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LegCo Panel on Home Affairs

Background paper prepared by Legislative Council Secretariat on previous discussions held by Legislative Council Members on the issue of racial discrimination

Purpose

This paper gives an account of previous discussions held by Legislative Council (LegCo) Members at meetings of the Panel on Home Affairs on the issue of racial discrimination in the context of the relevant human rights reports. This paper also provides details on questions relating to the issue of racial discrimination raised by Members at Council meetings.

Human rights reports

International Convention on the Elimination of All Forms of Racial Discrimination

2. The International Convention on the Elimination of All Forms of Racial Discrimination was extended to Hong Kong in March 1969. Prior to 1 July 1997, the 14th periodic report of the United Kingdom on Hong Kong, which was the last report on Hong Kong, was submitted by the Government of the United Kingdom in November 1996 as part of the report of the United Kingdom. The report was considered by the United Nations (UN) Committee on the Elimination of Racial Discrimination in March 1997. The UN Committee on the Elimination of Racial Discrimination issued its Concluding Observations on 20 March 1997, a copy of which is in **Appendix I**. The UN Committee expressed concern in paragraph 19 of its Concluding Observations that specific legislation against racial discrimination was not yet available in all the Dependent Territories and Crown Dependencies. The UN Committee also expressed concern in paragraph 20 of its Concluding Observations about the absence of a provision in the Hong Kong Bill of Rights Ordinance protecting persons from racial discrimination to which they might be subjected by private persons, groups or organisations.

3. In June 1997, the Permanent Representative of the People's Republic of China to the UN notified the UN Secretary General that the International Convention on the

Elimination of All Forms of Racial Discrimination would continue to apply to the Hong Kong Special Administrative Region(HKSAR) with effect from 1 July 1997, and that the Central People's Government of the People's Republic of China would assume responsibility for the international rights and obligations arising from the application of the International Convention on the Elimination of All Forms of Racial Discrimination to the Region.

4. The first report of the HKSAR under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination was submitted to the UN by the Permanent Representative of the Chinese Mission to the UN on 3 October 2000. The report will be examined by the UN Committee on the Elimination of Racial Discrimination on 31 July and 1 August 2001.

International Covenant on Civil and Political Rights

5. The International Covenant on Civil and Political Rights was extended to Hong Kong in May 1976. The States Parties have obligations under Article 26 of the Covenant to enact law to prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race or other status.

6. The first report on the HKSAR under the International Covenant on Civil and Political Rights was submitted to the UN by the Permanent Representative of the Chinese Mission to the UN on 11 January 1999. The report was considered by the UN Human Rights Committee on 1 and 2 November 1999. The UN Committee issued its Concluding Observations on the first report on the HKSAR under the International Covenant on Civil and Political Rights on 15 November 1999, a copy of which is in **Appendix II**. The UN Committee expressed concern in paragraph 15 of its Concluding Observations that no legislative remedies were available to individuals in respect of discrimination on the ground of race.

The International Covenant on Economic, Social and Cultural Rights

7. The International Covenant on Economic, Social and Cultural Rights was extended to Hong Kong in May 1976. The States Parties have obligations under Article 2 of the Covenant to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind as to race or other status. The UN Committee on Economic, Social and Cultural Rights examined the third periodic report of the United Kingdom under the International Covenant on Economic, Social and Cultural Rights in respect of Hong Kong in November 1996. A copy of the Concluding Observation on this last report on Hong Kong which was issued on 6 December 1996 is in **Appendix III**. In paragraph 16 of its Concluding Observations, the UN Committee regretted the step-by-step approach adopted by the Hong Kong Government according to which legislation for the protection of vulnerable minorities was adopted primarily on the basis of public opinion surveys, that was, based on majority views.

8. The first report on the HKSAR under the International Covenant on Economic, Social and Cultural Rights was submitted to the UN by the Permanent Representative of the Chinese Mission to the UN on 4 June 1999. The report was considered by the UN Committee on Economic, Social and Cultural Rights on 27 and 30 April 2001. The UN Committee issued its Concluding Observations on the first report on the HKSAR under the International Covenant on Economic, Social and Cultural Rights on 11 May 2001, a copy of which is in **Appendix IV**. In paragraph 30 of its Concluding Observation, the UN Committee considered that the HKSAR's failure to prohibit racial discrimination in the private sector constituted a breach of its obligations under Article 2 of the Covenant.

Discussions held by the Panel on Home Affairs on the issue of racial discrimination in the context of human rights reports to the United Nations

1998-1999 legislative session

Meeting of the Panel on Home Affairs on 27 July 1998

9. The UN Committee on the Elimination of Racial Discrimination was informed in the 14th Periodic Report of the United Kingdom that a study on racial discrimination would be commenced and the findings of which would be reported to LegCo. The study was to provide a basis for a public consultation exercise on possible measures to tackle the issues identified. The Administration briefed the Panel of Home Affairs on the outcome of the consultation exercise at its meeting on 20 June 1997. It further reported the developments since then to the Panel on Home Affairs at its meeting on 27 July 1998.

10. At the meeting on 27 July 1998, the Administration advised the Panel on Home Affairs that there was no evidence to demonstrate that problem of racial discrimination in Hong Kong had become so serious that warranted legislation to outlaw racial discriminatory acts. As a responsible government, the Administration must consider the overall interests of the community and not just the interests of particular minorities.

11. A member was of the view that the Government had the responsibility to protect the interests of the minorities, and that to legislate against racial discrimination was in the overall interest of the community. Another member considered that racial discrimination was a complex issue that required careful and detailed consideration before a sensible conclusion could be reached on whether legislation was justified.

Meeting of the Panel on Home Affairs on 22 September 1998

12. The Panel on Home Affairs held a special meeting on 22 September 1998 to discuss the issue of racial discrimination with the Administration and concern organisations. Some concern organisations expressed the view that the Government had the obligations under international conventions, which were entrenched in

Article 39 of the Basic Law, to legislate for the protection of minorities against discrimination.

13. The Administration responded that the Government was aware of its various obligations under international conventions and covenants. The Hong Kong Bill of Rights Ordinance already prohibited the Government, all public authorities and any person acting on behalf of the Government or a public authority from engaging in practices that entailed racial discrimination. As regards relationship between private parties, the Administration was of the view that it should be dealt with by specific legislation.

14. In response to a deputation's view that public education and legislation was complementary to each other in the elimination of racial discrimination, the Administration maintained that to legislate against racial discrimination could be counter-productive and work to the detriment of social harmony. A member was of the view that the Administration was unable to put forward evidence that implementation of existing anti-discrimination legislation had been detrimental to social harmony.

15. As regards the absence of systematic information and statistics about racial discrimination in Hong Kong, a member suggested that a complaint mechanism should be set up to receive complaints from ethnic minorities who had experienced racial discrimination. The statistics so obtained would help the Administration to have a better understanding of the extent of the problem.

1999-2000 legislative session

Meeting of the Panel on Home Affairs on 10 January 2000

16. At its meeting on 10 January 2000, the Panel on Home Affairs discussed the outline of topics to be included in the first report of the HKSAR under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination with concern organisations and the Administration.

17. Concern organisations criticised the Government for failure to introduce legislation against racial discrimination. The Administration considered that the problem of racial discrimination in the territory was far less serious than many other advanced countries where legislation against racial discrimination did exist. The Administration remained of the position that the most effective way of stamping out racial discrimination was by changing people's attitude through public education and publicity rather than by legislation.

18. In its Concluding Observations on the 14th Periodic Report of the United Kingdom in respect of Hong Kong under International Convention on the Elimination of All Forms of Racial Discrimination (**Appendix I refers**), the UN Committee on the Elimination of Racial Discrimination expressed concerned that the "two-week rule"

might have discriminatory effects, since it applied mostly to domestic workers of Filipino origin, and that it might leave the workers concerned extremely vulnerable and in precarious conditions. According to the "two-week rule", when the contract of a foreign domestic worker or imported worker is pre-maturely terminated, the worker is permitted to remain in the HKSAR for the remainder of the permitted limited of stay, or for two weeks from the date of termination of contract, whichever is the shorter.

19. The Administration was of the view that the "two-week rule" was a measure for effective immigration control. Should there be any special compassionate grounds, or the termination was an unfair dismissal, the worker could apply to the Immigration Department for a waiver of that rule. The Administration stressed that the legality of the "two-week rule" was confirmed by a ruling of the Privy Council before the reunification.

2000-2001 legislative session

Meeting of the Panel on Home Affairs on 17 October 2000

20. When the Secretary for Home Affairs (SHA) briefed the Panel on Home Affairs on the 2000 Policy Address at the Panel meeting on 17 October 2000, some members expressed dissatisfaction that the Government had failed to introduce legislation against racial discrimination despite the fact that the UN Human Rights Committee had so advised in its Concluding Observations issued on 15 November 1999 in respect of the first report of the HKSAR under the International Covenant on Civil and Political Rights (**Appendix II refers**).

21. The Administration responded that according to the outcome of the public consultation on racial discrimination conducted in 1997, the majority of the respondents were of the view that under the prevailing situation, the Administration should aim to eliminate racial discrimination through civic education and publicity instead of enacting anti-discrimination legislation in a hasty manner.

