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Panel on Constitutional Affairs

**Background brief prepared by Legislative Council Secretariat
for the meeting on 18 January 2010**

**Reports of the Hong Kong Special Administrative Region under
the International Covenant on Economic, Social and Cultural Rights**

Purpose

This paper provides background information on the reports of the Hong Kong Special Administrative Region (HKSAR) to the United Nations (UN) under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and gives an account of the discussion of the Panel on Home Affairs (the HA Panel) relating to the HKSAR's second report submitted to UN in June 2003.

Background

2. The Government of the United Kingdom extended ICESCR to Hong Kong in 1976. The Government of the People's Republic of China (PRC) notified UN in June 1997 that the provisions of ICESCR as applied to Hong Kong would remain in force from 1 July 1997.
3. ICESCR followed a five-year reporting cycle. The first report of HKSAR under ICESCR was submitted by the Central People's Government (CPG) to UN in mid-1999 and was heard by the UN Committee on Economic, Social and Cultural Rights (CESCR) in April 2001. CESCR issued its Concluding Observations on the first report of HKSAR on 11 May 2001.
4. CPG ratified ICESCR on 27 March 2001 and the treaty took effect in China on 27 June 2001. HKSAR's second report under ICESCR was submitted to UN, as part of PRC's initial report, in June 2003.
5. CESCR considered PRC's initial report (including the reports of Hong Kong and Macau) on the implementation of ICESCR at its meetings on 27, 28 and 29 April 2005, and issued its Concluding Observations on the second report of HKSAR under ICESCR on 13 May 2005.

6. The HA Panel discussed the first report of HKSAR with deputations and the Administration at its meeting on 26 February 2001. At its meeting on 16 July 2001, the Panel followed up with the Administration on the Concluding Observations issued by CESCR on that report. The relevant issues raised by the HA Panel included discrimination on the grounds of race, sexual orientation and age, protection of children and young persons, establishment of human rights institution in HKSAR, and obligations under ICESCR.

7. For the detailed discussion of these issues, members may wish to refer to the background brief on ICESCR prepared by the Legislative Council (LegCo) Secretariat for the meeting of the HA Panel on 21 June 2005 [LC Paper No. CB(2)1998/04-05(01)].

Second report of HKSAR under ICESCR

Discussion on the second report

8. The HA Panel discussed the outline of topics to be covered in the second report of HKSAR with deputations and the Administration at its meetings on 10 January and 7 February 2003. The Panel further discussed the second report of HKSAR with deputations and the Administration at its meeting on 11 June 2004. The issues raised at these meetings are summarized in paragraphs 9 to 16 below.

Poverty

9. Some members noted with concern that according to the information provided by a deputation, the number of children on Comprehensive Social Security Assistance (CSSA) had increased from 30 000 as at 1993 to 150 000 as at January 2004. They considered it necessary for the Administration to devise a scientific method in collaboration with non-governmental organizations concerned for calculating the number of non-CSSA children who were living below the poverty line, and to formulate a policy to assist the families concerned.

10. The Administration responded that statistics showed that the number of CSSA recipients aged below 15 had increased from 19 612 as at end of 1993 to 118 864 as at end of 2003. The percentage share of recipients aged below 15 among all CSSA recipients had increased from 16.2% to 22.8% over the same period. The increase in the number of CSSA recipients aged below 15 could be attributed to an increase in family cases involving mostly adult recipients, as well as children under 15. The Administration explained that the number of CSSA recipients aged 15 - 59 (who were mainly able-bodied recipients) had in fact increased from 30 992 as at end of 1993 to 224 339 as at end of 2003. The percentage share of recipients aged 15 - 59 among all CSSA recipients had increased from 25.6% to 42.9% over the same period. The total number of CSSA recipients had also increased from 121 060 as at end of 1993 to 522 456 as at end of 2003. The change in the number of CSSA recipients aged under 15 showed no significant departure from the trend of increase in the number of able-bodied recipients or the total number of CSSA recipients.

11. As regards the proposal of adopting scientific calculations to work out the number of children living in poverty, the Administration considered that such calculations would inevitably involve subjective value judgment. Currently, there were no universally agreed definitions or measurements of poverty. There would also be difficulty in factoring the various forms of intangible income (e.g. subsidized housing, education, health care and welfare services) into the formula. The Administration also pointed out that needy families not receiving CSSA could also apply for other assistance, such as child care fee assistance, student travel subsidy, school textbook assistance, school fee remission and medical fee waiver.

