

**An outline of the topics to be covered  
in the initial report on the  
Hong Kong Special Administrative Region  
under the International Convention on the  
Elimination of All Forms of Racial Discrimination**

[**Note:** the Convention as applied to the HKSAR is reproduced at **Annex A.**]

**Introduction**

This outline sets out the broad subject headings and individual topics that we envisage covering in the Report. It serves as an invitation to all members of the public to submit their views on the implementation of the Convention in respect of those topics. It also invites the public to suggest (and comment on) any additional topics that they consider we ought to include.

We will carefully consider all the comments we receive. But we do not guarantee to address every one of them in the Report. And it is possible that, on occasion, our attempts to summarise a comment may oversimplify or misinterpret the contributor's intention. Should that happen, we apologise in advance. But we undertake to send every submission received to the Committee for the Elimination of Racial Discrimination under separate cover. This will ensure that the Committee has access to the full, original texts. With that in view, contributors whose submissions are written in Chinese may wish to consider providing English translations<sup>1</sup>.

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<sup>1</sup> Chinese is an official language of the UN and the Secretariat has its own translation facilities. However, they have a considerable workload that will be increased if the translation of submissions is left to them. We do not consider it necessary to translate English submissions into Chinese as most Committee Members read English.

## **Preface**

Developments between the hearing of last report on Hong Kong submitted by the Government of the United Kingdom (March 1997) and 30 June 1997.

- Conclusion of the study and consultations on racial discrimination
- The Hon Libby Wong's Member's Bill

## **Part I: General Profile of the Hong Kong Special Administrative Region (HKSAR)**

**Note:** the 'profiles' follow a standard format, form and content being prescribed in the UN 'Manual on Human Rights Reporting'. Thus Part I will update the information in the corresponding part of our first report under the International Convention of Economic, Social and Cultural Rights. The latter (the most recent to be submitted to the UN) is reproduced at **Annex B**.

- Ethnic composition of Hong Kong's population: in paragraph 18 of its concluding observations on the United Kingdom's 13<sup>th</sup> Report under the Convention, the Committee on the Elimination of Racial Discrimination (CERD) - examined in March 1996 - expressed concern at the absence of information that would determine the ethnic/racial composition of Hong Kong's population. In paragraph 4 of the Hong Kong section of the UK's 14<sup>th</sup> report (heard in March 1997), we said that we would take

account of this concern in preparing the 2000 census. Since then, we have decided to employ consultants to conduct a discrete survey to obtain the data. That will take place between October and December 1999. We will include its findings in the Report if they are available in time.

[**Note:** the concluding observations on the UKG's 13<sup>th</sup> and 14<sup>th</sup> reports are at **Annexes C and D** respectively. They contain only those paragraphs that are relevant to Hong Kong.]

### **Article 1**

Article 1 defines racial discrimination, scope and interpretation of the Convention. It does not concern matters that are susceptible to the reporting process.

### **Article 2 - Policy of eliminating racial discrimination**

#### Existing legislative framework

- BL 39, BL 41; ICCPR 2 and 26
- Hong Kong Bill of Rights Ordinance (BORO) - Section 7 and Articles 1 and 22 (prohibition of discrimination by Government/public bodies; equal protection under the law).
- Existing anti-discrimination laws

- Review of legislation in the light of the Bill of Rights (BOR)

### Policy on the elimination of racial discrimination

#### Legislation: the ongoing debate

- The Hon Christine Loh's Member's Bill
- Extending the BORO to inter-citizens' actions (recommended in paragraph 35 of the CERD's concluding observations on the UKG's 13<sup>th</sup> report). Findings of follow-up survey (1998/99): our position remains as expressed in paragraph 6 of the 14<sup>th</sup> Report. That is, legislation against discrimination needs to be specific to each particular type of discrimination.

#### Administrative measures to address racial discrimination

- Code of practice in relation to employment

[**Note:** educational measures will be addressed in relation to Article 7.]

#### Special groups

- Workers from outside the HKSAR (covering imported workers) admitted under the Supplementary Labour Scheme, foreign domestic helpers and workers from outside the HKSAR admitted under other schemes or policies):
  - equal protection under the labour legislation

- special measures to protect their employment rights and benefits (e.g. written standard employment contracts and minimum allowable wages for imported workers and foreign domestic helpers)
  - the two-week rule as applied to imported workers and foreign domestic helpers
  - channels to file employment claims
  - promotion and publicity on their employment rights and benefits under the employment contract and employment laws.
- Refugees, migrants and illegal immigrants from Vietnam [including ‘ex-China Vietnamese’].
- New arrivals from Mainland China
- employment and guidance services for new arrivals provided by the Labour Department and the Employees Retraining Board
  - statistics on new arrivals registered at the Labour Department for employment service.
- **Residents of Nepalese origin:** a new community

### **Article 3 - No racial segregation or apartheid**

- Not practised in Hong Kong

- **Patterns of settlement:** some ethnic groups are more in evidence in some localities than in others. But as yet no clear signs of ‘ghettoisation’<sup>2</sup>.

**Article 4 - No propaganda or organisations which are based on racial superiority**

- Views of extremist or racist organisations are repugnant to the HKSAR Government.
- Provisions exist in the criminal law that deal effectively with offences - such as killing and causing grievous bodily harm (Section 9A, Offence Against Person Ordinance, Cap. 212 - genocide) - that may be racially motivated.
- Sections 5A and 8 of the Societies Ordinance permit the refusal of registration of a society (or a branch) and the prohibition of a society’s operation in the interests of national security or public safety, public order or the protection of the rights and freedoms of others.
- Article 22 of the BOR prohibits public authorities engage in practices that entail racial discrimination.

