

政府總部民政事務局的信頭

本署檔號：HAB/CR/1/34/63

來函檔號：

電話：2835 1552

圖文傳真：2591 6002

香港中區

昃臣道 8 號

立法會秘書處

民政事務委員會秘書

李蔡若蓮女士

李女士：

一九九九年一月二十一日就

《公民權利和政治權利國際公約》（公約）報告舉行的會議

在一九九九年一月二十一日的會議席上，有議員提出幾點我們當時未能即時回答的問題，現謹答覆如下—

- (a) **功能界別**：有議員表示，人權事務委員會（委員會）曾把功能界別形容為“無恥”，因此詢問我們為何不把這點載入報告內。現隨信夾附委員會就公約第四次報告和補充報告舉行聽證會後所發表的審議結論。你可以看到兩份文件都沒有載錄這個字眼。審議結論是委員會審議報告後所達致的一致結論，其內列出委員會所關注的事項和其認為就這些事項應實行的措施。一如其他各份報告，我們在今次報告內已詳細交代了那些受關注的事項和有關的建議。其實，該位議員當時所指的，是人權事務委員會於一九九六年十二月六日就上述補充報告而舉行第 1535 次會議的會議記錄摘要第 26 段，當中記錄了委員會主席對於報告中有關選舉事宜部分有質疑的地方，他認為“過分側重工商界的意見，是無恥地違反公約第二條的做法”。這點重申有關公約第四次報告的審議結論第 19 段所述意見和第 25 段的相關建議。我們已在上述補充報告第 33 至 35 段，以及今次報告第 461 及 462 段回應上述意

見和建議。我們所作的交代，是對審議結論的回應，而非對個別委員意見的回應；這是很自然的，因為審議結論代表委員會的整體共識。如果委員會認為主席所說的，是繼先前所作評論後的另一番重要意見，理應在審議結論中加以反映；

- (b) **《職工會條例》**：報告第 398 段解釋了該條例第 17(1)條的規定。有議員指該段的中文本不用“職員”一詞而錯誤地用了“會員”的字眼。但我們查實，“會員”一詞正是該條例所用的字眼；
- (c) **《防止賄賂條例》**：有議員詢問，為何報告中沒有論述有關行政長官豁免受該條例條文規限的爭議。現時的爭議在一九九八年六月三十日（即報告截稿日）之後才出現。事實上，就論題大綱提交意見的團體中，無一提到這項爭議，足見這個問題當時並未受到公眾關注。不過，我知道行政署長打算於二月九日的政制事務委員會會議上討論這個問題；及
- (d) **就審議結論的回應**：我們同意表列我們對人權事務委員會所關注事項和所提建議的回應，方便議員參閱，待擬備妥當後便會將之送上。

民政事務局局長
（田卓賢代行）

一九九九年一月二十七日

副本送：行政署長
律政司司長（經辦人：黃繼兒先生）

政府總部民政事務局的信頭

本署檔號 OUR REF. : HAB/CR/1/34/63

電 話 TEL NO. : 2835 1552

圖文傳真 FAXLINE : 2591 6002

27 January 1999

Mrs Constance Li
Clerk to the Panel on Home Affairs
Legislative Council Secretariat
8 Jackson Road
Hong Kong

Dear Mrs Li.

ICCPR report: meeting on 21 January 1999

During the meeting, Member raised certain points that we were unable to address at the time -