The right of abode (ROA) issue

12. Some members urged the Administration to address the concern previously expressed by CESCR about the hardship arising from the HKSAR's policies on permanent residence and split families. They urged the Administration to adopt a just and humane approach for resolving the problem of ROA.

13. The Administration pointed out that the Interpretation issued by the Standing Committee of the National People's Congress on 26 June 1999 (the Interpretation) was valid and legally binding on Hong Kong courts, as so recognized by the Court of Final Appeal (CFA). The Administration noted that a recommendation made by CESCR in its Concluding Observations on the first report of HKSAR was that the Government of HKSAR should "reconsider extending the concession" made following the Interpretation. The Administration after consideration had concluded against making any extension to the concession. However, the Director of Immigration could exercise his discretion under the Immigration Ordinance (Cap. 115) on a case-by-case basis where there were exceptional humanitarian and compassionate grounds. The Administration's decision had been conveyed through the Ambassador and Deputy Permanent Representative of PRC to UN to CESCR in his letter dated 26 July 2002.

14. The Administration further informed members that since the delivery of the CFA judgment, the Government of HKSAR had appealed to the ROA claimants who had lost their cases in court to return to the Mainland, and had suggested to them that eligible persons should apply through the One-way Permit (OWP) and Two-way Permit Schemes to settle with or visit their family members in Hong Kong. At the same time, the Government of HKSAR had raised with CPG the possibility of allowing more Mainland young people to come to Hong Kong to take care of their aged parents. The Administration stressed that since the OWP Scheme was operated by the Mainland authorities in accordance with the Mainland laws, any changes to the OWP Scheme were ultimately for the Mainland authorities to decide.

Protection of children and juveniles

15. In response to members' concern about the treatment of children in correctional/residential homes, the Administration advised that a review had been conducted by the Management Services Agency in 1998-1999 with the aim of

improving the management and operation of these homes. Taking into account the recommendations of the review together with those of the report of the Hong Kong Human Rights Monitor in 2001, the Administration had implemented a package of measures to enhance the operation of correctional/residential homes.

Integration of non-Chinese speaking children into local community

16. Members enquired about the measures which had been taken to facilitate integration of non-Chinese speaking children into local community. The Administration advised that in the past, non-Chinese speaking children participating in the Primary One Admission (POA) central allocation could only select those schools with the tradition of admitting more non-Chinese speaking children. Under the Secondary School Places Allocation (SSPA) system, a separate list of secondary schools offering a third language (e.g. French or Urdu) and accepting this group of students was provided for parents' choice in the Central Allocation stage. Under the revised arrangements, non-Chinese speaking children participating in the POA and SSPA central allocation could choose non-Chinese speaking schools or local schools like their Chinese counterparts. In addition, support measures would be made available to those schools which admitted non-Chinese speaking children and to those non-Chinese speaking children allocated to mainstream schools.

Discussion on the Concluding Observations

17. At its meeting on 21 June 2005, the HA Panel discussed the Concluding Observations issued by CESCR on the second report of HKSAR with deputations and the Administration. The issues raised by the Panel are summarized in paragraphs 18 to 26 below.

Progress in implementing provisions of ICESCR and timetable for following up recommendations made in the Concluding Observations

18. Some members expressed dissatisfaction with the slow progress made by the Administration in implementing provisions of ICESCR and in following up the recommendations made by CESCR in its Concluding Observations. They pointed out that CESCR had expressed concerns on various issues including the exclusion of new arrivals from the Mainland from the coverage of the Race Discrimination Bill; insufficient information provided on the extent of poverty and social exclusion in HKSAR; reports of increasing poverty among the elderly in HKSAR; and the failure of the CSSA Scheme benefit levels to guarantee a decent standard of living. These members requested the Administration to provide a timetable for the implementation of the recommendations and to conduct a study on the basic needs of living to assess the poverty situation in HKSAR.

19. The Administration explained that while the Government of HKSAR was obliged to consider immediately how to take forward the recommendations of CESCR, there was no such obligation imposed on the Government that it had to implement immediately the recommendations. As CESCR had agreed, it depended on whether

the actual circumstances of the State Party and the region concerned were right for the implementation of the relevant recommendations. The Administration was unable to provide a timetable for the implementation of the recommendations set out in the Concluding Observations. However, the Administration would give CESCR a detailed response to its recommendations in the third report of HKSAR. On the poverty situation in HKSAR, the Administration pointed out that the Commission on Poverty had only been established for several months at that time, it should be allowed more time to tackle the problems relating to poverty.

