

Article 16: Prevention of other acts of cruel, inhuman or degrading treatment or punishment

General

16.1 It is the position of the HKSAR Government that all persons acting in an official capacity must act in accordance with the law. Measures are in place to ensure that any acts of cruel, inhuman or degrading treatment or punishment committed by, at the instigation of, or with the consent or acquiescence of, any public official - or other person acting in an official capacity - will be subject to criminal or disciplinary sanctions.

Ill-treatment of children

16.2. In broad terms, the position remains as explained in paragraphs 143 to 147 of the initial report.

16.3. The provision of legal representation through the Duty Lawyer Service (DLS) for children and juveniles involved in care or protection proceedings who are detained in a gazetted place of refuge has been operating well since its commencement in October 2003. Upon the review in 2005, the scope of such service has been expanded to cover any child or juvenile who is -

- (a) taken to the Juvenile Court directly by the Police for the purpose of applying for a Care or Protection Order, without being detained at a gazetted place of refuge before the court hearing; or
- (b) likely to be detained in a gazetted place of refuge on the recommendation of a social worker of the SWD.

16.4. Since March 2007, the service has been further extended to cover cases without parental or guardian consent for legal representation. We will continue to work closely with DLS with a view to maintaining the quality of the legal assistance provided to these children and juveniles.

16.5. Regulation 58 of the Education Regulations (Cap. 279, sub. leg. A) stipulates that “No teacher shall administer corporal punishment to a pupil”. Pursuant to the provision in the Education Regulations, the Education Bureau (EDB) has also set out in the School Administration Guide that “Under all circumstances, school discipline should be administered in a manner consistent with students’ human dignity, rights to education, individual differences and health conditions, including the physical, psychological and mental health conditions and in conformity with the present laws.” All schools are required to observe the requirements of the Regulations. Moreover, a seminar is conducted every year on legal issues relating to student guidance and discipline, where school teachers are reminded, among other things, that corporal punishment is prohibited by law. EDB also regularly conducts seminars to raise teachers’ awareness of child abuse and to enhance their competency in early identification of students and families in need of help. In the past five years (2007 to 2011), no teacher has been charged with the offence of corporal punishment.

Children in institutional care

16.6 Justices of the Peace and the SWD’s officers visit homes run by NGOs on both a scheduled and surprise basis. To ensure impartiality and effectiveness of complaints handling, an Independent Complaints Handling Committee comprising eight independent members who are neither Government officials nor NGO staff was set up in 2009 to handle complaints that cannot be satisfactorily resolved at the NGO level.

Domestic violence

16.7 As pointed out in paragraph 134 of the previous report, we consider that domestic violence does not fall within the scope of Article 16, which – inter alia – requires that acts of cruel or inhuman treatment (and so forth) be –

“.....committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

However, since the issue was raised in paragraph 13 of the previous Concluding Observations, we take this opportunity to state our position in the ensuing paragraphs.

16.8 In paragraph 13(a) of the previous Concluding Observations, the Committee recommended that HKSAR should thoroughly investigate all allegations of domestic violence which, if substantiated, should be appropriately prosecuted and punished.

16.9 Our criminal law punishes all acts of violence, irrespective of the relationships between the abusers and the victims, and independent of where the violent acts occur. The Police will handle all domestic violence reports professionally, and conduct thorough investigations according to the circumstances of each report. Where there is sufficient evidence of an offence, the Police will take firm and decisive actions to effect arrest and prosecution. The prosecuting authorities also accord priorities to domestic violence cases and ensure that they are processed quickly at all stages. Various measures have also been implemented to facilitate fast-tracking of cases involving vulnerable witnesses.

16.10 In paragraph 13(d) of the previous Concluding Observations, the Committee recommended that HKSAR should provide further information on the progress of the Enhanced Central Domestic Violence Database (ECDVD).

16.11 Early identification of problem couples / lovers involved in domestic incidents (domestic disputes in which no offence is committed), followed by timely intervention, is an important element of the strategy to prevent domestic conflicts from escalating into actual violence.

16.12 To this end, in January 2009 a new Police procedure was introduced whereby all domestic violence and domestic incidents reports are indexed in the ECDVD, a risk assessment completed, and a decision made on whether to refer the subjects for appropriate assistance based on the circumstances of the report and any previous incidents. In addition to details of all domestic violence and domestic incidents reports, the ECDVD also contains details of persons involved in all reports of attempted suicide, insane person and missing person, as these incidents

are often indicative of underlying domestic conflict issues. Furthermore, the ECDVD incorporates an automatic alert system whereby, if a person is involved in more than one of these incident types, an alert email is sent to the supervisory officers responsible for the previous incidents for special attention to such reports. The supervisory officers, who will assess the risk factors and decide if follow-up actions are required, including whether immediate intervention and assistance is required from the SWD.

