

International Covenant on Civil and Political Rights

Report of the Hong Kong Special Administrative Region

**on its follow-up to the Concluding Observations
of the Human Rights Committee**

**on the second periodic report
of the Hong Kong Special Administrative Region**

March 2007

Introduction

1. Following consideration of the second periodic report of the Hong Kong Special Administrative Region (HKSAR), the Human Rights Committee adopted, on 30 March 2006, the concluding observations which are reproduced at Annex A of this report. Paragraph 21 thereof specifically requested the HKSAR to “submit within one year information on the follow-up given to the Committee’s recommendations in paragraphs 9, 13, 15, 18.”

2. The relevant recommendations were –

THAT the HKSAR should –

- (a) ensure that the investigation of complaints against the police is carried out by an independent body, the decisions of which are binding on relevant authorities (*paragraph 9*);
- (b) take vigorous measures to prevent and prosecute harassment of media personnel, and ensure that the media can operate independently and free from government intervention (*paragraph 13*);
- (c) ensure that its policies and practices regarding the right of abode fully take into consideration its obligations regarding the right of families and children to protection enshrined in articles 23 and 24 of the Covenant (*paragraph 15*);

AND THAT

- (d) all necessary measures should be taken whereby the Legislative Council is elected by universal and equal suffrage. It should be ensured that all interpretations of the Basic Law, including on electoral and public affairs issues, are in compliance with the Covenant (*paragraph 18*).

3. In accordance with the Human Rights Committee's request, this report sets out, under respective headings, the HKSAR's follow-up and response to the recommendations.

Investigation of complaints against the Police

4. At present, the Complaints Against Police Office (CAPO), which is responsible for investigating into complaints against the Police, already operates independently of all operational and support formations of the Police Force. Moreover, its handling of complaints is closely monitored by the Independent Police Complaints Council (IPCC), which comprises non-official members from a wide spectrum of the community. There are effective checks and balances to ensure that complaints are handled thoroughly, fairly and impartially. The IPCC examines all investigation reports submitted by CAPO and may invite the complainants, complainees and witnesses to interviews as necessary. It may also ask CAPO to submit for its reference documents or information relevant to a complaint. CAPO will address any queries that the Council may raise about a case and will re-investigate the case if the Council so requests.

5. We are taking steps to convert the IPCC into a statutory body, and are preparing the necessary legislative proposals. This should further enhance the transparency and credibility of the police complaints system.

Prevention and prosecution against intimidation and harassment of legislators and media personnel

6. Hong Kong is one of the safest cities in the world. The HKSAR Government accords utmost importance to protecting the safety and property of the community, as well as safeguarding the freedom of speech and of the press enjoyed by the public and guaranteed under the Basic Law. Government does not tolerate any criminal acts, irrespective of whether they are committed against persons of particular categories or ordinary members of the public.

7. The number of criminal incidents against Legislative Council Members and public affairs commentators is very small. The majority of such cases are also of a relatively minor nature (such as vandalism of

publicity banners or causing nuisance to the complainants). This notwithstanding, the Police attach much importance to these incidents and, given their sensitivity, adopts a proactive approach in their investigation. They conduct careful and thorough investigation into all such cases of complaints and reports, including taking statements from relevant parties, locating witnesses, gathering evidence at scenes of crime, establishing the culprits' profiles, and analysing their modus operandi. Where sufficient evidence is established, the Police will take appropriate action to arrest and to prosecute the offenders. All investigations and proceedings are undertaken in conformity with the rule of law and justice.

8. As requested by members of the Human Rights Committee at the hearing on 20-21 March 2006, the details of the cases of violence and criminal intimidation involving legislators and media commentators from 2002 to 2006 (up to September) is attached at **Annex B** of this report. Where difficulties are encountered in investigations, these commonly relate to the lack of direct links between the culprits and the victims, and the often limited availability of information from the witnesses and victims.

9. At the risk of repetition, we reiterate the HKSAR Government's full commitment to protecting the safety of the public. In particular, we do not tolerate the use of violence or the threat of violence, regardless of whether the victims are ordinary members of the public or well known public figures. Where a witness or a victim is subject to a real and prolonged threat of physical injury, we would offer him protection. The Police will also investigate into such cases and take follow-up actions, including prosecutions, as may be necessary and appropriate.

