

**For discussion
on 18 January 2010**

Legislative Council Panel on Constitutional Affairs

**An outline of the topics in the third report of the
Hong Kong Special Administrative Region under
the International Covenant on Economic, Social and Cultural Rights**

Purpose

This paper seeks Members' comments on the proposed outline of the topics to be included in the third report of the Hong Kong Special Administrative Region (HKSAR) under the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Application of the ICESCR

2. The application of the ICESCR was extended to Hong Kong in 1976. Its provisions continue to apply to Hong Kong after the establishment of the Hong Kong Special Administrative Region on 1 July 1997.

Reporting Obligation under the ICESCR

3. Under Article 16 of the ICESCR, State Parties have obligation to make reports on measures they have adopted and the progress made in achieving the observance of the rights recognized therein. The HKSAR's first report under the ICESCR was submitted to the United Nations (UN) in 1999 and was considered by the UN Committee on Economic, Social and Cultural Rights (the Committee) in April 2001.

4. China ratified the ICESCR on 27 March 2001. The HKSAR's second report under the ICESCR was submitted to the UN as part of China's initial report in June 2003. It was considered by the Committee in April 2005.

5. The Central People's Government (CPG) is preparing its second report under the ICESCR. In this connection, the HKSAR Government will submit to the CPG a report on the implementation of the ICESCR in the HKSAR for incorporation into China's report.

Public Consultation

6. In line with the established practice, we have prepared for public consultation an outline of the topics for inclusion in the report at **Appendix**. It covers developments in the HKSAR since the Committee last examined the report on the HKSAR in 2005. The purpose of the consultation is to invite members of the public to submit views on the implementation of the ICESCR in the HKSAR in respect of those topics and to suggest any additional topics that should be included in the report.

7. The public consultation on the report outline will start on 11 January 2010. We will issue the outline to relevant non-governmental organisations and other concerned groups to invite their views. The outline will also be made available at all Public Enquiry Service Centres of District Offices, and uploaded to the website of the Constitutional and Mainland Affairs Bureau at <http://www.cmab.gov.hk>.

8. The public consultation will close on 19 February 2010. We will consider the comments received in drafting the Hong Kong report. The comments will be made available to members of the public on request, unless the contributor has specifically asked us to keep their views confidential.

Comments sought

9. Members are invited to comment on the proposed outline. We will take into consideration carefully the views and suggestions received, including those of Panel Members, in drafting the Hong Kong Report. The report will be published for dissemination to the public and copies will be sent to Members.

**Constitutional and Mainland Affairs Bureau
January 2010**

**An outline of the topics to be covered in the third report of the
Hong Kong Special Administrative Region under
the International Covenant on Economic, Social and Cultural Rights**

Introduction

The Government is preparing for the submission of the third report of the Hong Kong Special Administrative Region (HKSAR) under the United Nations (UN) International Covenant on Economic, Social and Cultural Rights (the Covenant). It will form part of the second periodic report of the People's Republic of China under the Covenant.

2. In accordance with the established practice, we have prepared an outline of the report. It sets out the broad subject headings and individual topics that we plan to cover in the report. We invite members of the public to submit their views on the implementation of the Convention in respect of those topics, and to suggest any additional topics that should be included in the report.

3. We will consider carefully all the comments and suggestions that will be received. Any persons or organisations wishing to offer views are invited to send them to the Constitutional and Mainland Affairs Bureau (CMAB) on or before 19 February 2010:

by post: Team 5
Constitutional and Mainland Affairs Bureau
Central Government Offices
3/F., East Wing
Lower Albert Road, Hong Kong

by fax: 2840-0657

by e-mail: icescr_consultation@cmab.gov.hk

4. Submissions will normally be made available to the general public upon request, unless the contributors specifically ask us to keep their views confidential.

5. The text of the Covenant is available on the CMAB website: http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/icescr.doc

6. References to “the previous report” are to the report of the HKSAR submitted by the Central People's Government in June 2003 and heard by the UN Committee on Economic, Social and Cultural Rights (the Committee) in April 2005. A copy of the previous report is available on the CMAB website: http://www.cmab.gov.hk/en/issues/culturalrights_report.htm

7. The report will mainly consist of –

- (a) information / explanations about any significant developments since the submission of the previous report in 2003. Our preliminary views on the areas in which there may have been developments that qualify as “significant” are indicated in the topic headings below. Respondents are welcome to propose additional topics which should be included in the report. In proposing additional topics, respondents should indicate why they consider the issue to be significant and relevant to the application of the Covenant in Hong Kong, and set out the views on the Government's performance in handling the topic;
- (b) updates of developments that were ongoing since the 2005 hearing and in respect of which we undertook to inform the Committee of future progress or outcomes; and
- (c) responses to the concerns and recommendations raised in the Committee's Concluding Observations (the concluding observations) of the previous report (reproduced at the **Annex**).

