

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

**Introduction: the present report**

1. In paragraph 48 of its concluding observations of 11 May 2001 on the Hong Kong SAR's initial report under the Covenant, the Committee on Economic, Social and Cultural Rights ('the Committee') requested the HKSAR to submit information on its progress in implementing the Committee's recommendation in paragraph 30 of the concluding observations (regarding racial discrimination) by 30 June 2003. The Committee also requested the HKSAR to submit its full second periodic report "in accordance with the prescribed dates of submissions."
2. To some extent, those requests have been overtaken by events. The People's Republic of China ratified the Covenant on 27 March 2001 and the treaty took effect in China three months thereafter (27 June 2001). In accordance with a Resolution 1984/88 of the UN Economic and Social Council (which modified Article 16 of the Covenant), China was then required to submit its initial report under the Covenant within two years of that date. That report is therefore due by mid-2003 and the second report of the HKSAR will form part of it.
3. The present outline is preparatory to the drafting of that report. It sets out the broad subject headings and individual topics that we envisage covering in the Report. It is also an invitation to all members of the public to submit their views on the implementation of the Covenant 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.

4. We will carefully consider all the comments that we receive **by or before the close of Friday 13 December 2002**. 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's Secretariat 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.

5. The Covenant is reproduced at **Annex A**.

6. References to 'the initial report' are to the report on the Hong Kong SAR submitted by the Central People's Government in June 1999 and heard by the Committee in April 2001.

7. The report will also respond - in the relevant sections - to the concerns and recommendations in the Committee's concluding observations on the previous report (reproduced at **Annex B**). In drafting it, we will adhere to the requirements prescribed by the Committee in the UN Manual on Human Rights Reporting: copies of the section relating to the ICESCR are available on request as are copies of the initial report under the Covenant (telephone: 2835 2106, or 2835 2065).

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

8. 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 initial report under the UN Convention on the Rights of the Child. The latter (the most recent to be submitted to the UN) is available on request (telephone: 2835 2106, or 2835 2065). The updated version will include data on the ethnic composition of the population by ethnicity, derived from an analysis of the 2000 Census, which included such data for the first time. It will also update the structure of Government, following the adoption, in mid-2002, of the accountability system.

## **Part II: Information in relation to each of the Articles in Part I of the Covenant**

9. The initial report contained detailed information on the laws, policies, and practices that are in place to ensure Hong Kong's compliance with the Covenant. Many of those are of long standing and, by nature, tend to remain unchanged - or to change very little - over time. We do not propose repeating descriptions/explanations of such matters in this report and we will frequently state that "there have been no significant developments in regard to [the topic in question] and the situation remains essentially as explained in paragraphs [x to y] of the initial report." This approach, the purpose of which is to avoid repetition and excessive length, conforms to the guidance in the UN Manual on Human Rights Reporting (page 67, final paragraph).

10. Thus, the second report will be shorter than the initial one and will chiefly comprise -

(a) information/explanations about significant developments since the hearing of the initial report. Our preliminary views as to 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 that they consider ought to so qualify. We ask that, in proposing additional topics, they state why they consider the issue/development to be significant (and relevant to the application of the Covenant in Hong Kong), and to set out their views on the Government's performance in handling the issue;

(b) updates of any developments that were ongoing at the time of the 2001 hearing and in respect of which we undertook to inform the Committee of future progress/outcomes; and

(c) responses to the concerns and recommendations in the Committee's concluding observations of 11 May 2001.

### **Article 1 - Progress and development of democracy**

11. We shall advise the Committee of any significant developments since 1998.

### **Response to the 2001 concluding observations**

12. In paragraph 13 of its concluding observations of May 2001, the Committee noted that, "while the 'ultimate aim is the election of all the members of the Legislative Council by universal suffrage' (article 68, Basic Law), the current arrangements for the election of the Legislative Council include some undemocratic features which impede the full enjoyment of economic, social and cultural rights in HKSAR." We will respond to this concern in this section of the report.