Establishment of a human rights institution

20. Some members pointed out that it was of utmost importance for the Administration to consider (a) enacting legislation to prohibit discrimination and protect human rights; and (b) setting up a human rights institution with a broad mandate to promote and uphold human rights, given CESCR had repeatedly urged HKSAR to set up such an institution since 2001. The Administration responded that the support of the community was necessary for the introduction of legislation with wide-ranging social implications. As regards the setting up of a human rights institution, the Administration pointed out that the Equal Opportunities Commission (EOC), The Ombudsman and the Office of the Privacy Commissioner for Personal Data were statutory bodies formed to investigate and report on grievances relating to human rights protection. The Administration considered it necessary to introduce certain reforms if it decided to set up a human rights institution which conformed to the Paris Principles and undertook to explore in this direction.

21. Some other members expressed concern as to whether a human rights institution with a broad mandate, if set up, would overlap with EOC in terms of its functions and responsibilities. The Chairperson of EOC took the view that there should be an organization with a broad mandate to deal with human rights work which fell outside the scope of the anti-discrimination ordinances. EOC considered that the Administration should provide a clear direction as to how it was going to take forward the proposal and on the delineation in responsibilities between EOC and the proposed human rights institution.

22. Some members further enquired whether consideration would be given to expand the ambit of EOC so that it would become an independent human rights institution. The Administration responded that it would be one of the options since EOC had been handling human rights work which, to a large extent, was part of the work expected to be handled by a human rights institution, if established.

23. At its meeting on 21 June 2005, the HA Panel passed a motion urging the Administration to establish a human rights institution for the purpose of promoting the protection and education of human rights and monitoring the implementation of the various international human rights treaties.

Protection of the rights of refugees

24. Some members requested the Administration to follow up the recommendation of CESCR that the Government of HKSAR should reconsider its position regarding the extension of the 1951 Convention Relating to the Status of Refugees. They stressed that the fundamental right of refugees to seek asylum in Hong Kong should not be ignored and there was a need for the extension of the Convention to HKSAR to provide a basis on which measures and policies for handling refugees were to be devised.

25. The Administration explained that HKSAR was comparatively prosperous due to its rapid economic development whereas some of its neighbouring places were in a relatively unstable state. If the Convention was extended into HKSAR against such a background, this might lead to influxes of refugees into the territory. The Government of HKSAR, therefore, had not requested CPG to extend the Convention into HKSAR.

26. Members may wish to note that the HA Panel agreed at its meeting on 12 October 2006 that reports of HKSAR under the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment should be discussed by the Panel on Security. The Panel on Security has been following up on issues relating to refugees, asylum seekers and torture claimants.

Latest development

27. The Administration issued on 11 January 2010 for public consultation an outline of topics to be included in the third report of HKSAR, as part of China's second report under ICESCR which is due for submission to UN by 30 June 2010.

Questions raised/motions moved at Council meetings

28. Details of the questions raised/motions moved relating to ICESCR at Council meetings since the first LegCo are in **Appendix I**.

Relevant papers

29. A list of relevant papers with their hyperlinks at the LegCo website is in **Appendix II**.

**Questions/motions relating to the International Covenant on Economic,
Social and Cultural Rights raised/moved by Members at Council meetings
since the first term of Legislative Council**

Meeting Date	Question/Motion
14 October 1998	Hon Christine LOH raised a written question on the reservations and declarations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).
2 December 1998	Hon LEUNG Yiu-chung raised an oral question on the progress in the submission of reports of the Hong Kong Special Administrative Region (HKSAR) under ICESCR and ICCPR.
31 March 1999	Hon LEUNG Yiu-chung raised a written question on the implementation of ICESCR in Hong Kong.
4 April 2001	Hon Cyd HO raised a written question on the removal of reservations made in respect of ICESCR.
25 April 2001	Hon Margaret NG raised an oral question on the Government's obligation under international human rights treaties to eradicate racial discrimination in Hong Kong and whether the Government had plans to introduce anti-racial discrimination legislation.
13 June 2001	Hon SZETO Wah raised an oral question on the establishment of a human rights institution as recommended in the Concluding Observations issued by the United National Committee on Economic, Social and Cultural Rights (UNCESCR) in May 2001.
13 June 2001	Hon LAU Chin-shek raised an oral question on the implementation of the recommendations made by UNCESCR in 1996 concerning employee benefits.
13 June 2001	Hon James TO raised an oral question on the implementation of recommendations made by UNCESCR in 1996 concerning prohibition of racial discrimination in the private sector and prohibition of discrimination on the basis on sexual orientation and age.

