

Legislative Council Panel on Home Affairs

**Implementation of international human rights treaties
in Hong Kong: 2004**

Introduction

We have undertaken to submit to the Panel on Home Affairs short annual overviews of developments relating to the six treaties which applied to the Hong Kong Special Administrative Region (HKSAR) and which entailed an obligation to submit periodic reports to the United Nations Treaty Monitoring Bodies (TMBs). Those treaties were (and remain) the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹, and the Convention on the Rights of the Child (CRC).

2. We advised the Panel that we envisaged issuing the reports in the first half of each calendar year and that they would cover developments in the preceding calendar year. Thus, the first such report – issued in May 2004 - covered developments in 2003. The present report is the second and covers developments in 2004, though it occasionally touches on developments in the first half of 2005. The format remains experimental and, like our reports to the TMBs, susceptible to evolutionary development on the basis of further feedback from the Panel.

3. In preparing the report, we have taken into account the fact that both 2003 and 2004 were particularly heavy periods for reporting under the United Nations (UN) treaties with reports being submitted under the ICESCR, the ICCPR, the CEDAW, and the CRC. And, at the time of drafting the present report, we were finalising our second under the CAT (see paragraph 26 below). Those reports have addressed the issues in detail and we have confined discussion to significant developments during the period under report (calendar year 2004). As with the 2003 report, we have adhered to our original

¹ The CEDAW is under the purview of the Secretary for Health, Welfare and Food. Accordingly, the section on the Convention (section E below) was contributed by the Health, Welfare and Food Bureau.

commitment to providing an overview and have therefore addressed only the most significant developments in the areas covered by each particular treaty. The interpretation of the term ‘significant’ – that is to say, what issues should or should not be included – has again been at the discretion of responding bureaux as they are best placed to advise which of the numerous developments relating to matters within their ambit merit the designation.

(A) International Covenant on Economic, Social and Cultural Rights (ICESCR)

General

4. The position remains broadly as discussed in paragraphs 4 to 15 of the 2003 report. In paragraph 4, we advised that our second report under the Covenant had been submitted to the UN in June 2003 as part of China’s initial report. The Committee on Economic, Social and Cultural Rights heard China’s report on 27, 28 and 29 April 2005, discussing the Hong Kong section on the morning of 29 April. A Hong Kong team attended as part of the Chinese delegation, together with a team from Macau. The Committee issued its concluding observation on 13 May and we will respond to them in full in our third report, which is due by 30 June 2010. The timing of these events fell outside the scope of the present report but we discuss the issues in a paper presented to the Panel at its meeting on 21 June 2005. Other significant developments are discussed below.

Article 6

Measures to promote employment

5. Article 6 provides for the right to work and, in the aftermath of the economic downturn of the last few years, helping people to secure jobs has been among our most important priorities. We discussed our ongoing initiatives to that purpose in paragraphs 5 to 7 of the 2003 report and take this opportunity to update the Panel on progress. In broad terms, we are able to report that, in 2004, the Labour Department assisted over 86,000 job seekers to secure employment and received nearly 300,000 vacancy notices from the private sector. The following paragraphs explain some of the programmes that help job-seekers to secure employment.

Youth employment

6. In paragraph 6 of the 2003 report, we discussed the Youth Pre-

employment Training Programme, which we initiated in 1999 to provide pre-employment training to school leavers aged 15 to 19. Over the past five years, 57,000 young people have been trained under the programme, with about 70% securing jobs after training. In 2004, as foreshadowed in the 2003 report, the courses were improved in terms of breadth and depth, and with longer training hours for job-specific skills.

7. In paragraph 7 of the 2003 report, we discussed the Youth Work Experience and Training Scheme, which was introduced in 2002 to provide on-the-job training of six to twelve months for young people aged between 15 and 24 with educational attainment below degree level. As at the end of 2004, over 18,000 trainees had secured employment under the Scheme and some 11,000 had found jobs in the open market through the assistance of their case managers.

8. In May 2004, we launched the “Youth Self-employment Support Scheme” to train and assist young people aged 18 to 24 with educational attainment below degree level and assessed to have motivation to become self-employed. A total of 36 projects providing 1,500 training places in areas with business prospects have been approved. As at the end of 2004, the trainees had conducted over 1,400 business transactions with gross profits of about \$950,000.

