

Article 13: Right of complaint

Correctional Services Department

13.1 The complaint mechanism in place remains essentially the same as explained in paragraphs 110 to 116 of the previous report. CSD's Complaints Investigation Unit handles and investigates all complaints within its purview. The results of these investigations are examined by the CSD Complaints Committee. In 2011, the CSD's Complaints Investigation Unit received a total of 95 complaints from inmates and members of the public. During the year, the CSD's Complaints Committee examined 78 complaints, of which one was substantiated.

Police

13.2 Integrity and respect for the rights of members of the public are among the core values of the Police. The Police will continue their efforts in promoting such core values within the Force.

Sex workers

13.3 In paragraph 11 of the previous Concluding Observations, the Committee expressed concerns on the allegations of routine police abuses of persons during operations in the context of prostitution-related offences.

13.4 All police officers participating in undercover operations are required to fully comply with internal guidelines designed for this purpose, and the conduct of these undercover operations is subject to supervision. Any person who feels aggrieved by police actions may lodge a complaint. All complaints against police officers will be thoroughly investigated. If any allegation of abuse of authority is substantiated, the police officer concerned will be subject to disciplinary action. Criminal prosecution may be taken as required.

Complaints Against Police Office and Independent Police Complaints Council

13.5 In paragraph 12 of the previous Concluding Observations, the Committee expressed that HKSAR should continue to take steps to establish a fully independent mechanism mandated to receive and investigate complaints on police misconduct.

13.6 Under the existing two-tier police complaints handling system, the Complaints Against Police Office (CAPO) is responsible for handling and investigating complaints lodged by members of the public against members of the Police. The CAPO operates independently from other Police formations to ensure its impartiality in handling complaints. The Independent Police Complaints Council (IPCC) is an independent statutory body specifically appointed to monitor and review the CAPO's handling and investigation of complaints. Members of the IPCC appointed by the Chief Executive are drawn from a wide spectrum of the community.

13.7 The Independent Police Complaints Council Ordinance (Cap. 604) (IPCC Ordinance) provides the above police complaints system with a statutory basis. The Ordinance came into force on 1 June 2009 and turned the former IPCC into a statutory body. It clearly sets out the statutory IPCC's role, functions and powers in the police complaints handling system, as well as the obligations of the Police to comply with the requirements made by the IPCC under the Ordinance. There are effective checks and balances to ensure that the complaints lodged with the CAPO are handled thoroughly, fairly and impartially.

13.8 In gist, the CAPO is obliged under the Ordinance to submit a detailed investigation report on each reportable complaint to the IPCC for rigorous examination and is required to address queries and suggestions from the IPCC on the report. Where IPCC members have doubts about the investigation of a particular complaint, they may invite the complainants, complainees and any other person who is or may be able to provide information or other assistance to interviews. If the IPCC is not satisfied with the result of a CAPO investigation, it may ask the CAPO to clarify any doubts or reinvestigate the complaint. It may also bring the

case to the personal attention of the Chief Executive. The IPCC also monitors the CAPO's investigations into reportable complaints through the IPCC Observers Scheme, under which IPCC members and a wide pool of Observers undertake, on a scheduled or surprise basis, observations of the interviews and collection of evidence conducted by the Police during investigation of complaints to ensure that these processes are conducted in a fair and impartial manner. The minimum number of observations to be conducted by each Observer every year was increased from 2 to 4 in 2008. An addition of 20 Observers were appointed to the IPCC Observers Scheme in November 2010, increasing the total number of Observers to 110. Duty rosters are issued to remind Observers on duty to attend observations. Observers not on roster may also attend for observations. As a token of appreciation, a non-taxable honorarium is provided to Observers per attendance of observation. CAPO endeavour to inform IPCC of impending interviews or scene visits as soon as practicable. In 2010 and 2011, over 90% of such notifications were given at least 48 hours in advance. The number of observations conducted by IPCC from 2008 to 2011 is detailed in the following table.

Year	Number of notification received by IPCC	Number of observations conducted by IPCC	Number of pre-arranged observations	Number of surprise observations
2008	3319	548 (16.5%)	497	51
2009	8998	1808 (20%)	1477	331
2010	6887	1888 (27.4%)	1245	643
2011	4893	2010 (41%)	1346	664

13.9 The above shows that the statutory framework provided for under the IPCC Ordinance has enhanced the transparency of the police complaints handling system with effective check and balances and reinforced the independent monitoring role of the IPCC.

Immigration Department

13.10 The situation remains essentially as explained in paragraphs 118 and 119 of the initial report.

Customs and Excise Department

13.11 The position remains essentially as explained in paragraph 120 of the initial report. There were 122 complaints of assault received in the reporting period of 2005 - 2011. All were found unsubstantiated after police investigations.

Independent Commission Against Corruption

13.12 In paragraph 119 of the previous report, we stated that the ICAC Complaints Committee was chaired by a member of the Executive Council. The current Chairman of the ICAC Complaints Committee assumed office in January 2010 and remained in position after his tenure with the Executive Council expired on 30 June 2012.

13.13 In paragraph 120 of the previous report, we reported that in 2003, 29 complaints concerning 70 allegations were lodged against the ICAC or its officers while in 2004, the corresponding figures were 21 complaints and 53 allegations respectively. For the two years' breakdown of the allegations by categories, we noticed that exact figures, instead of percentages, were quoted in the previous report. Please see below for an updated complaints statistics for the period from 2003 to 2011 –

Year	No. of complaints received	Total no. of allegations received	Category of allegation (%)			
			Misconduct	Abuse of power	Neglect of duties	Inadequacy of ICAC procedures
2003 ⁷	29	70	49	36	14	1
2004 ⁸	21	53	32	36	32	0
2005	32	106	54	35	11	0
2006	15	44	27	43	27	3
2007	18	43	28	30	40	2
2008	22	48	42	12	46	0

⁷ In 2003, the Committee received 34 allegations concerning ICAC officers' misconduct, 25 allegations on abuse of power, 10 on neglect of duties; and the remaining case was inadequacy of ICAC procedures.

⁸ In 2004, the Committee received 17 allegations concerning ICAC officers' misconduct, 19 allegations on abuse of power; and 17 allegations on neglect of duties.

2009	31	90	49	13	38	0
2010	34	76	55	5	38	2
2011	14	44	59	9	25	7

13.14 Also, we reported in paragraph 121 of the previous report that for 2003 and 2004, 10 and seven allegations against the ICAC were found to be substantiated or partially substantiated respectively. We noticed that for the period 1998 to 2002, the statistics compiled were based on the number of complaints instead of allegations. For clarity's sake, please refer to the following updates concerning the number of complaints found to be substantiated or partially substantiated between 2003 and 2011 –

Year	No. of complaints considered	No. of complaints either substantiated or partially substantiated
2003	35	9
2004	22	5
2005	22	7
2006	24	5
2007	23	2
2008	22	2
2009	20	2
2010	25	4
2011	30	3

Avenues for complaint by mental patients

13.15 The position remains as explained in paragraphs 123 of the previous report. The numbers of complaints received from mental patients by the HA in the past five years are set out in the table below.

The total number of complaints received from mental patients by the HA				
2007	2008	2009	2010	2011*
150	147	151	154	249

* The definition of “complaints” was expanded in 2011, leading to the record of a higher number of complaints.