Part I: General profile of the of the Hong Kong Special Administrative Region (HKSAR)

8. The “general profile” part follows the standard format, form and content as prescribed by the current reporting guidelines of the UN. It contains information of a general and factual nature relating to the implementation of the human right treaties applicable to the HKSAR. Information in the corresponding part of the previous report will also be updated.

Part II: Main Report

9. The part of the report will contain specific information relating to the implementation of Articles 1 to 15 of the Covenant.

Article 1: Progress and development of democracy

10. We will inform the Committee of significant developments relating to constitutional development in the HKSAR since 2003.

Article 2: Progressive realisation of the rights recognised in the Covenant and the exercise of those rights without discrimination

11. We will update the Committee of significant developments in respect of the Article, including -

- Legislation against racial discrimination
- Discrimination on the grounds of sexual orientation and age
- Protection for persons with disabilities
- The Equal Opportunities Commission
- Financial eligibility limit for legal aid
- Human rights institution

12. We will, in particular, respond to paragraph 91 of the Concluding Observations on the legislation on racial discrimination, and also respond to paragraph 92 of the Concluding Observations on HKSAR's position regarding the 1951 Refugees Convention and asylum policy.

Article 3: Equal rights of men and women

13. We will inform the Committee that we will separately prepare HKSAR's third report under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). We will also advise the Committee of developments in respect of -

- CEDAW and Women's Commission
- Review of the Sex Discrimination Ordinance (Chapter 480)
- The "Small House Policy"

Article 4: Permissible limitations of Covenant rights &

Article 5: Prohibition on destruction of any rights and freedoms recognised in the Covenant

14. We will inform the Committee that the position for Article 4 and Article 5 remains as reported in paragraphs 4.1 and 5.1 of the previous report. In short, the HKSAR Government does not subject the rights provided under the Covenant to any limitations other than those provided for in law (Article 4), and the Government imposes no restrictions upon and makes no derogations from any fundamental human rights (Article 5).

Article 6: Choice of occupation and labour rights

15. We will advise the Committee that the position remains largely the same as mentioned in the previous report, and update the Committee on significant developments in respect of -

- International Labour Conventions (ILCs)
- Employment services
- Youth pre-employment training
- Vocational training
- Protection of employees against unreasonable dismissal
- Employment statistics
- Importation of labour
- Right to work: concerns about discrimination

Article 7: Right to enjoy just and favourable conditions of work

16. We will update the Committee on significant developments in respect of –

- List of reports on relevant ILCs
- Statutory Minimum Wage
- Employment protection: employees' rights and benefits
- Imported workers and foreign domestic helpers

- Employment protection for women
- Safe and healthy working conditions
- Prevention of accidents and diseases in the workplace: legal protections

17. In particular, we will address paragraph 93 of the Concluding Observations on the Equal Opportunities Commission's study on equal pay for work of equal value, and follow-up measures, and respond to paragraph 95 of the Concluding Observations on the "two-week rule" and the legal protection and benefits for foreign domestic helpers.

Article 8: Right to trade union membership

18. We will advise the Committee that the position remains largely the same as mentioned in the previous report, and update the Committee on significant developments in respect of -

- The ILCs
- Trade Unions Ordinance (Chapter 332)
- Legislative protection against anti-union discrimination under the Employment Ordinance (Chapter 57)
- Number and membership of trade unions
- Promotion of effective communication, consultation and voluntary negotiation between employers and employees
- The right to strike

Article 9: Right to social security

19. We will advise the Committee of significant developments in respect of –

- The ILCs
- An overview of the social security system in Hong Kong
- Government expenditure on social security
- The Comprehensive Social Security Assistance Scheme (CSSA)

- The Social Security Allowance Scheme
- Protection of wage payment and statutory rights and benefits
- Employees' compensation and compensation for pneumoconiosis
- The Occupational Deafness Compensation Scheme
- Retirement benefits and protection

20. We will respond to paragraphs 94 and 96 of the Concluding Observations on extending the coverage of the social security system to cover unemployed workers by payment of an unemployment benefit, and reviewing the eligibility criteria for the CSSA. We will also respond to paragraph 95 of the Concluding Observations on inclusion of foreign domestic helpers in the Mandatory Provident Fund Scheme.

