

Legislative Council Panel on Home Affairs

Hearing of the United Nations Committee on Economic, Social and Cultural Rights on the Second Report of the Hong Kong Special Administrative Region under the International Covenant on Economic, Social and Cultural Rights and Concluding Observations Adopted by the Committee on the Report

INTRODUCTION

This paper informs Members of the hearing of the United Nations Committee on Economic, Social and Cultural Rights (“the Committee”) on the Second Report (“the Report”) of the Hong Kong Special Administrative Region (“the HKSAR”) under the International Covenant on Economic, Social and Cultural Rights (“the Covenant”) and the Concluding Observations of the Committee on the Report issued on 13 May 2005.

BACKGROUND

2. The Committee considered the report of the People’s Republic of China (including the HKSAR and the Macau Special Administrative Region) on 27, 28 and 29 April 2005 in Geneva, Switzerland. The hearing on the Report submitted by the HKSAR under the Covenant took place on 29 April 2005. The Hong Kong team, which was part of the Chinese delegation, was led by the Acting Permanent Secretary for Home Affairs. The team comprised 11 officials from the Home Affairs Bureau, the Department of Justice, the Health, Welfare and Food Bureau, the Social Welfare Department, the Labour Department, the Housing Department and the Education and Manpower Bureau. The opening statement and the concluding remarks of the leader of the Hong Kong team are at Annexes A and B respectively.

3. The team presented the Report and answered the Committee’s questions at the hearing.

CONCLUDING OBSERVATIONS

4. The Concluding Observations of the Committee were issued on 13 May 2005. An extract of the Concluding Observations on the HKSAR is at Annex C. In relation to the HKSAR Report, the Committee identified six positive aspects, including the establishment of the Commission on Poverty and the Sexual Minorities Forum, and the planned establishment of the Gender Identity and Sexual Orientation Unit.

5. The Committee also expressed several concerns (for example, it pointed out that the present anti-discrimination legislation does not cover discrimination on the basis of race, sexual orientation and age) and made a number of suggestions and recommendations (for example, it strongly urged 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).

WAY FORWARD

6. We note the Committee's concerns and recommendations, and are considering them carefully and with an open mind.

7. The development of economic, social and cultural rights in Hong Kong has been positive and progressive, and has often been accomplished through prudent, incremental progression. It is in that context that we are now examining the Committee's conclusions and recommendations.

8. We will respond in detail to the Committee's recommendations in our next report.

Home Affairs Bureau
June 2005

Annex A

Acting Permanent Secretary for Home Affairs' opening statement at
ICESCR hearing

Following is the opening statement by the Acting Permanent Secretary for Home Affairs, Mr Stephen Fisher, at the hearing of the United Nations Committee on Economic, Social and Cultural Rights this afternoon (April 27 Geneva time):

Madam Chair, distinguished Members,

I am grateful to you and to Ambassador Sha for the opportunity to introduce our report. First of all, let me introduce my team.

As acting Permanent Secretary for Home Affairs, I have the honour to be the Alternate Representative of the Chinese delegation and to lead the Hong Kong team. Our team members are -

- my Home Affairs Bureau colleagues, Mr John Dean, Ms Amy Yeung and Ms Cynthia Tong;
- Mr Robert Allcock, Solicitor General and Ms Anita Ng from the Department of Justice;
- Ms Salina Yan, Deputy Secretary for Health, Welfare and Food and Ms Pallas Hoo from the Social Welfare Department;
- Ms Do Pang Wai-yee, Assistant Commissioner for Labour;
- Mr Tam Wing-pong, Deputy Director of Housing; and
- Mrs Fanny Lam, Principal Assistant Secretary for Education and Manpower.

Major issues of concern

I am aware that the Committee intends to focus at this hearing on the questions on our report sent to us last year. I would like to take this opportunity to address a few of the issues that I know to be of central concern to the Committee. I propose starting with the question of racial discrimination.

Race

I am sure that the Committee welcome the news that, in June 2003, we announced the decision to legislate against racial discrimination. I am pleased to inform the Committee that, having completed five months of public consultations on our legislative proposals, the law drafting process is well underway and we hope to introduce a Bill into the Legislative Council later this year. The timing is a few months slower than we originally envisaged, largely because we extended the consultation period in response to public demand and because of the subsequent need to take account of the many useful and insightful responses that we received. We will be pleased to provide any additional information that Members may wish to ask us on this topic.

Equal Opportunities Commission

Let me now turn to another issue of interest to Members, that is, the Equal Opportunities Commission (EOC). I think it is likely that the Committee has learned from our friends in the NGOs about the controversy which surrounded the EOC in the last two years. I take this opportunity to explain where matters stand.

