

**For discussion
on 21 June 2010**

Legislative Council Panel on Constitutional Affairs

**An outline of the topics in the third report of the
Hong Kong Special Administrative Region in the light of
the International Covenant on Civil and Political 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) in the light of the International Covenant on Civil and Political Rights (ICCPR).

Application of the ICCPR

2. The application of the ICCPR was extended to Hong Kong in 1976. Its provisions as applied to Hong Kong remain in force after the establishment of the Hong Kong Special Administrative Region on 1 July 1997.

Reporting in the light of the ICCPR

3. The HKSAR's report in the light of the ICCPR is submitted to the United Nations (UN) through the Central People's Government. The first report was submitted to the UN in January 1999 and was considered by the UN Human Rights Committee (the Committee) in November 1999. The second report was submitted to the UN in January 2005 and was considered by the Committee in March 2006.

4. The Committee, in its previous Concluding Observations in 2006, set 2010 as the date for the submission of the HKSAR's third periodic report in the light of the ICCPR. Accordingly, the HKSAR Government is preparing its third report.

Public Consultation

5. 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 HKSAR's report in 2006. The purpose of the consultation is to invite members of the public to submit views on the implementation of the ICCPR in the HKSAR in respect of those topics and to suggest any additional topics that should be included in the report.

6. The public consultation on the report outline will start on 3 June 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>.

7. The public consultation will close on 15 July 2010. We will consider the comments received in drafting the HKSAR report. The comments will be made available to members of the public on request, unless the contributors have asked us specifically to keep their views confidential.

Comments Sought

8. Members are invited to comment on the outline. We will take into consideration carefully the views and suggestions received, including those of Members, in drafting the HKSAR Report. The report will be disseminated to the public and copies will be sent to Members.

Constitutional and Mainland Affairs Bureau
June 2010

**An outline of the topics to be covered in the third report of the
Hong Kong Special Administrative Region in the light of
the International Covenant on Civil and Political Rights**

Introduction

The Government is preparing for the submission of the third report of the Hong Kong Special Administrative Region (HKSAR) in the light of the United Nations (UN) International Covenant on Civil and Political Rights (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 Covenant 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 15 July 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: iccpr_consultation@cmab.gov.hk

4. Submissions and the names of the persons / organisations making the submissions will normally be made available to the general public upon request, unless the contributors ask us specifically to keep their views and / or identities confidential.

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

6. References to “the previous report” are to the report of the HKSAR submitted by the Central People's Government in January 2005 and heard by the UN Human Rights Committee (the Committee) in March 2006. A copy of the previous report is available on the CMAB website: http://www.cmab.gov.hk/en/issues/prc_2.htm. References to “the initial report” are to the report of the HKSAR submitted in January 1999 and heard by the Committee in November 1999, available at: <http://www.cmab.gov.hk/en/issues/prc.htm>.

7. The third report will consist mainly of –

- (a) information/explanations about any significant developments since the submission of the previous report in 2005. 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 at the time of the 2006 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) on the previous report (reproduced at the **Annex**).

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

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.

Part II: Main Report

9. This part of the report contains specific information relating to the implementation of Articles 1 to 27 in Parts I, II and III of the Covenant in the HKSAR as prescribed by the current guidelines of the Committee.

Article 1: Progress and development of democracy

10. We will inform the Committee of significant developments relating to constitutional development in the HKSAR since 2004.

Article 2: Ensuring to all individuals the rights recognised in the Covenant

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

- Human rights institution
- The Equal Opportunities Commission
- The Ombudsman
- Complaints against the Police
- Human rights education

12. In particular, we will respond to paragraphs 8 and 9 of the Concluding Observations concerning the Committee's recommendation on the establishment of an independent human rights institution and an independent body to investigate complaints against the police.

Article 3: Equal rights of men and women

13. We will inform the Committee that we will prepare separately 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 –

- Equal pay for work of equal value
- Advisory and statutory bodies

- Women in public office
- The Small House Policy
- CEDAW
- Women's Commission

Article 4: Public emergencies

14. We will inform the Committee that the position for Article 4 remains as explained in paragraphs 88 to 92 of the initial report.

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

15. We will inform the Committee that the position for Article 5 remains as reported in paragraph 93 of the initial report. In short, the provisions of the Covenant are entrenched constitutionally under Article 39 of the Basic Law. The Hong Kong Bill of Rights Ordinance gives effect in local law to the provisions of the Covenant as applied to the HKSAR.

Article 6: The Right to life

16. We will report to the Committee the number of deaths in custody of the four disciplined forces, namely the Police, the Correctional Services Department, the Customs and Excise Department and the Immigration Department, as well as of the Independent Commission Against Corruption. The findings of the Coroners in these cases and the improvements on the procedures in this respect will also be mentioned.

Article 7: No torture or inhuman treatment and no experimentation without consent

17. We will update the Committee in respect of information regarding –

- Instances of the alleged use of torture
- Training of disciplined forces and Independent Commission Against Corruption

- Persons facing deportation

18. In particular, we will respond to paragraph 10 of the Concluding Observations, which concerns protection of individuals against deportation.

