

立法會 *Legislative Council*

LC Paper No. CB(2)155/04-05(01)

Ref : CB2/PL/HA

Panel on Home Affairs

Background brief prepared by Legislative Council Secretariat on legislating against racial discrimination

Purpose

This paper sets out the background of the issue of legislative against racial discrimination in the context of relevant human rights reports. It also gives an account of the relevant discussions at meetings of the Council and the Panel on Home Affairs since the first term of the Legislative Council (LegCo).

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 (ICERD) was extended to Hong Kong in March 1969. Prior to 1 July 1997, the United Nations (UN) Committee on the Elimination of Racial Discrimination had already expressed concern in its Concluding Observations issued after consideration of the 14th periodic report of the United Kingdom on Hong Kong that specific legislation against racial discrimination was not yet available in all the Dependent Territories and Crown Dependencies. The UN Committee had also reiterated its previous concern 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 ICERD 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 ICERD to the Region.

4. The first report of the HKSAR under Article 9 of ICERD was submitted to the UN by the Permanent Representative of the Chinese Mission to the UN on 3 October

2000 as part of China's combined eighth and ninth reports. The report was considered by the UN Committee on the Elimination of Racial Discrimination on 31 July and 1 August 2001. The UN Committee issued its Concluding Observations on the first report of the HKSAR on 9 August 2001, a copy of which is in **Appendix I**.

5. The UN Committee on the Elimination of Racial Discrimination reiterated its concern in paragraph 17 of its Concluding Observations about the continuous absence in the HKSAR of legal provisions protecting persons from racial discrimination to which they might be subjected by private persons, groups or organizations. The UN Committee pointed out that it did not accept the argument put forward by the HKSAR Government for not initiating such legislation, i.e. that such legislation would not be supported by the society as a whole. It was recommended to the Government of the State party and to the local authorities of the HKSAR 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 had been done with regard to discrimination on the grounds of gender and disability.

International Covenant on Civil and Political Rights

6. The International Covenant on Civil and Political Rights (ICCPR) 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. The Hong Kong Bills of Right Ordinance, which incorporates into Hong Kong law the provisions of ICCPR as applied to Hong Kong, proscribes all forms of discrimination on the part of the Government and public bodies. Specifically, Article 22 of the Hong Kong Bill of Rights prohibits the Government and all public authorities, and any person acting on behalf of the Government, or a public authority, from engaging in practices that entail racial discrimination.

7. The first report of the HKSAR under ICCPR 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 November and 2 November 1999. The UN Committee issued its Concluding Observations on the first report on the HKSAR under ICCPR 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

8. The International Covenant on Economic, Social and Cultural Rights (ICESCR) 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.

9. The first report of the HKSAR under ICESCR 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 April and 30 April 2001. The UN Committee issued its Concluding Observations on the first report on the HKSAR under ICESCR on 11 May 2001, a copy of which is in **Appendix III**. 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.

10. The second report of the HKSAR under the Covenant was submitted to the UN as part of China's initial report in June 2003. The Government informed the UN Committee on Economic, Social and Cultural Rights in its second report that views had been sought from interested parties in 2000 and early 2001 on the question of legislation against racial discrimination in the private sector. At the time of finalizing the report, the Government had completed an analysis of the responses received and were examining the balance of consideration. The Government would further update the Committee, as necessary, at the hearing of the report. The related hearing will be held at a date to be advised between 25 April and 13 May 2005.

The Government's position and discussions of LegCo Members at meetings of the Council and the Panel on Home Affairs on the issue of legislating against racial discrimination

11. LegCo Members have followed up closely the issue of legislating against racial discrimination at meetings of the Council and the Panel on Home Affairs since the first term of the LegCo. When discussing human rights reports with the Administration and concern organizations, members of the Panel have time and again called upon the Administration to legislate against racial discrimination as soon as possible on the grounds that the HKSAR Government has the obligations under ICERD, ICCPR and ICESCR to prohibit racial discrimination and the relevant UN Committees have recommended the HKSAR Government to do so in their Concluding Observations issued after consideration of the respective reports of the HKSAR under the international conventions.

Public consultation in 1997

12. The Government conducted a study on racial discrimination in 1996 and published its findings in a consultation paper entitled "Equal Opportunities: A Study on Discrimination on the Ground of Race" in February 1997. New arrivals from the Mainland are included in the study on racial discrimination conducted in 1996. According to paragraph 1.7 of the consultation paper published in 1997, the reason for inclusion of the new arrivals from the Mainland is that "international bodies concerned with race-related issues consider that 'racial discrimination' includes

discrimination against identifiable minorities within a particular culture, even those of the same ethnic stock as the host community". The example given to justify the inclusion is that in its examination of the United Kingdom's 13th report under ICERD, the UN Committee on the Elimination of Racial Discrimination considered and commented on the circumstances of the Irish Travellers. The Travellers are ethnically Irish people who speak an Irish dialect. But their distinct lifestyle sets them apart as a discrete minority and, as such, the difficulties they experience are considered a legitimate subject for inquiry by the UN Committee.

