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COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

Thirty-fourth session
25 April – 13 May 2005

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 (including Hong Kong and Macao)

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

1. The Committee on Economic, Social and Cultural Rights considered the initial report of the People's Republic of China (including Hong Kong and Macao) on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/1990/5/Add.59) at its 6th to 10th meetings, held on 27, 28 and 29 April 2005 (E/C.12/2005/SR.6-10), and adopted, at its 27th meeting held on 13 May 2005, the following concluding observations.

A. INTRODUCTION

2. The Committee welcomes the submission of the initial report of the State party, which was submitted on time and prepared in general conformity with the Committee's guidelines. The Committee also notes with appreciation the comprehensive written replies to its List of Issues.

3. The Committee welcomes the constructive dialogue with the delegation of the State party, which included representatives of Hong Kong Special Administrative Region (HKSAR) and Macao Special Administrative Region (MSAR). The Committee appreciates that the delegation was composed of experts in the different areas covered by the Covenant.

Part Two: HONG KONG SPECIAL ADMINISTRATIVE REGION

B. Positive Aspects

71. The Committee welcomes the information that the age of criminal responsibility has been raised.

72. The Committee notes with appreciation the establishment of a Commission on Poverty to devise in this connection, future strategies to combat poverty.

73. The Committee welcomes the establishment of the Sexual Minorities Forum, a formal communication channel between HKSAR and persons with different sexual orientation, and the planned establishment of the Gender Identity and Sexual Orientation Unit within the Home Affairs Bureau.

74. The Committee welcomes the extensive efforts taken by HKSAR, including sensitisation campaigns, to combat prejudices and discrimination against persons with physical and mental disabilities.

75. The Committee welcomes the enactment in 2002 of the Marital Rape Ordinance.

76. The Committee welcomes the enactment in 2003 of the Law on Prevention of Child Pornography.

C. Factors and Difficulties Impeding the Implementation of the Covenant

77. The Committee notes the absence of any significant factors or difficulties preventing the effective implementation of the Covenant in HKSAR.

D. Principal Subjects of Concern

78. The Committee regrets that HKSAR has not implemented a number of the recommendations contained in its concluding observations of 2001. The Committee wishes to reiterate in particular its concern on the following issue:

- (a) The present anti-discrimination legislation does not cover discrimination on the basis of race, sexual orientation and age;
- (b) the absence of a human rights institution with a broad mandate, while noting HKSAR's position that the Equal Opportunities Commission has comparable functions;
- (c) the lack of effective protection from discrimination and abuse in practice, of foreign domestic helpers, affected by the "two-week rule", upon expiration of their contract;
- (d) the continuing spread of poverty and lack of effective access to social service which affect the disadvantaged and marginalized groups;
- (e) the exclusion of many individuals, including women who are homemakers, persons with disabilities, and older persons, from the Mandatory Provident Fund Scheme, due to their inability to make sufficient voluntary contributions;

- (f) the hardship arising from the right of abode policies in relation to permanent residence and split families; and
- (g) the persistence of inadequate housing in the form of cage-homes and bed-space apartments, despite measures taken by HKSAR to provide alternative housing to residents who choose to remain in such homes.

79. The Committee is concerned that, in the proposed racial discrimination law, the protection afforded by this law will not cover migrants from the Mainland despite the widespread *de jure* and *de facto* discrimination against them on the basis of their origin. The Committee is also concerned that, according to the proposals made by the Hong Kong Home Affairs Bureau, the new law will not affect the existing immigration legislation in HKSAR.

80. The Committee is concerned that HKSAR lacks a clear asylum policy and that the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, to which China is a party, are not extended to HKSAR. In particular, the Committee regrets the position of the HKSAR that it does not foresee any necessity to have the Convention and the Protocol extended to its territorial jurisdiction.

81. The Committee is concerned that the wage disparity between men and women continues to be a problem despite the position of HKSAR that the Sex Discrimination Ordinance provides sufficient protection for women in the field of employment, in accordance with the principle of equal pay for work of equal value.

82. The Committee is concerned that the social security system in HKSAR does not include unemployment benefits.

83. The Committee expresses its concern about the particularly precarious situation of foreign domestic workers, a majority of whom are from Southeast Asia, who are unpaid and are not entitled to social security.

84. The Committee is seriously concerned that under the existing social security system, in particular, the Comprehensive Social Security Assistance (CSSA), the levels of benefit are not sufficient to guarantee a decent standard of living and that many low-income persons, in particular older persons, are not covered by the scheme. The Committee is further concerned that new migrants are unable to apply for CSSA due to the 7-year residence requirement.

85. The Committee expresses concern about reports of the high incidence of trafficking in persons, especially women and children into HKSAR, mainly for the purpose of sexual exploitation. The Committee regrets that it did not receive sufficient information regarding this problem and the measures taken in this respect by HKSAR.

86. The Committee notes with regret that sufficient information was not provided on the extent of poverty and social exclusion in HKSAR. The Committee is also concerned about reports of increasing of poverty among the older persons, that the more so HKSAR is facing the problem of rapidly ageing society.