- (a) **functional constituencies:** a Member said that the Human Rights Committee had described these constituencies as “shameless” and asked why we did not cite this in the report. The Committee’s concluding observations on the hearings of the Fourth Report and the Supplementary Report are attached. You will see that neither of them contain the expression in question. The concluding observations represent the Committee’s concerted view of what matters are of concern and what needs to be done about them. In our report, as in every other report, we have meticulously addressed those concerns and the related recommendations. The Member was, in fact, referring to paragraph 26 of the summary record (minutes) of the HRC’s 1535th meeting (6 December 1996) at which it discussed the supplementary report. This records the Chairman’s doubts about the section in the report on electoral matters and his view that “giving undue weight to the views of the business community was a shameless violation of article 2 of the Covenant.” The statement repeats the point in paragraph 19 (and the corresponding recommendation in paragraph 25) of the concluding observations on the fourth report. Those were addressed in

paragraphs 33 to 35 of the Supplementary Report and in paragraphs 461 and 462 of the present report. Naturally, these address the concluding observations - being the consensus of the Committee as a whole - not the views of individual Members. Had the Committee considered the Chairman's remark to be a significant development of its previous comments, it would have reflected this in its concluding observations;

- (b) **Trade Unions Ordinance:** paragraph 398 of the report explains the provisions of section 17(1) of the Ordinance. A Member stated that the Chinese version of this paragraph incorrectly used the word [會員] instead of [職員]. Our investigations reveal that the term [會員] is the exact term used in the Ordinance;
- (c) **Prevention of Bribery Ordinance:** a Member asked why the report did not discuss the controversy over the Chief Executive's exemption from the provisions of this Ordinance. The present controversy arose after 30 June 1998, the closing date for the report. That the issue was not of public concern at the time is clearly demonstrated by the fact that none of the organisations that commented on the outline report made any reference to it. However, I understand that the Director of Administration intends to address the subject at the meeting of the Panel on Constitutional Affairs on 9 February; and
- (d) **response to concluding observations:** we agreed to tabulate our response to the HRC's concerns and recommendations for Members' benefit. This will follow shortly.

Yours sincerely

(John Dean)

for Secretary for Home Affairs

c.c. (w/o encl) - D of Admin
SJ (Mr Stephen Wong)



International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/79/Add.57
3 November 1995

ORIGINAL : ENGLISH

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES
PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding Observations of the Human Rights Committee

United Kingdom of Great Britain and Northern Ireland (Hong Kong)

1. At its 1451st to 1453rd meetings, held on 19 and 20 October 1995, the Human Rights Committee considered the part of the fourth periodic report of the United Kingdom of Great Britain and Northern Ireland relating to Hong Kong (CCPR/C/95/Add.5 and HRI/CORE/1/Add.62), and adopted¹ the following the observations:

A. Introduction

2. The Committee welcomes the presence of a high level delegation which included several officials of the Hong Kong Government. It expresses its appreciation to the representatives of the State party for the high quality of the report, abundance of additional information and detailed and frank answers provided in response to the oral and written questions posed and comments made by the Committee during its consideration of the report. The Committee notes with satisfaction that such information enabled it to engage in a highly constructive dialogue with the State party.

¹ At its 1469th meeting (fifty-fifth session) held on 1 November 1995.

3. The detailed information submitted by a wide range of non-governmental organizations has greatly assisted the Committee in its understanding of the human rights situation in Hong Kong.

B. Factors relating to reporting obligations under the Covenant

4. The Committee notes that the United Kingdom and the People's Republic of China have agreed in the Joint Declaration and Exchange of Memoranda of 19 December 1984 that the provisions of the Covenant as applied to Hong Kong shall remain in force after 1 July 1997. In this connection, the Committee, at its 1453rd meeting on 20 October 1995, made clear its view on future reporting obligations in relation to Hong Kong in a statement made by the Chairperson, which is attached to the present document that, as the reporting obligations under article 40 of the Covenant will continue to apply, the Committee will be competent to receive and consider reports that must be submitted in relation to Hong Kong.

C. Positive aspects

5. The Committee welcomes the initiatives taken by the Government with a view to ensuring the full implementation of the Covenant in Hong Kong, in future as well as at present. In that regard, the Sino-British Joint Declaration on the question of Hong Kong appears to provide a sound legal basis for the continued protection of the rights as specified in the Covenant. The Committee welcomes the enactment of the Bill of Rights Ordinance in June 1991.