Article 8: No slavery or servitude; no forced or compulsory labour

19. We will advise the Committee that the position remains as explained in paragraph 86 of the previous report. In short, Articles 4(1) and (2) of the Hong Kong Bill of Rights prohibit slavery and the slave trade in all their forms and also the holding of any person in servitude. There is also no forced or compulsory labour, which is prohibited by Article 4(3) of the Hong Kong Bill of Rights.

Article 9: Liberty and security of person

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

- The Law Reform Commission (LRC) Report on Arrest
- Immigration detention in respect of foreign illegal migrants
- Vietnamese refugees and ex-China Vietnamese migrants

Article 10: Right of persons deprived of their liberty

21. We will inform the Committee that the position concerning the right of prisoners, regulation and management of penal establishment and prison rules are largely the same as that stated in the previous report. Where applicable, we will provide updates in respect of –

- The rights of prisoners
- Regulation and management of penal establishments
- Rehabilitation of offenders
- Rehabilitation of juvenile offenders
- Young offenders detained at Executive discretion

- Assistance for Hong Kong residents detained in the Mainland of China

22. We will, in particular, address paragraph 11 of the Concluding Observations concerning the notification system between the HKSAR and the authorities in the Mainland of China on HKSAR residents detained in the Mainland.

Article 11: No imprisonment for non-fulfilment of contract

23. We will advise the Committee that the position in relation to this Article remains the same as explained in the initial report.

Article 12: Liberty of movement

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

- Travel documents for permanent residents and non-permanent residents
- Lawful entry into Hong Kong
- Assistance for Hong Kong residents in distress outside Hong Kong

Article 13: Restrictions on expulsion from Hong Kong

25. We will update the Committee on the statistics on deportation and removal.

Article 14: Equality before courts and right to fair and public hearing

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

- Civil Justice Reform
- Right of access to the legal system

Article 15: No retrospective criminal offences or penalties

27. We will inform the Committee that there is no significant update in relation to this Article.

Article 16: Right to recognition as person before law

28. We will advise the Committee that the position in respect of this Article remains as reported in the previous report.

Article 17: Protection of privacy, family, home, correspondence, honour and reputation

29. We will update the Committee on significant developments in the following areas. In particular, we will respond to paragraph 12 of the Concluding Observations on the protection of and redress to individual in relation to interception of communications and the carrying out of covert surveillance by the law enforcement agencies –

- Interception of Communications and Surveillance Ordinance
- Personal data privacy
- Law Reform Commission's report on stalking

Article 18: Freedom of thought, conscience and religion

30. We will include updated information and statistics on religious freedom and religious body under this Article.

Article 19: Freedom of opinion and expression

31. We will inform the Committee on significant developments concerning freedom of opinion and expression, including the issues set out below. We will also respond to paragraphs 13, 14 and 17 of the Concluding Observations, which expressed concerns on the prevention of and protection against intimidation and harassment of legislators and media personnel, and the definition of the offences of treason and sedition in the Crimes Ordinance.

- Press freedom
- The offences of treason and sedition

- Prevention and protection against intimidation and harassment of legislators and media personnel
- Regulation and licensing of the broadcast media
- Radio Television Hong Kong
- Film classification system
- Appeals against the decision of the Film Censorship Authority and the censors
- Regulation of obscene and indecent articles
- Code on Access to Information
- United Nations (Anti-Terrorism Measures) Ordinance

Article 20: Prohibition on propaganda for war

32. We will update the Committee on legislation against racial discrimination, which includes prohibition of racial vilification and serious vilification.

Article 21: Right of peaceful assembly

33. We will update the Committee on various aspects relating to the Public Order Ordinance under this Article.

Article 22: Freedom of association

34. We will inform the Committee of the latest position in respect of –

- Societies Ordinance
- Regulation of trade union activities
- Organisations for the promotion of human rights

Article 23: The family – a vital component of society

35. We will update the Committee on significant developments of the following topics. In particular, we will address the concern raised in paragraph 15 of the Concluding Observations on family issues arising from the right of abode policy and practices –

- Family welfare services
- Split families
- Amendments to the Matrimonial Causes Rules
- New arrivals from the Mainland of China

Article 24: Rights of children

36. We will inform the Committee of developments regarding rights of children. In particular, we will respond to paragraph 16 of the Concluding Observations on measures to tackle domestic violence, including training for police officers and resources allocated. Topics under this Article include -

- Convention on the Rights of the Child
- Promotion of the rights of the child
- Services for the child
- Child abuse and domestic violence
- Review of the Adoption Ordinance
- Legal representation

Article 25: Right to participate in public life

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

- Constitutional development
- Election of the Chief Executive

- Legislative Council elections
- Review of District Council
- District Council elections
- Rural elections
- Government advisory and statutory bodies

Article 26: Right to equal protection before the law

38. We will advise the Committee of latest developments in the following topics. In particular, we will respond to paragraph 19 of the Concluding Observations concerning legislation to combat racial discrimination.

- Legislation against racial discrimination
- Discrimination on the ground of age and sexual orientation
- Disability discrimination

Article 27: Right of the ethnic minorities

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

- Administrative guidelines and support services for ethnic minorities
- Access to public sector employment

**Constitutional and Mainland Affairs Bureau
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NATIONS

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**International covenant
on civil and
political rights**

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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.