Meeting of the Panel on Home Affairs on 13 February 2001

22. In its Concluding Observations on the 14th Periodic Report of the United Kingdom in respect of Hong Kong under the International Convention on the Elimination of All Forms of Racial Discrimination (**Appendix I refers**), the UN Committee on the Elimination of Racial Discrimination recommended that questions relating to the racial or ethnic origin of persons be incorporated in the questionnaires established within the framework of the population census. The Government informed the UN Committee in the first report of the HKSAR under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination that it had commissioned a sample survey of the ethnic minorities. The HKSAR Government submitted the findings of the sample survey to the UN Committee in January 2001.

23. The Panel on Home Affairs discussed with concern organisations and the Administration the sample survey of Hong Kong's ethnic minorities at its meeting on 13 February 2001.

24. Some members expressed dissatisfaction that the Administration had ignored the core issue of racial discrimination in Hong Kong in conducting the sample survey. They urged that the Administration should conduct another survey to ascertain the extent of racial discrimination in Hong Kong. The Administration responded that the sample survey was not one about racial discrimination. It had kept itself well informed of the issue of racial discrimination by maintaining contact with different ethnic groups.

25. As regards the need to legislate against racial discrimination, the Administration reiterated its view that it did not see the need for the time being to regulate by legislation discriminatory acts on the ground of race occurring in the private sector or between individuals.

Meeting of the Panel on Home Affairs at the meeting on 26 February 2001

26. The Panel held a special meeting on 26 February 2001 to discuss the Report on the HKSAR under the International Covenant on Economic, Social and Cultural Rights with concern organisations and the Administration. Some members were of the view that legislation against racial discrimination should not be determined on the basis of public opinion surveys, i.e. the majority views, and that the minorities affected should be consulted. SHA responded that the need to legislate against racial discrimination would not be determined simply by the result of opinion surveys. The Administration had proactively approached ethnic minorities for a better understanding of their experience.

Questions relating to the issue of racial discrimination raised at Council meetings

1998-1999 legislative session

Council meeting on 22 July 1998

27. At the LegCo meeting on 22 July 1998, Hon Emily LAU raised a question concerning bars and clubs charging non-white customers with higher rates. An extract from the Official Record of Proceedings of the meeting is in **Appendix V**.

Council meeting on 16 December 1998

28. At the Council meeting on 16 December 1998, Miss Christine LOH, a former Member of the Legislative Council, raised a question relating to public education on racial discrimination. An extract from the Official Record of Proceedings of the meeting is in **Appendix VI**.

1999-2000 legislative session

Council meeting on 23 February 2000

29. At the Council meeting on 23 February 2000, Miss Christine LOH, a former Member of the Legislative Council, raised a question relating to redress channel for aggrieved persons being racially discriminated against by acts of the Government or a public body or other parties. An extract from the Official Record of Proceedings of the meeting is in **Appendix VII**.

Council meeting on 4 April 2001

30. At the Council meeting on 4 April 2001, Hon Cyd HO raised a question about reservations and declarations made in respect of international human right treaties applicable to the HKSAR. An extract from the Official Record of Proceedings of the meeting is in **Appendix VIII**.

31. Members may wish to note that in the notification letter to the UN Secretary General that International Convention on the Elimination of All Forms of Racial Discrimination would continue to apply to the HKSAR after 1 July 1997, the Central People's Government of the People's Republic of China made two declarations. The first declaration was about Article 22¹ and the second one preserved the pre-existing declaration about Article 6² which was entered by the Government of the United Kingdom. According to the second declaration, "The Government of the People's Republic of China on behalf of the HKSAR interprets the requirement in Article 6 concerning "reparation and satisfaction" as being fulfilled if one or other of these forms of redress is made available and interprets "satisfaction" as including any form of redress effective to bring the discriminatory conduct to an end."

Council meeting on 25 April 2001

32. At the Council meeting on 25 April 2001, Hon Margaret NG raised a question about the Government's plan to introduce legislation against racial discrimination. An extract from the Official Record of Proceedings of the meeting is in **Appendix IX**.

Note 1 *"Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement".*

Note 2 *"State Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedom contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination."*

Council meeting on 13 June 2001

33. At the Council meeting on 13 June 2001, Hon James TO raised a question on implementation of the recommendation made by the UN Committee on Economic, Social and Cultural Rights on prohibition of discrimination in its Concluding Observations (**Appendices III and IV refer**). An extract of the Official Record of Proceedings of the meeting is in **Appendix X**.

34. Members may wish to note that in response to a supplementary question raised by Hon Albert HO to Hon James TO's oral question, the Secretary for Justice explained that while the International Covenant on Civil and Political Rights required all States Parties to ensure immediate and full compliance with the obligations under the Covenant, States Parties only had obligations under the International Covenant on Economic, Social and Cultural Rights to achieve progressive realisation of the rights recognised by the Covenant.

35. At the same Council meeting, Hon SZETO Wah asked an oral question about the recommendation of the UN Committee on Economic, Social and Cultural Rights to establish a human rights institution in its recently adopted Concluding Observations (**Appendix IV refers**). In reply to Hon SZETO Wah's follow-up question about the binding effect of the UN Committee's recommendations, the Secretary for Justice advised that while the Administration respected the UN Committee's recommendations, these recommendations were not rulings made by a court or quasi-judicial body. An extract from the Official Record of Proceedings of the meeting is in **Appendix XI**.

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
50th session
3 - 21 March 1997

CERD/C/50/Misc.1
future CERD/C/304/Add.20

20 March 1997

Concluding observations

United Kingdom of Great Britain and Northern Ireland

1. At its 1185th and 1186th meetings, held on 3 and 4 March 1997, the Committee on the Elimination of Racial Discrimination considered the fourteenth periodic report of the United Kingdom of Great Britain and Northern Ireland (CERD/C/299/Add.9), and adopted, at its 1204th and 1209th meeting, held on 14 and 19 March 1997, the following concluding observations:

A. Introduction

2. The Committee welcomes the opportunity to continue its dialogue with the State party. It also welcomes its fourteenth periodic report, and notes with appreciation that information on Crown Dependencies and Dependent Territories is contained therein. The Committee notes with great appreciation that the report provides answers in detail to concerns expressed and recommendations made by the Committee in its concluding observations following the consideration of the thirteenth periodic report of the State party (see documents CERD/C/263/Add.7 and A/51/18, paras. 219 - 255). The Committee further welcomes the comprehensive answers provided by the delegation in the course of the dialogue.

3. The Committee notes that the State party has not made the declaration provided in article 14 of the Convention, and some of its members requested that the possibility of making such a declaration be considered.

B. Factors and difficulties impeding the implementation of the Convention

4. It is noted that the position maintained by the Government with regard to the non-incorporation of the full substance of the Convention within the domestic legal order, as well as its restrictive interpretation of the provisions of article 4 of the Convention, may hamper the full implementation of the provisions of the Convention.

5. Moreover, it is noted that the occurrence of racism and racially motivated attacks, as well as incidents directed against members of ethnic minorities, impede the implementation of the Convention.

C. Positive aspects

6. The various measures taken to increase the participation of members of ethnic minorities in public and government office and in the police are welcomed by the Committee. The adoption of the Housing Act 1996 to combat racial discrimination in the fields of housing, the setting up of lay visiting schemes which encompass inspection and supervision of detention in police stations by members of local communities to prevent and combat ill-treatment in custody, the drafting of changes to the code of practice which regulates police powers and procedures in the exercise of stop and search powers, the creation of a Racial Incidents Standing Committee to implement the report of the Racial Attacks Group to combat racially motivated incidents, and the adoption of a 10 Point Action Plan to raise the achievement of ethnic minority pupils following the publication of a report by the Office for Standards in Education are noted with appreciation by the Committee.

7. With respect to article 7 of the Convention, the holding of seminars and the setting up of training programmes for judges, magistrates and law enforcement officials, provided in particular by the Ethnic Minorities Advisory Committee and the Police Training Centres, which are aimed at the elimination of racial discrimination from the relationships between members of these professions and members of ethnic minorities, are welcomed by the Committee. The launching of a number of information campaigns against racial discrimination addressed to the

public at large or to specific sectors of the public (such as the "Lets kick racism out of football" campaign) is also welcomed by the Committee.

8. The adoption of the Race Relations (Northern Ireland) Order 1997 is noted, all the more so since it contains special provisions relating to the Irish Traveller communities. The fact that direct access to the courts and industrial tribunals is granted for violations of the provisions of the Order outlawing racial discrimination in the fields of employment, training, education and housing and in the provision of goods and services is also welcomed by the Committee.

9. It is noted with satisfaction that, in accordance with the Committee's recommendations, the United Kingdom Government requested the authorities of the Crown Dependencies and the .Dependent Territories to consider the introduction of specific legislation against racial discrimination within their respective legal orders, and that to this effect, it provided them with draft model legislation in line with its Race Relations Act 1976. It is further noted with satisfaction that some of these authorities have acceded to that request, i.e. those of Anguilla, Bermuda, the British Virgin Islands, the Falkland Islands and Saint Helena.

10. The adoption of the British Nationality (Hong Kong) Bill, which grants the right to members of ethnic minorities in Hong Kong who have no other nationality than their present British nationality to be registered as full British citizens, and thus to enjoy the right of abode in the United Kingdom, is noted with appreciation by the Committee.

11. It is also noted with satisfaction that, after 140 years, equal status has been accorded to Chinese with English in the Hong Kong courts at all levels, and that the Hong Kong Government is undertaking the translation into Chinese of all the laws adopted in Hong Kong before 1989.