### **Article 2 - Progressive realisation of the rights recognised in the Covenant and the exercise of those rights without discrimination**

13. We shall update the Committee on significant developments in relation to the following matters that were discussed in paragraphs 1 to 3 of the initial report -

## Human rights provisions in the Basic Law and the Hong Kong Bill of Rights Ordinance

### **The Government's response to the Committee's concluding observations**

14. In paragraph 15 of its concluding observations of May 2001, the Committee regretted that "the HKSAR had not implemented a number of the recommendations in its concluding observations of 1996, despite the delegation's assurance that these must be given effect." And, in paragraph 28, the Committee again urged the HKSAR "to implement the Committee's suggestions and recommendations embodied in its concluding observations of 1996, as well as the current ones, and to undertake whatever relevant concrete measures may be necessary towards their implementation." The recommendations of particular concern were identified in sub-paragraphs 15(a) to (g). The concerns in sub-paragraph 15(a) to (d) are within the scope of Article 2 of the Covenant and we will address them seriatim in this section of the report. Those in sub-paragraph 15(e) and (f) concern labour issues and, as such, pertain to Article 7. We will therefore address them in that section of the report. Similarly, we will address the concerns in sub-paragraph 15(g) - which relates to child protection - in the section dealing with Article 10.

### **Legal status of the Covenant**

15. In paragraph 15 (a) of its concluding observations, the Committee reiterated its particular concern about the Covenant's status in the HKSAR's domestic legal order continues to be different from that of the

International Covenant on Civil and Political Rights, the provisions of which have been incorporated into domestic legislation. We will respond to this concern in this section of the report.

### **Legislation against racial discrimination**

16. In paragraph 15(b) of the 2001 concluding observations, the Committee expressed particular concern about "the failure of the HKSAR to extend the prohibition of race discrimination into the private sector". And, in paragraph 30, the Committee expressed the view that "the HKSAR's failure to prohibit race discrimination in the private sector constitutes a breach of its obligations under article 2 of the Covenant. The Committee calls upon the HKSAR to extend its prohibition of race discrimination into the private sector." We will address these matters in this section of the report.

### **Discrimination on the grounds of sexual orientation and age**

17. In paragraphs 15(c) and 31 of the 2001 concluding observations, the Committee expressed particular concern about -

"the failure of the HKSAR to prohibit discrimination on the basis of sexual orientation and age." And, in paragraph 31, the Committee urged the HKSAR "to prohibit discrimination on the basis of sexual orientation and age."

We will address this concern in this section of the report.

### **Human Rights Commission**

18. In paragraph 15(d) of the 2001 concluding observations, the Committee expressed particular concern about -

"the failure of the HKSAR to establish a national human rights institution with a broad mandate and its failure to establish adequate alternative arrangements for the promotion of economic, social and cultural rights." In this respect, in paragraph 32, the Committee urged the HKSAR "to establish a national human rights institution consistent with the Paris principles (1991) and the Committee's General Comment No. 10. Until such an institution is established, the Committee urges the HKSAR to enhance its measures for the promotion of economic, social and cultural rights."

We will address these matters in this section of the report.

### **Legal status of the Covenant**

19. In paragraph 16 of its concluding observations of May 2001, the Committee greatly regretted "that some judgements of the High Court in HKSAR express the opinion that the Covenant is "promotional" (*Mok Chi Hung v. Director of Immigration*, judgement of 5 January 2001) or "aspirational" (*Chan To Foon v. Director of Immigration*, judgement of 11 April 2001) in nature. As the Committee has confirmed on numerous occasions, such opinions are based on a mistaken understanding of the legal obligations arising from the Covenant." In paragraph 27, the Committee reminded the HKSAR "that the provisions of the Covenant constitute a legal obligation on the part of the States parties. Thus, the



Committee urges the HKSAR not to argue in court proceedings that the Covenant is only “promotional” or “aspirational” in nature.”

We will address these matters in this section of the report.

### **Protection of disabled persons and discrimination against the mentally ill**

20. Additionally, we shall update the Committee on significant developments in relation to the following matters that were discussed in paragraphs 18 to 35 of the initial report -

Protection for disabled persons -

- Review of the “Design Manual: Barrier Free Access 1997”
- Case of Ma Bik Yung.

Discrimination against the mentally ill -

- Establishment of the Guardianship Board under the Mental Health Ordinance (Chapter 136)
- Case of K and others.

### **Review of the Equal Opportunities Commission (new topic)**

21. We will also inform the Committee of developments in regard to the review of the Equal Opportunities Commission.

### **Article 3 - Equal rights of men and women**

22. In paragraphs 35 to 38 of the initial report, we informed the Committee of the measures we had taken to implement the provisions of

the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In this section of the report, we will update the Committee on significant developments since then.