Middle-aged job seekers

9. In paragraph 5 of the 2003 report, we discussed measures - introduced in May 2003 - to promote employment for groups particularly hard-hit by unemployment, namely the middle-aged and the young. Among these was the ‘Re-employment Training Programme for the Middle-aged’, employers are encouraged to engage and provide on-the-job training to unemployed persons aged 40 or above. To that end we pay participating employers a monthly training allowance of \$1,500 per trainee for up to three months. As at the end of 2004, the Programme had helped place nearly 9,000 persons in employment.

Job fairs

10. Getting people into the workplace means responding promptly to the recruitment needs of employers. The major job fairs are an established approach to achieving this. As from late-2003, we have also been holding mini-job fairs on a regular basis at the Labour Department’s larger Job Centres. In 2004, we staged ten major fairs and 32 mini ones, attracting some 59,000 visitors.

Article 7

Statutory minimum wage and standard working hours

11. Wages and hours of work are terms and conditions of employment. As such, we consider them to be matters for negotiation between employers and employees in the context of market conditions. But there have been calls from the CESCR, legislators and trade unions for a statutory minimum wage and standard working hours.

12. These proposals have potentially far-reaching implications for the economy and the labour market. Whether implementing them would, in fact, bring real benefits to workers is of crucial importance and requires careful evaluation. Therefore, before taking any or all of them forward, we consider it essential that the parties concerned reach a consensus through objective analysis and rational discussion. To that end, in late 2004, we referred the issues to the Labour Advisory Board² for discussion. Those discussions are ongoing. In the meantime, we will keep an open mind and listen to views from different sectors of the community.

(B) International Covenant on Civil and Political Rights (ICCPR)

General

13. In paragraph 17 of the 2003 report, we advised the Panel that we were finalising our second report under the ICCPR (ICCPR2). That report has since been submitted to the United Nations and we have been given to understand that it is likely to be heard at a date to be advised in March 2006. In the report, we respond to each of the concerns and recommendations in the UN Human Rights Committee's concluding observations of 15 November 1999 on our initial report. Among others, topics of major interest included the electoral system, rural elections, Hong Kong's ethnic minorities, and the question of legislation to implement Article 23 of the Basic Law. ICCPR2 covers developments that would normally have been discussed in this section of the present report and there is little that we can usefully add to it at this stage. We are therefore confining the discussion here to the few significant developments that fell outside the scope of ICCPR2.

² The Board is of many years standing. Its members comprise representatives of Employers, employees, and the Government. As such, it is representative of the key stakeholders and the ideal forum to deliberate the issues.

Article 2

Equal opportunities

14. In paragraph 19 of the 2003 report, we advised the Panel of the decision that the Secretary for Home Affairs should appoint an independent panel of inquiry on incidents relating to the Equal Opportunities Commission. The Secretary for Home Affairs accordingly appointed the ‘Independent Panel of Inquiry on Incidents Relating to the Equal Opportunities Commission’ in May 2004. The Panel submitted its report in February 2005. The appointment of the new Equal Opportunities Commission Chairperson, Mr Raymond Tang, and 15 new Members were announced in December 2004 and April 2005 respectively.

Article 17

Law Reform Commission’s reports on Civil liability for invasion of privacy and Privacy and media intrusion

15. In December 2004, the Law Reform Commission released the two above reports. The key recommendations include –

- (a) the creation of two torts to deal with –
 - (i) unwarranted intrusion upon the solitude or seclusion of another; and
 - (ii) unwarranted publicity given to an individual’s private life; and
- (b) the establishment of a statutory but independent and self-regulating commission to deal with complaints of unjustifiable infringements of privacy by the print media.

The Commission’s recommendations have aroused considerable media and public interest. We are studying these recommendations, taking account of the public response to them.

(C) International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

General

16. The position remains essentially as explained in paragraphs 23 to 27 of the 2003 report. The following paragraphs serve to update the Panel on developments since then.

UN reporting

17. As explained in paragraphs 23 to 27 of the 2003 report, our initial report under the ICERD formed part of China's combined 8th and 9th reports, which the Committee on the Elimination of racial Discrimination heard on 31 July and 1 August 2001. Our second report will form part of China's 10th and we will initiate the customary pre-drafting consultations when the Central People's Government calls for our contribution. We will inform the Panel when we have further information.