87. The Committee, while noting the generally high level of enjoyment to health in HKSAR, remains concerned that the spending on public hospitals has been on the decline, resulting in longer waiting lists for patients. The Committee is also concerned that under the current fee waiver system, low income patients still do not receive the most appropriate medical care. The Committee further notes with regret that many of the expensive drugs required by the chronically ill and the mentally-ill patients are not subsidised, and are thus denied to these patients in practice.

88. The Committee remains concerned about the low level of awareness of the general public in HKSAR of sexual and reproductive health issues. The Committee also regrets that no comprehensive sexual and reproductive health programme exists in HKSAR and that education on sexual and reproductive health is not part of the school curriculum.

89. The Committee is concerned that insufficient measures have been taken to facilitate enrolment in local schools of children of migrants from the Mainland and other foreign migrant workers who do not have the legal right to remain in HKSAR.

E. Suggestions and Recommendations

90. The Committee once again urges HKSAR to implement the Committee's relevant suggestions and recommendations contained in its concluding observations of 2001 (E/C.12/1/Add.58), as well as the current ones, and to undertake whatever relevant concrete measures may be necessary towards their implementation.

91. The Committee strongly urges the HKSAR to extend the protection afforded by the proposed racial discrimination law to internal migrants from the Mainland, and to put a stop to the widespread discriminatory practices against them on the basis of their origin. The Committee further recommends that the relevant provisions of the existing immigration legislation governing entry into, period of stay, and departure from, HKSAR are amended to ensure full conformity and consistency with the new racial discrimination legislation.

92. The Committee recommends that HKSAR reconsider its position regarding the extension of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol to its territorial jurisdiction, and that it strengthen its cooperation with UNHCR, in particular, in the formulation of a clear and coherent asylum policy based on the principle of non-discrimination.

93. The Committee requests that HKSAR provide in its next periodic report, the results of the Equal Opportunities Commission Study on Gender-based Pay Inequalities and the measures to follow up the findings of the study.

94. The Committee recommends that HKSAR consider extending its social security system to cover unemployed workers through the payment of an unemployment benefit based on contributions from employers and employees.

95. The Committee urges the State party to review the existing "two-week rule", with a view to eliminating discriminatory practices and abuse arising from it, and to improving the legal protection and benefits for foreign domestic workers so that they are in line with those afforded to local workers, particularly with regard to wages and retirement benefits. The Committee

recommends that HKSAR enable domestic helpers to acquire pension rights through their inclusion in the Mandatory Provident Fund.

96. The Committee urges the HKSAR to review the eligibility criteria for the CSSA so as to ensure that all those in need, including low-income persons and families, older persons and new migrants are adequately covered by the scheme to enable them to enjoy a decent standard of living.

97. The Committee requests that the State party provide, in its next periodic report, detailed information on the problem of trafficking and commercial sexual exploitation of persons in the State party and on measures taken to effectively address these problems. The Committee urges the State party to ensure respect for the necessary procedural safeguards when deporting victims of trafficking in persons, particularly when such victims are minors, and to provide them with the necessary medical, psychological and legal support. The Committee requests HKSAR to report back to the Committee in its next periodic report on the result of the study by the Commission on Women on domestic violence.

98. The Committee urges HKSAR to strengthen its efforts to combat poverty and social exclusion, in particular with regard to the disadvantaged and marginalised groups, and older persons. The Committee also recommends the State party to adopt an official poverty line, which would enable the State party to define the extent of poverty and to monitor and evaluate progress in alleviating poverty. The Committee requests that the State party provide, in its next periodic report, disaggregated and comparative annually-collected data on the number of people living in poverty and on progress made in reducing the incidence of poverty, and the impact, if any, that the newly-established Commission on Poverty has had on the issue of poverty in HKSAR.

99. The Committee urges the State party to continue its efforts to improve its health services, *inter alia*, through the allocation of adequate and increased resources. The Committee recommends HKSAR to consider revising the current subsidized drug list, to meet the needs of the chronically-ill and the mentally-ill. The Committee encourages the State party to submit in its next periodic report annually collected comparative statistical data, disaggregated by sex, age and urban/rural residence, paying particular attention to the disadvantaged and marginalised groups.

100. The Committee recommends HKSAR to develop a comprehensive sexual and reproductive health programme, including a public awareness-raising campaign about safe contraceptive methods. The Committee also calls upon HKSAR to introduce education on sexual and reproductive health in the school curriculum.

101. The Committee urges HKSAR to amend its legislation to provide for the right to education of all school-aged children in its jurisdiction, including children of migrants without the legal right to remain in HKSAR.

102. The Committee encourages HKSAR to ensure that human rights education is provided in schools at all levels and to raise awareness about human rights, in particular, economic, social and cultural rights among state officials and the judiciary.

129. The Committee requests the State party to include in its second periodic report on the implementation of the Covenant all available information on any measures taken and progress made, particularly with regard to the suggestions and recommendations made by the Committee in the present concluding observations.

130. The Committee requests the State party to widely disseminate the present concluding observations among all levels of society, and in particular, members of the judiciary, law enforcement officials and non-governmental organisations. It also encourages the State party to engage non-governmental organisations and other members of civil society in the process of discussions at the national level prior to the submission of the second periodic report.

131. The Committee requests the State party to submit its second periodic report before 30 June 2010.