Right of abode

10. The criteria for eligibility for the right of abode in Hong Kong are prescribed in Article 24 of the Basic Law (BL24) and the Immigration Ordinance (Cap 115). Those prescriptions and laws are consistent with the relevant international human rights treaties applicable to Hong Kong.

11. In January 2002, the Court of Final Appeal handed down judgment on the right of abode cases. Mainland residents who have no

legal right to stay in Hong Kong must return to the Mainland. The Director of Immigration may exercise his discretion on a case-by-case basis to allow individual Mainland residents to stay if there are exceptional humanitarian or compassionate considerations.

12. We fully understand the wishes for family reunion. However, it has to be equally recognised that such wishes are not an absolute right. Governments worldwide require people who wish to join their families to submit, prior to entering the jurisdictions in question, formal applications for processing in accordance with local laws and policies.

13. Eligible Mainland residents who wish to settle in Hong Kong must apply under the One-way Permit Scheme for exit permits from the Mainland authorities in accordance with the relevant national laws and administrative regulations. To ensure orderly entry at a rate that our socio-economic infrastructure can practicably absorb, the Scheme is subject to a daily quota of 150, or 54,750 a year. Applications are assessed by Mainland authorities in accordance with a points-based system. From July 1997 to February 2007, over 500,000 Mainland residents have settled in Hong Kong under the Scheme. Mainland residents may also apply for Two-way Permits from the relevant Mainland authorities to visit their family members in Hong Kong. In 2006, 1,740,120 Two-way permit holders entered Hong Kong on exit endorsement for visiting relatives.

Universal suffrage for election to the Legislative Council

14. For proper perspective, it should be pointed out that, when the Covenant was applied to Hong Kong in 1976, a reservation was made not to apply article 25(b) in so far as it might require the establishment of an elected Executive or Legislative Council in Hong Kong. This reservation continues to apply.

15. Notwithstanding this reservation, the Basic Law promulgated by the National People's Congress in 1990 clearly states that universal suffrage is the ultimate aim of Hong Kong's constitutional development. Thus, the final goal of Hong Kong's evolution towards democracy originates from the Basic Law, and not the Covenant. Both the Central Authorities and the Government are fully committed to achieving the

ultimate aim of universal suffrage in accordance with the Basic Law and the relevant Interpretation and Decision of the Standing Committee of the National People's Congress (NPCSC) of April 2004.

16. Regarding NPCSC's interpretation of the Basic Law, the HKSAR Government's consistent position is that, the power of interpretation of the Basic Law, which is enshrined in the Constitution and the Basic Law, is vested in NPCSC. Such power is in general and unqualified terms. This principle is fully acknowledged and respected in Hong Kong and by the courts of the HKSAR. The exercise of that power by the NPCSC, therefore, has not, and could not have, in any way affected the independence of the Judiciary, the rule of law, or Hong Kong's high degree of autonomy.

- End of report -

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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 (HKSAR)

1. The Human Rights Committee considered the second periodic report of the Hong Kong Special Administrative Region (HKSAR) (CCPR/C/HKG/2005/2) at its 2350th and 2351st meetings (CCPR/C/SR.2350-2351), on 20 and 21 March 2006. This report is the second submitted by the People's Republic of China after the return of the HKSAR to Chinese sovereignty on 1 July 1997. The Committee adopted the following concluding observations at its 2364th and 2365th meetings (CCPR/C/SR.2364), on 30 March 2006.

A. Introduction

2. The Committee welcomes the submission of HKSAR's second periodic report, which was elaborated in conformity with the reporting guidelines, and the constructive dialogue with the delegation who provided comprehensive replies to the written and oral questions formulated by the Committee. The Committee welcomes also the wide publicity given to the report, the list of issues and its previous concluding observations. The Committee appreciates the process of consultations undertaken by the HKSAR for the preparation of the report, which included consultations with civil society.

B. Positive aspects

3. The Committee welcomes initiatives taken to respond to the needs of minority communities, such as the establishment of the Ethnic Minorities Forum and the provision of funding for community level projects. It also welcomes the public education efforts carried out to foster a culture of mutual understanding and respect among people of different races.