Meeting Date	Question/Motion
13 June 2001	Hon Martin LEE raised an oral question on the need to improve the current arrangements for the election of the Legislative Council as pointed out by UNCESCR in its Concluding Observations in 2001.
13 June 2001	Hon Michael MAK raised an oral question on the implementation of anti-poverty measures as recommended by UNCESCR in its Concluding Observations in 2001.
20 June 2001	Hon Audrey EU raised an oral question on the incorporation of provisions of ICESCR into laws of HKSAR.
20 June 2001	Hon James TO raised an oral question on how the Government would follow up the recommendations made by UNCESCR in its Concluding Observations in 2001 concerning policies on permanent residence and split families.
10 April 2002	Hon Cyd HO raised a written question on the Government's plan to legislate against racial discrimination in the private sector and among individuals
19 June 2002	Hon Emily LAU raised an oral question on legislation against acts of racial discrimination in the private sector.
20 November 2002	Hon Emily LAU raised a written question on the proposed establishment of a human rights commission.
2 June 2004	Hon Audrey EU raised an oral question on the legislative proposals for racial discrimination law as announced by the Government in June 2004
6 April 2005	Hon LEE Cheuk-yan raised an oral question on the implementation of ICESCR in Hong Kong

International Covenant on Economic, Social and Cultural Rights

Relevant documents

<u>Committee</u>	<u>Meeting Date</u>	<u>Paper</u>
Panel on Home Affairs	26 February 2001	<p>Submission from the Equal Opportunities Commission [LC Paper No. CB(2)928/00-01(02)]</p> <p>Press release and statistics provided by Equal Opportunities Commission [LC Paper No. CB(2)948/00-01(02)]</p> <p>Submission from Hong Kong Council of Social Service [LC Paper No. CB(2)928/00-01(03)]</p> <p>Submission from Hong Kong Human Rights Monitor [LC Paper No. CB(2)948/00-01(01)] (English version only)</p> <p>Minutes of meeting [LC Paper No. CB(2)1758/00-01]</p>
	16 July 2001	<p>Administration's paper on "Concluding Observations of the United Nations Committee on Economic, Social and Cultural Rights on the Report of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China in the light of the International Covenant on Economic, Social and Cultural Rights (ICESCR)" [LC Paper No. CB(2)2064/00-01(03)]</p> <p>Administration's reply on a statement in the Concluding Observations to the effect that "The International Covenant on Economic, Social and Cultural Rights is not 'promotional' or 'aspirational' " [LC Paper No. CB(2)2161/00-01(01)]</p> <p>Minutes of meeting [LC Paper No. CB(2)175/01-02]</p>

<u>Committee</u>	<u>Meeting Date</u>	<u>Paper</u>
	10 January 2003	<p>Outline of the topics to be covered in the second report on the HKSAR under the ICESCR provided by the Administration</p> <p>Submission from Equal Opportunities Commission [LC Paper No. CB(2)855/02-03(01)]</p> <p>Submission from Hong Kong Human Rights Commission [LC Paper No. CB(2)864/02-03(01)] (Chinese version only)</p> <p>Submission from Hong Kong Against Racial Discrimination [LC Paper No. CB(2)864/02-03(02)]</p> <p>Submission from the Hong Kong Committee on Children's Rights [LC Paper No. CB(2)855/02-03(02)]</p> <p>Submission from Against Child Abuse [LC Paper No. CB(2)855/02-03(03)]</p> <p>Submission from the Hong Kong Council of Social Service [LC Paper No. CB(2)815/02-03(02)]</p> <p>Submission from Parent's Association for the Implementation of Right of Abode of Mainland Children (Hong Kong) [LC Paper No. CB(2)815/02-03(03)] (Chinese version only)</p> <p>Minutes of meeting [LC Paper No. CB(2)1118/02-03]</p>
	7 February 2003	<p>Submission from Unison Hong Kong [LC Paper No. CB(2)1070/02-03(01)]</p> <p>Submission from Horizons [LC Paper No. CB(2)1070/02-03(02)]</p>

