

立法會

Legislative Council

立法會CB(2)155/04-05(01)號文件

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民政事務委員會

立法會秘書處擬備的背景資料簡介

立法禁止種族歧視

目的

本文件旨在參照相關的人權報告，說明立法禁止種族歧視一事的背景，並載述自立法會首屆任期至今，在立法會會議及民政事務委員會會議上進行的有關討論。

人權報告

《消除一切形式種族歧視國際公約》

2. 《消除一切形式種族歧視國際公約》在1969年3月引伸適用於香港。在1997年7月1日之前，聯合國消除種族歧視委員會經審議聯合王國(英國)有關香港的第十四次定期報告後，在其發表的審議結論中已對聯合王國所有屬土和屬地仍未制定禁止種族歧視的具體法例表示關注。該聯合國委員會亦重申其以往曾表關注的問題，指《香港人權法案條例》未有條文保障市民免受任何個人、私人團體或機構的種族歧視。

3. 在1997年6月，中華人民共和國常駐聯合國代表通知聯合國秘書長，表示《消除一切形式種族歧視國際公約》由1997年7月1日起，會繼續適用於香港特別行政區(“香港特區”)，而中華人民共和國中央人民政府會承擔該公約適用於香港特區所涉及的各項國際權利和義務。

4. 香港特區根據《消除一切形式種族歧視國際公約》第九條提交的第一次報告，納入了中國根據該公約提交聯合國的第八及第九次綜合報告內，由中國常駐聯合國代表於2000年10月3日呈交聯合國。該份報告其後在2001年7月31日及8月1日由聯合國消除種族歧視委員會審議。該聯合國委員會於2001年8月9日發表對香港特區第一次報告的審議結論，有關文本載於**附錄I**。

5. 聯合國消除種族歧視委員會在審議結論第17段中，對於香港特區仍未立例保障市民免受任何個人、私人團體或機構的種族歧視，一再表示關注。該聯合國委員會指出，香港特區政府就其未有訂立此類法例而提出論據，表示此類法例不能得到社會整體支持，委員會對此並不接受。該委員會建議締約國的政府及香港特區的地方當局全面檢討當前這種不理想的情況，並通過適當的法例，以便在法律上提供妥善的補救措施，禁止基於種族、膚色、世系、民族或人種而歧視他人，一如以往對性別及殘疾歧視所採取的做法。

《公民權利和政治權利國際公約》

6. 《公民權利和政治權利國際公約》在1976年5月引伸適用於香港。根據該公約第二十六條，締約各國有責任制定法律禁止任何歧視，並保證人人享受平等而有效的保護，以免基於種族或其他身份等原因而受歧視。《香港人權法案條例》把《公民權利和政治權利國際公約》中適用於香港的條文納入香港法例，禁止政府及公共機構作出一切形式的歧視。具體來說，《香港人權法案》第二十二條訂明，政府及所有公共主管當局，以及代表政府或所有公共主管當局行事的任何人，均不得採取足以引起種族歧視的做法。

7. 香港特區根據《公民權利和政治權利國際公約》提交的第一次報告，由中國常駐聯合國代表於1999年1月11日呈交聯合國。該份報告其後在1999年11月1日及11月2日由聯合國人權事務委員會審議。該聯合國委員會於1999年11月15日發表對香港特區根據上述公約提交的第一次報告的審議結論，有關文本載於**附錄II**。據審議結論第15段所載，聯合國人權事務委員會關注到，現行法例並未為基於種族而遭受歧視的人士提供任何補救措施。

《經濟、社會與文化權利的國際公約》

8. 《經濟、社會與文化權利的國際公約》在1976年5月引伸適用於香港。根據該公約第二條，締約各國有責任保證人行使該公約所宣布的權利，不得基於種族或其他身份等任何方面而受歧視。

9. 香港特區根據《經濟、社會與文化權利的國際公約》提交的第一次報告，由中國常駐聯合國代表於1999年6月4日呈交聯合國。該份報告其後在2001年4月27日及4月30日由聯合國經濟、社會及文化權利委員會審議。該聯合國委員會於2001年5月11日發表對香港特區根據上述公約提交的第一次報告的審議結論，有關文本載於**附錄III**。據審議結論第30段所載，聯合國經濟、社會及文化權利委員會認為香港特區未能禁止私營機構的種族歧視問題，是違反了該公約第二條所訂明的責任。