12. It is noted with satisfaction that the Hong Kong Government is now providing education up to the secondary level to Vietnamese migrants in Hong Kong, and that education services are provided to all Vietnamese children in the detention centres free of charge. The fact that the syllabus takes into account the future reintegration of these children into the Vietnamese

education system on their return to Viet Nam is viewed as a positive measure by the Committee.

D. Principal subjects of concern

13. Concern is expressed that full effect has not been given to the provisions of the Convention within the domestic legal order, and that individuals cannot be protected from any discriminatory practices that have not been prohibited by Parliament.

14. Special concern is again expressed at the restrictive interpretation by the Government of the provisions of article 4 of the Convention. In this regard, it is noted that such an interpretation is in conflict with the State party's obligations under article 4 (b) of the Convention to prohibit organizations which promote and incite racial discrimination and to declare the participation therein an offence and is not in accord with the Committee's General Recommendation No. XV (42).

15. Concern is expressed that the race relations legislation concerning Northern Ireland tabled in Parliament contains two grounds for exemption, namely public order and public safety, which are additional to the ones already enshrined in the Race Relations Act of 1976, and that bodies working in the field of health, education, social services, planning and housing do not have the same positive legal duty to eliminate discrimination as that which applies to local authorities in Britain.

16. Concern is expressed by the Committee with respect to the continuing failure to incorporate questions relating to the racial or ethnic origin of persons in the Northern Ireland population census questionnaires. The Committee is of the view that the identification of minority groups and the analysis of their civil, political, economic and social status are a precondition for identifying the difficulties that they may be facing and for assessing whether and how such difficulties may be due to racial discrimination, and thus for evaluating the need to adopt specific measures, laws and regulations to overcome those difficulties.

17. With respect to the effective enjoyment of the rights provided for in article 5 of the Convention by all parts of the population without discrimination, concern is expressed at remaining instances of racial discrimination in the field of employment, notably the opportunities for professional promotions, in the private as well as in the public sectors, in the field of housing and education, in the exercise of stop and search powers by the police, and with respect to occurrence of ill-treatment by the police.

18. It is noted with concern that the implementation of some of the provisions of the Asylum and Immigration Act 1996 may be detrimental to the protection of asylum seekers against any racial discrimination. In this regard, particular concern is expressed at the fact that asylum claims may a priori be considered to be unfounded, and thus be dealt with more swiftly, when the claimants come from certain countries considered by the United Kingdom not to "generally give rise to a serious risk of persecution", and at the fact that no right of in-country appeal is granted to asylum seekers sent back to certain safe third countries. Moreover, while the assurances provided in the report that the Asylum and Immigration Act 1996 in itself will not affect the United Kingdom's obligations under the Convention, it is underlined that the definition of racial discrimination under article 1, paragraph 1, of the Convention, includes the effect as well as the purpose of an act, and it is thus noted that the Asylum and Immigration Act 1996, in its effects, may be contrary to the Convention.

19. Concern is also expressed that specific legislation against racial discrimination is not yet available in all the Dependent Territories and Crown Dependencies, and that in some cases such legislation should be deemed unnecessary by the relevant authorities on the ground of the alleged non-existence of racial discrimination in the territories.

20. The absence of a provision in the Hong Kong Bill of Rights Ordinance protecting persons from racial discrimination to which they may be subjected by private persons, groups or organizations is a matter of concern for the Committee. In this regard, it is stressed that article 2, paragraph 1 (d), of the Convention, makes it an obligation for States parties to prohibit, including by the adoption of legislation, racial discrimination "by any persons, groups or

organizations”.

21. With respect to the “two-week rule” applying to foreign workers in Hong Kong which prohibits them from seeking employment or remaining in Hong Kong more than two weeks after the expiration of their employment contracts, concern is expressed that such a rule may have discriminatory effects, since it applies mostly to domestic workers of Filipino origin, and that it may leave the workers concerned extremely vulnerable and in precarious conditions.

E. Suggestions and recommendations

22. The Committee recommends that the State party consider giving full effect to the provisions of the Convention in its domestic legal order.

23. The Committee reaffirms that the provisions of article 4 of the Convention are mandatory, as noted in its General Recommendation VII (32). The Committee stresses that the United Kingdom should again consider the possibility of adopting the necessary legislation as requested by the provisions of article 4. In doing so, the Government should take into account the Committee’s General Recommendation XV (42).

24. The Committee recommends that questions relating to the racial or ethnic origin of persons be incorporated in the questionnaires established within the framework of the population census, in all the territories under the jurisdiction of the United Kingdom. In this regard, the Committee stresses that such information is useful for the effective assessment of progress achieved towards the full implementation of the provisions of the Convention for the benefit of all groups of the population.

25. The Committee recommends that the United Kingdom continue and strengthen its efforts towards the full enjoyment by all ethnic groups of all the rights provided for in article 5 of the Convention. The Committee recommends in particular that close attention be given to the issue of the deaths in police custody and to the monitoring of the conditions and the treatment of persons detained in police stations.

26. The Committee suggests that in its next report the State party include, for a recent year, (a) a review of the number of cases commenced under the Race Relations Act 1976 and their outcomes; and (b) information on the number of prosecutions for offences for a racist character, with an indication of sentences imposed in representative cases.

27. The Committee further recommends that the implementation of the Asylum and Immigration Act 1996 be closely monitored, so as to avoid any possible discrimination against certain categories of asylum seekers and to ascertain that its effects may in no way "nullify or impair the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms" of the persons affected by this Act, in accordance with article 1, paragraph 1, of the Convention.

28. The Committee also recommends that further consideration be given by the authorities of Guernsey, Jersey, the Isle of Man, the Cayman Islands, Montserrat and the Turks and Caicos Islands to the adoption of specific legislation prohibiting racial discrimination, in line with the provisions of the Convention. Noting that racial discrimination is deemed not to exist in some territories, the Committee suggests that the preventive function of the principles laid down in the Convention be given priority in the drafting of any future legislation.

29. The Committee also recommends that special attention be given by the Government of Hong Kong to the situation of the foreign workers subject to the "two-week rule" and that all the necessary measures, including the modification or repeal of this specific rule, be undertaken to ensure the protection of all their rights under the Convention.

30. The Committee further recommends that the fourteenth periodic report of the State party, as well as the present concluding observations, be given publicity and be widely disseminated among the public at large.

31. The Committee recommends that the State party's next periodic report, due on 7 March 1998, be a comprehensive report and that it address all the points raised during the consideration of the report.

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**UNITED
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**International covenant
on civil and
political rights**

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Hong Kong Special Administrative Region

1. The Committee considered the fifth periodic report of the Hong Kong Special Administrative Region (CCPR/C/HKSAR/99/1 and supplementary information CCPR/C/HKSAR/99/1/Add.1) at its 1803rd to 1805th meetings (CCPR/C/SR.1803-SR.1805), held on 1 and 2 November 1999. This report is the first submitted by the People's Republic of China after the return of HKSAR to Chinese sovereignty on 1 July 1997. The Committee adopted, at its 1810th meeting (sixty-seventh session) held on 4 November 1999, the following concluding observations.

A. Introduction

2. The Committee expresses appreciation to the delegation from HKSAR for the information it provided and for its willingness to submit further information in writing. It further welcomes the recognition given by the delegation to the contribution made by NGOs to the consideration of the HKSAR report.

3. The Committee thanks the People's Republic of China for its willingness to participate in the reporting procedure under article 40 of the Covenant by submitting the report prepared by the HKSAR authorities and by introducing the HKSAR delegation to the Committee. The Committee affirms its earlier pronouncements on the continuity of the reporting obligations in relation to Hong Kong.

B. Positive aspects

4. The Committee notes that article 39 of the Basic Law provides that the provisions of the Covenant as applied to HKSAR shall remain in force and shall be implemented through the laws of HKSAR. The Committee welcomes the fact that the primacy of the Covenant is ensured in domestic legislation by a combination of articles 39 and 11 of the Basic Law.

5. The Committee welcomes the efforts undertaken by the HKSAR to give publicity to its report and its commitment to give wide dissemination to the Committee's concluding observations.

6. The Committee welcomes the efforts undertaken by HKSAR to educate civil society about human rights. In particular, the Committee welcomes the great number of training courses, workshops and seminars conducted in HKSAR for all sectors of the population, including the civil service, the judiciary, the police and the educational establishments.

7. The Committee welcomes the steps taken by HKSAR to promote gender equality through educational campaigns and appropriate legislation.

C. Principal subjects of concern and recommendations

8. The Committee is concerned that most of the recommendations formulated in the Committee's concluding observations (published in A/51/40, paras. 66-72; A/52/40, paras. 84-85) have not yet been implemented.

9. The Committee remains concerned that there is no independent body established by law to investigate and monitor human rights violations in HKSAR and the implementation of Covenant rights.

10. The Committee is seriously concerned at the implications for the independence of the judiciary of the request by the Chief Executive of HKSAR for a reinterpretation of article 24(2)(3) of the Basic Law by the Standing Committee of the National People's Congress (NPC) (under article 158 of the Basic Law) following upon the decision of the Court of Final Appeal (CFA) in the Ng Ka Ling and Chan Kam Nga cases, which placed a particular interpretation on article 24(2)(3). The Committee has noted the statement of the HKSAR that it would not seek another such interpretation except in highly exceptional circumstances. Nevertheless, the Committee remains concerned that a request by the executive branch of government for an interpretation under article 158 (1) of the Basic Law could be used in circumstances that undermine the right to a fair trial under article 14.