<u>Committee</u>	<u>Meeting Date</u>	<u>Paper</u>
		<p>Submission from Hong Kong Christian Institute [LC Paper No. CB(2)1101/02-03(01)]</p> <p>Further Submission from Equal Opportunities Commission [LC Paper No. CB(2)1112/02-03(01)]</p> <p>Submission from Hong Kong Human Rights Monitor [LC Paper No. CB(2)1133/02-03(01)] <i>(English version only)</i></p> <p>Submission from Association of Parents Fighting for the Right of Abode in Hong Kong [LC Paper No. CB(2)1133/02-03(02)] <i>(Chinese version only)</i></p> <p>Minutes of meeting [LC Paper No. CB(2)1686/02-03]</p>
	11 June 2004	<p>The second report of the HKSAR of the People's Republic of China in the light of ICESCR</p> <p>Administration's paper on "Implementation of international human rights treaties in Hong Kong: 2003" [LC Paper No. CB(2)2324/03-04(01)]</p> <p>Submission from the Equal Opportunities Commission [LC Paper No. CB(2)2638/03-04(01)]</p> <p>Submission from Hong Kong Human Rights Monitor [LC Paper No. CB(2)2762/03-04(01)] <i>(English version only)</i></p> <p>Submission from Hong Kong Human Rights Commission [LC Paper No. CB(2)2660/03-04(02)] <i>(English version only)</i></p>

<u>Committee</u>	<u>Meeting Date</u>	<u>Paper</u>
		<p>Submission from Hong Kong Bar Association [LC Paper No. CB(2)2762/03-04(04)] <i>(English version only)</i></p> <p>Submission from Horizons [LC Paper No. CB(2)2660/03-04(01)] <i>(English version only)</i></p> <p>Submission from Parent's Association for the Implementation of Right of Abode of Mainland Children [LC Paper No. CB(2)2696/03-04(01)] <i>(Chinese version only)</i></p> <p>Submission from Hong Kong Parents Association of Fighting for Children's Right of Abode [LC Paper No. CB(2)2727/03-04(01)] <i>(Chinese version only)</i></p> <p>Submissions from Unison Hong Kong [LC Paper No. CB(2)2559/03-04(01)] <i>(English version only)</i> [LC Paper No. CB(2)2559/03-04(02)] [LC Paper No. CB(2)2727/03-04(02)] <i>(English version only)</i></p> <p>Submissions from Hong Kong Christian Institute [LC Paper No. CB(2)2762/03-04(02)] <i>(English version only)</i> [LC Paper No. CB(2)2762/03-04(03)] <i>(Chinese version only)</i></p> <p>Submission from Hong Kong Bar Association [LC Paper No. CB(2)2762/03-04(04)] <i>(English version only)</i></p> <p>Minutes of meeting [LC Paper No. CB(2)3063/03-04]</p>
	21 June 2005	Administration's paper on "Hearing of Second Report of the United Nations

<u>Committee</u>	<u>Meeting Date</u>	<u>Paper</u>
		<p>Committee on Economic, Social and Cultural Rights on the Second Report of HKSAR under ICESCR and Concluding Observations Adopted by the Committee on the Report" [LC Paper No. CB(2)1950/04-05(01)]</p> <p>Concluding Observations issued by the United Nations Committee on Economic, Social and Cultural Rights on 13 May 2005 on the second report of HKSAR under ICESCR [LC Paper No. CB(2)1634/04-05(01)]</p> <p>Background brief on "The International Covenant on Economic, Social and Cultural Rights" prepared by the Legislative Council Secretariat [LC Paper No. CB(2)1998/04-05(01)]</p> <p>Submission from the Equal Opportunities Commission [LC Paper No. CB(2)1998/04-05(02)]</p> <p>Submission from Society for Community Organization [LC Paper Nos. CB(2)1981/04-05(01) &(02)] (Chinese version only) [LC Paper No. CB(2)2020/04-05(01)] (English version only)</p> <p>Submission from New Immigrants' Mutual Aid Association [LC Paper No. CB(2)1981/04-05(02)] (Chinese version only)</p> <p>Submission from Hong Kong Human Rights Commission [LC Paper No. CB(2)1981/04-05(01)] (Chinese version only) [LC Paper No. CB(2)2020/04-05(01)] (English version only)</p> <p>Submission from Mr Mark DALY, a lawyer</p>

<u>Committee</u>	<u>Meeting Date</u>	<u>Paper</u>
		<p>[LC Paper No. CB(2)2053/04-05(01)] <i>(English version only)</i></p> <p>Submission from Civil Human Rights Front</p> <p>[LC Paper No. CB(2)2053/04-05(02)] <i>(English version only)</i></p> <p>Minutes of meeting [LC Paper No. CB(2)2575/04-05]</p>

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