Article 10: Protection of the family

21. We will update the Committee of developments in respect of –

- The ILCs
- The family
- Definition of “family”
- Family Council
- Welfare services to families
- After school care programme
- Unextended nuclear family households
- Care and support for the elderly
- Family reunification of migrants
- Youth suicide
- New arrivals from the Mainland of China
- Maternity protection

- Protection of children and juveniles
- Commission on Youth
- Employment of children and young persons
- Domestic violence

22. We will, in particular, respond to paragraph 97 of the Concluding Observations on trafficking in persons, especially women and children into the HKSAR, mainly for the purpose of sexual exploitation, and provide information on the result of the study by the Women's Commission on domestic violence.

Article 11: Right to an adequate standard of living

23. We will advise the Committee of significant developments in the following areas –

General

- Economic indicators
- Economic restructuring
- Income distribution

The right to continuous improvement of living condition

- Poverty alleviation

The right to adequate food

- Supply of food

The right to water

- Adequate and affordable access to water
- Conservation of water and protection of water sources

The right to adequate housing

- Housing and planning

24. We will also respond to paragraph 98 of the Concluding Observations on poverty alleviation.

Article 12: The right to health

25. We will advise the Committee of significant developments in respect of –

- Health and healthcare
- Policy
- General health of Hong Kong's population
- Provision of healthcare services
- Traditional Chinese medicine
- Regulation of health care institutions
- Control of communicable diseases
- Prevention and control of HIV/AIDS
- Sexual and reproductive health programme
- Prevention of abuse of alcohol
- Tobacco control
- Combating drug abuse
- Reforming the health care systems
- Food safety
- Services for persons with disabilities
- Services for persons with mental health problems
- Environment and industrial hygiene

26. We will respond to paragraphs 99 and 100 of the Concluding Observations on revision of the subsidized drug list and on sexual and reproductive health programme.

Article 13 and Article 14: Right to education

27. We will advise the Committee of developments in respect of the area of education, including –

- Access to education and educational attainment
- Profile of educational attainment
- Pre-primary education
- Primary and secondary education
- Quality Education Fund
- Language policy - biliteracy and trilingualism
- Medium of instruction
- Post-secondary education
- Higher education
- Adult education
- Qualifications Framework
- Vocational education
- Education for non-Chinese speaking students
- Education for students with disabilities
- Education of prisons inmates
- Education for children with no right to stay
- Education for newly arrived children/young people from the Mainland of China
- Civic education, human rights education and education against discrimination
- Public education on the Basic Law

28. We will respond to paragraphs 101 and 102 of the Concluding Observations regarding right to education of all school-aged children and human rights education.

Article 15: Right to cultural life, scientific progress and its application

29. We will update the Committee on the developments in respect of –

- Policy on culture
- Policy on heritage conservation
- West Kowloon Cultural District
- Hong Kong Arts Development Council
- Hong Kong Academy for Performing Arts
- Hong Kong Arts Centre
- The Leisure and Cultural Services Department
- School and professional education on culture and the arts
- Archives
- Promotion of science and technology
- Protection of intellectual property rights
- Country parks and conservation areas



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**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 (including Hong Kong and Macao)

(Note: this document only contains extracts of paragraphs concerning the Hong Kong Special Administrative Region (HKSAR))

1. The Committee on Economic, Social and Cultural Rights considered the initial report of the People's Republic of China (including Hong Kong and Macao) on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/1990/5/Add.59) at its 6th to 10th meetings, held on 27, 28 and 29 April 2005 (E/C.12/2005/SR.6-10), and adopted, at its 27th meeting held on 13 May 2005, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the initial report of the State party, which was submitted on time and prepared in general conformity with the Committee's guidelines. The Committee also notes with appreciation the comprehensive written replies to its list of issues.

3. The Committee welcomes the constructive dialogue with the delegation of the State party, which included representatives of Hong Kong Special Administrative Region (HKSAR) and Macao Special Administrative Region (MSAR). The Committee appreciates that the delegation was composed of experts in the different areas covered by the Covenant.

II. HONG KONG SPECIAL ADMINISTRATIVE REGION

B. Positive aspects

71. The Committee welcomes the information that the age of criminal responsibility has been raised.
72. The Committee notes with appreciation the establishment of a Commission on Poverty to devise in this connection future strategies to combat poverty.
73. The Committee welcomes the establishment of the Sexual Minorities Forum, a formal communication channel between HKSAR and persons with different sexual orientation, and the planned establishment of the Gender Identity and Sexual Orientation Unit within the Home Affairs Bureau.
74. The Committee welcomes the extensive efforts made by HKSAR, including sensitization campaigns, to combat prejudices and discrimination against persons with physical and mental disabilities.
75. The Committee welcomes the enactment in 2002 of the Marital Rape Ordinance.
76. The Committee welcomes the enactment in 2003 of the Law on Prevention of Child Pornography.