Legislation against racial discrimination

18. As foreshadowed in paragraphs 23 of the 2003 report, we published a consultation paper on our legislative proposals in September 2004. The consultation period was originally scheduled to end on 31 December but we subsequently extended it to 8 February 2005 in response to public demand. In the course of the exercise, Home Affairs Bureau representatives attended 67 meetings with District Councils, NGOs, minority organisations, statutory and advisory bodies, and other organisations. We also received 230 written submissions. Another ten were received after the close of the consultation period, making a total of 240. Developments since then fell outside the period covered by this report but a paper submitted to the Panel for its meeting on 8 July 2005 provides a preliminary analysis and assessment of the public response. We aim to introduce a Bill into the Legislative Council by the end of 2005.

Promotion of racial harmony

19. In 2004-05, we spent \$5.83 million on promotion of awareness of racial harmony and equality. Those initiatives are described in the paragraphs that follow.

20. **Committee on the Promotion of Racial Harmony (CPRH):** established by the Home Affairs Bureau in June 2002, the Committee advises the Government on strategies for promoting racial harmony, in terms of both improving existing efforts and of introducing new initiatives. It comprises both non-government members and representatives of the key government departments. The Race Relations Unit (which was established at the same time) is its Secretariat and implements the publicity programmes that the Committee endorses. The Unit's work covers three additional areas, namely conducting public education, administering the Equal Opportunities Funding Scheme, and maintaining a hotline for complaints and enquiries. These are discussed in the paragraphs that follow.

21. **Public education:** currently, the Unit's work in this area comprises -
- (a) **the Equal Opportunities (Race) Funding Scheme:** this is an annual programme to encourage community-based initiatives to promote awareness and to encourage contact between the minorities and the majority population. In 2004-05, we sponsored 25 projects at a total cost of \$0.65 million;
 - (b) **a hotline for complaints and enquiries:** the functions of this service are self-explanatory. The Unit has published a guide to its procedures in Chinese, English, Thai, Indonesian, Nepali and Urdu. The guide explains how to make a complaint, describes the investigation process, and provides answers to frequently asked questions. In 2004, the Unit handled 336 enquiries and 30 complaints;
 - (c) **school talks:** the Unit gives talks to schools and NGOs. The talks include briefing on the concept of racial discrimination, examples of cases that we handled and group discussions where students were encouraged to express their views;
 - (d) **an education kit:** the kit was designed for teachers to use in the classroom. It includes a teacher's guidebook, a CD-ROM (for presentation by the teachers), and inter-active class activities. The Unit has published 2 000 copies in Chinese and 1 000 copies in English;
 - (e) **exhibitions:** the Unit has two sets of roving boards that it lends to schools and youth centres for internal display. One set is in story format and aims to foster respect for people of different ethnicities. The other set describes the culture and lifestyles of Hong Kong's minority communities;
 - (f) **a sensitivity kit:** the Unit produces a self-learning education kit on valuing diversity for front-line civil servants in association with Civil Servant Training and Development Institute, Health, Welfare and Food Bureau and Equal Opportunities Commission; and
 - (g) **the Community Organiser Training Programme:** the programme is a CPRH initiative to help potential community organisers to address problems experienced by the minority communities and to train them in the promotion of racial harmony. In its capacity as Secretariat to the CPRH, the Unit has formed an expert sub-committee to design the curriculum and to plan course delivery. The first such programme was conducted in 2003-04. The second, comprising five training sessions, was held on Sundays throughout November 2004³. The training covered Hong Kong culture, communication skills, basic Hong Kong

³ Currently, the resources of the Race Relations Unit are sufficient to provide just one such programme per year.

laws (particularly the labour laws), and community and government services. A total of 28 trainees enrolled, of whom 23 (92%) graduated. Programme 'alumni' now provide valuable assistance to the Race Relations Unit in the organisation of promotional activities in the communities to which they belong.