4. The Committee notes with appreciation the initiatives undertaken to promote non-discrimination on the grounds of sexual orientation.

5. The Committee welcomes the putting in place, following a judgement of the Court of Final Appeal, of administrative procedures for the assessment of claims of torture made by persons facing deportation.

6. The Committee welcomes the withdrawal of the National Security (Legislative Provisions) Bill introduced in 2003 under article 23 of the Basic Law, in view of the serious concerns which the Bill raised regarding the protection of rights under the Covenant.

7. The Committee welcomes the measures taken in order to tackle domestic violence, including preventive measures, crisis intervention, support services for victims, treatment of offenders and the ongoing revision of the legislative framework.

C. Principal subjects of concern and recommendations

8. The Committee regrets that the HKSAR has not implemented a number of recommendations contained in its previous concluding observations (CCPR/C/79/Add.117). It remains concerned regarding the limited mandate and powers of the Ombudsman, including its lack of oversight function of the police, and the Equal Opportunities Commission (article 2).

The HKSAR should consider the establishment of an independent human rights institution compliant with the Paris Principles.

9. The Committee remains concerned that investigations of police misconduct are still carried out by the police themselves through the Complaints Against Police Office (CAPO), and that the Independent Police Complaints Council (IPCC) does not have the power to ensure proper and effective investigation of complaints or for the effective implementation of its recommendations (article 2).

The HKSAR should ensure that the investigation of complaints against the police is carried out by an independent body, the decisions of which are binding on relevant authorities.

10. The Committee remains concerned at the absence of adequate legal protection of individuals against deportation to locations where they might be subjected to grave human rights violations, such as those contrary to articles 6 and 7 of the Covenant.

The HKSAR should establish an appropriate mechanism to assess the risk faced by individuals expressing fears of being victims of grave human rights violations in the locations to which they may be returned.

11. The Committee is concerned at reports that Hong Kong residents detained on the Mainland encounter difficulties in having contact with their families in Hong Kong (article 10).

The HKSAR should take measures to ensure that the notification system between the Regional and Mainland authorities is complied with and that cases of detention are notified promptly to the relatives in the Region.

12. The Committee remains concerned that no clear legislative framework exists regarding the capacity of law enforcement agencies to intercept communications and carry out covert surveillance (article 17).

The HKSAR should enact legislation on the matter which is in full conformity with article 17 of the Covenant and provide a mechanism of protection and redress to individuals claiming interference with their privacy or correspondence.

13. The Committee is concerned about reports of intimidation and harassment against journalists and media personnel, frequently in connection with debates on political issues (article 19).

The HKSAR should take vigorous measures to prevent and prosecute harassment of media personnel, and ensure that the media can operate independently and free from government intervention.

14. The Committee is concerned that the current definition of the offences of treason and sedition in the Crimes Ordinance is too broad (articles 19, 21, 22).

The HKSAR should amend its legislation regarding such offences to bring it into full conformity with the Covenant.

15. The Committee notes with concern that, as a result of the right of abode policies, many families remain separated or their members feel necessitated to stay in HKSAR illegally. In some cases, family members who have been repatriated to the Mainland are not even provided with two-way permits to visit their families in HKSAR (articles 23 and 24).

The HKSAR should ensure that its policies and practices regarding the right of abode fully take into consideration its obligations regarding the right of families and children to protection enshrined in articles 23 and 24 of the Covenant.

16. Notwithstanding the measures adopted by the HKSAR to tackle the problem of domestic violence, concerns persist, including regarding the handling of cases by the police and the funding of social services to assist the victims (articles 3, 23, 24).

The HKSAR should make sure that police officers receive proper training to deal with cases of domestic violence and ensure adequate allocation of resources for protection and provision of assistance to the victims.

17. The Committee is concerned about allegations of threats and acts of vandalism against some legislators during the run up to elections in 2004 and it regrets that the HKSAR did not provide it with information on the difficulties caused to legislators of the Democratic Party (articles 19 and 25)

The HKSAR should investigate allegations of harassment of legislators, ensure that they do not recur and take the necessary steps for full compliance with articles 19 and 25.

