

Legislative Council Panel on Constitutional Affairs

**Report of the Hong Kong Special Administrative Region
for the United Nations Human Rights Council
Universal Periodic Review**

Purpose

This paper invites Members' attention to the report of the Hong Kong Special Administrative Region (HKSAR) for the United Nations Human Rights Council Universal Periodic Review (UPR), which is part of the Report of the People's Republic of China (China Report) submitted to the United Nations (UN) by the Central People's Government (CPG) under the UPR mechanism.

The UPR mechanism

2. The United Nations Human Rights Council (UNHRC) was created by the UN General Assembly Resolution 60/251 of 15 March 2006 to replace the UN Commission on Human Rights. Among its primary responsibilities, it was charged with the responsibility to "undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States".

Submission of report

3. Under the UPR, States Parties are required to submit to the UN a report describing, inter alia, framework for the promotion of and protection of human rights, implementation of international human rights obligations, identification of achievements, challenges and constraints.

4. The Report of the HKSAR is at Annex. It covers the following key issues:

- (a) background information about Hong Kong;

- (b) the legal framework within which human rights are protected;
- (c) measures to promote human rights through public education and publicity;
- (d) developments on major aspects including constitutional development, the political appointment system, enactment of the Independent Police Complaints Council Ordinance as well as promotion of the rights and interests of ethnic minorities, women, children and persons with disability;
- (e) measures to encourage community involvement and contribution from the civil society as well as exchange of views with the public.

5. After the submission of the Report by the CPG to the UN, it has been published by the UN on its web-site. In accordance with established practice, we have published the HKSAR section of the Report locally and distributed it to the public, including interested non-government organizations. The HKSAR Report is also available on the website of the Constitutional and Mainland Affairs Bureau.

Hearing of the Report

6. The hearing of the China Report is scheduled to be held on 9 February 2009 in Geneva. Officials from relevant Bureaux and Departments of the HKSAR Government will attend the hearing as members of the Chinese delegation to answer questions and to provide further information as appropriate.

Constitutional and Mainland Affairs Bureau
January 2009

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Methodology and consultation

In preparing this part of the report, the Hong Kong Special Administrative Region (HKSAR) Government conducted an exercise in September 2008 to consult the public. The HKSAR Government published a consultation document which contained the background and objectives of the review, a proposed outline of the report and an appeal to the public for comments. This document was sent to a broad spectrum of the community, including the Legislative Council, relevant non-governmental organisations (NGOs), interested members of the public and the media, and was distributed through the District Offices and on the internet. During the consultation period, the HKSAR Government also collected views from representatives of NGOs at the Human Rights Forum. The HKSAR Government carefully considered all the views and comments received.

Background information

2. The HKSAR was established on 1 July 1997 as a Special Administrative Region of the People's Republic of China. In accordance with the Basic Law of the HKSAR of the People's Republic of China, the HKSAR enjoys a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication.

3. The Chief Executive is the head of the HKSAR. He leads the Government of the HKSAR and is responsible for implementing the Basic Law, signing bills and budgets passed by the Legislative Council,

promulgating laws, making decisions on government policies and issuing executive orders.

4. The Legislative Council is the legislature of the HKSAR. It has 60 Members, with 30 Members returned by geographical constituencies through direct elections and 30 Members by functional constituencies.

5. The legal system of the HKSAR is founded on the rule of law and an independent judiciary. Under the principle of “One Country, Two Systems”, the HKSAR’s legal system differs from that of the Mainland, and is based on the common law. The Court of Final Appeal is the highest appellate court in the HKSAR. All judges are qualified legal practitioners and have security of tenure, which is protected by the Basic Law.

Framework and measures for promotion and protection of human rights

6. In the HKSAR, human rights and freedoms are guaranteed constitutionally by the Basic Law, including equality before the law, freedom of speech and of the press, freedom of association, of assembly and of demonstration, freedom from unlawful search of or intrusion into homes or other premises, freedom and privacy of communication, freedom of movement, freedom of religious belief and right to social welfare in accordance with law. The Basic Law also provides for the rights of HKSAR permanent residents to vote and to stand for election in accordance with law.

7. A total of 15 international human rights treaties apply to the HKSAR. As regards local legislation, the Hong Kong Bill of Rights Ordinance was enacted specifically to give effect in local law to the provisions of the International Covenant on Civil and Political Rights as applied to the HKSAR. The Ordinance binds the HKSAR Government and all public authorities. Further human rights protection is accorded by specific legislation, including the Sex Discrimination Ordinance, Disability Discrimination Ordinance, Mental Health Ordinance, Family Status Discrimination Ordinance, Race Discrimination Ordinance and Personal Data (Privacy) Ordinance.

8. The protection of human rights is buttressed by the rule of law and an independent judiciary. In addition, there is an extensive institutional framework of organisations which help promote and safeguard different rights. These include a comprehensive legal aid system, the Equal Opportunities Commission, the Office of the Privacy Commissioner for Personal Data, the Ombudsman, the Independent Police Complaints Council, as well as various administrative channels for complaints and redress. The effectiveness of these mechanism and organisations is closely monitored by the Legislative Council, the media and the public.