11. The Committee takes the view that the Independent Police Complaints Council has not the power to ensure proper and effective investigations of complaints against the police. The Committee remains concerned that investigations of police misconduct are still in the hands of the police themselves, which undermines the credibility of these investigations.

The HKSAR should reconsider its approach on this issue and should provide for independent investigation of complaints against the police.

12. The Committee reiterates its concern, expressed in paragraph 19 of its concluding observations, adopted at the end of the consideration of the fourth periodic report, that the electoral system for the Legislative Council does not comply with articles 2, paragraphs 1, 25 and 26 of the Covenant. The Committee is concerned about the impending abolition of the Municipal Councils that would further diminish the opportunity of HKSAR residents to take part in the conduct of public affairs, that is guaranteed under article 25.

The HKSAR should reconsider this step. It should take all necessary measures to maintain and strengthen democratic representation of HKSAR residents in public affairs.

13. The Committee is concerned that the Interception of Communications Ordinance, which was passed in June 1997 in order to restrict the power of the authorities to intercept communications, has not yet been brought into effect. Section 33 of the Telecommunication Ordinance and Section 13 of the Post Office Ordinance still continue to be in force, thus allowing the authorities to violate the right to privacy under article 17 of the Covenant.

The HKSAR must ensure that its law and practice protect the rights guaranteed under article 17.

14. In the light of the fact that the Covenant is applied in HKSAR subject to a reservation that seriously affects the application of article 13 in relation to decision-making procedures in deportation cases, the Committee remains concerned that persons facing a risk of imposition of the death penalty or of torture, or inhuman, cruel or degrading treatment as a consequence of their deportation from HKSAR may not enjoy effective protection.

In order to secure compliance with articles 6 and 7 in deportation cases, the HKSAR should ensure that their deportation procedures provide effective protection against the risk of imposition of the death penalty or of torture or inhuman, cruel or degrading treatment.

15. The Committee remains concerned that no legislative remedies are available to individuals in respect of discrimination on the grounds of race or sexual orientation.

Necessary legislation should be enacted in order to ensure full compliance with article 26 of the Covenant.

16. The Committee is concerned that the educational system in HKSAR discriminates against girls in selection for secondary schools, that considerable differences exist in the earning levels between men and women, that women are

under-represented in public boards and public offices, and that there is discrimination against women in the Small Home Policy.

The HKSAR should adopt positive measures to overcome discrimination against women and should ensure equal pay for work of equal value.

17. The Committee is concerned that the age of criminal responsibility is seven years and takes note of the statement by the Delegation that the Law Reform Commission is currently conducting a review of this matter.

The age of criminal responsibility should be raised so as to ensure the rights of children under article 24.

18. The Committee is concerned that the offences of treason and sedition under the Crimes Ordinance are defined in overly broad terms, thus endangering freedom of expression guaranteed under article 19 of the Covenant.

All laws enacted under article 23 of the Basic Law must be in conformity with the Covenant.

19. With regard to freedom of assembly, the Committee is aware that there are very frequent public demonstrations in HKSAR and takes note of the delegation's statement that permission to hold demonstrations is never denied. Nevertheless, the Committee is concerned that the Public Order Ordinance could be applied to restrict unduly enjoyment of the rights guaranteed in article 21 of the Covenant.

The HKSAR should review this Ordinance and bring its terms into compliance with article 21 of the Covenant.

20. With regard to freedom of association, the Committee is concerned that the Societies Ordinance may be applied in a way to restrict unduly the enjoyment of Article 22 rights.

The HKSAR should review this Ordinance so as to ensure full protection of the right to freedom of association, including trade union rights, under article 22 of the Covenant.

D. Date of examination of the sixth periodic report:
dissemination of information

21. The Committee sets the date for the submission of the next periodic report as 31 October 2003. That report should be prepared in accordance with the Committee's new Guidelines (CCPR/C/66/GUI/Rev.1) and should give particular attention to the issues raised by the Committee in these Concluding Observations. The Committee urges that the text of these Concluding Observations be made available to the public as well as to the legislative and administrative authorities. It requests that the next periodic report be widely disseminated among the public, including civil society and

non-governmental organizations operating in HKSAR.

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**Economic and Social
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COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on
Economic, Social and Cultural Rights

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
(HONG KONG)

1. The Committee considered, at its fifteenth session, the third periodic report submitted by the United Kingdom of Great Britain and Northern Ireland on articles 1 to 15 of the Covenant as applied in Hong Kong (E/1994/104/Add.10). The Committee considered this report at its 39th, 41st, 42nd and 44th meetings held on 26, 27 and 28 November 1996. After having considered the report, the Committee adopted at its 55th meeting, held on 6 December 1996, the following concluding observations.

A. Introduction

2. The Committee notes with satisfaction that the report submitted by the State party was prepared in accordance with the Committee's guidelines. It welcomes the large and high-level delegation composed of representatives from the United Kingdom of Great Britain and Northern Ireland and from Hong Kong. The information submitted in the report and that provided by the delegation in reply to both written and oral questions enabled the Committee to obtain a broad view of the extent of the State party's compliance with its obligations under the International Covenant on

Economic, Social and Cultural Rights. The Committee also expresses its appreciation for the written replies to its list of questions (E/C. 12/Q/HON.1). The Committee notes with satisfaction that this information enabled it to engage in a constructive dialogue with the State party, particularly concerning the applicable law. However, it is regretted that a number of the Committee's questions relating to reports of what actually happens in practice were not answered.

3. The Committee also welcomes the presence of a significant number of non-governmental organizations from Hong Kong. The information provided by these non-governmental organizations greatly assisted the Committee in its understanding of the human rights situation in Hong Kong.

B. Positive aspects

4. The Committee notes with satisfaction that both the Sino-British Joint Declaration and the Basic Law affirm that the Covenant will continue to apply to Hong Kong after the resumption of sovereignty over the territory by the People's Republic of China as at 1 July 1997.

5. The Committee notes that the Government of Hong Kong has established conditions for a high level of economic prosperity.

6. The Committee welcomes the fact that non-governmental organizations, members of the Legislative Council and other interested parties have had an opportunity to contribute their comments on topics included in the report. The Committee lauds efforts made by the Hong Kong government to promote public awareness of the Covenant, and to make available to the public at large a substantial number of copies of the report, in English and Chinese, both in printed form and on the Internet.

7. The Committee welcomes the enactment of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance, in July and August 1995, respectively. It also notes with interest the establishment of the Equal Opportunity Commission in May 1996.

8. The Committee notes that the housing policy of the government of Hong Kong endeavours to elaborate a long-term programme for public housing construction and to encourage private-sector housing construction so as to make adequate and affordable housing available to all residents of Hong Kong.

C. Factors and difficulties impeding the implementation of the Covenant

9. The Committee notes that the uncertainties arising from the resumption of sovereignty over Hong Kong by the People's Republic of China have clearly caused some difficulties for the Hong Kong government in undertaking measures to its maximum capacity towards the protection and promotion of the economic, social and cultural rights of its constituents.

10. The Committee notes that constraints arising from limited habitable land in Hong Kong and from the significant influx of immigrants into its territory may result in difficulties in implementing certain articles of the Covenant. However, it is also noted that Hong Kong has considerable resources at its disposal to overcome most problems posed by these obstacles.

11. The Committee notes that while the government of Hong Kong has established conditions for a high level of economic prosperity, while the latest figures show a Gross Domestic Product per capita in Hong Kong of US\$ 23,500, the fourth highest in the world, and while the Hong Kong

government has accommodated reserves, as of March 1996, of US\$ 20 billion, Hong Kong has one of the most uneven distributions of income in the world: 20 per cent of the population hold 50 per cent of the national wealth, but

250,000 households, i.e. 11 per cent of the population, live in absolute poverty and 850,000 citizens live below the poverty line.

D. Principal subjects of concern

12. The Committee deeply regrets that the recommendations expressed in its concluding observations in 1994 have largely been ignored by the Hong Kong government.

13. The Committee is concerned that the modalities for the continued submission of reports by Hong Kong after the resumption of sovereignty by the People's Republic of China are still at the stage of negotiation and have not been resolved to date.

14. The Committee expresses its disappointment that the principal subjects of concern listed in its concluding observations in 1994 remain unresolved. The Committee reiterates its serious concern on the following issues:

(a) The provisions of the International Covenant on Economic, Social and Cultural Rights continue to be excluded from the domestic law of Hong Kong, which already contains the provisions of the International Covenant on Civil and Political Rights;

(b) The level of awareness among the judiciary of international human rights law in general and of the International Covenant on Economic, Social and Cultural Rights in particular remains low.

(c) The Hong Kong government continues to object to the establishment of a human rights commission;

(d) The number of split families continues to grow at an alarming rate;

(e) The treatment of Vietnamese refugees in Hong Kong, particularly those who refuse repatriation to Viet Nam, is repressive and discriminatory;

(f) The two-week rule imposed upon foreign domestic helpers upon expiration of their contract continues to hinder their enjoyment of economic, social and cultural rights;

(g) The phenomenon of subhuman cage homes remains a blight;

(h) The level of social security payments available to the elderly does not allow them to enjoy their rights under the Covenant.

15. The Committee is concerned that the Sex Discrimination Ordinance does not protect those individuals whose right to work is violated by inappropriate account being taken of their private sex lives. The Committee further considers it a serious matter that women above the age of 30 suffer discrimination in employment.