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<sup>2</sup> This entry addresses a requirement in the most recent (1997) edition of the UN Manual on Human Rights Reporting. In relation to Article 3 of the ICERD, the Manual records that - at its 1125<sup>th</sup> meeting (17 August 1995) the CERD adopted General Recommendation XIX(47). Inter alia, this observed that “while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private persons. In many cities, residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, colour, descent and national or ethnic origin, so that inhabitants can be stigmatized and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds”. Accordingly, the Committee invited States Parties “to monitor all trends which can give rise to racial segregation, to work for the eradication of any negative consequences that ensue, and to describe any such action in their periodic reports” [UN Manual, pages 278 and 279].

- Section 33 of the Television Ordinance (Chapter 52) and section 13M of the Telecommunication Ordinance (Chapter 106) prohibit, inter alia, the broadcast of programmes, advertisements and announcements that are likely to incite hatred against any group of persons, being a group defined by reference to (inter alia) colour, race, nationality, ethnic or national origins.
- Section 10 of the Film Censorship Ordinance (Chapter 392) provides that the censor shall consider, for the purpose of making a decision under the Ordinance, inter alia, whether the film insults or denigrates any particular class of the public by reference to, inter alia, the colour, race, ethnic or national origins of the members of that class.

**Article 5 - Guarantees of rights of everyone without distinction as to race, colour, or national or ethnic origin**

[Note: the question of legislation will be addressed in relation to Article 2.]

**Article 5(a) - equal treatment before tribunals and organs administering justice**

- Equality before the law
- Legal aid
- Chinese and English used in all judicial proceedings
- services available to persons who do not speak Chinese or English

Article 5(b) - security of person

- Offence Against the Person Ordinance
- Crimes (Torture) Ordinance

Article 5(c) - Political rights

- Elections to the Legislative Council and District Councils
- equal access to public service

Article 5(d) - Civil rights

- Freedom of movement
- Free to leave the territory
- Right to residency/right of abode
- Right to marriage
- Right to own property and inherit
- Freedom of religion, expression, assembly and association (BORO)

Article 5(e) - Economic, social and cultural rights

- Freedom of choice of employment
- Equal protection of employment rights and benefits under the labour legislation.
- Right to just and favourable conditions of work
- Right to form and join trade union

- Basic Law: Article 27
  - BOR: Article 18
  - Trade Unions Ordinance
  - number and membership of trade unions; and
  - relevant provisions of the Employment Ordinance
- Review of the applicability of the Employment Ordinance to live-in domestic helper.
  - Common terms of appointment and conditions of civil service.
  - Right to Housing
  - Right to receive medical care, social security and social services.
  - Right to education and training, existing provisions in the law ensure that education is offered without regard to race (for example, section 4 of the Post Secondary Colleges Ordinance, Cap. 320).
  - Right to participate in cultural activities

Article 5(f) - right of access

- Right of access to any public places or services

**Article 6 - Provision of effective protection and remedies against any acts of racial discrimination**

- Interpretative declaration in respect of “reparation and satisfaction”.
- Racial discrimination by Government or public authority would infringe the BORO.

Section 6 of the BORO provides that

remedies remain confined to acts of Government and public authorities for the reasons discussed in relation to Article 2. In appropriate cases, complaints of racial discrimination may be challenged in court as being contrary to the protections guaranteed in the ICCPR and the Basic Law.

### **Article 7 - Measures to combat prejudice**

#### Educational and promotional measures

- The schools: how racial issues are addressed in the various curricula.
- Public education: measures taken to foster public awareness and a culture of mutual tolerance.

#### Community Participation schemes

#### Publication of the Convention and the present report

**LAND AND PEOPLE**

Background statistical information, using the most up-to-date figures available, is as follows -

**(a) Population by sex**

<u>Sex</u>	<u>Mid 1987</u> (million)	<u>Mid 1992</u> (million)	<u>Mid 1998</u> (million)
Male	2.9	2.9	3.4
Female	2.7	2.9	3.3
Total	5.6	5.8	6.7

**(b) Population by age group and sex**

<u>Age</u>	<u>Sex</u>	<u>Percentage of total population</u>		
		<u>Mid 1987</u>	<u>Mid 1992</u>	<u>Mid 1998</u>
Under 15	Male	11.7	10.6	9.0
	Female	10.8	9.9	8.4
15-64	Male	36.3	36.2	36.5
	Female	33.2	34.2	35.6
65 and over	Male	3.4	4.0	4.8
	Female	4.5	5.0	5.7
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All age groups	Male	51.4	50.8	50.4
	Female	48.6	49.2	49.6

(c) Educational attainment (for population aged 15 and above)

<u>Educational attainment</u>	<u>Sex</u>	<u>Percentage</u>		
		<u>1986</u>	<u>1991</u>	<u>1996</u>
No schooling/kindergarten	Male	3.6	3.6	2.5
	Female	10.5	9.1	7.0
Primary	Male	15.8	13.2	11.2
	Female	13.5	12.0	11.4
Secondary and above	Male	31.8	33.8	35.8
	Female	24.8	28.2	32.1

(d) Literacy rate (1984):88.4% (1996):90.5%

(e) Percentage of population (excluding mutes) aged five and over by usual language/dialect

<u>Usual language/dialect</u>	<u>Percentage</u>	
	<u>1991</u>	<u>1996</u>
Cantonese	88.7	88.7
Putonghua	1.1	1.1
Other Chinese dialects	7.0	5.8
English	2.2	3.1
Others	1.0	1.3
	<u>100.0</u>	<u>100.0</u>

(f) Crude birth and death rates

	<u>1987</u>	<u>1992</u>	<u>1997</u>
Crude birth rate (per 1,000 population)	12.6	12.3	9.1
Crude death rate (per 1,000 population)	4.8	5.3	4.9

(g) Expectation of life at birth (Number of years)

<u>Sex</u>	<u>1987</u>	<u>1992</u>	<u>1997</u>
Male	74.2	74.8	76.8
Female	79.7	80.7	82.2

(h) Infant mortality rate (per 1,000 live births)

<u>1987</u>	<u>1992</u>	<u>1997</u>
7.4	4.8	3.9

(i) Maternal mortality rate (Number of deaths per 100,000 total births)