10. 香港特區根據《經濟、社會與文化權利的國際公約》提交的第二次報告於2003年6月呈交聯合國，是中國根據該公約提交聯合國的第一次報告的一部分。政府在第二次報告中告知聯合國經濟、社會及文化權利委員會，當局在2000年及2001年年初曾就應否立法禁止私營

機構種族歧視的問題，徵詢有關各方的意見。在該份報告定稿時，政府已完成對所收集的回應意見的分析，並正權衡各項考慮因素。如有需要，政府會在委員會審議該份報告時，再行提交最新資料。有關的審議會將在2005年4月25日至5月13日期間舉行，確實日期容後公布。

政府對立法禁止種族歧視一事的立場及立法會議員在立法會會議和民政事務委員會會議上就此事進行的討論

11. 自立法會首屆任期以來，立法會議員在立法會會議和民政事務委員會會議上，一直密切跟進立法禁止種族歧視的事宜。事務委員會委員與政府當局及關注團體討論人權報告時，一再促請政府當局盡快立法禁止種族歧視，因為根據《消除一切形式種族歧視國際公約》、《公民權利和政治權利國際公約》及《經濟、社會與文化權利的國際公約》，香港特區政府有責任禁止種族歧視，而有關的聯合國委員會在審議香港特區根據各條國際公約分別提交的報告後所發表的審議結論中，亦建議香港特區政府這樣做。

在1997年進行的公眾諮詢

12. 政府曾在1996年進行關於種族歧視的研究，並於1997年2月在一份題為《平等機會：關於種族歧視的研究》的諮詢文件中公布研究結果。該項在1996年進行的種族歧視研究，把內地來港的新移民納入了研究範圍。據1997年發表的諮詢文件第1.7段所載，把內地來港的新移民納入研究範圍，是因為“關注種族問題的國際組織認為，‘種族歧視’包括在某種文化內對一些可確認的少數人士所作的歧視，即使這些少數人士是與社會大眾人士屬於同一個種族”。政府當局又以下述情況為例，證明把內地來港的新移民納入研究範圍是合理的：聯合國消除種族歧視委員會在審議英國根據《消除一切形式種族歧視國際公約》所提交的第十三次定期報告時，曾對愛爾蘭流浪者(Irish Travellers)的處境作出考慮及評論。這些流浪者在種族上是愛爾蘭人，並且同樣操一種愛爾蘭方言，但其獨特的生活方式使他們成為截然不同的少數人士，故此，他們所遭遇的困難亦順理成章成為該聯合國委員會研議的課題。

13. 對1997年的諮詢文件提出意見的人士當中，超過八成反對立法禁止種族歧視。該等人士認為，在當前的情況下，政府當局應透過公民教育及宣傳工作，來達致消除種族歧視的目的，而不應草率制定反歧視法例。

14. 政府當局的一貫立場是，沒有證據顯示香港的種族歧視問題已嚴重至必須立法禁止種族歧視行為。立法禁止種族歧視，效果可能適得其反，並且有損社會的和諧。在決定應否立法禁止種族歧視之前，政府當局必須考慮社會的整體利益，而不能只顧及某幾類少數族裔人士的利益。

15. 在1998年7月22日的立法會會議上，劉慧卿議員就酒吧和會所向非白種人的顧客收取較高費用的做法提出口頭質詢。兩位前立法會議員陸恭蕙議員及何秀蘭議員亦提出補充質詢，詢問政府當局會否進行另一項意見調查，就有否需要立法禁止種族歧視一事，徵詢少數族裔人士的意見。民政事務局局長回答時表示不準備進行這項意見調查，因為若政府計劃立法，必須得到香港大部分市民的支持。

16. 民政事務委員會曾在2001年2月26日舉行特別會議，與關注團體及政府當局討論香港特區根據《經濟、社會與文化權利的國際公約》提交的第一次報告。當時，事務委員會委員提出意見，認為不應根據民意調查的結果，亦即依照社會上大多數人的意見，來決定是否需要立法禁止種族歧視。當局應就此事徵詢受影響的少數族裔人士的意見。民政事務局局長回應時表示不會單憑民意調查的結果，來決定是否需要立法禁止種族歧視。政府當局曾主動接觸少數族裔人士，以期對他們的相關遭遇有更深入的了解。