16. The Committee regrets the step-by-step approach according to which legislation for the protection of vulnerable minorities is adopted primarily on the basis of public opinion surveys, that is, based on majority views.

17. The Committee is concerned that the principle of equal pay for work of equal value as elaborated in the non-binding Code of Practice of the Sex Discrimination Ordinance has not been reflected in Hong Kong labour law, thus giving rise to discrimination against women.

18. The Committee expresses its concern over the unfavourable status of Hong Kong residents who possess British Overseas residence, but who are not entitled to citizenship of any British territory after 1997 although they are allowed to reside in Hong Kong under Chinese law even if they are not Chinese citizens.

19. The Committee is concerned that in the field of employment, the Sex Discrimination Ordinance provides relatively insufficient remedies owing to the absence of provisions of reinstatement and full recovery compensation, while both of these remedies are foreseen in the Disability Discrimination Ordinance.

20. The Committee expresses its concern about the extent of unemployment or underemployment as a result of rapid economic restructuring. In this connection, the Committee is particularly concerned about the significant numbers of women who are thereby forced out of the labour force and must sometimes resort to precarious activities.

21. The Committee is concerned that Hong Kong labour legislation does not provide protection against unfair dismissal, nor does it provide for a limitation on hours of work, for a paid weekly rest period and compulsory overtime pay. This situation is a major hindrance to the enjoyment of just and favourable conditions of work.

22. The Committee expresses its concern that trade union rights are unduly restricted in Hong Kong. In particular, the Committee is of the view that restrictions applied to affiliation with international trade union organizations, the prohibition on the formation of confederations of trade unions from different industries, as well as the legal right of employers to dismiss persons involved in strike activities, are incompatible with the Covenant.

23. The Committee expresses its deep concern that there is no comprehensive mandatory old-age social security scheme in Hong Kong and that approximately 60 per cent of the population is not protected by any public or private pension plan.

24. The Committee expresses its concern that large numbers of individuals and families who are eligible for comprehensive social security assistance (CSSA) do not apply for it, either because they are not aware of CSSA, because they fear the cultural stigma attached to the concept of welfare assistance, or because they are discouraged from applying by certain practices of the authorities which are not in conformity with Hong Kong law, such as the requirement of children's consent before parents may receive CSSA benefits.

25. The Committee is concerned that CSSA recipients are not granted reimbursement for expenses for traditional medicine, given the fact that Hong Kong residents frequently use traditional medicine and that Hong Kong courts grant such reimbursements in civil liability actions.

26. The Committee reiterates its deep concern over the growing numbers of split families in Hong Kong. The Committee is of the view that the Hong Kong government has an obligation to ensure that the criteria applied in deciding on those eligible for legal migration into Hong Kong are consistent with the provisions of the Covenant.

27. The Committee expresses its concern at the absence of a holistic policy for the protection of children from all forms of abuse.

28. The Committee is deeply concerned that the standard of living of elderly singletons in the lowest 20 per cent income group who are not receiving CSSA is lower than that of the CSSA recipients. The Committee notes that many of these singletons live in substandard accommodation.

29. The Committee regrets that the Hong Kong government has not given any clear indication of a time-frame within which it expects to eradicate the deplorable phenomenon of cage homes. The Committee is particularly concerned over the inadequate conditions of the housing offered by the Hong Kong government to new immigrants from China, resulting in many of them living in deplorable conditions.

30. The Committee expresses its concern over the inadequate care and protection of the mentally ill and disabled in Hong Kong. In particular, the Committee notes with concern the apparent lack of initiative on the part of the Hong Kong government to undertake public education to combat discrimination against those with mental disabilities.

31. The Committee takes note with concern that, while the Hong Kong government has adopted an educational policy in relation to children of immigrant families from China, it has not undertaken sufficient efforts to ensure school placements for these children and to protect them from discrimination.

E. Suggestions and recommendations

32. In the light of the terms of the Sino-British Joint Declaration and of the recent practice of United Nations human rights treaty bodies, the Committee is of the firm view that, following the resumption of sovereignty over Hong Kong by the People's Republic of China, the People's Republic of China is under an obligation not only to ensure the enjoyment in the Hong Kong Special Administrative Region of the rights guaranteed by the Covenant but also to submit reports pursuant to article 16 of the Covenant. The Committee therefore considers that it is competent to examine the implementation of the Covenant after 1 July 1997 on the basis of reports or such other material as will be before the Committee, and reiterates its willingness to receive reports in respect of the Hong Kong Special Administrative Region from the People's Republic of China or, if the authorities so decide, directly from the Hong Kong Special Administrative Region. The Committee encourages all parties concerned to work out as soon as possible the modalities of submitting such reports and to inform the Committee of these modalities. The Committee is convinced, however, that the best way to resolve this issue would be for the People's Republic of China itself to become a party to the International Covenant on Economic, Social and Cultural Rights.

33. The Committee urges the Hong Kong government to consider with the utmost care the Committee's suggestions and recommendations embodied in its concluding observations of 1994, as well as those that follow, and to undertake whatever relevant concrete measures may be necessary.

34. The Committee strongly urges the Hong Kong government to take every possible measure to develop a fair and open one-way permit approval mechanism in order to facilitate rapid family reunification.

35. The Committee recommends that the Government should undertake more effective measures for the retraining of those who have lost employment or are underemployed as a result of economic restructuring.

36. The Committee urges the amendment of the Sex Discrimination Ordinance to include provisions on reinstatement in employment as well as the removal of the current maximum amount for recovery compensation.

37. The Committee recommends that the Government lift repressive provisions and limitations in relation to trade union federations including the prohibition on establishing international affiliation.

38. The Committee recommends a review of government policy in relation to unfair dismissal, minimum wages, paid weekly rest time, maximum hours of work and overtime pay rates, with a view to bringing such policy into line with the government's obligations as set forth in the Covenant.

39. The Committee strongly recommends that the Hong Kong government should reconsider the adoption of a universal, comprehensive retirement protection scheme which seeks to ensure that disadvantaged groups are accorded full access to social security.

40. The Committee reiterates in the strongest possible terms its recommendation that the Hong Kong government should undertake, as a matter of high priority, the total eradication of cage homes.

41. The Committee urges the Hong Kong government to review the seven-year residence rule applied before providing housing to immigrant families from China, with a view to ensuring their right to adequate housing.

42. The Committee requests that, within 45 days, it receive a comprehensive response to its inquiry regarding three Vietnamese refugees who were denied medical and dental treatment, mainly for refusing to return voluntarily to Viet Nam.

43. The Committee strongly recommends that the Hong Kong government review the situation concerning persons with mental illness and disability and to ensure that their rights under the Covenant are fully protected.

44. The Committee recommends that measures to integrate children of immigrant families from China into the general education system be implemented with maximum possible attention from government authorities.

45. The Committee recommends that these concluding observations be made widely available in English and Chinese within Hong Kong and that copies be provided by the government to all members of the judiciary and to the relevant echelons of the public service.

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Appendix IV

UNITED NATIONS	E
Economic and Social Council	Distr. GENERAL UNEDITED VERSION E/C.12/1/Add.58 11 May 2001 Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on
Economic, Social and Cultural Rights

PEOPLE'S REPUBLIC OF CHINA: HONG KONG SPECIAL ADMINISTRATIVE
REGION

1. The Committee considered, at its twenty-fifth session, the initial report submitted by the People's Republic Of China on articles 1 to 15 of the Covenant as applied in Hong Kong Special Administrative Region (E/1990/5/Add.43). The Committee considered this report at its 9th, 10th and 11th meetings held on 27 and 30 April. After having considered the report, the Committee adopted at its 29th meeting, held on 11 May 2001, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the well-prepared and detailed initial report, which conforms in general with the Committee's guidelines on reporting. The Committee also notes with appreciation the written replies to its list of issues and the additional statistics provided by the HKSAR. The delegation's professionalism and openness contributed to a fruitful and constructive dialogue.

B. Positive aspects

3. The Committee warmly welcomes the ratification of the Covenant by China.
4. The Committee warmly welcomes the HKSAR's withdrawal of reservations to articles 1 and 7 of the Covenant.
5. The Committee welcomes the HKSAR's wide consultations with civil society organisations and other interested parties as part of the preparation of its initial report. The Committee notes with appreciation that the HKSAR made available to the public at large copies of the report.
6. The Committee commends the HKSAR for its efforts to provide adequate housing for Hong Kong residents. In particular, the Committee notes with appreciation that,
 - a) the old temporary housing accommodations have been demolished with their occupants adequately housed in interim housing while waiting to be permanently housed;
 - b) the Government provides interim housing for evicted squatters, victims of domestic violence and divorced families; and
 - c) self-built structures in squatter communities erected before 1982 and therefore protected by relevant housing policy, in most cases have been provided with basic services including water, sanitation and access to roads with a view to improving the living conditions of the residents.
7. The Committee notes with satisfaction that the Equal Opportunities Commission established in 1996 is effectively carrying out its mandate without interference from the government of HKSAR.
8. The Committee notes with appreciation that the Committee's General Comments are valuable source materials consulted frequently by the Human Rights Unit of the Justice Department.
9. The Committee welcomes the delegation's assurance that all rights enshrined in the Covenant contain certain justiciable aspects. Moreover, the Committee notes with satisfaction that the Covenant is invoked in Hong Kong courts.
10. The Committee welcomes the establishment of a Women's Commission in HKSAR.
11. The Committee commends the HKSAR's programme for training unskilled and unemployed workers with the objective of finding employment for them. The Committee notes with appreciation that the Employers Training Board conducts training programmes for unskilled women and provides them with allowances during training courses.