13. Over 80% of respondents to the consultation paper in 1997 opposed legislation against racial discrimination. These 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.

14. The Administration had all along held the position that there was no evidence to demonstrate that the problem of racial discrimination in Hong Kong had become so serious that warranted legislation to prohibit acts of racial discrimination. To legislate against racial discrimination could be counter-productive and work to the detriment of social harmony. In deciding whether or not to legislate against racial discrimination, the Administration should consider the overall interests of the community and not just the interests of particular minorities.

15. At the Council meeting on 22 July 1998, Hon Emily LAU raised an oral question concerning bars and clubs charging non-white customers with higher rates. In his replies to the supplementary questions raised by Hon Christine LOH and Hon Cyd HO, about conducting another survey to consult the minorities on the need to legislate against racial discrimination, the Secretary for Home Affairs (SHA) said that he was not going to conduct the survey because the Government must have the support of the majority of the people of Hong Kong if it planned to legislate.

16. When the Panel on Home Affairs held a special meeting on 26 February 2001 to discuss the first report of the HKSAR under ICESCR with concern organizations and the Administration, members of the Panel expressed the view that the need for 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. The 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 relevant experience.

Two-phase consultation in 2001-2002

17. The Administration conducted a two-phase consultation exercise on legislation against racial discrimination in 2001-2002. In the first phase, the Administration consulted the business sector as to whether they agreed in principle to Government

introducing legislation against racial discrimination in the private sector; the concerns that they might have should such legislation be introduced; and issues to which the Administration should pay particular attention in drafting such legislation. In the second phase, the Administration consulted non-governmental organizations (NGOs), including ethnic minority.

18. As regards the consultation with the business sector, 25 of the 34 targeted business organizations responded to the proposal of introducing legislation against racial discrimination. Among these 25 business organizations, nine overseas trade associations expressed support for such legislation. Among the remaining local trade associations, six indicated support, one indicated support but did not consider it appropriate to legislate at this stage, six indicated objection and three held no views. All of the 44 NGOs which submitted comments in the second-phase consultation were in favour of legislation.

19. The Panel on Home Affairs discussed the preparation of the second report of the HKSAR under ICERD and preparation of other reports under human rights treaties for submission to the UN with concern organizations and the Administration at its meeting on 13 December 2002. Some Panel members were of the view that the Government should fulfil its international obligations under international conventions by legislating against racial discrimination as the business community had indicated its support and there seemed little objection from the rest of the society. The Administration responded that the Government had not yet taken a decision on the issue because more time was required to study the issue thoroughly, and not because of objection from the society.

20. At the Council meeting on 12 March 2003, Hon Audrey EU moved a motion urging the Government to adopt the recommendations of the relevant UN committees and expeditiously legislate against racial discrimination to ensure that new arrivals from the Mainland and ethnic minorities in Hong Kong could enjoy equal opportunities in such areas as education, employment and access to social services. Twenty-one out of the 22 Members who spoke on the motion expressed support for legislating against racial discrimination. The motion was passed by the Council.

Public consultation in 2004

21. The Government announced in June 2004 its decision to legislate against racial discrimination and issued a Consultation Paper entitled "Legislating Against Racial Discrimination" in September 2004 inviting public views on the legislative proposals. According to the Consultation Paper, it is the Government's view that new arrivals from the Mainland do not constitute a racial or ethnic group in Hong Kong. Discrimination against new arrivals from the Mainland by local Chinese is therefore not considered a form of racial discrimination.

22. At the Council meeting on 2 June 2004, Hon Audrey EU raised an oral question about the legislative proposals for racial discrimination law. In his reply to

Hon Audrey EU's follow-up question about the position of new arrivals from the Mainland, SHA said that as most of the new arrivals from the Mainland belonged to the Han race of the Chinese people, if they were subject to any discrimination because they were new to Hong Kong, this was a kind of social discrimination, instead of racial discrimination. SHA further explained that the Government considered in the past the discrimination faced by new arrivals from the Mainland as racial discrimination according to an international discrimination case in which Irish Travellers were subject to discrimination. On a detailed study of the case of the Irish Travellers as well as other cases, the Administration, however, found that there were marked differences between the case of Irish Travellers and the background of new arrivals from the Mainland. As such, the Administration considered that new arrivals from the Mainland should not be covered by the bill. SHA added that the definition of racial discrimination in the bill was based on the acts of discrimination due to race, colour, descent, national or ethnic origin, which was the same as the definition contained in Article 1 of ICERD.