23. We shall also respond to paragraph 17 of the 2001 concluding observations, where the Committee expressed the concern that the Women's Commission might not have appropriate resources and powers to ensure that a gender perspective was integrated into the formulation of policy. And we will address paragraph 33 of the concluding observations, where the Committee urged the HKSAR "to provide the Women's Commission with sufficient powers and resources to improve the status of women in Hong Kong and to integrate gender in its policy-making and to ensure wider participation of women in all spheres of public life."

### **Other topics**

24. These will include -

The current Review of the Sex Discrimination Ordinance (Chapter 480).

The Small House Policy (previously addressed in relation to Article 11).

### **Article 4 - Permissible limitations of Covenant rights**

25. Here, we will tell the Committee that the position remains as reported in paragraph 39 of the initial report. That is, the HKSAR Government does not subject the rights provided under the Covenant to any limitations other than those provided for in law. Such limitations - where they exist - are compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a free society.

We shall advise the Committee that the position is unchanged, though we shall not repeat paragraph 39.

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

26. We will tell the Committee that the position remains as reported in paragraph 40 of the initial report. That is, the HKSAR Government imposes no restrictions upon and makes no derogations any fundamental human rights on the pretext that such rights are not recognised, or are only partly recognised by the Covenant. We shall advise the Committee that the position is unchanged, though we shall not repeat paragraph 40.

**Article 6- Choice of occupation and labour rights**

27. In this section, we will advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 41 to 77 of the initial report. Issues that we will cover will include -

International Labour Conventions (ILCs)

Employment statistics

Employment services: we will update the information in paragraphs 50 to 52 of the initial report. We will also report on new developments in this area, including the -

- Semi self-help employment service.
- Job Matching Programme.
- Telephone Employment Service

- Interactive Employment Service
- Enhanced job vacancy processing services
- Promotion Programme Employment
- Guidance Centres for New Arrivals
- Employment services for local domestic helpers
- Re-employment - Pilot Programme for the middle-aged

Protection of employees against unreasonable dismissal

Employees retraining

New arrivals from Mainland China

The ethnic minorities (including non-Chinese new arrivals). This is a new topic)

Action against illegal workers

Prohibition of employment of children

Importation of labour (Supplementary Labour Scheme)

Task Force on Employment

Right to work: concerns about discrimination

### **Withdrawal of reservation**

28. In paragraph 29 of its concluding observations of May 2001, the Committee recommended "that the HKSAR withdraw its reservation against Article 6 and the interpretative declaration replacing its former reservation against Article 8." In this section of the report, we will respond to the recommendation in regard to the reservation against

Article 6. We will discuss the interpretative declaration under Article 8 in the section dealing with that article.

### **Article 7 - Right to enjoy just and favourable conditions of work**

29. In this section of the report, we shall update the Committee on significant developments in relation to the following matters that were discussed in paragraphs 78 to 117 of the initial report -

List of reports under relevant ILCs

Safe and healthy working conditions -

- Factories and Industrial Undertakings (Amendment) Ordinance 1999

Prevention of accidents and diseases in the workplace: legal protections

### **Employment protection: employees' rights and benefits**

30. In paragraph 15(e) of its concluding observations of May 2001, the Committee expressed particular concern at "the absence of protection against unfair dismissal, lack of adequate regulation on statutory minimum wage, working hours, paid weekly rest, rest breaks and compulsory overtime pay." In paragraph 34, the Committee reiterated its recommendation "that the HKSAR review its policy in relation to unfair dismissal, minimum wages, paid weekly rest time, rest breaks, maximum hours of work and overtime pay rates, with a view to bringing such policy into line with the HKSAR's obligations as set forth in the Covenant." And, in paragraph 35, the Committee urged the HKSAR "to enact legislation on equal pay for work of equal value as provided for in the

Covenant." We shall respond to those concerns in this section of the report.

### **Imported workers and foreign domestic helpers**

31. In paragraph 15(f) of its concluding observations, the Committee expressed particular concern that "the two-week rule imposed upon foreign domestic helpers upon expiration of their contract denies their right to freely seek employment and to protection from discrimination". We shall respond to that concern in this section of the report.

### **Article 8 - Right to trade union membership**

32. We will also advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 119 to 132 of the initial report. Issues that we will cover will include -

The ILCs

Trade Unions Ordinance

Number and membership of trade unions

Legislative protection against anti-union discrimination under the Employment Ordinance (Chapter 57): Employment (Amendment) Bill 2000 (clarification of protection of the right to strike)

Provision for cooling-off period in the Labour Relations Ordinance (Chapter 55)

Promotion of effective communication, consultation and voluntary negotiation between employers and employees: this is a new topic.