6. The Committee takes note with appreciation of the various ordinances that have been reviewed as to their conformity with the Bill of Rights and amended accordingly, and also appreciates the continuing process of reviewing and updating of relevant legislative provisions in that regard.

7. The Committee welcomes efforts being made by the authorities to disseminate information on human rights to members of the judiciary, civil servants, teachers and the public in general, including school-age children.

8. The Committee further welcomes the recent enactment of the Sexual Discrimination Ordinance and the Disability Discrimination Ordinance, the aims of which include the elimination of discrimination against women and disabled persons. It welcomes the oral information provided by the authorities that an Equal Opportunities Commission will be established in the first quarter of 1996 with power to recommend draft laws and draft amendments to these Ordinances.

9. The Committee welcomes the enactment of the Torture Ordinance, which gives domestic effect to part of article 7 of the Covenant.

D. Principal subjects of concern

10. The Committee notes that Section 7 of the Bill of Rights Ordinance provides that "the Ordinance binds only the Government and all public authorities; and any person acting on behalf of the Government or a public authority". The Committee emphasizes in this regard that under the Covenant a State party does not only have an obligation to protect individuals against violations by Government officials but also by private parties. It thus notes with deep concern the absence of legislation providing effective protection against violations of Covenant rights by non-governmental actors.

11. The Committee expresses concern over the investigative procedure in respect of alleged human rights violations by the police. It notes that the investigation of such complaints rests within the Police Force itself rather than being carried out in a manner that ensures its independence and credibility. In light of the high proportion of complaints against police officers which are found by the investigating police to be unsubstantiated, the Committee expresses concern about the credibility of the investigation process and takes the view that investigation into complaints of abuse of authority by members of the Police Force must be, and must appear to be, fair and independent and must therefore be entrusted to an independent mechanism. The Committee welcomes the changes made to strengthen the status and authority of the Independent Police Complaints Council but notes that these changes still leave investigations entirely in the hands of the police.

12. The Committee notes with concern that, while majority of the population is Chinese speaking, official charge forms and charge sheets as well as court documents are in English only, though efforts are being made to make Chinese versions available.

13. The Committee expresses concern over the situation of women in Hong Kong, particularly the high level of violence and the absence of adequate punitive or remedial measures. It regrets that the Sexual Discrimination Ordinance is not yet in force and that it limits the damages awarded to women who are subject to sexual discrimination and does not give power to direct the reinstatement of women who have lost their jobs due to sexual discrimination. The Committee is also concerned that the Sexual Discrimination Ordinance has significant exemptions and that it is limited in its application to discrimination based on gender and marriage and does not prohibit discrimination on ground of age, family responsibility or sexual preference.

14. The Committee notes with concern that there is as yet no detailed regulations to cover emergencies and that under the Court of Final Appeal Ordinance, the jurisdiction of the Court will not extend to reviewing undefined "acts of state" by the executive. The Committee is concerned that vague terminology such as "acts of state" may be interpreted so as to impose undue restrictions on the jurisdiction of the Court, including the application of any emergency laws that may be enacted in the future.

15. The Committee also regrets that there is not yet detailed legislation to cover emergency and that the provision in article 18 of the Basic Law on that subject appears not correspond with the provisions of article 4 of the Covenant.

16. The Committee expresses concern that the administration of legal aid in Hong Kong is refused in a large number of Bill of Rights cases that are directed against the Government or public officers.

17. While noting with satisfaction the efforts by the Government, in cooperation with the United Nations High Commissioner for Refugees, to care for the needs of the Vietnamese asylum-seekers, the Committee expresses concern that many Vietnamese asylum-seekers are subject to long-term detention and that many are held under deplorable living conditions that raise serious questions under articles 9 and 10 of the Covenant. It is particularly alarmed about the situation of children living in camps who are deprived of enjoyment of rights under the Covenant in practice, given their parents' status as illegal immigrants. The Committee also expresses concern at the conditions under which deportations and removals of non-refugees of Vietnamese origin were carried out in practice.

