

Legislative Council Panel on Home Affairs

Hearing of the United Nations Human Rights Committee on the Second Report of the Hong Kong Special Administrative Region in the light of the International Covenant on Civil and Political Rights

Introduction

At the meeting of the Panel on Home Affairs on 8 November 2005, Members requested the Administration to submit information on the Administration's arrangements for the upcoming hearing of the second report of the Hong Kong Special Administrative Region (HKSAR) in the light of the International Covenant on Civil and Political Rights (ICCPR). This paper outlines the arrangements.

Background

2. The HKSAR submitted its first report in the light of the ICCPR in January 1999, and the hearing by the United Nations Human Rights Committee (HRC) was held in November of that year. The HRC's Concluding Observations on the report is at Annex A. The Administration responded to the concerns and recommendations raised therein in the HKSAR's second report, which was submitted to the HRC in January 2005. The report is available on the Home Affairs Bureau's website at <http://www.hab.gov.hk>.

The Hearing

3. The hearing on HKSAR's second report has been scheduled for 20 to 21 March at the United Nations in New York. A Government delegation, led by the Home Affairs Bureau, and comprising a total of nine members, will attend the hearing to answer the HRC's questions. A full list of the delegation is at Annex B.

4. We understand that the HRC will focus on the list of issues published in December 2005 (copy at Annex C). The Administration has compiled a response to the list. We will publish our response to the list of issues as soon as the HRC has received it.

Home Affairs Bureau
March 2006

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Hong Kong Special Administrative Region

1. The Committee considered the fifth periodic report of the Hong Kong Special Administrative Region (CCPR/C/HKSAR/99/1 and supplementary information CCPR/C/HKSAR/99/1/Add.1) at its 1803rd to 1805th meetings (CCPR/C/SR.1803-SR.1805), held on 1 and 2 November 1999. This report is the first submitted by the People's Republic of China after the return of HKSAR to Chinese sovereignty on 1 July 1997. The Committee adopted, at its 1810th meeting (sixty-seventh session) held on 4 November 1999, the following concluding observations.

A. Introduction

2. The Committee expresses appreciation to the delegation from HKSAR for the information it provided and for its willingness to submit further information in writing. It further welcomes the recognition given by the delegation to the contribution made by NGOs to the consideration of the HKSAR report.

3. The Committee thanks the People's Republic of China for its willingness to participate in the reporting procedure under article 40 of the Covenant by submitting the report prepared by the HKSAR authorities and by introducing the HKSAR delegation to the Committee. The Committee affirms its earlier pronouncements on the continuity of the reporting obligations in relation to Hong Kong.

B. Positive aspects

4. The Committee notes that article 39 of the Basic Law provides that the provisions of the Covenant as applied to HKSAR shall remain in force and shall be implemented through the laws of HKSAR. The Committee welcomes the fact that the primacy of the Covenant is ensured in domestic legislation by a combination of articles 39 and 11 of the Basic Law.

5. The Committee welcomes the efforts undertaken by the HKSAR to give publicity to its report and its commitment to give wide dissemination to the Committee's concluding observations.

6. The Committee welcomes the efforts undertaken by HKSAR to educate civil society about human rights. In particular, the Committee welcomes the great number of training courses, workshops and seminars conducted in HKSAR for all sectors of the population, including the civil service, the judiciary, the police and the educational establishments.

7. The Committee welcomes the steps taken by HKSAR to promote gender equality through educational campaigns and appropriate legislation.

C. Principal subjects of concern and recommendations

8. The Committee is concerned that most of the recommendations formulated in the Committee's concluding observations (published in A/51/40, paras. 66-72; A/52/40, paras. 84-85) have not yet been implemented.

9. The Committee remains concerned that there is no independent body established by law to investigate and monitor human rights violations in HKSAR and the implementation of Covenant rights.

10. The Committee is seriously concerned at the implications for the independence of the judiciary of the request by the Chief Executive of HKSAR for a reinterpretation of article 24 (2)(3) of the Basic Law by the Standing Committee of the National People's Congress (NPC) (under article 158 of the Basic Law) following upon the decision of the Court of Final Appeal (CFA) in the Ng Ka Ling and Chan Kam Nga cases, which placed a particular interpretation on article 24 (2)(3). The Committee has noted the statement of the HKSAR that it would not seek another such interpretation except in highly exceptional circumstances. Nevertheless, the Committee remains concerned that a request by the executive branch of government for an interpretation under article 158 (1) of the Basic Law could be used in circumstances that undermine the right to a fair trial under article 14.