### **Public Order Ordinance (Chapter 245)**

33. In paragraph 26 of its concluding observations, the Committee expressed the concern that "the Public Order Ordinance may be used to restrict trade union activities, such as peaceful campaigns to promote labour rights, which are protected by article 8(c) of the Covenant." In paragraph 37, the Committee recommended that "the Public Order Ordinance be reviewed with a view to amending its provision to ensure freedom of trade union activities as provided for under article 8(c) of the Covenant." We will respond to those comments in this section of the report.

34. In paragraph 29 of its concluding observations of May 2001, the Committee recommended "that the HKSAR withdraw its reservation on article 6 and the interpretative declaration replacing its former reservation on article 8." In this section of the report, we will respond to the recommendation in regard to the interpretative declaration under Article 8. We will respond to it in regard to the reservation against Article 6 in the section dealing with that article.

### **Article 9 - Right to social security**

35. We will advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 135 to 196 of the initial report. Topics will include -

## The ILCs

Overall objective

Government expenditure on social security

Comprehensive Social Security Assistance Scheme

Social Security Allowance Scheme

Government's general policy on medical care

Entitlement to sickness days and sickness allowance

Entitlement to long service payment

Protection of wage payments

Employees' compensation

## **Retirement benefits and protection**

36. In paragraph 21 of its concluding observations of May 2001, the Committee expressed the concern that "many individuals, including women who are homemakers, persons with disabilities, and older persons, are excluded from the Mandatory Provident Fund Scheme." And, in paragraph 36, the Committee urged the HKSAR "to adopt a comprehensive pension system that provides adequate retirement protection for the entire population and in particular for housewives, self-employed persons, older persons and persons with disabilities." We shall respond to those concerns in this section of the report



### **Article 10 - Protection of the family**

37. In this section of the report, we shall advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 198 to 322 of the initial report. Topics will include -

The ILCs: including application to Hong Kong of ILC No. 138 (Minimum Age Convention) and No. 182 (The Worst Forms of Child Labour Convention)

The family

Definition of “family”

Multi-disciplinary measures against child abuse

### **Single parent families and split families**

38. In paragraph 12 of its concluding observations of May 2001, the Committee noted that "issues regarding the right of abode in relation to permanent residence and split families impede the enjoyment of economic, social and cultural rights by the families affected by the reinterpretation (26 June 1999, National People's Congress Standing Committee, NPCSC) of Article 24 of the Basic Law." In paragraph 22, the Committee expressed deep concern about the hardship arising from HKSAR's policies on permanent residence and split families. In paragraph 40, the Committee urged the HKSAR - when formulating and implementing its policies on permanent residence and split families - to give the most careful attention to all the human rights dimensions of the issue, including articles 2(2), 3 and 10. The Committee reminds the

HKSAR that any limitations in relation to article 10 must be justified in relation to each element set out in article 4. The Committee also urged the HKSAR to reconsider extending the “concession” made by HKSAR following the NPCSC’s re-interpretation of 26 June 1999. And, in paragraph 41, the Committee urged the HKSAR “to enhance the transparency of all relevant processes concerning permanent residence and split families, for example, the Committee recommends that all data, appropriately disaggregated (e.g. by origin of applicant), is made publicly available, and tabled in the Legislative Council, every six months.”

We shall respond to these concerns in this section of the report.

### **Comprehensive child protection policy**

39. In paragraph 15(g) of its concluding observations of May 2001, the Committee expressed particular concern about the lack of a comprehensive policy for the protection of children from all forms of abuse. In paragraph 42, the Committee called upon the HKSAR “to adopt urgent measures to address the problems leading to youth suicide and all forms of child abuse.” We shall respond to these concerns in this section of the report.

40. In paragraph 23 of its concluding observations, the Committee expressed concern about “the reported increase in the incidence of child abuse and suicide among the youth.” In paragraph 42, the Committee called upon the HKSAR “to adopt urgent measures to address the problems leading to youth suicide and all forms of child abuse.” We shall respond to these concerns in this section of the report. Headings will include -

Guidance in the schools

Pilot programme for early intervention and treatment of young people with psychotic problems

Cross-sectoral collaboration

### **Age of criminal responsibility**

41. In paragraph 24 of its concluding observations of May 2001, the Committee expressed the concern that "the age of criminal responsibility is set at the young age of seven years." In paragraph 43, the Committee called upon the HKSAR "to amend its laws to raise the age of criminal responsibility so as to ensure the rights of the child under article 10 of the Covenant." We shall respond to these concerns in this section of the report.