在2001至2002年度分兩個階段進行的諮詢

17. 在2001至2002年度，政府當局分兩個階段進行立法禁止種族歧視的諮詢工作。在第一階段諮詢中，政府當局就下述事宜徵詢商界的意見：商界人士原則上是否贊成政府制定適用於私營機構的禁止種族歧視法例、他們對於訂立有關法例所關注的問題，以及政府當局在草擬有關法例時應特別留意的事項。在第二階段諮詢中，政府當局徵詢了非政府機構(包括少數族裔人士)的意見。

18. 關於對商界進行的諮詢，在34個獲諮詢的商界團體當中，有25個就立法禁止種族歧視的建議作出回應。在這25個商界團體當中，有9個海外商會支持訂立有關法例。至於其餘的本地商會，有6個支持立法，1個雖支持立法但認為不宜在現階段進行，另有6個反對立法，3個沒有意見。在第二階段諮詢中提交意見的44個非政府機構，全部均贊成立法。

19. 民政事務委員會曾在2002年12月13日的會議上，與關注團體及政府當局討論香港特區根據《消除一切形式種族歧視國際公約》擬備第二次報告，以及根據各條人權條約擬備其他報告提交予聯合國的事宜。事務委員會部分委員認為，既然商界已對立法禁止種族歧視的建議表示支持，而社會上其他人士似乎亦無甚麼反對聲音，政府實應根據國際公約履行其國際義務，立法禁止種族歧視。政府當局回應時表示，政府尚未就此事作出決定，原因並非社會上有人提出反對，而是政府需要多一點時間詳細研究此事。

20. 在2003年3月12日的立法會會議上，余若薇議員動議議案，促請政府採納聯合國相關委員會的建議，盡快立法禁止種族歧視，確保內地新移民及本港的少數族裔人士在教育、就業及享受社會服務等各方面均享有平等機會。在22位就該議案發言的議員當中，有21位對立法禁止種族歧視表示支持。該議案獲立法會通過。

在2004年進行的公眾諮詢

21. 政府在2004年6月宣布決定立法禁止種族歧視，並於2004年9月發表一份題為《立法禁止種族歧視》的諮詢文件，邀請公眾就有關立法建議提出意見。據該份諮詢文件所載，政府認為內地新來港定居人士並非自成一個種族，因此，本港華裔人士如歧視內地新來港定居人士，不屬種族歧視行為。

22. 在2004年6月2日的立法會會議上，余若薇議員提出一項關於立法禁止種族歧視的口頭質詢。民政事務局局長在回答余若薇議員就內地新來港定居人士的情況提出的跟進問題時表示，由於內地新來港定居的人大部分屬於漢族華人，該等人士如果因為他們是新來港的人而遭受歧視，便是一種社會性的歧視，而不是種族歧視。民政事務局局長進一步解釋，政府過去是根據外國一個針對愛爾蘭流浪者的歧視個案，把內地新來港定居人士所面對的歧視定為種族歧視。然而，當政府當局深入研究愛爾蘭流浪者的個案及其他個案時，卻發現愛爾蘭流浪者的情況與內地新來港定居人士的背景有很大分別，因此，政府當局認為不應把內地新來港的人納入法案的涵蓋範圍內。民政事務局局長補充，有關法案對種族歧視的界定，會針對基於種族、膚色、世系、民族或人種而作出的歧視行為，而這與《消除一切形式種族歧視國際公約》第一條所載的定義相同。

23. 自立法會首屆任期至今，在立法會會議及民政事務委員會會議上就立法禁止種族歧視一事而曾經進行的各次討論，現按年月順序載列於**附錄IV**，方便委員參考。

立法會秘書處
議會事務部2
2004年11月5日

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Fifty-ninth session
30 July - 17 August 2001

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Concluding Observations of the Committee on the Elimination of Racial Discrimination

(Note: this document only contains extracts of paragraphs concerning the
Hong Kong Special Administrative Region)

China

1. The Committee considered the eighth and ninth periodic report of China (CERD/C/357/Add.4, Parts I, II and III), which were due on 28 January 1997 and 28 January 1999 respectively, at its 1468th and 1469th meetings (CERD/C/SR.1468 and 1469), held on 31 July and 1 August 2001. The eighth and ninth periodic report of China consists of three separate parts. Part I covers the whole of China, with the exception of the Hong Kong and Macau Special Administrative Regions, which are covered by Part II and Part III respectively. At its 1480th and 1481st meetings, held on 8 and 9 August 2001, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the opportunity to continue its dialogue with the State party, including with representatives from the Hong Kong and Macau Special Administrative Regions. The Committee was encouraged by the attendance of a large delegation representing important governmental departments as well as the Hong Kong and Macau Special Administrative Regions.