18. The Committee recalls that in the concluding observations regarding the part of the fourth periodic report of the United Kingdom of Great Britain and Northern Ireland relating to Hong Kong, adopted on 1 November 1995, it referred to the reservation made by the United Kingdom according to which article 25 b) did not require the establishment of an elected legislature in Hong Kong. The Committee took the view that once an elected Legislative Council is established, its election must conform to article 25 of the Covenant. As stated at that time, and reiterated in its concluding observations on the initial report of the HKSAR, adopted on 4 November 1999, the Committee still considers that the electoral system in Hong Kong does not meet the requirements of article 25, as well as articles 2, paragraph 1 and 26 of the Covenant. Furthermore, the Committee is concerned that the implementation of the procedure for interpretation of the Basic Law, such as on electoral and public affairs issues, does not include adequate arrangements to ensure that such interpretations are in compliance with the Covenant (articles 2, 25, 26).

All necessary measures should be taken whereby the Legislative Council is elected by universal and equal suffrage. It should be ensured that all interpretations of the Basic Law, including on electoral and public affairs issues, are in compliance with the Covenant.

19. While welcoming the measures taken by the HKSAR to combat racial discrimination, the Committee remains concerned at the absence of relevant specific legislation (article 26).

The Committee urges the HKSAR to adopt the necessary legislation in order to ensure full compliance with article 26 of the Covenant.

20. The Committee sets 2010 as the date for the submission of the HKSAR's third periodic report. It requests that the present concluding observations be published and widely disseminated to the general public, as well as to the judicial, legislative and administrative authorities.

21. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the HKSAR should submit within one year information on the follow-up given to the Committee's recommendations in paragraphs 9, 13, 15, 18. The Committee requests the HKSAR to include in its next periodic report information on its remaining recommendations and on the implementation of the Covenant as a whole.

Annex B**Reported cases of violence and criminal intimidation involving well known personalities
from 2002 to 2006 (up to September 2006)**

Person Affected	Timing/Location	Report/Allegation	Classification	Person arrested/Sentencing
2002				
Legislative Council (LegCo) Member	December 2002 at the LegCo Member's office in Shatin	A person made calls to the office and threatened to set fire to the office.	Criminal intimidation	–
2003				
LegCo Member	June 2003, at the LegCo Member's office in Tung Chung, Lantau	The glass panel of the main door of the office was found smashed.	Criminal damage	–
LegCo Member	May to June 2003, at the LegCo Member's office in Central	Phone calls were received from an unknown person, threatening violence if the LegCo Member did not handle her request.	Criminal intimidation	–
LegCo Member	July 2003, at the LegCo Member's office in Shatin	Rotten vegetable was scattered outside the office.	Nuisances committed in public places	A 66-year old male was convicted and fined \$1,000 for each charge.

Person Affected	Timing/Location	Report/Allegation	Classification	Person arrested/Sentencing
	September 2003, at the LegCo Member's office in Shatin	Faeces were splashed outside the office.	Nuisances committed in public places	
LegCo Member	August 2003, in Tai Po	Two advertisement signboards and one plastic banner, which were hung on the railings on a road, were damaged.	Criminal damage	-
LegCo Member	October 2003, at the LegCo Member's Office in Shatin	Nuisance telephone calls were made to the office.	Telephone Nuisance	A 54-year-old female was summonsed for 'Telephone Nuisance'. She was convicted and was fined HK\$750.
2004				
LegCo Member	February 2004, at the LegCo Member's clinic in Yuen Long	Two teenagers splashed red paint at the clinic, and was arrested by an off-duty constable.	Criminal damage	The two persons pleaded guilty in court and were sentenced to training centre and detention centre respectively.