C. Factors and difficulties impeding the implementation of the Covenant

77. The Committee notes the absence of any significant factors or difficulties preventing the effective implementation of the Covenant in HKSAR.

D. Principal subjects of concern

78. The Committee regrets that HKSAR has not implemented a number of the recommendations contained in its concluding observations of 2001. The Committee wishes to reiterate in particular its concern at the following issues:
- (a) The present anti-discrimination legislation does not cover discrimination on the basis of race, sexual orientation and age;
 - (b) The absence of a human rights institution with a broad mandate, while noting the position of HKSAR that the Equal Opportunities Commission has comparable functions;
 - (c) The lack of effective protection from discrimination and abuse, of foreign domestic helpers, affected by the “two-week rule”, upon expiration of their contract;
 - (d) The continuing spread of poverty and lack of effective access to social services, which affects the disadvantaged and marginalized groups;
 - (e) The exclusion of many individuals, including women who are homemakers, persons with disabilities and older persons, from the Mandatory Provident Fund Scheme, due to their inability to make sufficient voluntary contributions;
 - (f) The hardship arising from the right of abode policies in relation to permanent residence and split families; and

(g) The persistence of inadequate housing in the form of cage-homes and bed-space apartments, despite measures taken by HKSAR to provide alternative housing to residents who choose to remain in such homes.

79. The Committee is concerned that in the proposed racial discrimination law, the protection it affords will not cover migrants from the Mainland despite the widespread de jure and de facto discrimination against them on the basis of their origin. The Committee is also concerned that according to the proposals made by the Hong Kong Home Affairs Bureau, the new law will not affect the existing immigration legislation in HKSAR.

80. The Committee is concerned that HKSAR lacks a clear asylum policy and that the Convention relating to the Status of Refugees of 1951 and the Protocol thereto of 1967, to which China is a party, are not extended to HKSAR. In particular, the Committee regrets the position of HKSAR that it does not foresee any necessity to have the Convention and the Protocol extended to its territorial jurisdiction.

81. The Committee is concerned that the wage disparity between men and women continues to be a problem despite the position of HKSAR that the Sex Discrimination Ordinance provides sufficient protection for women in the field of employment, in accordance with the principle of equal pay for work of equal value.

82. The Committee is concerned that the social security system in HKSAR does not include unemployment benefits.

83. The Committee expresses its concern about the particularly precarious situation of foreign domestic workers, a majority of whom are from South-East Asia, who are underpaid and are not entitled to social security.

84. The Committee is seriously concerned that under the existing social security system, and in particular under the Comprehensive Social Security Assistance (CSSA), the levels of benefit are not sufficient to guarantee a decent standard of living and that many low-income persons, in particular older persons, are not covered by the scheme. The Committee is further concerned that new migrants are unable to apply for CSSA due to the seven-year residence requirement.

85. The Committee expresses concern about reports of the high incidence of trafficking in persons, especially women and children, into HKSAR, mainly for the purpose of sexual exploitation. The Committee regrets that it did not receive sufficient information regarding this problem and the measures taken in this respect by HKSAR.

86. The Committee notes with regret that the information provided on the extent of poverty and social exclusion in HKSAR was insufficient. The Committee is also concerned about reports of increasing poverty among older persons, the more so as HKSAR is facing the problem of a rapidly ageing society.

87. The Committee, while noting the generally high level of enjoyment to health in HKSAR, remains concerned that spending on public hospitals has been on the decline, resulting in longer waiting lists for patients. The Committee is also concerned that under the current fee waiver system, low-income patients still do not receive the most appropriate medical care. The Committee further notes with regret that many of the expensive drugs required by chronically ill and mentally ill patients are not subsidized, and are thus in practice denied to these patients.

88. The Committee remains concerned about the low level of awareness of the general public in HKSAR of sexual and reproductive health issues. The Committee also regrets that no comprehensive sexual and reproductive health programme exists in HKSAR and that education on sexual and reproductive health is not part of the school curriculum.

89. The Committee is concerned that the measures taken to facilitate enrolment in local schools of children of migrants from the Mainland and other foreign migrant workers who do not have the legal right to remain in HKSAR are insufficient.