<u>1987</u>	<u>1992</u>	<u>1997</u>
4.3	5.5	1.6

(j) Fertility rate

	<u>1987</u>	<u>1992</u>	<u>1997</u>
General fertility rate (per 1,000 women aged 15-49) excluding female foreign domestic helpers	47.9	46.3	33.5

(k) Percentage of household heads by sex

<u>Sex</u>	<u>1986</u>	<u>1991</u>	<u>1996</u>
Male	73.0	74.3	72.8
Female	27.0	25.7	27.2

- (l) Unemployment rate  
(averages of the estimates obtained from the quarterly General Household Surveys of the year)

<u>1987</u>	<u>1992</u>	<u>1997</u>
1.7	2.0	2.2

- (m) Rate of inflation

- (i) Composite Consumer Price Index (CPI)

<u>Year</u>	<u>Annual rate of increase in CPI(%)</u>
1990	10.2
1991	11.6
1992	9.6
1993	8.8
1994	8.8
1995	9.1
1996	6.3
1997	5.8

Note: The Composite CPI is compiled on the basis of expenditure patterns of about 90% of households in the HKSAR, which had an average monthly expenditure of HK\$4,000 - HK\$59,999 during the base period of October 1994 - September 1995. This approximately corresponds to a monthly expenditure range of HK\$4,600 - HK\$69,200 at 1997 prices.

(ii) Implicit price deflators of Gross Domestic Product (GDP)<sup>#</sup>

<u>Deflator</u> <u>Year</u>	<u>(1990=100)</u>	<u>Annual Rate of</u> <u>change (%)</u>
1990	100.0	7.5
1991	109.2	9.2
1992	119.8	9.7
1993	130.0	8.5
1994	139.0	6.9
1995	142.5	2.5
1996	150.2	5.4
1997	159.0	5.9

(n) Gross Domestic Product for 1990 - 1997<sup>#</sup>

<u>Year</u>	<u>At current</u> <u>market prices</u> <u>(US\$ Mn)</u>	<u>At constant (90)</u> <u>market prices</u> <u>(US\$ Mn)</u>
1990	74,791	74,791
1991	86,027	78,756
1992	100,676	84,013
1993	116,011	89,222
1994	130,808	94,139
1995	139,238	97,703
1996	154,171	102,622
1997	171,406	107,796

(o) Per capita income

(Per capita GDP for 1990-1997<sup>#</sup>)

<u>Year</u>	<u>At current market prices (US\$)</u>	<u>At constant (90) market prices (US\$)</u>
1990	13,111	13,111
1991	14,956	13,692
1992	17,357	14,484
1993	19,660	15,120
1994	21,674	15,598
1995	22,618	15,871
1996	24,429	16,261
1997	26,362	16,579

(p) External debt: The HKSAR Government does not incur external debts.

\* Provisional figure

# GDP figures refer to the estimates released in March 1998

## GENERAL POLITICAL STRUCTURE

### Constitutional document

2. In accordance with the provisions of Article 31 and sub-paragraph 13 of Article 62 of the Constitution of the People's Republic of China (PRC), as well as the relevant decisions of the National People's Congress (NPC) adopted at the Third Session of the Seventh NPC on 4 April 1990, the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR) was established on 1 July 1997. The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China was also put into effect on 1 July 1997. Under the principle of "One Country, Two Systems", the socialist system and policies are not practised in the HKSAR and Hong Kong's previous capitalist system and way of life will remain unchanged for 50 years. A copy of the Basic Law is at Annex 1.

3. To fully realise the principle of "One Country, Two Systems", the Basic Law sets out the broad framework of the relationship between the Central Authorities and the HKSAR (Chapter II); the fundamental rights and duties of Hong Kong residents (Chapter III); the political structure (Chapter IV); economic, financial and social systems of the HKSAR (Chapters V & VI); its conduct of external affairs (Chapter VII); as well as the interpretation and amendment of the Basic Law (Chapter VIII).

4. Among other matters, the Basic Law provides that -

- (a) the HKSAR shall enjoy a high degree of autonomy except in defence and foreign affairs and exercise executive, legislative and independent judicial power, including that of final adjudication. The power of final adjudication of the HKSAR shall be vested in the Court of Final Appeal established in the Region;

- (b) the executive authorities and legislature of the HKSAR shall be composed of permanent residents of Hong Kong;
- (c) the laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravenes the Basic Law, and subject to any amendment by the legislature of the HKSAR;
- (d) national laws shall not be applied in the HKSAR except for those listed in Annex III to the Basic Law and that the laws listed therein shall be applied locally by way of promulgation or legislation by the Region. The Standing Committee of the National People's Congress may add to or delete from the list of laws in Annex III after consulting the Committee for the Basic Law of the HKSAR and the HKSAR government;
- (e) the HKSAR is authorised to conduct external affairs on its own. The HKSAR may on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with foreign states and regions and relevant international organisations in the appropriate fields, including economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields;
- (f) the HKSAR remains a free port, a separate customs territory and an international financial centre. There shall be free flow of capital. HKSAR issues and manages its own currency;

- (g) the HKSAR formulates its own policies on the development of education, science, culture, sports, labour and social services, and Hong Kong residents have the freedom of religious belief;
- (h) Hong Kong residents enjoy a wide range of freedoms and rights and this will be further dealt with under the section of “General Legal Framework Within Which Human Rights Are Protected”; and
- (i) the provisions of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.

## **System of Government**

### **General structure**

5. The Chief Executive of the HKSAR is the head of the Region. An Executive Council assists him in policy-making. The Legislative Council of the HKSAR is the legislature of the Region - it legislates, controls public expenditure and raises questions on the work of the government. The method for the formation of the Legislative Council is stipulated in the Basic Law and the “Decision on the Method for the Formation of the First Government and the First Legislative Council of the HKSAR” adopted at the Third Session of the Seventh NPC on 4 April 1990. The method for formation of the district organisations, including the municipal councils and district boards are prescribed by law.