11. The Committee takes the view that the Independent Police Complaints Council has not the power to ensure proper and effective investigation of complaints against the police. The Committee remains concerned that investigations of police misconduct are still in the hands of the police themselves, which undermines the credibility of these investigations.

The HKSAR should reconsider its approach on this issue and should provide for independent investigation of complaints against the police.

12. The Committee reiterates its concern, expressed in paragraph 19 of its concluding observations, adopted at the end of the consideration of the fourth periodic report, that the electoral system for the Legislative Council does not comply with articles 2, paragraphs 1, 25 and 26 of the Covenant. The Committee is concerned about the impending abolition of the Municipal Councils that would further diminish the opportunity of HKSAR residents to take part in the conduct of public affairs, that is guaranteed under article 25.

The HKSAR should reconsider this step. It should take all necessary measures to maintain and strengthen democratic representation of HKSAR residents in public affairs.

13. The Committee is concerned that the Interception of Communications Ordinance, which was passed in June 1997 in order to restrict the power of the authorities to intercept communications, has not yet been brought into effect. Section 33 of the Telecommunication Ordinance and Section 13 of the Post Office Ordinance still continue to be in force, thus allowing the authorities to violate the right to privacy under article 17 of the Covenant.

The HKSAR must ensure that its law and practice protect the rights guaranteed under article 17.

14. In the light of the fact that the Covenant is applied in HKSAR subject to a reservation that seriously affects the application of article 13 in relation to decision-making procedures in deportation cases, the Committee remains concerned that persons facing a risk of imposition of the death penalty or of torture, or inhuman, cruel or degrading treatment as a consequence of their deportation from HKSAR may not enjoy effective protection.

In order to secure compliance with articles 6 and 7 in deportation cases, the HKSAR should ensure that their deportation procedures provide effective protection against the risk of imposition of the death penalty or of torture or inhuman, cruel or degrading treatment.

15. The Committee remains concerned that no legislative remedies are available to individuals in respect of discrimination on the grounds of race or sexual orientation.

Necessary legislation should be enacted in order to ensure full compliance with article 26 of the Covenant.

16. The Committee is concerned that the educational system in HKSAR discriminates against girls in selection for secondary schools, that considerable differences exist in the earning levels between men and women, that women are under-represented in public boards and public offices, and that there is discrimination against women in the Small Home Policy.

The HKSAR should adopt positive measures to overcome discrimination against women and should ensure equal pay for work of equal value.

17. The Committee is concerned that the age of criminal responsibility is seven years and takes note of the statement by the Delegation that the Law Reform Commission is currently conducting a review of this matter.

The age of criminal responsibility should be raised so as to ensure the rights of children under article 24.

18. The Committee is concerned that the offences of treason and sedition under the Crimes Ordinance are defined in overly broad terms, thus endangering freedom of expression guaranteed under article 19 of the Covenant.

All laws enacted under article 23 of the Basic Law must be in conformity with the Covenant.

19. With regard to freedom of assembly, the Committee is aware that there are very frequent public demonstrations in HKSAR and takes note of the delegation's statement that permission to hold demonstrations is never denied. Nevertheless, the Committee is concerned that the Public Order Ordinance could be applied to restrict unduly enjoyment of the rights guaranteed in article 21 of the Covenant.

The HKSAR should review this Ordinance and bring its terms into compliance with article 21 of the Covenant.

20. With regard to freedom of association, the Committee is concerned that the Societies Ordinance may be applied in a way to restrict unduly the enjoyment of Article 22 rights.

The HKSAR should review this Ordinance so as to ensure full protection of the right to freedom of association, including trade union rights, under article 22 of the Covenant.

D. Date of examination of the sixth periodic report;
dissemination of information

21. The Committee sets the date for the submission of the next periodic report as 31 October 2003. That report should be prepared in accordance with the Committee's new Guidelines (CCPR/C/66/GUI/Rev.1) and should give particular attention to the issues raised by the Committee in these Concluding Observations. The Committee urges that the text of these Concluding Observations be made available to the public as well as to the legislative and administrative authorities. It requests that the next periodic report be widely disseminated among the public, including civil society and non-governmental organizations operating in HKSAR.