E. Suggestions and recommendations

90. The Committee once again urges HKSAR to implement the Committee's relevant suggestions and recommendations, contained in its concluding observations made in 2001 (E/C.12/1/Add.58), as well as in the current ones, and urges it to undertake whatever relevant concrete measures may be necessary towards their implementation.

91. The Committee strongly urges HKSAR to extend the protection afforded by the proposed racial discrimination law to internal migrants from the Mainland, and to put a stop to the widespread discriminatory practices against them on the basis of their origin. The Committee further recommends that the relevant provisions of the existing immigration legislation governing entry into, period of stay, and departure from, HKSAR are amended to ensure full conformity and consistency with the new racial discrimination legislation.

92. The Committee recommends that HKSAR reconsider its position regarding the extension of the Convention relating to the Status of Refugees and its Protocol to its territorial jurisdiction, and that it strengthen its cooperation with UNHCR, in particular in the formulation of a clear and coherent asylum policy based on the principle of non-discrimination.

93. The Committee requests that HKSAR provide, in its next periodic report, the results of the Equal Opportunities Commission Study on Gender-based Pay Inequalities and the measures to follow up the findings of the study.

94. The Committee recommends that HKSAR consider extending its social security system to cover unemployed workers through the payment of an unemployment benefit based on contributions from employers and employees.

95. The Committee urges the State party to review the existing "two-week rule", with a view to eliminating discriminatory practices and abuse arising from it, and to improving the legal protection and benefits for foreign domestic workers so that they are in line with those afforded to local workers, particularly with regard to wages and retirement benefits. The Committee recommends that HKSAR enable domestic helpers to acquire pension rights through their inclusion in the Mandatory Provident Fund.

96. The Committee urges HKSAR to review the eligibility criteria for the CSSA so as to ensure that all those in need, including low-income persons and families, older persons and new migrants are adequately covered by the scheme to enable them to enjoy a decent standard of living.

97. The Committee requests that the State party provide, in its next periodic report, detailed information on the problem of trafficking and commercial sexual exploitation of persons in the State party and on measures taken to effectively address these problems. The Committee urges the State party to ensure respect for the necessary procedural safeguards when deporting victims of trafficking in persons, particularly when such victims are minors, and to provide them with the

necessary medical, psychological and legal support. The Committee requests HKSAR to report back to the Committee in its next periodic report on the result of the study by the Commission on Women on domestic violence.

98. The Committee urges HKSAR to strengthen its efforts to combat poverty and social exclusion, in particular with regard to disadvantaged and marginalized groups and older persons. The Committee also recommends the State party to adopt an official poverty line, which would enable the State party to define the extent of poverty and to monitor and evaluate progress in alleviating poverty. The Committee requests that the State party provide, in its next periodic report, disaggregated and comparative annually collected data on the number of people living in poverty, on the progress made in reducing the incidence of poverty, and on the impact, if any, that the newly-established Commission on Poverty has had on the issue of poverty in HKSAR.

99. The Committee urges the State party to continue its efforts to improve its health services, inter alia, through the allocation of adequate and increased resources. The Committee recommends HKSAR to consider revising the current list of subsidized drugs to meet the needs of the chronically and mentally ill. The Committee encourages the State party to submit in its next periodic report annually collected comparative data, disaggregated by sex, age and urban/rural residence, paying particular attention to disadvantaged and marginalized groups.

100. The Committee recommends HKSAR to develop a comprehensive sexual and reproductive health programme, including a public awareness-raising campaign about safe contraceptive methods. The Committee also calls upon HKSAR to introduce education on sexual and reproductive health in the school curriculum.

101. The Committee urges HKSAR to amend its legislation to provide for the right to education of all school-age children in its jurisdiction, including children of migrants without the legal right to remain in HKSAR.

102. The Committee encourages HKSAR to ensure that human rights education is provided in schools at all levels and to raise awareness of human rights, in particular economic, social and cultural rights, among State officials and the judiciary.

129. The Committee requests the State party to include, in its second periodic report on the implementation of the Covenant, all available information on any measures taken and progress made, particularly with regard to the suggestions and recommendations made by the Committee in the present concluding observations.

130. The Committee requests the State party to widely disseminate the present concluding observations among all levels of society, and in particular, members of the judiciary, law enforcement officials and NGOs. It also encourages the State party to engage NGOs and other members of civil society in the process of discussions at the national level prior to the submission of the second periodic report.

131. The Committee requests the State party to submit its second periodic report before 30 June 2010.