C. Factors and difficulties impeding the implementation of the Covenant

12. The Committee notes that issues regarding the right of abode in relation to permanent residence and split families impede the enjoyment of economic, social and cultural rights by the families affected by the reinterpretation (26 June 1999, National People's Congress Standing Committee, NPC-SC) of Article 24 of the Basic Law.
13. While the "ultimate aim is the election of all the members of the Legislative Council by universal suffrage" (article 68, Basic Law), the Committee notes that the current arrangements for the election of the Legislative Council include some undemocratic features which impede the full enjoyment of economic, social and cultural rights in HKSAR.

14. The economic policies of HKSAR, based essentially on the philosophy of "positive non-interventionism", i.e. keeping taxes low and limiting government expenditure to the provision of essential services, in accordance with Article 5 of the Basic Law, which guarantees its free trade, free enterprise and low tax regime for at least 50 years, have had a negative impact on the realisation and enjoyment of the economic, social and cultural rights of Hong Kong's inhabitants, the more so as those policies have been exacerbated by globalisation.

D. Principal subjects of concern

15. The Committee regrets that the HKSAR has not implemented a number of the recommendations in its concluding observations of 1996, despite the delegation's assurance that these must be given effect. The Committee wishes to reiterate in particular its concern on the following issues:
- a) The Covenant's status in HKSAR's domestic legal order continues to be different from that of the International Covenant on Civil and Political Rights, the provisions of which have been incorporated into domestic legislation;
 - b) The failure of the HKSAR to extend the prohibition of race discrimination into the private sector;
 - c) The failure of the HKSAR to prohibit discrimination on the basis of sexual orientation and age;
 - d) The failure of the HKSAR to establish a national human rights institution with a broad mandate and its failure to establish adequate alternative arrangements for the promotion of economic, social and cultural rights;
 - e) The absence of protection against unfair dismissal, lack of adequate regulation on statutory minimum wage, working hours, paid weekly rest, rest breaks and compulsory overtime pay;
 - f) The two-week rule imposed upon foreign domestic helpers upon expiration of their contract denies their right to freely seek employment and to protection from discrimination;
 - g) The lack of a comprehensive policy for the protection of children from all forms of abuse;
16. The Committee greatly regrets that some judgements of the High Court in HKSAR express the opinion that the Covenant is "promotional" (*Mok Chi Hung v. Director of Immigration*, judgement of 5 January 2001) or "aspirational" (*Chan To Foon v. Director of Immigration*, judgement of 11 April 2001) in nature. As the Committee has confirmed on numerous occasions, such opinions are based on a mistaken understanding of the legal obligations arising from the Covenant.

17. The Committee is concerned that the Women's Commission may not have appropriate resources and powers to ensure that a gender perspective is integrated into the formulation of policy.
18. The Committee is gravely concerned about the widespread and unacceptable incidence of poverty in HKSAR. It is especially concerned that a large number of older persons continue to live in poverty without effective access to social services.
19. The Committee is deeply concerned that the HKSAR lacks adequate, institutional arrangements to ensure the formulation and implementation of comprehensive, integrated, consistent and effective anti-poverty strategies.
20. The Committee expresses its regret that in relation to the care of persons with mental illness, the HKSAR is reluctant to authorise the prescription of new drugs that are more costly but more effective and have been shown to produce fewer side effects for the mentally ill. In addition, the Committee notes with concern the apparent lack of initiative on the part of the HKSAR to undertake public education to combat discrimination against those with mental disabilities.
21. The Committee is concerned that many individuals, including women who are homemakers, persons with disabilities, and older persons, are excluded from the Mandatory Provident Fund Scheme.
22. The Committee is deeply concerned about the hardship arising from HKSAR's policies on permanent residence and split families.
23. The Committee expresses its concern about the reported increase in the incidence of child abuse and suicide among the youth.
24. The Committee is concerned that the age of criminal responsibility is set at the young age of seven years.
25. While acknowledging that the HKSAR has made progress in relation to housing, the Committee remains deeply concerned that the right to housing of many people in Hong Kong remains unfulfilled. In the Committee's view, bed-space apartments, or cage homes, are an affront to human dignity and roof-top structures constitute a grave risk to the life and health of their inhabitants.
26. The Committee is concerned that the Public Order Ordinance may be used to restrict trade union activities, such as peaceful campaigns to promote labour rights, which are protected by article 8(c) of the Covenant.

E. Suggestions and recommendations

27. The Committee reminds the HKSAR that the provisions of the Covenant constitute a legal obligation on the part of the States parties. Thus, the Committee urges the HKSAR not to argue in court proceedings that the Covenant is only "promotional" or "aspirational" in nature.
28. The Committee again urges the HKSAR to implement the Committee's suggestions and recommendations embodied in its concluding observations of 1996, as well as the current ones, and to undertake whatever relevant concrete measures may be necessary towards their implementation.

29. The Committee recommends that the HKSAR withdraw its reservation on article 6 and the interpretative declaration replacing its former reservation on article 8.
30. It is the Committee's view that the HKSAR's failure to prohibit race discrimination in the private sector constitutes a breach of its obligations under article 2 of the Covenant. The Committee calls upon the HKSAR to extend its prohibition of race discrimination into the private sector.
31. The Committee also urges the HKSAR to prohibit discrimination on the basis of sexual orientation and age.
32. The Committee urges the HKSAR to establish a national human rights institution consistent with the Paris principles (1991) and the Committee's General Comment No. 10. Until such an institution is established, the Committee urges the HKSAR to enhance its measures for the promotion of economic, social and cultural rights.
33. The Committee urges the HKSAR to provide the Women's Commission with sufficient powers and resources to improve the status of women in Hong Kong and to integrate gender in its policy-making and to ensure wider participation of women in all spheres of public life.
34. The Committee reiterates its recommendation that the HKSAR review its policy in relation to unfair dismissal, minimum wages, paid weekly rest time, rest breaks, maximum hours of work and overtime pay rates, with a view to bringing such policy into line with the HKSAR's obligations as set forth in the Covenant.
35. The Committee urges the HKSAR to enact legislation on equal pay for work of equal value as provided for in the Covenant.
36. The Committee urges the HKSAR to adopt a comprehensive pension system that provides adequate retirement protection for the entire population and in particular for housewives, self-employed persons, older persons and persons with disabilities.
37. The Committee recommends that the Public Order Ordinance be reviewed with a view to amending its provision to ensure freedom of trade union activities as provided for under article 8(c) of the Covenant.
38. The Committee strongly recommends that the HKSAR establish either an inter-departmental anti-poverty unit or an independent anti-poverty commission, to conduct relevant research, formulate anti-poverty strategies and monitor all policies for their impact on poverty.
39. The Committee urges the HKSAR to ensure that Comprehensive Social Security Assistance levels permit recipients a reasonable standard of living consistent with articles 9 and 11 of the Covenant.
40. When formulating and implementing its policies on permanent residence and split families, the HKSAR is urged to give the most careful attention to all the human rights dimensions of the issue, including articles 2(2), 3 and 10. The Committee reminds the HKSAR that any limitations in relation

to article 10 must be justified in relation to each element set out in article 4. The Committee urges the HKSAR to reconsider extending the "concession" made by HKSAR following the NPC-SC's re-interpretation of 26 June 1999.

41. The HKSAR is urged to enhance the transparency of all relevant processes concerning permanent residence and split families, for example, the Committee recommends that all data, appropriately disaggregated (eg by origin of applicant), is made publicly available, and tabled in the Legislative Council, every six months.
42. The Committee calls upon the HKSAR to adopt urgent measures to address the problems leading to youth suicide and all forms of child abuse.
43. The Committee calls upon the HKSAR to amend its laws to raise the age of criminal responsibility so as to ensure the rights of the child under article 10 of the Covenant.
44. The Committee calls on the HKSAR to give urgent attention to the housing rights of all Hong Kong residents, including squatters and those living in roof-top structures and bedspace apartments or cage homes. In its next periodic report, the HKSAR is requested to give special attention to the impact of current policies on squatters, roof-top structures and bedspace apartments or cage homes. In particular, the Committee would like the HKSAR to comment on the operation and efficacy of the Bedspace Apartments Ordinance (Chapter 447).
45. The Committee recommends that the HKSAR undertake a comprehensive review of mental health policy and adopt effective measures to ensure that persons with mental illness enjoy the right to adequate and affordable health care. The Committee urges the HKSAR to provide public education to combat discrimination against persons with mental illness.
46. The Committee requests that the HKSAR disseminate these concluding observations as widely as possible among its citizens.
47. The Committee requests the HKSAR to address, in its second periodic report, the implementation of these concluding observations.
48. The Committee requests the HKSAR to submit information on its progress in implementing the Committee's recommendation in paragraph 30 (race discrimination) by 30 June 2003. The Committee requests the HKSAR to submit its full second periodic in accordance with the prescribed dates of submissions.