Legal framework

16.13 With the enactment of the Domestic Violence (Amendment) Ordinance 2008, the protection afforded by the Domestic Violence Ordinance has been extended to former spouses and former cohabitants of the opposite sex as well as immediate and extended family members. The protection of minors who are under the age of 18 and victims of domestic violence has also been enhanced. The court is now empowered to require the abusers to attend an anti-violence programme seeking to change their abusive attitude and behaviour. Since January 2010, the name of the Ordinance has been changed to Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189) (DCRVO) with the protection further extended to same sex cohabitants.

16.14 The criminal law deals with domestic violence mainly by the Offences Against the Person Ordinance (Cap. 212) which imposes criminal sanctions for, inter alia, murder, manslaughter, attempts to murder, wounding or inflicting grievous bodily harm, exposing a child under the age of two years whereby his life is endangered, ill-treatment or neglect of a child or young person by a person who has the charge of such child or young person, assault occasioning actual bodily harm and common assault. The Crimes Ordinance (Cap. 200) also criminalises acts of intimidation, arson, destroying or damaging property and sexual offences (including rape / marital rape, incest, indecent assault) etc.

16.15 In relation to the protection in civil law, the Protection of Children and Juveniles Ordinance (Cap. 213) empowers the court to grant a Care or Protection Order or appoint a legal guardian in respect of a child or juvenile who is in need of care or protection as defined under the

Ordinance. The Mental Health Ordinance (Cap. 136) empowers the Guardianship Board established under the Ordinance to make an emergency guardianship order if it has reason to believe that a mentally incapacitated person is in danger, or is being or likely to be maltreated or exploited and it is necessary to make immediate provision to protect that person. The DCRVO provides civil remedies in the form of injunctions to protect primarily individuals in certain specified familial / cohabitation relationships and their children against molestation by the other person.

Services for victims of domestic violence and families in need

16.16 In addition to legal protection, the SWD offers a wide range of preventive, supportive and specialised services to help victims of domestic violence and families in need.

16.17 Over the past few years, the Government has devoted additional resources to enhance services in this regard, including –

- (a) strengthening social work manpower;
- (b) enhancing the 24-hour hotline service of the SWD;
- (c) increasing the capacity and support services of refuge centres for women;
- (d) setting up of a crisis intervention and support centre (the CEASE Centre) primarily for victims of sexual violence;
- (e) launching a family support programme to reach out to vulnerable families for early intervention;
- (f) sustaining efforts in publicity and public education to increase public awareness on the domestic violence problem and the legal remedies and services available;
- (g) enhancing the training of relevant frontline professionals etc;
- (h) strengthening clinical psychological support for victims of

domestic violence, particularly children witnessing domestic violence;

- (i) launching an Anti-violence Programme and implementing the Batterer Intervention Programme to change the batterers' attitude and behaviour; and
- (j) strengthening the support for victims of domestic violence through the Victim Support Programme for Victims of Family Violence.

16.18 There are currently 11 Family and Child Protective Services Units under the SWD. They are specialised units manned by experienced social workers that handle spouse / cohabitant battering and child abuse cases and provide statutory protection for children. They provide a co-ordinated package of one-stop service and arrangement of various services for victims, their families and batterers in domestic violence cases, and help them tide over the difficult period, lessen trauma associated with violence and live a new life.

16.19 There are also 62 Integrated Family Service Centres (IFSCs) set up across the territory that provide a wide range of preventive, supportive and therapeutic welfare services to families in need. A major focus of the IFSCs is on early intervention. Social workers of the IFSCs will proactively reach out to the needy families to support them in developing mutual help networks in the community and enhancing their resilience.

16.20 There are five refuge centres for women with 260 places in Hong Kong, providing short-term accommodation service for victims of domestic violence. Additional resources have been allocated in the past few years to enhance the capacity and support services of the refuge centres.

16.21 There is a Multi-purpose Crisis Intervention and Support Centre (CEASE Centre) to provide crisis intervention and support services including 80 places of short term accommodation service to victims of sexual violence and individuals / families facing domestic

violence or in crisis.

16.22 The SWD and the Housing Department together implemented enhanced measures (through housing assistance and compassionate rehousing (including conditional tenancy)) to assist victims of domestic violence with genuine and long-term housing needs which cannot be resolved by their own means.