Person Affected	Timing/Location	Report/Allegation	Classification	Person arrested/Sentencing
Media commentator	March 2004, in Tsimshatsui	The person reported that he was assaulted by four males outside a hotel.	Assault	<p>Police enquiry led to the arrest of 5 persons. 4 of them were prosecuted on the offence of common assault.</p> <p>Among these 4 persons, 3 pleaded guilty and were fined \$2,000 each. The other person jumped court bail and warrant of arrest has been issued.</p>
Media commentator	March 2004	A number of anonymous calls were made to the person's shop, demanding him to repay a debt. One of the callers threatened to cause trouble to the shop if the debt remained unpaid.	Criminal intimidation	-
Media commentator	March 2004	A "\$" sign was sprayed on the roller shutter of the person's shop.	Criminal damage	-
Media commentator	March 2004, office of a company in North Point	3 persons poured red paint on the carpet of the office of the company, of which the person was one of the directors.	Criminal damage	-

Person Affected	Timing/Location	Report/Allegation	Classification	Person arrested/Sentencing
LegCo Member	March 2004 at the LegCo Member's office in Shatin	A plastic information box outside the office was smashed.	Criminal damage	-
LegCo Member	June 2004, at the LegCo Member's office in Tai Po	Posters outside the office were found to have been set on fire.	Arson	-
LegCo Member	(1) April 2004, inside Legislative Council Building in Central; (2) May 2004, in Shamshuipo area; (3) May 2004, at an office of a district councillor of the LegCo Member's party in Shamshuipo	Letters of intimidating nature were received. Some of the LegCo Member's promotion banners in Shamshuipo area were also damaged.	(1) Criminal intimidation (2) Criminal damage	-
LegCo Member	May 2004, outside the LegCo Member's office in Kwai Chung	Faeces were found outside the office.	Request for Police investigation	-

Person Affected	Timing/Location	Report/Allegation	Classification	Person arrested/Sentencing
2005				
LegCo Member	January 2005, in Central	During a public meeting and procession, a placard with allegedly intimidating words against the LegCo Member was found.	(1) Criminal intimidation (2) Incitement to wound	-
LegCo Member	March 2005, at the LegCo Member's law firm in Central	Threatening phone call was received in connection with the business of the law firm.	(1) Blackmail (2) Criminal intimidation	4 persons were arrested. They were released unconditionally due to insufficient evidence to lay any charges.
2006				
LegCo Member	February 2006, at the LegCo Member's office in Tuen Mun	Excretal mixture was found at the front entrance of the office. Activity advertisements outside the office were also splashed with dirty liquid.	(1) Criminal damage (2) Laying offensive matter on a public place	A male person was arrested. The arrested person pleaded guilty to 2 counts of criminal damage and 1 count of laying offensive matter on a public place, and was fined a total of \$3,000.

Person Affected	Timing/Location	Report/Allegation	Classification	Person arrested/Sentencing
LegCo Member	June 2006, at the LegCo Member's office in Tuen Mun	<p>A person turned up at the office and demanded to talk to the LegCo Member. He pushed the LegCo Member's shoulder once.</p> <p>Upon police arrival, the LegCo Member indicated that the person had no intention to harm him, and that he did not want to pursue the case.</p>	Request for police investigation	-
LegCo Member	August 2006, at a restaurant in Central	The LegCo Member was assaulted by 4 persons inside the restaurant, each armed with a wooden baton. The assailants fled after the attack.	Wounding	7 persons were arrested. 4 persons pleaded guilty to "conspiracy to wound with intent", with one of them additionally pleading guilty to "assault occasioning actual bodily harm". All 4 persons were sentenced to 4 years and 8 months of imprisonment. The other 3 persons were released from Police bail due to insufficient evidence to lay charges. One wanted person has yet to be located for investigation.

Person Affected	Timing/Location	Report/Allegation	Classification	Person arrested/Sentencing
LegCo Member	August 2006	Two threatening letters were received following an earlier attack on the LegCo Member. One was mailed to his solicitor's office and enclosing a piece of cutter. The other was inserted into a post box outside his office in Tuen Mun.	Criminal intimidation	-
LegCo Member	August 2006, at the LegCo Member's office in Central	A defamatory letter, with a razor blade enclosed, was received.	Criminal intimidation	One person was arrested but was later released unconditionally due to insufficient evidence to lay charges.
LegCo Member	August 2006, at the LegCo Member's office in LegCo	A letter with a razor blade enclosed was received.	Request for Police investigation	-
LegCo Member	September 2006, at the LegCo Member's office in Kwai Fong Estate	A threatening letter was received.	Criminal intimidation	-