**Hearing on the Second Report in the light of the International
Covenant on Civil and Political Rights (20 & 21 March 2006)**

**Government of the Hong Kong Special Administrative Region
Delegation List**

| | Name | Title |
|----|--|---|
| 1. | Mr FISHER Stephen Frederick (Leader) | Deputy Secretary for Home Affairs Home Affairs Bureau |
| 2. | Mr ALLCOCK Robert Charles (Deputy leader) | Solicitor General Department of Justice |
| 3. | Mr LAI Yee Tak, Joseph | Deputy Secretary for Constitutional Affairs Constitutional Affairs Bureau |
| 4. | Ms SO Ka Pik, Linda | Principal Assistant Secretary (Security) Security Bureau |
| 5. | Mr WONG Sze Ping, Charles | Principal Assistant Secretary (Security) Security Bureau |
| 6. | Miss YEUNG Wai Sum, Amy | Assistant Secretary for Home Affairs Home Affairs Bureau |
| 7. | Ms TONG Man Kwong, Cynthia | Principal Information Officer Home Affairs Bureau |
| 8. | Ms LAI Yuen Man | Government Counsel Department of Justice |
| 9. | Miss CHUI Sze Man, Stella | Information Officer Constitutional Affairs Bureau |

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HUMAN RIGHTS COMMITTEE

**List of issues to be taken up in connection with the consideration of the
second periodic report of HONG KONG SPECIAL ADMINISTRATIVE
REGION OF THE PEOPLE'S REPUBLIC OF CHINA**

**Constitutional and legal framework within which the Covenant is
implemented and conformity of laws with it (art. 2)**

1. Please provide information on the re-interpretation of the Basic Law provisions (annex I and II), issued by the Standing Committee of the National People's Congress (NPC) on 6 April and 26 April 2004, particularly in terms of its impact for the authority of the HKSAR courts and the principle of universal suffrage in the elections of the Chief Executive and the Legislative Council in 2007 and 2008. How is this interpretation consistent with the Standing Committee's obligation to respect civil and political rights in HKSAR?
2. In view of comments provided by the HKSAR government in paragraphs 76 to 78 of the report (CCPR/C/HKG/2005/2), please explain whether it has taken, or envisages to take, any steps to establish a national human rights institution in conformity with the Paris Principles, as well as to extend the mandate of the Ombudsman over the police and the Independent Commission against Corruption.
3. Please elaborate on the 2002 review of the Equal Opportunities Commission (EOC) (paragraph 79 of the report) and provide information on the refusal to appoint an independent panel to investigate the alleged EOC incident of July 2003. What steps do the HKSAR authorities intend to take towards setting up a more transparent mechanism for the appointment of EOC chairpersons and members?
4. Please provide information on the status of the National Security Bill, introduced in February 2003 under article 23 of the Basic Law and withdrawn on 5 September 2003. Does the HKSAR government plan to reintroduce any elements of this bill? If so, when and what measures have been taken, or are envisaged, to ensure compatibility of these elements with the Covenant.

Principles of gender equality and non-discrimination; freedom from torture and cruel, inhuman or degrading treatment; right to be free of arbitrary arrest and detention; security of the person and protection from arbitrary arrest; treatment of prisoners and other detainees (arts. 3, 7, 9, 10 and 26)

5. What measures has the HKSAR government taken to combat violence against women, including domestic and sexual violence?

6. Please provide further information on the notification system set up to assist HKSAR residents detained in mainland China (paragraph 198 of the report).

Prohibition of slavery or forced or compulsory labour (art. 8)

7. Please provide information on legal proceedings, if any, instituted against traffickers in human beings, on the penalties imposed, on the protection of victims and redress granted to them.

Right to privacy; right to freedom of thought, conscience and religion; right to freedom of opinion and expression, peaceful assembly and association (arts. 17, 18, 19, 21 and 22)

8. Please provide information about the extent to which the Telecommunications Ordinance, the Post Office Ordinance and the Interception of Communications Ordinance are in compliance with articles 17 and 19 of the Covenant, as well as details on the announced review of regulations under the Interception of Communications Ordinance (paragraph 248 of the report).

9. Please comment on reports of allegedly increasing self-censorship by the media in the wake of the so-called “patriotism campaign” of April 2004, criticism from the mainland officials, and threats from the triads against leading media figures that were reportedly not acted upon by the HKSAR authorities. Please provide information on policies to ensure compliance with article 19 of the Covenant.