16.23 In handling domestic violence cases, the primary focus is to respond immediately to stop the violence, ensure safety of the victims and their families and provide support, in particular to the victims. If the victims and children are considered to be of high-risk of further violence, the SWD will take immediate action (subject to the victims' consent as appropriate) to arrange for shelter, temporary accommodation or residential service for the victims and their children. In case of need, social workers would also assist the victims to seek legal protection through application for an injunction under the DCRVO or initiating the application for a Care or Protection Order under the Protection of Children and Juveniles Ordinance to protect the children.

16.24 To strengthen support for victims of domestic violence, including those involved in the legal proceedings, the SWD has launched the Victim Support Programme for Victims of Family Violence (VSP) since June 2010. The VSP provides emotional support and information on community support services (e.g. legal aid services, accommodation, medical and childcare services, etc.) and the relevant legal proceedings to the victims concerned. If necessary, the victims concerned will be accompanied by social workers or volunteers to attend court hearings and go through the legal proceedings.

Prevention and early intervention

16.25 To facilitate intervention at an earlier stage, the Government has taken various preventive measures to identify the vulnerable families and provide assistance as early as possible before their problems escalate into more serious incidents. For instance :

- (a) The SWD has since early 2007 launched a Family Support

Programme (FSP) to increase contacts with needy families who are reluctant to seek help. Under the FSP, through telephone contacts, home visits and other outreaching programmes, families at risk, including those at risk of domestic violence, psychiatric problems and social isolation, are connected to various support services available and are motivated to receive services to prevent further deterioration of their problems. Volunteers including those who have overcome family / personal problems or crises are recruited and trained to contact these families and to provide them with support and assistance.

- (b) A Comprehensive Child Development Service (CCDS) has been launched in phases since July 2005. Built on the existing services provided in Maternal and Child Health Centres, public hospitals, IFSCs / Integrated Services Centres and pre-primary institutions, CCDS seeks to identify at-risk pregnant women, mothers with probable Postnatal Depression, children and families with psychosocial needs, and pre-primary children with physical, developmental and behavioural problems at an early stage. Children and families in need would be referred to appropriate intervention services, such as cross-disciplinary care arrangement, psychiatric, emotional and social service support. CCDS will be extended to cover all districts by end of 2012-13 to enhance support for children and families in need.

16.26 The SWD also set up in June 2011 a standing Child Fatality Review Mechanism following the successful experience of a three-year pilot scheme to review child death cases to work out strategies for prevention of avoidable child death.

16.27 The SWD will continue to provide training at both central and district levels to social workers and other professionals in dealing with domestic violence and to enhance their skills in risk assessment, crisis intervention and post-trauma counselling. In 2012-13, SWD will provide about 7 000 places for social workers and other professionals.

Publicity and public education

16.28 The SWD has launched a territory-wide and district-based publicity campaign on “Strengthening Families and Combating Violence” to enhance public awareness of the serious impact of domestic violence, encourage families in need to seek help, and promote the concept of neighbourhood watch.

16.29 The SWD has also developed a website of Support for Victims of Child Abuse, Spouse / Cohabitant Battering and Sexual Violence to help victims understand their rights, protection provided by the law and support services available in the community.

16.30 Following the commencement of the DCRVO, publicity efforts have also been strengthened to increase public awareness of the much-expanded protection of the new legislation and the wide meaning of “molestation” from which victims of domestic violence are protected under the Ordinance.

16.31 The Family Life Education Resource Centre of the SWD has also produced resource kits for family education to support relevant departments and organisations to provide family education services in order to promote family functioning and strengthen family relationships including positive parenting.

Statistics

Spouse / cohabitant Battering

16.32 The number of new spouse / cohabitant battering cases reported to the SWD in 2009, 2010 and 2011 were 4 807, 3 163 and 3 174 respectively.

Child Abuse

16.33 According to the statistics of the SWD’s Child Protection Registry, the number of newly reported child abuse cases in 2009, 2010 and 2011 were 993, 1 001 and 877 respectively.

Human trafficking

16.34 In paragraph 7 of the previous Concluding Observations, the Committee recommended that the HKSAR should increase protection to trafficked persons. We always provide necessary support and assistance to victims of trafficking, depending on the merits of individual cases. These services include urgent intervention, as well as medical, counselling and other support services. It must however be stressed that the HKSAR is neither a destination nor a transit point for human trafficking. Neither is it a place of origin for exporting illegal migrants. Over the years, cases of human trafficking are rarely discovered in Hong Kong; the number of reported cases each year ranged between one to four from 2008 to 2011. There has been no reported case that involves children.