## **Chief Executive**

6. The Basic Law provides that the Chief Executive of the HKSAR shall be selected by election or through consultations held locally and be appointed by the Central People's Government. The method for selecting the Chief Executive is to be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress.

7. The first Chief Executive was selected in accordance with the NPC's "Decision on the Method for the Formation of the First Government and the First Legislative Council of the HKSAR". A Selection Committee was formed to recommend a candidate to the Central People's Government for appointment. The Selection Committee comprised 400 members from various sectors of the community. In future, the Chief Executive will be elected by an Election Committee composing of 800 members.

8. Annex I of the Basic Law further provides that amendments to the method for selecting the Chief Executive for the terms subsequent to the year 2007 may be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive. Any such amendments are to be reported to the Standing Committee of the NPC for approval. Article 45 of the Basic Law provides that the ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

## **Executive Council**

9. Members of the Executive Council of the HKSAR are appointed by the Chief Executive from among the principal officials of the executive authorities, members of the Legislature Council and public figures. Their appointment or removal shall be decided by the Chief Executive. The total number of these appointed members is not specified. At present, there are 14 members.

10. The Council normally meets once a week. The Chief Executive presides over its meetings. He is required by Article 56 of the Basic Law to consult the Executive Council before making important policy decisions and introducing bills to the Legislative Council. Members tender their advice on an individual basis, but the Council's conclusions are presented as collective decisions.

### **Legislative Council**

11. Article 68 of the Basic Law provides that the HKSAR Legislative Council shall be constituted by election. The method for its formation shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The composition of the Legislative Council in its first three terms will be as follows -

<b><u>Membership</u></b>	<b><u>First term</u></b> 1998-2000 (two years)	<b><u>Second term</u></b> 2000-2004 (four years)	<b><u>Third term</u></b> 2004-2008 (four years)
(a) elected by geographical constituencies through direct elections	20	24	30
(b) elected by functional constituencies	30	30	30
(c) elected by an election committee	10	6	-
<b>Total</b>	<b>60</b>	<b>60</b>	<b>60</b>

12. Basic Law Annex II further provides that amendments to the method for forming the Legislative Council after 2007 may be made with the endorsement of a two-thirds majority of all the members of the Council and the consent of the Chief Executive. Any such amendments are to be reported to the Standing Committee of the NPC for the record. According to Article 68 of the Basic Law,

the ultimate aim is the election of all the members of the Legislative Council by universal suffrage.

13. According to Article 73 of the Basic Law, the powers and functions of the Legislative Council include enactment, amendment or repeal of laws in accordance with the provisions of the Basic Law and legal procedures; examining and approving budgets introduced by the government; approving taxation and public expenditure; receiving and debating the policy addresses of the Chief Executive; raising questions on the work of the government; debating any issue concerning public interests; endorsing the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court; and receiving and handling complaints from Hong Kong residents. The Council is also empowered to impeach the Chief Executive under certain prescribed circumstances.

### **Municipal Councils**

14. The Municipal Councils comprise the Urban Council and the Regional Council. The two bodies operate at the regional level and respectively provide - and make policy in relation to - “municipal services” in the urban areas and the New Territories. These services include maintaining environmental hygiene, protecting public health, providing facilities and programmes for sports, recreation, culture and entertainment. The Councils are statutory bodies and are financially autonomous.

### **District Boards**

15. The District Boards are statutory bodies established to provide a forum for public consultation and participation at the district level. They play an advisory role with substantial responsibility for the management of district affairs and community halls. They discuss a wide range of matters affecting the well-being of residents in their districts and recommend appointments to the various

local bodies. They are also allocated public funds for undertaking cultural and recreational activities for local communities and for minor environmental improvement works.

### **Provisional Legislative Council, Provisional Municipal Councils and Provisional District Boards**

16. The former legislature of Hong Kong established under British rule ceased to exist on 1 July 1997 after the then existing constitutional instruments had lapsed when the People's Republic of China resumed exercising sovereignty over Hong Kong. In preparation for the establishment of the HKSAR, the Preparatory Committee had, on 24 March 1996, decided to establish the Provisional Legislative Council to perform specified tasks to enable the business of Government to continue before elections could be held to form the first Legislative Council of the HKSAR.

17. The Provisional Legislative Council comprised 60 members who were elected by the Selection Committee for the First Government of the HKSAR on 21 December 1996. Major tasks of the Council were to enact laws which were essential for the normal operation of the HKSAR; to amend and repeal laws where necessary in accordance with the Basic Law; examine and approve budgets introduced by the government; approve taxation and public expenditure; receive and debate the policy addresses of the Chief Executive; and endorse the appointment of the judges of the Court of Final Appeal and the Chief Judge of the High Court. The term of office of the Council members expired on 30 June 1998.

18. The former Municipal Councils and District Boards established under British rule were dissolved on 30 June 1997. In preparation for the establishment of the HKSAR, the Preparatory Committee had, on 1 February 1997, decided that provisional district organisations including the Provisional Urban Council, the Provisional Regional Council and Provisional District Boards should be set up on 1 July 1997 by the HKSAR Government before elections could be held

to form the first district organisations of the Region. The members of these provisional bodies were appointed by the Chief Executive of the HKSAR. Their term of office will end no later than 31 December 1999.

19. The Provisional Urban Council and Provisional Regional Council each comprises 50 members. The members include all elected members of the former Urban Council and the Regional Council. In addition, nine new members were appointed to the Provisional Urban Council and 11 new members to the Provisional Regional Council. The 18 Provisional District Boards have a total of 468 members, including all elected members of the former District Boards and 95 new members. The Government is now conducting a review of the Municipal Councils and District Boards so as to decide whether the present structure of local representative institutions can continue to ensure the efficient and responsive delivery of services to our evolving community.