10. Please provide information on the reported raid against the premises of seven news agencies and their journalists’ homes by the Independent Commission against Corruption (ICAC) on 24 July 2004, which the Court of First Instance found to be “wrong in fact and in law” in a judgement in August 2004. What is the effect on the freedom of the press of the Court of Appeal’s ruling, which dismissed the ICAC appeal on technical grounds in October 2004, but concluded that ICAC had acted lawfully? Please elaborate on the monitoring role of the Independent Commission against Corruption Complaints Committee (paragraph 51 of the report).

11. According to information before the Committee, there are reports of academics based in Hong Kong detained by the mainland security agents for political reasons, and that the government of the Special Administrative Region has not intervened. In this respect, please elaborate on the steps taken by the HKSAR authorities to protect academic freedoms, enshrined in article 34 of the Basic Law and provided for by article 19 of the Covenant.

12. Please provide information on the extent to which the provisions concerning treason and sedition under the Crimes Ordinance is in compliance with article 19 of the Covenant. Please

indicate what measures have been taken to implement the Committee's previous concluding observations on this issue.

13. Please provide information on whether the HKSAR authorities intend to amend the Societies Ordinance to replace the current compulsory registration system, which makes the establishment of associations conditional on government approval, with a system of notification. Please provide statistical information on the number of registration requests refused on the grounds of national security, public safety, public order, or the protection of the rights and freedom of others.

14. Please comment on information before the Committee that police authorities have used the "notice of no objection" procedure under the Public Order Ordinance to make it more difficult for groups to obtain permissions for marches, demonstrations and rallies, and to arrest journalists and students during peaceful protests. Please elaborate on the conditions and/or penalties imposed on such protestors. What types of application for public demonstrations have been rejected for reasons of "national security", "public order", or their subject matter?

15. According to information before the Committee, restrictions have been placed on Falun Gong practitioners in HKSAR (including limited use of public facilities, denial of entry into HKSAR to followers based outside the Region, and public warnings by officials). Please comment and provide information on the compatibility of these restrictions with articles 18, 19 and 21 of the Covenant.

16. Please explain how the absence of an institutional framework for union recognition and collective bargaining is compatible with article 22 of the Covenant.

Expulsion of aliens; right to enter one's own country; protection of the family and children (arts. 12, 13, 23, 24)

17. Please provide additional information on the powers of the Chief Executive to issue a removal order or a deportation order according to the relevant provisions of the Immigrations Ordinance. For the purposes of a removal order (Section 19.1 (a)), who qualifies as an "undesirable immigrant"? What criteria are used by the Chief Executive to determine whether the deportation of an immigrant is "conducive to the public good" (Section 20.1)?

18. Please elaborate on the status of refugees or asylum-seekers on the HKSAR territory since the government's elimination of the temporary protection policy, and provide information on the requests received and granted by the Director of Immigration. Please explain how the HKSAR authorities have given effect to the Court of Final Appeal's judgement of 8 June 2004 in

the case of *Prabakar v. Secretary for Security*. What provisions exist with respect to employment of those who are granted refugee status (or are awaiting an assessment of their status by the Office of the United Nations High Commissioner for Refugees) and school attendance of their children?

19. According to information before the Committee, the grounds for claiming the right of abode have been considerably narrowed. In January 2002, a judgement of the Court of Final Appeal found that only some 400 out of 5,000 claimants had the right of abode. In this respect, please provide information on the status, legal protections, and numbers of claimants of the right of abode and the right to family reunion.

Right to take part in the conduct of public affairs; right to vote (art. 25)

20. There have been a number of allegations of threats and of cases of vandalism against democratic legislators and allegations of a poor response by the police to investigate and prosecute the offenders. Please provide information on the actions taken, if any, to prevent, investigate, and prosecute threats and vandalism reportedly perpetrated against legislators of the Democratic Party in the lead-up to the September 2004 elections.

**Prohibition of discrimination and rights of persons belonging to minorities
(arts. 26 and 27)**

21. Please elaborate on the measures taken or planned to protect foreign domestic workers, predominantly women, from direct and indirect discrimination in their workplaces and government offices, and to reduce the incidence of contract violations, underpayment and criminal abuse against them. Please provide information on support mechanisms, including legal remedies, as well as statistical information on investigations and prosecutions relating to underpayment or non-payment of wages and allegations of abuse or maltreatment, and their outcome (judgements and compensation).