18. With respect to article 17, the Committee takes note of the Law Reform Commission's review of the Telecommunication Ordinance and the Post Office Ordinance. The Committee notes with concern that these ordinances can be abused to intrude on the privacy of individuals and that their amendment is urgently required.

19. The Committee is aware of the reservation made by the United Kingdom that article 25 does not require establishment of an elected Executive or Legislative Council. It however takes the view that once an elected Legislative Council is established, its election must conform to article 25 of the Covenant. The Committee considers that the electoral system in Hong Kong does not meet the requirements of article 25, as well as articles 2, 3 and 26 of the Covenant. It underscores in particular that only 20 of 60 seats in the Legislative Council are subject to direct popular election and that the concept of functional constituencies, which gives undue weight to the views of the business community, discriminates among voters on the basis of property and functions. This clearly constitutes a violation of articles 2, paragraph 1, 25 (b) and 26. It is also concerned that laws depriving convicted persons of their voting rights for periods of up to ten years may be a disproportionate restriction of the rights protected by article 25.

E. Suggestions and recommendations

20. The Committee recommends that efforts be accelerated to introduce, as soon as possible, Chinese version of official charge forms and charge sheets as well as court documents.

21. The Committee recommends that the State party adopt the proposal of the Independent Police Complaints Council to incorporate non-police members in the investigation of all complaints against the police.

22. The Committee recommends that the State party reconsiders its decision on the establishment and competence of a Human Rights Commission.

23. The Committee recommends that the deficiencies in the Sexual Discrimination Ordinance be overcome by appropriate amendments and that comprehensive anti-discrimination legislation aiming at eliminating all remaining discrimination prohibited under the Covenant be adopted.

24. The Committee urges the Government to take immediate steps to ensure that living conditions in Vietnamese Refugee detention centres be improved. Special attention should be devoted to the situation of children whose rights under the Covenant should be protected. Refugee status of all detainees should be speedily determined with right of judicial review and legal aid. Deportation and removal of non-refugees of Vietnamese origin should be closely monitored to prevent abuse.

25. The Committee recommends that immediate steps be taken to ensure that the electoral system be put in conformity with articles 21, 22 and 25 of the Covenant.

F. Request for a report

26. The Committee requests the Government of the United Kingdom to submit a brief report, by 31 May 1996, on new developments with regard to the enjoyment of human rights in Hong Kong, pursuant to the recommendations contained in these Observations and in the attached Statement by the Chairperson, for consideration by the Committee at its 58th session to be held in Geneva from 21 October to 8 November 1996.

STATEMENT BY THE CHAIRPERSON ON BEHALF OF THE HUMAN RIGHTS
COMMITTEE RELATING TO THE CONSIDERATION OF THE PART
OF THE FOURTH PERIODIC REPORT OF THE UNITED KINGDOM
RELATING TO HONG KONG²

The Human Rights Committee - dealing with cases of dismemberment of States parties to the International Covenant on Civil and Political Rights - has taken the view that human rights treaties devolve with territory, and that States continue to be bound by the obligations under the Covenant entered by the predecessor State. Once the people living in a territory find themselves under the protection of the International Covenant on Civil and Political Rights, such protection cannot be denied to them by virtue of the mere dismemberment of that territory or its coming within the jurisdiction of another State or of more than one State.¹

However, the existence and contents of the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong make it unnecessary for the Committee to rely solely on the foregoing jurisprudence as far as Hong Kong is concerned. In this regard, the Committee points out that the parties to the Joint Declaration have agreed that all provisions of the Covenant as applied to Hong Kong shall remain in force after 1 July 1997. These provisions include reporting procedures under article 40. As the reporting requirements under article 40 of the International Covenant on Civil and Political Rights will continue to apply, the Human Rights Committee considers that it is competent to receive and review reports that must be submitted in relation to Hong Kong.

Accordingly, the Committee is ready to give effect to the intention of the parties to the Joint Declaration as far as Hong Kong is concerned, and to cooperate fully with the parties to the Joint Declaration to work out the necessary modalities to achieve these objectives.