9. The HKSAR also attaches great importance to promotion of human rights through public education and publicity. Human rights topics form part of the school curriculum at different levels and are included in the syllabuses of a wide range of subjects. Courses on various aspects on human rights are offered by tertiary institutions. Outside of schools, government bureaux and departments organise activities to promote aspects of human rights relevant to their functional responsibilities and provide financial assistance to community

organisations to promote public involvement in the endeavours. The HKSAR Government also organises human rights training and education for civil servants.

10. The promotion of human rights is also an important part of relevant organisations' work. For instance, the Equal Opportunities Commission operates regular programmes to provide public education against discrimination and to promote equal opportunities. The Committee on the Promotion of Civic Education produces and distributes educational materials and sponsors programmes to foster community awareness of the rights of the individual. The Women's Commission promotes the well-being and interests of women in all aspects of life.

Achievements and challenges

11. Since its establishment, the HKSAR has been taking steps to promote and protect human rights. Steady progress has been made. The key developments are highlighted below.

12. On constitutional development, the Basic Law provides that the ultimate aim is the election of the Chief Executive (CE) and all Members of the Legislative Council (LegCo) by universal suffrage in accordance with the principle of gradual and orderly progress. In December 2007, following extensive public consultation on the models, roadmap and timetable for implementing universal suffrage, the HKSAR Government submitted a report to the Standing Committee of the National People's Congress (NPCSC). Consequently, the NPCSC decided that the election of the CE may be implemented by universal suffrage in 2017, and that after the CE is elected by universal suffrage, the election of the LegCo of

the HKSAR may be implemented by the method of electing all the members by universal suffrage.

13. Between 2008 and 2012, the third-term HKSAR Government will endeavour to roll forward Hong Kong's electoral methods to a mid-way point. It will undertake public consultation to determine the two electoral methods for 2012. Between 2012 and 2017, the fourth-term HKSAR Government and the LegCo will address together the method for implementing universal suffrage for the election of the CE.

14. The political appointment system of the HKSAR Government was implemented in 2002. Under the system, the principal officials (Secretaries of the HKSAR Government) are political appointees who serve coterminous with the CE in these positions for a term of five years. This represents a major step forward in the system of governance as it has widened the pool of candidates for appointment of principal officials and also requires the principal officials to shoulder political responsibility. Two additional tiers of political appointees (i.e. Under Secretaries and Political Assistants) were created in April 2008. Under the political appointment system, the civil service continues to remain permanent, meritocratic, professional and politically neutral.

15. The more recent initiatives to enhance the protection of human rights include the enactment of the Race Discrimination Ordinance in July 2008. During the legislative process, the HKSAR Government received a number of requests for amendments to the proposed legislation. The HKSAR Government has made certain amendments to address some of the requests and is of the view that the Ordinance, as amended, represents a major step forward in our commitment to combat racial discrimination.

To reinforce existing services, the HKSAR Government is planning the establishment of four regional support service centres for ethnic minorities to provide interpretation service to facilitate their access to public services and to organise language training and other programmes to promote their integration into the community. The HKSAR Government is also drawing up administrative guidelines for relevant bureaux and departments to facilitate their formulation and implementation of policies to promote racial equality.

16. The Independent Police Complaints Council Ordinance was also enacted in July 2008. The Ordinance aims to convert the existing Independent Police Complaints Council into a statutory body and thus enhances the independence of the Council as well as the transparency of the police complaints system.

17. With regard to the interests of women, the Sex Discrimination Ordinance was enacted in 1995. In 2001, the Women's Commission was established to promote the well-being and interests of women in Hong Kong, and to monitor the implementation of Convention on the Elimination of All Forms of Discrimination Against Women.

18. To protect the rights of persons with disabilities, the Disability Discrimination Ordinance has been in force since 1995. With the ratification of the Convention on the Rights of Persons with Disabilities by the Central People's Government, this Convention has been applied to the HKSAR since 31 August 2008.

19. The interests of the child are primary in the HKSAR Government's formulation and dispensation of legislation and policies

relating to or affecting children. It is also paramount in actions undertaken by courts of law and administrative authorities in charge of child welfare. Children in the HKSAR are now entitled to 12 years of free education in public schools. The HKSAR Government also organises activities and provides funding for community projects to promote public awareness of and respect for children's rights. The HKSAR Government pioneered the Children's Council project and established the Children's Rights Forum to provide a platform for exchange and to solicit the views of children representatives on matters relating to their interest.

20. To encourage community involvement and seek contribution from the civil society, the HKSAR Government maintains continued dialogue with relevant NGO and has in recent years established regular channels including the Human Rights Forum, the Ethnic Minorities Forum, the Sexual Minorities Forum as well as the Children's Rights Forum to facilitate communication, exchange of views and mutual understanding.

21. Through the various channels, the HKSAR Government receives views and suggestions from the public on human rights issues. Some have proposed that the establishment of a Human Rights Commission be considered. Since the HKSAR's existing framework is operating well, the HKSAR Government does not see the need to establish a separate human rights institution to supersede or duplicate existing institutions. We do recognise that, with the development of society, there will be a need for further work and continued demand from different sectors for more to be done. The HKSAR Government will continue to gauge the views of all relevant sectors and balance different interests in the community. The HKSAR Government will also have to ensure that

measures to be taken will suit local circumstances and fit the evolving situation in Hong Kong.