropriate adult, of 18 years of age or above and of the same gender as the person to be searched, is mandatory for detained persons under the age of 16 and detained persons who are or suspected to be mentally incapacitated. Detained persons with special needs of other categories may request for the presence of an appropriate adult as necessary. The role of an appropriate adult include, but not limited to, assisting the Police in dealing with and looking after the rights, welfare and special needs of such a person and assisting the Police in communicating and explaining to such a person the reason(s) for detention and procedural matters; and
- (d) the introduction of a Language Identifier for persons who speak a language other than Chinese or English to identify their own language to facilitate communication and for subsequent arrangements of an interpreter, if necessary.

Immigration Department

11.12 The situation remains largely as explained in paragraph 100 of the previous report.

11.13 To provide an immigration detention facility for immigration offenders (18 years old or above) awaiting repatriation, removal or deportation in accordance with the Immigration Ordinance, the Castle Peak Bay Immigration Centre (CIC) commenced operation in 2005. The detainees at the CIC are treated in accordance with the Immigration (Treatment of Detainees) Order (Cap. 115, sub. leg. E) which contains provisions about notification to relatives, communication with legal advisers, keeping of detention records, medical examination, comfort of detainees, complaints, and visits by Justices of the Peace.

11.14 The ImmD conducts on-going reviews and updates, if required, internal guidelines for search. The Department conducted a comprehensive review and issued standard guidelines for search of persons, premises, vehicles and vessels in 2008. Officers who carry out searches must comply with the guidelines and ensure that all searches are lawfully and reasonably conducted. Before the search, officers will serve a “Search Notice” to the subject which stipulates the purpose of search and factors to be considered when deciding the appropriate scope of search. Besides, persons being searched will be informed of the rights to retain essential clothing or article, such as hearing-aid, spectacles and religious head-dress, etc. Officers who fail to comply with the relevant guidelines are liable to disciplinary actions, and if crimes are involved, prosecutions would be taken where appropriate.

11.15 From early 2009, individual immigration control points have implemented the “Detention Policy and Guidelines in Handling Person Detained under Section 32 (of the Immigration Ordinance)”. A refused landing passenger will be served a “Notice on Detention Policy” and a “Notice of Detention”. All detention cases will be reviewed on a monthly basis by the Sectional Commanders of the control points. If detention has to be maintained, the detainee will be served a fresh “Notice of Review of Detention”.

Customs and Excise Department

11.16 The position is as explained in paragraph 69 of the initial report. Moreover, all Customs offices are now equipped with video recording facilities.

Persons detained in mental hospitals

11.17 The position regarding the protection of the rights of persons detained in mental hospitals remains essentially as explained in paragraphs 73 to 80 of the initial report. A development of note has been, in 2001, the Judiciary and the HA formulated administrative arrangements to ensure that mental patients, if they so request, could have access to a judge or magistrate before such judge or magistrate determines whether or not to make an order of compulsory detention in a mental hospital.

11.18 Conditions under which electro-convulsive therapy (ECT) will be administered on patients remain the same as explained in paragraphs 81 to 83 of the initial report. The pattern of application of ECT in the past five years was as follows -

	2007-08	2008-09	2009-10	2010-11	2011-12
Number of Patients receiving ECT	175	153	110	137	82
Number of treatments	1 387	1 266	828	945	696
Average number of treatments per patient	7.9	8.3	7.5	6.9	8.5