3. The Committee welcomes the detailed and comprehensive report submitted by the State party, the contents of which correspond with the Committee's guidelines for the preparation of reports. The additional oral information provided by the delegation in response to the wide range of questions asked by Committee members is also appreciated.

4. In view of the dialogue held, the Committee wishes to emphasize that irrespective of the relationship between the central authorities and the special administrative regions, and the principle "One Country; Two Systems", the People's Republic of China has, as the State party to the Convention, the responsibility to ensure its implementation on its entire territory.

B. Positive aspects

8. The Committee notes that as a result of its previously expressed concerns and recommendations, the recently conducted 2001 Population Census in the Hong Kong Special Administrative Region included questions which would help to determinate the ethnic and racial composition of the region and allow for the identification of minority groups and an analysis of their political, economic and social situation.

9. The Committee welcomes the extensive consultation with civil society in the preparation of, in particular, the part of the State party report pertaining to the Hong Kong Special Administrative Region and the indication by the delegation that projects are already under way in that region to address some of the problems identified by non-governmental organizations during those consultations, such as the provision of language training for immigrants, mainly of Nepalese, Pakistani and Bangladeshi origin.

C. Concerns and recommendations

17. With reference to article 2, paragraph 1(d) of the Convention, the Committee takes note of on-going consultations, but reiterates its concern about the continuous absence in the Hong Kong Special Administrative Region of legal provisions protecting persons from racial discrimination to which they may be subjected by private persons, groups or organizations. The Committee does not accept the argument put forward for not initiating such legislation, i.e. that such legislation would not be supported by the society as a whole. It is recommended to the Government of the State party and to the local authorities of Hong Kong Special Administrative Region that the existing unsatisfactory situation

be thoroughly reviewed and that appropriate legislation be adopted to provide appropriate legal remedies and prohibit discrimination based on race, colour, descent or national or ethnic origin similarly to what has been done with regard to discrimination on the grounds of gender and disability.

18. The Committee reiterates its concern regarding the situation of foreign domestic workers in the Hong Kong Special Administrative Region, mainly from the Philippines, Indonesia and Thailand, and the existence of certain rules and practices, such as the so called "two-weeks rule", which may be discriminatory in effect.

19. The Committee requests the State party to provide in subsequent reports, inter alia, detailed information on judicial cases relating specifically to violations of the Convention, including in the Hong Kong and Macau Special Administrative regions, with special reference to the granting by courts of adequate reparation for such violations.

25. The Committee recommends that the State party submits its tenth periodic report jointly with its eleventh periodic report, due on 28 January 2003, and that it addresses all points raised in the present observations.

UNITED
NATIONS

CCPR

**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 investigation 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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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 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 and have resulted in a significant revenue surplus.

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 vs. Director of Immigration*, judgement of 5 January 2001) or "aspirational" (*Chan To Foon vs. 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 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 that 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 29 (race discrimination) by 30 June 2003. The Committee requests the HKSAR to submit its full second periodic report in accordance with the prescribed dates of submissions.

按年月順序列出的過往有關討論

過往在立法會會議及民政事務委員會會議上就種族歧視問題進行的討論，現按年月順序載列於下文各段，方便委員參考。

1998至1999年度立法會期

1998年7月22日立法會會議

2. 劉慧卿議員就酒吧和會所向非白種人的顧客收取較高費用的做法提出口頭質詢，其後亦有兩項補充質詢，是關於當局會否進行另一項意見調查，就有否需要立法禁止種族歧視一事，徵詢少數族裔人士的意見。上述質詢及有關答覆的內容，可登入資料研究及圖書館資訊系統或立法會網站瀏覽(網址：<http://www.legco.gov.hk/yr98-99/chinese/counmtg/hansard/980722fc.pdf>)。