22. **Publicity programmes:** in 2004, our publicity programmes focused on raising awareness of racial harmony and promoting our existence and the services that we offer. They included -

- (a) **a poster campaign:** posters were displayed at MTR and KCR stations throughout March 2004. The posters included the Unit's hotline number and the message of equal opportunities for all, irrespective of race and colour; and
- (b) **Sunday cultural programmes:** to foster a sense of community and belonging among Hong Kong's ethnic minorities, the Home Affairs Bureau is sponsoring a series of Sunday cultural programmes under the theme 'Culture in Motion'. These include music and dance performances, exhibitions, and other forms of entertainment to promote the cultural heritage of each of Hong Kong's six largest minority communities. The objectives are to promote cultural diversity and to encourage inter-communal understanding. The first show - for the Filipino community - was held in February 2005. Others will follow in 2005 and 2006.

23. **Integration programmes:** these are practical measures to help minority communities - both established and newly arrived - to adapt to the Hong Kong way of life. Initiatives in this area are -

- (a) **Your Guide to Services in Hong Kong:** this is a service guidebook that is available in eight languages⁴. The guides provide comprehensive information on Government and NGO services and are tailored to the needs of each client community;
- (b) **Mobile Information Service:** we commissioned the International Social Service to recruit and manage a team of six 'information ambassadors' from the main minority communities. Their task is to distribute information kits to our target clientele on arrival at the airport and to handle their enquiries in their own languages;

⁴ English, Indonesian, Tagalog, Thai, Sinhalese, Urdu, Hindi and Nepali

- (c) **language courses:** we fund the International Social Service, Caritas, and Christian Action to provide courses in Cantonese and English. The Unit co-ordinates the promotional campaigns with a view to 'selling' the programme to our target clientele;
- (d) **Radio programmes:** a further initiative to foster the minorities' sense of belonging to Hong Kong while retaining their own cultural identities. An equally important objective is to promote multi-culturalism in Hong Kong. The first programmes – in Nepali and Urdu - went out in November 2004. We accorded priority to these languages because, unlike the other main minority languages, no programmes were available in them at the time of the scheme's conception;
- (e) **After school support programme:** we initiated this programme on a pilot basis, in collaboration with an NGO, in September 2004. Its purpose is to help minority children and their parents to adapt to school life in Hong Kong, through such means as language lessons, counselling, and assistance with homework; and
- (f) **the Harmony Scholarship Scheme:** we introduced this scheme in 2004/05 as a form of recognition for the schools that have made a special effort to diversify their enrolment. In 2004/05, we awarded a total of \$95,000 to 14 students from 12 schools with relatively large intakes of minority children.

24. In 2005-06, we provisionally plan to spend \$6.57 million. We shall continue the Sunday cultural programmes, the after school support programme, and the radio programmes. We shall also continue long-standing initiatives, such as the language classes, the Equal Opportunities Funding Scheme, the CPRH, the service guidebooks, and public education campaigns.

Liaison with the minority communities

25. As explained in paragraph 27 of the 2003 report, we attach great importance to understanding the concerns of Hong Kong's minority communities. We also explained the work and function of the Ethnic Minorities Forum and the longer-established Nepalese Community Forum. Thereafter, in June 2004, we took the decision to streamline those communication channels by merging the two forums under the banner of the Ethnic Minorities Forum. As before, attendance is open to the media, to community representatives/organisations, and to NGOs that serve the various communities. Issues discussed in have included such matters as language, education, employment, crime, visa policy, and discrimination. As also previously reported, participants' concerns are relayed to the relevant bureaux/departments,

whose representatives have continued to attend Forum meetings to brief its members on the issues in hand and to respond to questions on them.

(D) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

26. In paragraph 29 of the 2003 report, we advised Members that we were preparing to draft our second report which will form part of China's combined fourth and fifth report under the Convention. The drafting process was delayed due to other claims on our resources. However, we are now finalising the draft and will publish the report as soon as it has been submitted to the United Nations.

27. In broad terms, the position regarding the implementation of the CAT in Hong Kong is essentially as described in the 2003 report. Indeed, there have been no cases where any act of torture referred to in Article 1 of the Convention has been alleged to have taken place in Hong Kong since 1998. However, there was one significant development in relation to Article 3 of the Convention⁵. This was the case of *Secretary for Security vs Sakthevel Prabakar*⁶, which we discuss below.