### **The structure of the Administration**

20. The Chief Executive is the head of the HKSAR Government. If the Chief Executive is not able to discharge his duties for a short period, such duties will temporarily be assumed by the Chief Secretary for Administration, Financial Secretary or Secretary for Justice in that order of precedence.

21. A Department of Administration, a Department of Finance, a Department of Justice, and various bureaux, divisions and commissions are established in the HKSAR Government. There are currently 13 policy bureaux and two resource bureaux concerned respectively with finance and the civil service. The bureaux, each headed by a Secretary, collectively form the Government Secretariat.

22. With certain exceptions, the heads of government departments are responsible to the bureaux Secretaries for the direction of their departments and the efficient implementation of approved government policy. The exceptions are the

Independent Commission Against Corruption and the Commission of Audit, each of which functions independently and is accountable to the Chief Executive.

### **The judicial system of the HKSAR**

23. The legal system is firmly based on the rule of law and a Judiciary which is independent of the legislative and executive branches of Government.

24. Article 19 of the Basic Law provides that the HKSAR shall be vested with independent judicial power, including that of final adjudication. The courts of the HKSAR shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by the legal system and principles previously in force in Hong Kong shall be maintained.

25. The courts of justice comprise the Court of Final Appeal, the High Court (which consists of the Court of Appeal and the Court of First Instance), the District Court, the Magistracy, the Lands Tribunal, the Labour Tribunal, the Small Claims Tribunal, the Obscene Articles Tribunal and the Coroner's Court. The courts hear and determine all criminal trials and civil disputes, whether between individuals or between individuals and Government of the Region.

26. Article 82 of the Basic Law provides that the power of final adjudication of the HKSAR shall be vested in the Court of Final Appeal of the Region, which may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal. By virtue of Article 83, the structure, powers and functions of the courts of the HKSAR at all levels are prescribed by law.

27. All judges and judicial officers must have qualified as legal practitioners in Hong Kong or in a common law jurisdiction and have substantial professional experience. Article 88 of the Basic Law provides that "Judges of the courts of the HKSAR shall be appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors."

28. Judges have security of tenure. Article 89 of the Basic Law provides that “A judge of a court of the HKSAR may only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive on the recommendation of a tribunal appointed by the Chief Justice of the Court of Final Appeal and consisting of not fewer than three local judges. The Chief Justice of the Court of Final Appeal of the HKSAR may be investigated only for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by the Chief Executive and consisting of not fewer than five local judges and may be removed by the Chief Executive on the recommendation of the tribunal and in accordance with the procedures prescribed in this Law.”

## GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

### Rule of Law

29. The fundamental basis for the protection of human rights is the rule of law maintained by an independent judiciary (see paragraphs 23 to 28 above). The principles that inform the rule of law are -

- (a) **the supremacy of the law:** No individual is punishable or can lawfully be made to suffer personally or financially except for a breach of law established before the independent courts. Where, under the law, an official or an authority has a discretion to make a decision, that discretion must be exercised legally, fairly and reasonably. Where it does not do so, the decision must be capable of successful challenge before the courts. The Basic Law guarantees the right of Hong Kong residents to institute legal proceedings in the courts against the acts of the executive authorities and their personnel; and
  
- (b) **equality before the law:** Article 25 of the Basic Law provides that all Hong Kong residents shall be equal before the law. Article 22 provides that all offices set up in the HKSAR by departments of the Central People's Government, or by provinces, autonomous regions, or municipalities directly under the Central Government and personnel of these offices shall abide by the laws of the Region. Article 14 provides that members of the garrison shall, in addition to abiding by national laws of the PRC, abide by the laws of the HKSAR. Article 35 also provides that Hong Kong residents shall have the right to institute legal proceedings in the courts

against the acts of the executive authorities and their personnel. No government authority or official, and no individual, is above the law. All persons, regardless of race, rank, politics, religion or sex, are equal before the law and subject to the same law. Individuals and the HKSAR Government have the same access to the courts to enforce legal rights or defend an action.

Some commentators have argued that the principle of equality before the law was compromised by a recent amendment to the Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of the HKSAR). The amendment in question was a replacement of the reference to the “Crown” by the “State” in section 66 of the Ordinance. Before 1 July 1997, section 66 used to provide that no ordinance was binding on the Crown unless it expressly stated, or necessarily implied, that the Crown was bound. After 1 July 1997, the reference to the “Crown” in section 66 had to be amended. The amendment to section 66 of Chapter 1 was simply made in order to preserve the substance of the law before 1 July 1997 and reflect the change of sovereignty.

### **Human rights guarantees in the Basic Law**

30. It is now possible to employ legal arguments and take legal action based on the principle of consistency with the Basic Law. Indeed, the application of the Basic Law has already been tested in several court cases.

31. Article 4 of the Basic Law provides that the HKSAR shall safeguard the rights and freedoms of residents of the HKSAR and of other persons in the Region in accordance with law. The Basic Law guarantees a wide range of freedoms and rights, including -

- (a) equality before the law;
- (b) freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike;
- (c) freedom of the person; freedom from torture; freedom from arbitrary or unlawful arrest, detention or imprisonment; freedom from arbitrary or unlawful search of the body; and right against arbitrary or unlawful deprivation of life;
- (d) freedom from arbitrary or unlawful search of, or intrusion into, one's home or other premises;
- (e) freedom and privacy of communication;
- (f) freedom of movement within the HKSAR and freedom of emigration to other countries and regions and freedom to travel and to enter or leave the Region;
- (g) freedom of conscience; freedom of religious belief and freedom to preach and to conduct and participate in religious activities in public;
- (h) freedom of choice of occupation;
- (i) freedom to engage in academic research, literary and artistic creation, and other cultural activities;
- (j) right to confidential legal advice, access to the courts, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies; right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel;

(k) right to social welfare in accordance with law; and

(l) freedom of marriage and right to raise a family freely.