1998年7月27日民政事務委員會會議

3. 事務委員會舉行該次會議，討論香港特別行政區(“香港特區”)根據各條國際人權條約提交報告的事宜。政府當局在會議席上匯報自上次於1997年6月20日向事務委員會講述就種族歧視問題進行諮詢的結果以後，關於處理此事項的最新進展。有關會議紀要的內容，可登入資料研究及圖書館資訊系統或立法會網站瀏覽(網址：<http://www.legco.gov.hk/yr98-99/chinese/panels/ha/minutes/ha270798.htm>)。

1998年9月22日民政事務委員會會議

4. 事務委員會舉行該次會議，與政府當局及關注團體討論種族歧視問題。有關會議紀要的內容，可登入資料研究及圖書館資訊系統或立法會網站瀏覽(網址：<http://www.legco.gov.hk/yr98-99/chinese/panels/ha/minutes/ha220998.htm>)。

1999至2000年度立法會期

2000年1月10日民政事務委員會會議

5. 事務委員會與關注團體及政府當局討論香港特區根據《消除一切形式種族歧視國際公約》第九條提交的第一次報告擬涵蓋的論題大綱。有關會議紀要的內容，可登入資料研究及圖書館資訊系統或立法會網站瀏覽(網址：<http://www.legco.gov.hk/yr99-00/chinese/panels/ha/minutes/ha100100.pdf>)。

2000至2001年度立法會期

2000年10月17日民政事務委員會會議

6. 民政事務局局長在該次會議上，就2000年施政報告向事務委員會作出簡報，其間他解釋政府在立法禁止種族歧視一事上的立場。有關會議紀要的內容，可登入資料研究及圖書館資訊系統或立法會網站瀏覽(網址：<http://www.legco.gov.hk/yr00-01/chinese/panels/ha/minutes/ha171000.pdf>)。

2001年2月13日民政事務委員會會議

7. 事務委員會與關注團體及政府當局討論政府對少數族裔人士進行抽樣調查的結果。有關會議紀要的內容，可登入資料研究及圖書館資訊系統或立法會網站瀏覽(網址：<http://www.legco.gov.hk/yr00-01/chinese/panels/ha/minutes/ha130201.pdf>)。

2001年2月26日民政事務委員會會議

8. 事務委員會與關注團體及政府當局討論香港特區根據《經濟、社會與文化權利的國際公約》提交的第一次報告。有關會議紀要的內容，可登入資料研究及圖書館資訊系統或立法會網站瀏覽(網址：<http://www.legco.gov.hk/yr00-01/chinese/panels/ha/minutes/ha260201.pdf>)。

2001年4月25日立法會會議

9. 吳靄儀議員提出一項口頭質詢，詢問政府有否計劃制定禁止種族歧視的法例。該項質詢及有關答覆的內容，可登入資料研究及圖書館資訊系統或立法會網站瀏覽(網址：<http://www.legco.gov.hk/yr00-01/chinese/counmtg/hansard/010425fc.pdf>)。

2001年6月13日立法會會議

10. 涂謹申議員就如何落實聯合國經濟、社會及文化權利委員會在其審議結論中作出的禁止歧視建議提出口頭質詢。該項質詢及有關答覆的內容，可登入資料研究及圖書館資訊系統或立法會網站瀏覽(網址：<http://www.legco.gov.hk/yr00-01/chinese/counmtg/hansard/010613fc.pdf>)。

2001年7月10日民政事務委員會會議

11. 事務委員會討論香港特區根據《消除一切形式種族歧視國際公約》提交的第一次報告。有關會議紀要的內容，可登入資料研究及圖書館資訊系統或立法會網站瀏覽(網址：<http://www.legco.gov.hk/yr00-01/chinese/panels/ha/minutes/ha100701.pdf>)。

2001至2002年度立法會期

2001年11月9日民政事務委員會會議

12. 事務委員會在該次會議上聽取民政事務局局長就行政長官2001年施政報告作出簡報，其間討論了立法禁止種族歧視一事。有關會議紀要的內容，可登入資料研究及圖書館資訊系統或立法會網站瀏覽(網址：<http://www.legco.gov.hk/yr01-02/chinese/panels/ha/minutes/ha011109.pdf>)。