28. Following the CFA judgment in that case, we put in place administrative procedures for assessing torture claims under Article 3.1 and are confident that those procedures will fully meet the high standards of fairness laid down by the CFA. As at 31 March 2005, some 58 Article 3-related claims were under consideration. These involved 73 persons who could be subject to deportation/removal cases and one person who could be subject to extradition. These claims are being assessed in accordance with the new procedures.

Removal and deportation

29. It should be noted that Hong Kong's obligations under Article 3.1 will only arise where persons who do not enjoy the right to stay in Hong Kong are to

⁵ Article 3.1 of the Convention states that no state party shall expel, return or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.

⁶ [2005] 1 HKLRD 289, CFA

be removed or deported to places where there are substantial grounds for believing that they would be in danger of being subjected to torture. Where they are to be removed or deported to places to which no claims of torture relate, Article 3(1) will not be engaged.

30. Claimants who have failed to establish their claims will be removed from Hong Kong in accordance with our laws. Claimants whose claims are established will not be removed to places where there are substantial grounds for believing that they would be in danger of being subjected to torture. However, removal to places where they may be admitted without the danger of being subjected to torture may be considered. If subsequent changes in conditions of a place are such that a claim of a person established earlier in respect of that place can no longer be substantiated, his removal to that place may be considered.

Extradition

31. Where claims are made by fugitives under Article 3.1 in respect of their surrender to the requesting jurisdictions concerned, their claims will be assessed to ascertain whether their surrender would entail any breach of the CAT. The Chief Executive shall take into account the determination of such claims and other relevant factors when considering whether the fugitives concerned should be surrendered to the requesting jurisdictions.

(E) International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

General

32. The position concerning the implementation of the CEDAW in Hong Kong remains broadly as explained in paragraphs 31 to 33 of the 2003 report but we take this opportunity to update the Panel on significant developments in 2004.

UN reporting

33. We submitted our second report on the progress made in implementing the CEDAW in the HKSAR. The report was incorporated in the periodic report submitted by the People's Republic of China to the United Nations in early 2004. It was also uploaded on the Internet and its printed and CD-ROM versions were distributed to the Legislative Council and other interested parties.

(F) Convention on the Rights of the Child (CRC)

General

34. The position concerning the implementation of the CRC in Hong Kong remains broadly as explained in paragraphs 34 to 37 of the 2003 report but we take this opportunity to update the Panel on significant developments in 2004.

UN reporting

35. In paragraph 34 of the 2003 report, we advised the Panel that the HKSAR's first report under the CRC had been submitted to the UN Committee on the Rights of the Child - as part of China's second report - in June 2003. The Committee will hear the report on 19 September 2005. A Hong Kong team will attend as part of the Chinese delegation, together with a team from Macau. We have also received the 'list of issues' from the Committee. We will make our response publicly available once it has been submitted to the UN.

The right of children to participate in public life: the Hong Kong Children's Council and Children's Forum

36. We initiated the 'Child Ambassadors' Scheme' - in collaboration with the leading child-oriented NGOs - in 2000 as a means of promoting awareness of the CRC and of children's rights generally. We also aimed to provide children with a formal vehicle for the expression of their views and to develop their awareness of their status as persons who are bearers of rights. And, in March 2003, we provided funding to enable our NGO partners to organise Hong Kong's first Children's Council. The objectives were to promote public awareness of the Convention on the Rights of the Child and to give practical effect to the right of children to have their views respected. Legislators and senior representatives of the Government appeared before the Child Councillors to answer questions and to participate in the discussion. The event aroused public awareness of the Convention in particular and of children's rights in general.

37. The Council of 2003 marked a major step towards alignment with international best practice. Children's Parliaments have been established in several countries such as the United Kingdom, France, and Switzerland. Our hope was that Hong Kong's Child Councillors would share what they had learned with their peers and spread the message as widely as possible, stimulating public interest in children's rights and providing the participants

with practical insights into child rights in action.

38. After the first Children's Council, a core group of children who had been inspired by the children's rights 'message' formed their own Children's Council Working Committee with advice and assistance from our NGO partners, whom we continue to sponsor. The result was the second Children's Council, held in March 2004 and an international Children's Forum, held in Hong Kong in December 2004. We have reserved funds for further initiatives of this nature in 2005-06.

Home Affairs Bureau

July 2005