Persons in Hong Kong other than Hong Kong residents shall, in accordance with law, enjoy the rights and freedoms of Hong Kong residents prescribed by Chapter III of the Basic Law. In addition, permanent residents of the HKSAR enjoy the rights to vote and to stand for election in accordance with law.

### **Effect of other human rights instruments in HKSAR law**

32. According to Article 39 of the Basic Law -

“The provisions of the ICCPR and the ICESCR as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.

The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.”

33. In general, and as is usual in common law systems, treaties that apply to Hong Kong (including human rights treaties) do not themselves have the force of law in the domestic legal system of Hong Kong. They cannot be directly invoked before the courts as the source of individual rights. However, the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with these international obligations. The usual method of giving effect in local law to treaty obligations (when these require some change in existing laws or practice) is to enact specific new legislation<sup>1</sup>. Where this results in the creation or definition of specific legal rights and where these rights are denied or interfered with (or there is the threat of such action), a remedy will be available in the courts through the ordinary procedures of civil litigation; or the law may provide criminal sanctions.

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<sup>1</sup> An example is the Crimes (Torture) Ordinance (Chapter 427 of the Laws of the HKSAR) which was enacted to give effect in Hong Kong to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

## **Bill of Rights Ordinance**

34. The Hong Kong Bill of Rights Ordinance (BORO) (Chapter 383 of the Laws of the HKSAR) was enacted in June 1991 specifically to give effect in local law to the provisions of the ICCPR as applied to Hong Kong. It achieves this by setting out a detailed Bill of Rights, the terms of which are almost identical to those of the ICCPR.

## **Adoption of laws: effect on the BORO**

35. Article 160 of the Basic Law provides that the laws previously in force in Hong Kong shall be adopted as laws of the Region except for those which the Standing Committee of the NPC declares to be in contravention of the Basic Law. In February 1997, the Standing Committee considered that three sections of the BORO (relating to the interpretation and application of the Ordinance<sup>2</sup>) had an overriding effect over other laws, including the Basic Law. As such, they contravened the Basic Law and could not be adopted.

36. The non-adoption of these sections has no effect on the protection of human rights in the HKSAR in view of the constitutional guarantee in Article 39 of the Basic Law. The substantive protections in Part II of the Ordinance (almost identical to the provisions of the ICCPR) are unchanged. So too are the remedies provided under section 6 for contravention of the Ordinance and the binding effect on the Government and all public authorities under section 7. The full text of the BORO as it now stands is at Annex 2.

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<sup>2</sup> The three sections were -

- (a) section 2(3): “In interpreting and applying this Ordinance, regard shall be had to the fact that the purpose of this Ordinance is to provide for the incorporation into the law of Hong Kong of provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong, and for ancillary and connected matters.”
- (b) section 3: “Effect on pre-existing legislation -
  - (1) All pre-existing legislation that admits of a construction consistent with this Ordinance shall be given such a construction.
  - (2) All pre-existing legislation that does not admit of a construction consistent with this Ordinance is, to the extent of the inconsistency, repealed.”
- (c) section 4: “Interpretation of subsequent legislation - All legislation enacted on or after the commencement date shall, to the extent that it admits of such a construction, be construed so as to be consistent with the International Covenant on Civil and Political Rights as applied to Hong Kong.”

## **Legal aid**

37. Legal aid in the HKSAR is mainly provided by the Legal Aid Department and the Duty Lawyer Service.

38. The Legal Aid Department provides eligible persons with legal representation in both civil and criminal cases. Applicants must satisfy the Director of Legal Aid of their financial eligibility (the means test) and of the justification for legal action (the merits test). In criminal cases, the Director of Legal Aid has a discretion to grant legal aid to an applicant who fails the means test if the Director is satisfied that it is in the interests of justice to do so. Moreover, in cases of murder, treason or privacy with violence, the grant of legal aid to persons for their defence or appeal is mandatory so long as they can pass the means test.

## **The Duty Lawyer Service**

39. The Duty Lawyer Service is managed and administered by the Law Society and the Bar Association of Hong Kong. It complements the services by the Legal Aid Department and comprises -

- (a) the Duty Lawyer Scheme which offers legal representation to defendants (juvenile and adult) who are charged in the Magistracies and who cannot afford private representation. Applicants are subject to a simple means test and a merits test - based on the “interests of justice” principle - in accordance with Article 14 of the ICCPR and Article 11 of the Bill of Rights;
- (b) the Legal Advice Scheme which provides members of the public with free legal advice through individual appointments; and
- (c) the “Tel Law Scheme” which provides taped information on legal aspects of everyday problems.

## **Office of the Ombudsman**

40. The Ombudsman - formerly known as the Commissioner for Administrative Complaints (COMAC) - is an independent authority, established under the Ombudsman Ordinance (previously known as the COMAC Ordinance). The Ombudsman investigates and reports on grievances arising from maladministration. “Maladministration” includes such things as inefficient, bad or improper administrative decisions, acts, recommendations or omissions. Members of the public can complain directly to The Ombudsman. He can also initiate investigations on his own volition and may publish investigation reports of public interest. Additionally, The Ombudsman is empowered to investigate complaints of non-compliance with the administrative Code on Access to Information.

41. To enable him to carry out his functions effectively, The Ombudsman is able to appoint his own staff to carry out his duties. Subject to the Ombudsman Ordinance, he may obtain any information and documents from such persons as he thinks fit; he may summon any person to provide information relating to his investigations and may enter any premises of the organizations under his jurisdiction to conduct investigations. He also has sufficient means with which to ensure that his recommendations are heard and acted upon.

42. After investigation of a complaint, The Ombudsman is empowered to report his opinion and reasons, together with a statement of any remedy and recommendation that is considered necessary, to the head of the organisation affected. If The Ombudsman believes that there has been a serious irregularity or injustice done, he may make a report to the Chief Executive of the HKSAR. Such a report is bound by law to be laid before the Legislative Council.