² Read out by the Chairman at the Committee's 1453rd meeting on 20 October 1995.

³ See documents CCPR/C/SR.1178/Add.1, CCPR/C/SR.1200, CCPR/C/SR.1201 and CCPR/C/SR.1202.



International Covenant
on Civil and
Political Rights

DIST.
GENERAL

CCPR/C/79/Add.58
8 November 1996

ORIGINAL : ENGLISH

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 40 OF THE COVENANT

Concluding Observations of the Human Rights Committee

United Kingdom of Great Britain and Northern Ireland (Hong Kong)

1. At its 1535th and 1536th meetings, held on 23 October 1995, the Human Rights Committee considered a report submitted by the United Kingdom of Great Britain and Northern Ireland relating to Hong Kong (CCPR/C/117) in compliance with a special decision of the Committee (CCPR/C/79/Add.57). The Committee subsequently adopted¹ the following observations:

A

2. The Committee welcomes the presence of a high level delegation which included a significant number of officials of the Hong Kong Government. It expresses its appreciation to the representatives of the State party for the high quality of the report, and the detailed and frank answers provided by the delegation in response to the written and oral questions. The Committee notes with satisfaction that this information enabled it to engage in a highly constructive dialogue with the State party.

¹ At its 1556th meeting (Fifty-eighth session), on 6 November 1996.

3. The Committee also welcomes the presence of a significant number of non-governmental organizations from Hong Kong. The information provided by these NGOs greatly assisted the Committee in its understanding of the human rights situation in Hong Kong.

3

4. At its 1553rd meeting, on 20 October 1995, the Committee² envisaged issues in connection with reporting obligations on the part of Hong Kong after the transfer of sovereignty to the People's Republic of China on 1 July 1997. It recalled that, in dealing with cases of dismemberment of States parties to the International Covenant on Civil and Political Rights, it had taken the view that human rights treaties devolve with territory, and that States continue to be bound by the obligations under the Covenant entered into by the predecessor State. Once the people living in a territory enjoy the protection of the rights under the International Covenant on Civil and Political Rights, such protection cannot be denied to them merely by virtue of dismemberment of that territory or its coming under the sovereignty of another State or of more than one State.³

5. The Committee reiterates that the existence and contents of the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China make it unnecessary for the Committee to rely solely on the foregoing jurisprudence as far as Hong Kong is concerned. In this regard, the Committee pointed out that the parties to the Joint Declaration have agreed that all provisions of the Covenant as applied to Hong Kong shall remain in force after 1 July 1997. These provisions include reporting procedures under article 40 since the reporting requirements under article 40 will thus continue to apply, the Human Rights Committee expects that it will continue to receive and review reports submitted in relation to Hong Kong.

6. Accordingly, the Committee is ready to give effect to the intention of the parties to the Joint Declaration as far as Hong Kong is concerned, and to cooperate fully with the parties to the Joint Declaration to work out the necessary modalities to achieve these objectives.

C. Suggestions and recommendations

7. The Committee urges the United Kingdom of Great Britain and Northern Ireland (Hong Kong) Government to take all necessary steps to ensure effective and continued application of the provisions of the Covenant in the territory of Hong Kong in accordance with the Joint Declaration and the Basic Law.

² Statement by the Chairperson on behalf of the Human Rights Committee (read out by the Chairman at the Committee's 1453rd meeting on 20 October 1995) contained in document CCPR/C/79/Add.57).

³ See document CCPR/C/SR.1178/Add.1, CCPR/C/SR.1200, CCPR/C/SR.1201 and CCPR/C/SR.1202.

8. The Committee reminds the United Kingdom of Great Britain and Northern Ireland Government of its continuing responsibility to ensure to the people of Hong Kong the rights protected by the Covenant and to carry out its obligations under the Covenant including in particular article 40; in that regard, it requests the Government of the United Kingdom to report on the human rights situation in the territory of Hong Kong up to 30 June 1997.