23. A chronological account of past discussions on the issue of legislating against racial discrimination at meetings of the Council and the Panel on Home Affairs since the first term of the LegCo is set out in **Appendix IV** for members' easy reference.

Council Business Division 2
Legislative Council Secretariat
5 November 2004

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

CERD/C/59/Misc.16/Rev.3
9 August 2001
Original: ENGLISH
UNEDITED VERSION

**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**

Distr.
GENERAL

CCPR/C/79/Add.117
15 November 1999

Original: ENGLISH

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.



UNITED
NATIONS

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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 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 judgments 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.

Chronological account of past discussions

A chronological account of past discussions on the issue of racial discrimination at meetings of the Council and the Panel on Home Affairs is set out below for members' easy reference.

1998-1999 legislative session

Council meeting on 22 July 1998

2. Hon Emily LAU raised an oral question concerning bars and clubs charging non-white customers with higher rates. Two supplementary questions were raised about conducting another survey to consult the ethnic minorities on the need to legislate against racial discrimination. The questions and replies are available on the Research and Library Services Information System and the Council's website at "<http://www.legco.gov.hk/yr98-99/english/counmtg/hansard/980722fe.htm>".

Meeting of the Panel on Home Affairs on 27 July 1998

3. The meeting was held to discuss the reports to be submitted by the Hong Kong Special Administrative Region (HKSAR) under the international human rights treaties. At the meeting, the Administration reported the developments on the issue of racial discrimination since it had last briefed the Panel on the outcome of a consultation exercise on the same subject on 20 June 1997. The minutes of the meeting are available on the Research and Library Services Information System and the Council's website at "<http://www.legco.gov.hk/yr98-99/english/panels/ha/minutes/ha270798.htm>".

Meeting of the Panel on Home Affairs on 22 September 1998

4. The meeting was held to discuss the issue of racial discrimination with the Administration and concern organizations. The minutes of the meeting are available on the Research and Library Services Information System and the Council's website at "<http://www.legco.gov.hk/yr98-99/english/panels/ha/minutes/ha220998.htm>".

1999-2000 legislative session

Meeting of the Panel on Home Affairs on 10 January 2000

5. The Panel 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 (ICERD) with concern organizations and the Administration. The minutes of the meeting are available

on the Research and Library Services Information System and the Council's website at "<http://www.legco.gov.hk/yr99-00/english/panels/ha/minutes/ha100100.pdf>".

2000-2001 legislative session

Meeting of the Panel on Home Affairs on 17 October 2000

6. The Secretary for Home Affairs (SHA) briefed the Panel on the 2000 Policy Address at this meeting during which he explained the Government's position in the issue of legislating against racial discrimination. The minutes of the meeting are available on the Research and Library Services Information System and the Council's website at "<http://www.legco.gov.hk/yr00-01/english/panels/ha/minutes/ha171000.pdf>".

Meeting of the Panel on Home Affairs on 13 February 2001

7. The Panel discussed the findings of a sample survey of ethnic minorities commissioned by the Government with concern organizations and the Administration. The minutes of the meeting are available on the Research and Library Services Information System and the Council's website at "<http://www.legco.gov.hk/yr00-01/english/panels/ha/minutes/ha130201.pdf>".

Meeting of the Panel on Home Affairs on 26 February 2001

8. The Panel discussed the first report of the HKSAR under the International Covenant on Economic, Social and Cultural Rights (ICESCR) with concern organizations and the Administration. The minutes of the meeting are available on the Research and Library Services Information System and the Council's website at "<http://www.legco.gov.hk/yr00-01/english/panels/ha/minutes/ha260201.pdf>".

Council meeting on 25 April 2001

9. Hon Margaret NG raised an oral question on the Government's plan to introduce legislation against racial discrimination. The question and reply are available on the Research and Library Services Information System and the Council's website at "<http://www.legco.gov.hk/yr00-01/english/counmtg/hansard/010425fe.pdf>".

Council meeting on 13 June 2001

10. Hon James TO raised an oral question on the implementation of the recommendation made by the United Nations (UN) Committee on Economic, Social and Cultural Rights on prohibition of discrimination in its Concluding

Observations. The question and reply are available on the Research and Library Services Information System and the Council's website at "<http://www.legco.gov.hk/yr00-01/english/counmtg/hansard/010613fe.pdf>".