43. With two exceptions, The Ombudsman has jurisdiction over all Government departments of the HKSAR and major statutory bodies. The exceptions are the Police and the Independent Commission Against Corruption

(ICAC). Complaints against these departments are handled by discrete, dedicated bodies (see paragraphs 44 to 45 below).

## **Complaints and investigations**

### **The Police**

44. The Complaints Against Police Office (CAPO) investigates all complaints about the conduct and behaviour of members of the police force. The CAPO's investigations are monitored and reviewed by the Independent Police Complaints Council. This is an independent body comprising non-official members appointed by the Chief Executive from a wide spectrum of the community.

### **The ICAC**

45. The Independent Commission Against Corruption Complaints Committee - established in 1977 - monitors and reviews the handling by the ICAC of complaints against the ICAC. Again, this is an independent committee appointed by the Chief Executive. The Committee comprises mainly of members of the Executive and Legislative Councils and a representative of The Ombudsman. Persons with complaints against the ICAC or its officers have direct access to the Committee as well as the ICAC itself. The investigation of such complaints is handled by a special unit of the ICAC Operations Department. When the unit has completed its investigation of a complaint, its conclusions and recommendations are submitted to the Committee for consideration.

### **Other disciplined services**

46. Other disciplined services departments maintain clear guidelines and procedures for handling complaints. For example, the Correctional Services Department (CSD), which runs HKSAR's prisons, has a Complaints Investigation Unit to manage its internal grievance redress system for staff and prisoners. CSD

staff and prisoners may also direct their complaints to The Ombudsman. The existing complaint channels are considered effective in view of the number and the nature of complaints handled.

47. The Immigration Department applies complaints procedures set out in the Immigration Service Standing Orders made by the Director of Immigration under the authority of the Immigration Service Ordinance. Complaints about abuse of authority or maltreatment by service members can be made to the Director of Immigration and are investigated promptly in accordance with the procedures in the Standing Orders. To ensure that all complaints are properly handled, a Complaints Review Working Party examines the results of investigations, conduct reviews and recommends follow-up action. Persons who consider that they have been improperly treated or that their cases have been mismanaged also have access to The Ombudsman. If there is evidence that a member of the Immigration Service has committed a criminal offence, the Immigration Service will immediately report the matter to the police for further investigation. Disciplinary procedures against Immigration Service staff are also governed by the Immigration Service Ordinance and the Immigration Service Standing Orders. Under section 8 of the Immigration Service Ordinance, unlawful or unnecessary exercise of authority resulting in loss or injury to any person is a disciplinary offence.

## **INFORMATION AND PUBLICITY**

### **Promotion of public awareness of the human rights treaties**

48. The Home Affairs Bureau of the HKSAR Government is responsible for promoting public awareness of the rights and obligations stipulated in the human rights treaties applicable to the Region. Following the enactment of the BORO in 1991, the Committee on the Promotion of Civic Education (CPCE) under the Home Affairs Bureau established a Human Rights Education Sub-Committee to promote public understanding of the BORO and respect for human rights as set out in the various treaties. Over the past six years, human rights has been one of the major emphases of the CPCE's work. Recently, the CPCE has increased its efforts to promote a public understanding of the Basic Law which provides the constitutional guarantees for human rights protection in the Region. A Basic Law Promotion Steering Committee - chaired by the Chief Secretary to Administration - was established in January 1998 to guide promotional strategy.

### **Government publications**

49. The PRC Government is responsible for preparing reports in respect of the HKSAR under various human rights treaties (but see paragraph 50 below in relation to the ICCPR and the ICESCR). Draft reports are prepared by the Home Affairs Bureau of the HKSAR Government. The Bureau consults the Legislative Council and non-governmental organisations on the state of the implementation of these treaties in the Region. It addresses their views in the reports which it tables before the Legislative Council - and publishes in bound, bilingual format - after the PRC Government has submitted them to the United Nations. Copies are deposited in public libraries and posted on the Internet for public inspection.

## **Reports of the HKSAR in the light of the ICCPR and the ICESCR**

50. In November 1997, the PRC Government announced that, in line with the Joint Declaration and the Basic Law, and considering that China was not yet a signatory to the two Covenants, it would make reference to the provisions of the two Covenants and transmit reports on the HKSAR to the United Nations. Thus the Government of the HKSAR is responsible for preparing the reports on the Region in relation to the two Covenants for transmission to the United Nations.

COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION

Forty eighth session

26 February - 15 March 1996

Concluding observations of the Committee  
on the Elimination of Racial Discrimination

United Kingdom of Great Britain and Northern Ireland

1. The Committee considered the 13<sup>th</sup> periodic report of the United Kingdom of Great Britain and Northern Ireland (CERD/C/263/Add.7 and CERD/C/263/Add.7 Part II) at its 1139<sup>th</sup>, 1140<sup>th</sup> and 1141<sup>st</sup> meetings (CERD/C/SR. 1139, 1140 and 1141), held on 4 and 5 March 1996, and adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the thirteenth periodic report of the United Kingdom of Great Britain and Northern Ireland and one of its Dependent Territories (Hong Kong). It notes with satisfaction the State party's timely submission of the report, as well as the detailed answers provided to the questions posed at the present session and to the issues raised by the Committee in its concluding observations in connection with the twelfth periodic report. The Committee recognizes that since the United Kingdom became a party to the Convention many legislative and other measures have been taken to implement the provisions of the Convention.

C. Positive factors

10. With respect to Hong Kong, the study on racial discrimination proposed to begin by the end of the present year is viewed as a constructive means of determining the extent of problems in the area of racial discrimination and reviewing all laws that may in a discriminatory manner confer exclusive benefits on members of a particular race. Where discrimination is found to exist, the study could serve as an important basis for the development of solutions.