~~raised by the Honourable Member just now.~~

~~**PRESIDENT** (in Cantonese): There are still many Members who are interested in this question and wish to raise supplementaries. I suggest Members should follow up the issue at the relevant panel meetings.~~

~~**PRESIDENT** (in Cantonese): Fifth question. Miss Emily LAU.~~

Differential Rates Charged by Bars and Clubs

5. **MISS EMILY LAU** (in Cantonese): *It is reported that the operators of some bars and clubs had charged non-white customers at higher rates. The Secretary for Home Affairs said that a letter would be sent to the operators concerned explaining to them the Government's anti-discrimination policy and drawing their attention to the contents of the Code of Practice Against Discrimination in Employment on the Ground of Race. In this connection, will the Executive Authorities inform this Council:*

- (a) *whether and when the Secretary for Home Affairs has sent the letter;*
- (b) *of the names and addresses of the bars and clubs concerned;*
- (c) *how the Code of Practice applies to such cases; and*
- (d) *whether these operators are still charging their customers at differential rates?*

PRESIDENT (in Cantonese): Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I would like to thank the Honourable Miss Emily LAU very much for raising this question. My reply is as follows:

- (a) When we read about the incident reported in the press last month, we decided that the best way to address this issue was to write to the 500 bars and clubs known to cater to a relatively cosmopolitan clientele, explaining the Government's opposition to racial discrimination and encouraging them to join us in our efforts to eliminate discriminatory practices and attitudes. Because of the time required to obtain the names and addresses of these establishments, we only managed to issue the letters on 8 July. We also sent as enclosures copies of our leaflet: *Equal Opportunities: Race and the Code of Practice Against Discrimination in Employment on the Ground of Race* and invited owners and managers to draw them to the attention of their staff and customers.
- (b) As the list of names and addresses is a long one, I do not think it is appropriate to go through it now. I shall, however, be pleased to provide a copy to any Member who wishes to see it.
- (c) We believe that public education and persuasion represent the best and most suitable approach to address this issue. In addition to the leaflet and the Code of Practice which I have just mentioned, other education/promotional activities which we have conducted recently include TV APIs (announcements of public interest), TV variety show, drawing competition/exhibition, as well as launching a modest funding scheme (\$2.5 million) to sponsor community projects aimed at promoting equal opportunities and support for the needs of minority groups.
- Our decision that continuous efforts in civic education and self regulation are preferable to coercion in the promotion of racial equality also took into account the public consultation held early last year which clearly indicated that legislation in this area would not enjoy a significant level of public acceptance or support. On the other hand, we trust that the various educational initiatives which I have just mentioned will gradually and progressively foster a culture of racial equality within our community.
- (d) We have not received further reports or complaints of this kind.

Thank you, Madam President.

PRESIDENT (in Cantonese): Miss Emily LAU.

MISS EMILY LAU (in Cantonese): *Madam President, I believe the Hong Kong Government is the only one of its kind in the whole world which believes that the mere sending of a few hundred letters will be sufficient to deal with the problem of racial discrimination. Madam President, I think the Secretary has not answered part (c) of my question, that is, why documents such as the Code of Practice Against Discrimination in Employment were sent to the operators concerned? I would like the Secretary to tell me why this was done because the charging of differential rates to non-white customers has nothing to do with this Code of Practice. I wish to follow up part (d) of my question. I wish to ask the Secretary whether he knows such things still exist but the reply he gave was no complaints had been received. If this is really the response from the Government, then I think this is a very passive attitude to take. All along the Government has never looked into this matter and even when it was informed of the situation, only a few letters were sent, thinking that the matter would hence be settled. Unless the Government thinks that this kind of things can be tolerated, it should at least go there and have a look. If this kind of things cannot be tolerated in Hong Kong, then may I ask the Secretary, why an investigation is not made into the bars?*

PRESIDENT (in Cantonese): Secretary, actually, Miss LAU has raised a follow-up question and a supplementary question. The follow-up question is: What is the relationship of the Code of Practice Against Discrimination in Employment to the charging of higher fees to non-white customers? This is a follow-up question. Her supplementary question is: Will the Government take the initiative to look into the matter? Secretary?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, first I wish to explain why the Code of Practice does have direct bearing on the matter mentioned by Miss LAU. Racial discrimination may come in different forms. It may be in words or action, like the event which Miss LAU mentioned. Now there are a few bars which reportedly charge customers of certain races a higher fee, and the differential fee does not apply to some other people. This is of

course racial discrimination and it is something we do not approve of. But in the many forms of racial discrimination, we think the employment issue is more important. There are people of different races living and working here in Hong Kong. Employment relations affect their lives and families, and such relations are more important for society. It is a proper thing for us to urge the people concerned to pay attention to racial discrimination in this respect. Although the Code of Practice is on employment matters, it also clearly conveys the message of equal opportunities, and that one should not discriminate against people of other races. So I think it is relevant. Besides, I have clearly stated in my reply that apart from this leaflet, we also have other follow-up measures. These include TV API, civic education activities, and public education work done by non-governmental organizations at the district level. We have a variety of public education work. As for our sending out a few hundred letters, the addressees of these letters are bar operators who serve an international clientele. It is a proper thing to do when we send letters to bar operators and explain to them since the root of the problem lies in the bars.

MISS EMILY LAU (in Cantonese): Would the Secretary please answer the other question raised by me?

PRESIDENT (in Cantonese): Secretary, Miss LAU's supplementary question is: Will the Government take the initiative to follow up the matter?

SECRETARY FOR HOME AFFAIRS (in Cantonese): There are 18 offices under the Home Affairs Department and we have direct links with the residents. We have reported on this matter in the meetings and I myself have talked to the Director on this. We agreed that the matter should be followed up. I have not asked people to pretend to be foreigners and go to these bars or to ask people of certain nationalities to go to every bar to carry out follow-up work. Thank you, Madam President.

PRESIDENT (in Cantonese): Miss Christine LOH.

MISS CHRISTINE LOH (in Cantonese): *Madam President, I was between*

tears and laughter when I heard the Secretary making his reply. If these measures are used to deal with the problem of racial discrimination, I think they are far from being adequate. Madam President, I wish to seek clarification. In part(b) of his reply, the Secretary states that the list of the names and addresses of these bars and clubs is a long one, but he said just now that only a few of them had this problem. I would like the Secretary to make a clarification on this point. My question is on part (c) of the reply in which the Secretary mentioned a consultation exercise was conducted last year and most of the people consulted did not think there was any need to legislate on racial discrimination. I would like to ask the Secretary, if the survey was on the majority, would he consider conducting another survey on the minorities since they are the ones who are being discriminated against?

PRESIDENT (in Cantonese): Miss LOH wanted the Secretary to clarify on the number of letters sent. In part (a) of his main reply, the Secretary has clearly stated that there were 500 such letters and so the list of addresses was very long.

MISS CHRISTINE LOH (in Cantonese): *Just now in replying to the second question raised by Miss Emily LAU, the Secretary said that the number of these bars was three or four. I have no idea as to the actual number of these bars having a problem of racial discrimination.*

PRESIDENT (in Cantonese): As we have spent a lot of time on this question, so I hope that the Secretary can give as brief a reply as possible and Members can be as brief as possible when raising questions.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, racial discrimination was reportedly found in three or four bars. We have sent letters to 500 bars and clubs because some of their customers are foreigners. So these are two separate things. I have with me a list of these 500 bars and clubs, if Miss LOH is interested, I can give her a copy. Is there another question?

PRESIDENT (in Cantonese): Miss LOH would like to know if the Secretary would carry out another survey.

MISS CHRISTINE LOH (in Cantonese): *I wish to raise the question once again. The Secretary said that the findings of the survey showed that the majority of the people did not think there was any need to legislate. If the interviewees are not those who have to face the problem of racial discrimination, obviously, they would not feel the need for legislation. So I would like to ask the Secretary whether he would plan to carry out another survey to interview the minority of people who really face racial discrimination and ask them if there is any need to legislate and what problems they face.*

PRESIDENT (in Cantonese): Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I am not going to carry out this survey, because if we plan to legislate, we must have the support of the majority of the people of Hong Kong. Thank you, Madam President.

PRESIDENT (in Cantonese): Miss Cyd HO.

MISS CYD HO (in Cantonese): *Madam President, I think the Secretary does not quite understand the concept of human rights. Human rights are meant to protect the minority, but the Secretary said that the 6 million people will all have to be consulted and their support secured before we can introduce any legislation. My question is: Given that this case of discrimination happened despite on-going efforts of persuasion and education, what effective measures the Government has in place to prevent this kind of discriminatory acts from recurring in future in view of its insistence not to legislate? If there are no effective measures, why then is the Government not willing to legislate?*

PRESIDENT (in Cantonese): Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, even if there is legislation, the problem of racial discrimination will not necessarily disappear. Let us look at many countries in the world, and I think Miss LAU herself has been to many advanced countries, and will certainly notice that the problem of racial discrimination still exists even with anti-discrimination legislation in place. Are the legislators of these countries not making racist remarks in public all the same? We do have laws and we are not refusing to make legislation on this. We have the Bill of Rights Ordinance which prohibits government and public bodies from taking any racially discriminatory measures. We certainly have laws addressing racial discrimination. As for education, it would be a long-term measure and we shall continue with it. But judging from the present situation, racial discrimination is not such a serious problem in Hong Kong, so we think that education is the most suitable method to deal with racial discrimination. Thank you, Madam President.

PRESIDENT (in Cantonese): Many Honourable Members are very interested in this problem, but since we have already spent more than 16 minutes on this question, I suggest Members may wish to follow up the issue in the relevant panels. The sixth question. Mr LEE Wing-tat.