2002年4月10日立法會會議

13. 前立法會議員何秀蘭議員就立法禁止私營機構和私人之間的種族歧視提出一項質詢。該項質詢及有關答覆的內容，可登入資料研究及圖書館資訊系統或立法會網站瀏覽(網址：<http://www.legco.gov.hk/yr01-02/chinese/counmtg/hansard/cm0410ti-translate-c.pdf>)。

2002年5月23日民政事務委員會會議

14. 事務委員會在該次會議上討論促進種族方面的平等機會時，曾有委員提出是否需要立法禁止種族歧視。有關會議紀要的內容，可登入資料研究及圖書館資訊系統或立法會網站瀏覽(網址：<http://www.legco.gov.hk/yr01-02/chinese/panels/ha/minutes/ha020523.pdf>)。

2002年6月19日立法會會議

15. 劉慧卿議員就立法禁止私營機構的種族歧視行為提出口頭質詢。該項質詢及有關答覆的內容，可登入資料研究及圖書館資訊系統或立法會網站瀏覽(網址：<http://www.legco.gov.hk/yr01-02/chinese/counmtg/hansard/cm0619ti-translate-c.pdf>)。

2002至2003年度立法會期

2002年12月13日民政事務委員會會議

16. 事務委員會與關注團體及政府當局討論香港特區根據《消除一切形式種族歧視國際公約》提交的第二次報告，以及根據各條人權條約擬備其他報告提交予聯合國的事宜。有關會議紀要的內容，可登入資料研究及圖書館資訊系統或立法會網站瀏覽(網址：<http://www.legco.gov.hk/yr02-03/chinese/panels/ha/minutes/ha021213.pdf>)。

2003年2月7日民政事務委員會特別會議

17. 事務委員會與關注團體及政府當局討論香港特區根據《經濟、社會與文化權利的國際公約》擬備的第二次報告。有關會議紀要的內容，可登入資料研究及圖書館資訊系統或立法會網站瀏覽(網址：<http://www.legco.gov.hk/yr02-03/chinese/panels/ha/minutes/ha030207.pdf>)。

2003年2月12日立法會會議

18. 曾鈺成議員就少數族裔人士提出口頭質詢。涂謹申議員亦就少數族裔人士所遇到的教育和就業問題，提出一項補充質詢。上述質詢及有關答覆的內容，可登入資料研究及圖書館資訊系統或立法會網站瀏覽(網址：<http://www.legco.gov.hk/yr02-03/chinese/counmtg/hansard/cm0212ti-translate-c.pdf>)。

2003年3月12日立法會會議

19. 余若薇議員動議議案，促請政府採納聯合國相關委員會的建議，盡快立法禁止種族歧視，確保內地新移民及本港的少數族裔人士在教育、就業及享受社會服務等各方面均享有平等機會。有關會議過程正式紀錄的內容，可登入資料研究及圖書館資訊系統或立法會網站瀏覽(網址：<http://www.legco.gov.hk/yr02-03/chinese/counmtg/hansard/cm0312ti-translate-c.pdf>)。

2003至2004年度立法會期

2004年1月9日民政事務委員會會議

20. 事務委員會聽取民政事務局局長就行政長官2004年施政報告作出簡報，其間局長告知事務委員會，當局會向立法會提交法案，立法禁止種族歧視。有關會議紀要的內容，可登入資料研究及圖書館資訊系統或立法會網站瀏覽(網址：<http://www.legco.gov.hk/yr03-04/chinese/panels/ha/minutes/ha040109.pdf>)。

2004年6月2日立法會會議

21. 余若薇議員就立法禁止種族歧視提出口頭質詢。該項質詢及有關答覆的內容，可登入資料研究及圖書館資訊系統或立法會網站瀏覽(網址：<http://www.legco.gov.hk/yr03-04/chinese/counmtg/hansard/cm0602ti-translate-c.pdf>)。

2004年6月11日民政事務委員會會議

22. 事務委員會與關注團體及政府當局討論香港特區根據《經濟、社會與文化權利的國際公約》提交的第二次報告，以及各條國際人權條約在香港特區的實施情況。有關會議紀要的內容，可登入資料研究及圖書館資訊系統或立法會網站瀏覽(網址：<http://www.legco.gov.hk/yr03-04/chinese/panels/ha/minutes/ha040611.pdf>)。