D. Principal subjects of concern

18. With respect to Hong Kong, concern is expressed at the failure to include in the 1991 Population Census questions which would help determine the ethnic and racial composition of the population. The identification of minority groups and subsequent analysis of their political, economic and social status is a precondition to determining the difficulties that minority groups may be facing and whether and how any such difficulties may be due to discrimination.

19. It is noted with concern that the adoption of the Bill of Rights Ordinance, while a welcome measure, does not protect persons in Hong Kong from racial discrimination to which they may be subjected by private persons, groups or organizations, as provided for in article 2, paragraph 1(d) of the Convention.

20. The Government's statement that South Asian residents of Hong Kong are granted some form of British nationality, whether of a British National

Overseas (BNO) or a British Overseas Citizen (BOC), so that no resident of Hong Kong would be left stateless following the transfer of sovereignty is noted with interest. It is, however, a matter of concern that such status does not entitle the bearer the right of abode in the United Kingdom and contrasts with the full citizenship status conferred upon a predominantly white population living in another dependent territory. It is noted that most of the persons holding BNO or BOC status are Asians and that judgements on applications for citizenship appear to vary according to the country of origin, which leads to the assumption that this practice reveals elements of racial discrimination.

21. Concern is also expressed about the “two-week rule”, which prohibits foreign workers from seeking employment or remaining in Hong Kong for over two weeks from the expiration of their employment contracts. In view of the fact that the overwhelming majority of the persons affected by this rule are female Filipino foreign domestic workers, this rule appears to have discriminatory aspects under the terms of the Convention which may leave workers vulnerable to abusive employers.

22. In connection with Vietnamese asylum-seekers in Hong Kong, there are serious indications that the conditions to which these persons are subjected during their often prolonged detention in refugee centres constitute a violation of their human rights and require urgent attention. Of principal concern is the absence of educational facilities for the children in these centres.

E. Suggestions and recommendations

35. With respect to Hong Kong, the Committee recommends that efforts be made to determine the ethnic and racial composition of the population. The Committee recommends that the Bill of Rights Ordinance be amended to extent the prohibition of discrimination to acts committed by private persons, groups or organizations, as provided for in article 2, paragraph 1(d), of the Convention. the Committee recommends that the “two-week rule” be modified to allow foreign workers to seek new employment in Hong Kong when their employment contracts are terminated.

36. The Committee recommends that the question of citizenship status of Hong Kong residents belonging to ethnic minorities of Asian origin be reviewed to ensure that their human rights are protected and that they are not discriminated against as compared with residents of other former colonies of the United Kingdom.

37. The Committee recommends that the fourteenth periodic report due on 5 April 1996 be submitted as an updating report, that it contain information on the metropolitan territory as well as on the dependent territories, including Hong Kong, and that it address all the points raised in these observations.

COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION

50th session

3 - 21 March 1997

Concluding observations

United Kingdom of Great Britain and Northern Ireland

1. At its 1185<sup>th</sup> and 1186<sup>th</sup> meetings, held on 3 and 4 March 1997, the Committee on the Elimination of Racial Discrimination considered the fourteenth periodic report of the United Kingdom of Great Britain and Northern Ireland (CERD/C/299/Add.9), and adopted, at its 1204<sup>th</sup> and 1209<sup>th</sup> meeting, held on 14 and 19 March 1997, the following concluding observations:

A. Introduction

2. The Committee welcomes the opportunity to continue its dialogue with the State party. It also welcomes its fourteenth periodic report, and notes with appreciation that information on Crown Dependencies and Dependent Territories is contained therein. The Committee notes with great appreciation that the report provides answers in detail to concerns expressed and recommendations made by the Committee in its concluding observations following the consideration of the thirteenth periodic report of the State party (see documents CERD/C/263/Add.7 and A/51/18, paras. 219-255). The Committee further welcomes the comprehensive answers provided by the delegation in the course of the dialogue.

### C. Positive aspects

10. The adoption of the British Nationality (Hong Kong) Bill, which grants the right to members of ethnic minorities in Hong Kong who have no other nationality than their present British nationality to be registered as full British citizens, and thus to enjoy the right of abode in the United Kingdom, is noted with appreciation by the Committee.

11. It is also noted with satisfaction that, after 140 years, equal status has been accorded to Chinese with English in the Hong Kong courts at all levels, and that the Hong Kong Government is undertaking the translation into Chinese of all the laws adopted in Hong Kong before 1989.

12. It is noted with satisfaction that the Hong Kong Government is now providing education up to the secondary level to Vietnamese migrants in Hong Kong, and that education services are provided to all Vietnamese children in the detention centres free of charge. The fact that the syllabus takes into account the future reintegration of these children into the Vietnamese education system on their return to Viet Nam is viewed as a positive measure by the Committee.

### D. Principal subjects of concern

19. Concern is also expressed that specific legislation against racial discrimination is not yet available in all the Dependent Territories and Crown Dependencies, and that in some cases such legislation should be deemed unnecessary by the relevant authorities on the ground of the alleged

non-existence of racial discrimination in the territories.

20. The absence of a provision in the Hong Kong Bill of Rights ordinance protecting persons from racial discrimination to which they may be subjected by private persons, groups or organizations is a matter of concern for the Committee. In this regard, it is stressed that article 2, paragraph 1(d), of the Convention, makes it an obligation for States parties to prohibit, including by the adoption of legislation, racial discrimination “by any persons, groups or organizations”.

21. With respect to the “two-week rule” applying to foreign workers in Hong Kong which prohibits them from seeking employment or remaining in Hong Kong more than two weeks after the expiration of their employment contracts, concern is expressed that such a rule may have discriminatory effects, since it applies mostly to domestic workers of Filipino origin, and that it may leave the workers concerned extremely vulnerable and in precarious conditions.

#### E. Suggestions and recommendations

29. The Committee also recommends that special attention be given by the Government of Hong Kong to the situation of the foreign workers subject to the “two-week rule” and that all the necessary measures, including the modification or repeal of this specific rule, be undertaken to ensure the protection of all their rights under the Convention.