Meeting of the Panel on Home Affairs on 10 July 2001

11. The Panel discussed the first report of the HKSAR under ICERD. The minutes of the meeting are available on the Research and Library Services Information System and the Council's website at "<http://www.legco.gov.hk/yr00-01/english/panels/ha/minutes/ha100701.pdf>".

2001-2002 legislative session

Meeting of the Panel on Home Affairs on 9 November 2001

12. The Panel received a briefing by the SHA on the Chief Executive's Policy Address 2001 at this meeting during which the issue of legislating against racial discrimination was discussed. The minutes of the meeting are available on the Research and Library Services Information System and the Council's website at "<http://www.legco.gov.hk/yr01-02/english/panels/ha/minutes/ha011109.pdf>".

Council meeting on 10 April 2002

13. Hon Cyd HO raised a question on legislation against racial discrimination in the private sector and among individuals. The question and reply are available on the Research and Library Services Information System and the Council's website at "<http://www.legco.gov.hk/yr01-02/english/counmtg/hansard/cm0410ti-translate-e.pdf>".

Meeting of the Panel on Home Affairs on 23 May 2002

14. The need to legislate against racial discrimination was raised during discussion of promotion of equal opportunities on racial issues at this meeting. The minutes of the meeting are available on the Research and Library Services Information System and the Council's website at "<http://www.legco.gov.hk/yr01-02/english/panels/ha/minutes/ha020523.pdf>".

Council meeting on 19 June 2002

15. Hon Emily LAU raised an oral question on legislation against acts of racial discrimination in private sector. The question and reply are available on the Research and Library Services Information System and the Council's website at "<http://www.legco.gov.hk/yr01-02/english/counmtg/hansard/cm0619ti-translate-e.pdf>".

2002-2003 legislative session

Meeting of the Panel on Home Affairs on 13 December 2002

16. The Panel discussed the second report of the HKSAR under ICERD and preparation of other reports under human rights treaties for submission to the UN with concern organizations and the Administration. The minutes of the meeting are available on the Research and Library Services Information System and the Council's website at "<http://www.legco.gov.hk/yr02-03/english/panels/ha/minutes/ha021213.pdf>".

Special meeting of the Panel on Home Affairs on 7 February 2003

17. The Panel discussed the second report to be prepared by the HKSAR under ICESCR with concern organizations and the Administration. The minutes of the meeting are available on the Research and Library Services Information System and the Council's website at "<http://www.legco.gov.hk/yr02-03/english/panels/ha/minutes/ha030207.pdf>".

Council meeting on 12 February 2003

18. Hon Jasper TSANG raised an oral question on ethnic minorities. Hon James TO also raised a supplementary question about education and employments problems encountered by ethnic minorities. The questions and replies are available on the Research and Library Services Information System and the Council's website at "<http://www.legco.gov.hk/yr02-03/english/counmtg/hansard/cm0212ti-translate-e.pdf>".

Council meeting on 12 March 2003

19. Hon Audrey EU moved a motion urging the Government to adopt the recommendations of the relevant UN committees and expeditiously legislate against racial discrimination to ensure that new arrivals from the Mainland and ethnic minorities in Hong Kong could enjoy equal opportunities in such areas as education, employment and access to social services. The Official Record of Proceedings of the meeting are available on the Research and Library Services Information System and the Council's website at "<http://www.legco.gov.hk/yr02-03/english/counmtg/hansard/cm0312ti-translate-e.pdf>".

2003-2004 legislative session

Meeting of the Panel on Home Affairs on 9 January 2004

20. The Panel received a briefing by the SHA on the Chief Executive's Policy

Address 2004 during which he informed the Panel that a bill to legislate against racial discrimination would be introduced into the Legislative Council. The minutes of the meeting are available on the Research and Library Services Information System and the Council's website at "<http://www.legco.gov.hk/yr03-04/english/panels/ha/minutes/ha040109.pdf>".

Council meeting on 2 June 2004

21. Hon Audrey EU raised an oral question about the legislative proposals for racial discrimination law. The question and reply are available on the Research and Library Services Information System and the Council's website at "<http://www.legco.gov.hk/yr03-04/english/counmtg/hansard/cm0602ti-translate-e.pdf>".

Meeting of the Panel on Home Affairs on 11 June 2004

22. The Panel discussed the second report of the HKSAR under ICESCR and the implementation of international human rights treaties in the HKSAR with concern organizations and the Administration. The minutes of the meeting are available on the Research and Library Services Information System and the Council's website at "<http://www.legco.gov.hk/yr03-04/english/panels/ha/minutes/ha040611.pdf>".