~~Chief Executive's Question and Answer Sessions~~

6. **MR LEE WING-TAT** (in Cantonese): *Will the Government inform this Council whether the Chief Executive:*

(a) *will, according to the Rules of Procedure of the Legislative Council, attend meetings of the Council during this Legislative Session to answer questions put to him by Members on the work of the Government; if so, what the details are;*

(b) *plans to address the Council and answer questions from Members after each trip to Beijing to report on his work;*

~~(c) *plans to hold question and answer sessions in various districts of*~~

- ~~(iii) for statistics relating to the computer literacy of the school population, the Education and Manpower Bureau has set clear attainment targets in respect of computing skills for students at key learning stages from Primary 3 to Secondary 7 in the recently announced Five-year Strategy on Information Technology for Learning in a New Era; and~~
- ~~(iv) for statistics on broadband coverage, the use of the Internet and IT penetration in the community will be obtained from the Telecommunications Authority and separate surveys to be commissioned by the Information Technology and Broadcasting Bureau and the Information Technology Services Department.~~
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Public Education on Racial Discrimination

13. **MISS CHRISTINE LOH:** *In respect of public education on racial discrimination, will the Government inform this Council of:*

- (a) *the public education programmes to be launched during the year 1999-2000; and the funds allocated or to be allocated to these programmes; and*
- (b) *the funding available for application by non-government organizations for implementing such public education programmes; and the details of the application procedure?*

SECRETARY FOR HOME AFFAIRS: Madam President, taking the questions seriatim:

- (a) The promotion of equal opportunities, as part and parcel of our civic education programmes, has been an on-going commitment of the Administration. During the past 12 months, our message against racial discrimination has been disseminated through a variety of measures including television broadcast, publications, leaflets,

posters and the participation of students and youngsters in exhibitions, drawing competitions and so on. Recently, we have embarked on a series of consultations with community leaders, district board representatives, non-governmental organizations and people of different ethnic backgrounds in order to evaluate our efforts so far and to consider the way forward. Based on the result of this exercise, which is scheduled for completion in January 1999, we shall formulate a suitable programme of activities for implementation in 1999-2000. In doing so, we shall also review the element of funding to be earmarked from our annual provision for civic education programmes.

- (b) Early this year, we operated several funding schemes to assist non-governmental organizations in implementing a range of civic education projects, including the promotion of racial harmony and equality. We shall continue with these schemes in 1999-2000 and, as explained in (a) above, we shall look into the funding arrangements when we finalize our 1999-2000 programme of activities early next year. Once the funding schemes are ready for implementation, we shall publicize them through the printed and electronic media and provide interested parties with details of the application procedure.

~~Change of Tariff Structure by CLP~~

14. ~~MR LAU KONG-WAH (in Chinese): It is learnt that the China Light and Power Company Limited (CLP) changed its tariff structure two years ago, from a flat unit rate to an inverted block structure whereby higher consumption is charged at progressively higher unit rates, with a view to encouraging users to reduce electricity consumption. In this connection, will the Government inform this Council:~~

- ~~(a) whether it knows if the volume of electricity supplied by CLP has reduced since the implementation of the inverted block structure; if the volume has not reduced, whether the Administration will propose to CLP that it should abolish the inverted block structure; and~~

- ~~(b) whether it has assessed the effectiveness in achieving a reduction in~~

- ~~(iii) for the three quarters at the West End Path Quarters, the Department of Health has used them as storage for medicine immediately upon taking over from the HA in January 1998.~~

Part (d) of the question

~~When vacant quarters are handed over to the Government by the subvented organizations, they will be allocated immediately for government use if suitable. Those not required for government purposes will be put to alternative uses such as leasing to private tenants or allocation to qualified welfare organizations pending redevelopment of the sites for long-term purposes. The existence of vacant quarters is only transient, arising from the need to resolve physical and other constraints before alternative uses are realized.~~

Racial Discrimination in Hong Kong

16. **MISS CHRISTINE LOH:** *Madam President, regarding racial discrimination in Hong Kong, will the Administration inform this Council:*

- (a) *whether it knows if members of the ethnic minorities consider that racial discrimination is prevalent in Hong Kong; if it is prevalent, of the details;*
- (b) *of the existing respective channels through which an aggrieved person can seek redress for being racially discriminated against by acts of:*
- (i) *the Government or a public body; or*
- (ii) *other parties;*

if there are no such channels, whether it will consider ways to help such aggrieved persons; if it will not, of the reasons for that;

- (c) *whether it has adopted a policy of making redress channels available to all aggrieved persons who have been subject to racial discrimination acts; if not, of the reasons for that; and*
- (d) *whether it will consider requesting the Central People's Government to make a declaration for Hong Kong in accordance with Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, that the Hong Kong Government recognizes the competence of the Committee of the Elimination of Racial Discrimination of the United Nations to receive and consider communications from Hong Kong residents or organizations claiming to be victims of a violation by the Hong Kong Government of any rights set forth in the Convention?*

SECRETARY FOR HOME AFFAIRS: Madam President, taking the Honourable Member's questions *seriatim*:

- (a) We examined the issue in detail in the course of our 1996-97 study, reporting our findings in the consultation paper: "A study of discrimination on the Ground of Race". Both that study and the subsequent consultations indicated that racial discrimination was not a significant problem in Hong Kong. Those findings have subsequently been reconfirmed in follow-up consultations conducted in 1997-98 and in 1998-99. Members of the ethnic minorities were included in all these consultations.
- (b) (i) An aggrieved person may seek redress against alleged acts of racial discrimination by the Government or a public authority (or by any person acting on their behalf) by bringing an action to court for possible infringement of the right to equality and non-discrimination guaranteed under the Hong Kong Bill of Rights Ordinance (BORO). Section 6 of that Ordinance — Remedies for contravention of Bill of Rights" — provides that:

"A court or tribunal:

- (a) in proceedings within its jurisdiction in action for breach of this Ordinance; and
- (b) in other proceedings within its jurisdiction in which a violation or threatened violation of the Bill of Rights is relevant,

may grant such remedy or relief, or make such order, in respect of such a breach, violation or threatened violation as it has power to grant or make in those proceedings and as it considers appropriate and just in the circumstances."

The remedy or relief granted by the court or tribunal may include an award of financial compensation. And, in appropriate cases, complaints of racial discrimination may be challenged in court as being contrary to the protections guaranteed in the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Basic Law.

Where persons consider that the actions of a public servant acting on behalf of the Government or a public authority has breached, violated, or threatened their rights guaranteed under the BORO on racial grounds, then section 6 of that Ordinance might be invoked for claiming of relief. But, where members of the public consider that a public officer has mistreated them, we strongly encourage them to bring the matter to the attention of the relevant departmental complaint channel. And the Ombudsman will readily investigate all complaints against unreasonable conduct, or abuse of power, on the part of public officials. The Government views most seriously — and will thoroughly investigate — allegations of misconduct on the part of its personnel, including mistreatment arising from discrimination. Where, after such

investigation, misconduct is established, it will take such corrective measures as it considers appropriate in the circumstances. Those measures may include disciplinary action;

- (b) (ii) While there is no specific legislation against discrimination on the ground of race on the part of private individuals and organizations, there are provisions in the law that afford relevant protections and means of redress. To particularize:
- the general criminal law of Hong Kong proscribes acts of violence of various kinds, as well, of course, as the incitement of others to commit such acts. For example, killing and causing grievous bodily harm — that may be racially motivated — are offences under section 9A of the Offences Against the Person Ordinance (Cap. 212). Under section 5A of the Societies Ordinance (Cap. 151), the Societies Officer may refuse to register or to exempt from registration a society or a branch if he reasonably believes that the refusal is necessary in the interests of national security or public safety, public order (order public) or the protection of the rights and freedoms of others. An order may also be made under section 8 of the Ordinance to prohibit the operation or continued operation of a society or a branch for the same reasons;
 - there are measures in force to prevent television and radio broadcasts containing material that is likely to incite racial hatred or is racially denigrating. The Television Ordinance (Cap. 52) and the Telecommunication Ordinance (Cap. 106) prohibit television and sound broadcasting licensees respectively from broadcasting any programme, advertisement, announcement or other material that is likely to incite hatred against any group of persons, being a group defined by reference to colour, race, sex, religion,

nationality or ethnic or national origins. There are similar provisions in the Codes of Practice on Programme Standards with which licensees are required to comply. And the Film Censorship Ordinance (Cap. 392) provides that approval for exhibition of a film may be refused if the film denigrates or insults any particular class of the public by reference to the colour, race, religious beliefs or ethnic or national origins or the sex of the members of that class.

(c) and (d)

We consider the existing channels to be adequate and see no need to make a declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination. Like our own BORO, that Article is concerned with claims by individuals or groups of individuals regarding violation of prescribed rights on the part of Governments. The BORO fully reflects the provisions of the ICCPR which include proscriptions on acts of discrimination, including racial discrimination where they concern Government and public authorities. Those provisions are directly enforceable in the courts of Hong Kong Special Administrative Region (SAR). Thus persons who consider that their rights have been infringed, or are threatened with infringement, have an immediate and effective right of access to an independent judicial system to have their claims tested. And, if those claims are upheld, they may be awarded appropriate remedy and redress. In these circumstances, we do not see any need to apply Article 14 to the SAR. Indeed, only 27 of the 155 States Parties to the Convention have made the declaration under Article 14¹.

¹Source: United Nations homepage.