In September 2003 the employment contract of a new appointee to the EOC office was terminated by the newly-appointed Chairperson of the Commission. The incident created a controversy and the Chairperson subsequently resigned. An Independent Panel of Inquiry was appointed in May 2004 to investigate the matter and related issues. The Panel completed its task and submitted its report in February 2005. The report contains 70 recommendations to strengthen the institutional framework of the EOC, to enhance its performance and to restore its credibility.

A new Chairperson was appointed in January this year. The new Chairperson is also in this room. He is an experienced lawyer and the former Privacy Commissioner. And, just last week, we announced the appointment of an entirely new Commission. In handling the EOC incident, I think it is fair to say that the Hong Kong Special Administrative

Region (SAR) Government has done everything practicable to restore the credibility of the Commission in the eyes of the public and to enable it to get on with the tasks for which it was created.

Sexual Orientation

A further matter on which I would like to explain our thinking is that of discrimination on the ground of sexual orientation. The Committee may have been disappointed in the response in paragraph 354(b) of our report to the recommendation in paragraph 15(c) of the 2001 concluding observations that we introduce legislation to prohibit such discrimination. However, we very much hope that Members will understand the difficulties that the recommendation presents in the face of deeply held moral beliefs and traditional values.

Hong Kong, like other developed societies, is changing and with such change, old preconceptions are gradually eroding and we are seeing the emergence of a new generation who do not share the prejudices of the past. The Hong Kong SAR Government is working hard to promote non-discrimination and to foster a culture of tolerance and mutual respect. I take this opportunity to tell Members a little about that work.

In September 2004, as a first step towards accelerating that process, we established a 'Sexual Minorities Forum' to provide a formal channel of communication between the Government and persons of different sexual orientation. The Forum is meeting regularly and has attracted a positive response. And, in the next few months, we will set up a Gender Identity and Sexual Orientation Unit on a two-year pilot basis under the aegis of the Home Affairs Bureau. The Unit will promote equal opportunities for persons of different sexual orientation. It will serve as secretariat to the Forum, and will maintain a hotline for enquiries and complaints. Essentially, therefore, its work will mirror that of the Race Relations Unit, which we described in paragraph 352 of our report. We are now in the process of recruiting the Unit's staff. An additional initiative - that we will also implement in the current financial year - is to conduct a survey on public attitudes towards the issues entailed.

These are early steps but we believe they are in the right direction and that they will do much to bring forward the time when we will feel able to introduce legislation to prohibit discrimination against the sexual minorities.

Poverty

As Members know, we have long had in place a comprehensive social security safety net, which is augmented through public housing, healthcare, and of course - free and compulsory education for all children. The Committee has expressed interest in the question of poverty in Hong Kong. I am pleased to inform Members that we recently established a Commission on Poverty to study the issue in depth and to propose strategies for a way forward.

Conclusion

In conclusion, Madam Chair, I wish firmly to reiterate - as we did in 2001 - our total commitment to the Covenant.

Thank you.

Ends/Thursday, April 28, 2005

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Annex B

Acting Permanent Secretary for Home Affairs' concluding remarks at ICESCR hearing

Following is the concluding remarks by the Acting Permanent Secretary for Home Affairs, Mr Stephen Fisher, at the hearing of the United Nations Committee on Economic, Social and Cultural Rights this afternoon (April 29 Geneva time):

Madam Chair, distinguished Members,

I would like to thank you and Ambassador Sha for the opportunity to introduce our report and to exchange views with Members on economic, social and cultural rights issues concerning the Hong Kong Special Administrative Region (SAR).

The promotion and protection of human rights is an arduous task. It is like rowing a boat against the current, if you don't move forward, you drift back. We will be forever vigilant in the protection of human rights.

I would like to take this opportunity to thank the human rights NGOs in the Hong Kong SAR for their work. Some of them are here today. We regard our friends in the NGOs as allies.

To facilitate dialogue between the Government and civil society organizations, we have established a Human Rights Forum, an Ethnic Minorities Forum and a Sexual Minorities Forum to provide formal channels of communication with NGOs and representatives of ethnic and sexual minorities. We will continue to develop this network.

Madam Chair, I would like to thank Members for their useful comments on the human rights situation in the Hong Kong SAR. We will carefully consider the advice and suggestions Members have given us.

Finally, I wish to confirm once again our commitment to the Covenant.

Thank you.

Ends/Saturday, April 30, 2005

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Annex C

**UNITED
NATIONS****E**

**Economic and Social
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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.