42. We shall also address the following topics that were discussed in paragraphs 205 to 247 of the initial report -

New arrivals from the Mainland

Certificate of Entitlement (C of E) Scheme

Mainland children adopted by Hong Kong

Welfare services for families

After-school care

Domestic violence

Establishing a family: marriage

Maternity protection

## **Protection of children and juveniles**

### **Convention on the Rights of the Child (UNCRC)**

43. We will inform the Committee of the submission of the SAR's initial report, which will form part of China's second report under the Convention.

### **Child pornography and child sex tourism**

44. We will explain the progress made towards the enactment of the current Bills against child pornography and child sex tourism. We will also explain the steps we are taking towards accession to the related Optional Protocol under the Convention on the Rights of the Child.

### **Other topics on protection of children and juveniles**

45. We will inform the Committee of any significant developments since 30 June 1998 in regard to the following -

Institutional co-ordination

Committee on Child Abuse

Measures against child abuse

The Child Care Services Ordinance

Child abuse as crime: the legal framework

Protection of Children and Juveniles Ordinance (Chapter 213)

Hague Convention on the Civil Aspects of International Child Abduction

Committee on Services for Youth at Risk

Training and rehabilitation of young offenders and delinquents

Commission on Youth

Employment of children and young persons

Drug abuse

**Care for the elderly**

46. We will advise the Committee of any significant developments in regard to -

Elderly Commission

Supporting family carers

Services for elderly people living in the community

Health care services for elderly living in the community

Enabling the elderly to lead an active and productive life

Financial assistance to the elderly in need

Residential care services for the elderly

Housing for the elderly

**Article 11 - Right to an adequate standard of living**

47. In this section of the report, we shall advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 323 to 411 of the initial report. Topics will include -

Economic indicators

Income distribution

## Economic restructuring

### Supply of food (liberalisation of import controls on rice)

48. In paragraph 14 of its concluding observations of May 2001, the Committee stated that "the economic policies of HKSAR, based essentially on the philosophy of 'positive non-interventionism', i.e. keeping taxes low and limiting government expenditure to the provision of essential services, in accordance with Article 5 of the Basic Law, which guarantees its free trade, free enterprise and low tax regime for at least 50 years, have had a negative impact on the realisation and enjoyment of the economic, social and cultural rights of Hong Kong's inhabitants, the more so as those policies have been exacerbated by globalisation." The Committee cited this as a "factor and difficulty impeding the implementation of the Covenant".

49. We will respond to this observation in the report. We shall also address developments in the following areas -

Food safety control regime

Hazard Analysis Critical Control Point

Legislation on the control of chemical residues in food and food animals

New administrative framework

## **Housing**

50. In this section of the report, we shall advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 344 to 411 of the initial report. Topics will include -

Housing policy

Development of overall housing strategy and policy objectives

Housing legislation

Reform of the institutional framework for public housing

Public housing

Subsidised home ownership schemes and loan schemes

Groups in special need

Squatters

Street sleepers

Private housing

Urban renewal: we will advise the Committee of new developments in this area, particularly in the light of the Urban Renewal Authority Ordinance (Chapter 563), which was enacted in May 2001.

Town planning

New towns

Territorial Development Strategy Review

Protection of the Harbour Ordinance 1997

51. In paragraph 25 of its concluding observations of May 2001, while acknowledging that the HKSAR had made progress in relation to housing, the Committee said that it remained deeply concerned "that the right to housing of many people in Hong Kong remains unfulfilled. In the Committee's view, bed-space apartments, or cage homes, are an affront to human dignity and roof-top structures constitute a grave risk to the life and health of their inhabitants." In paragraph 44, the Committee called

on the HKSAR "to give urgent attention to the housing rights of all Hong Kong residents, including squatters and those living in roof-top structures and bedspace apartments or cage homes. In its next periodic report, the HKSAR is requested to give special attention to the impact of current policies on squatters, rooftop structures and bedspace apartments or cage homes. In particular, the Committee would like the HKSAR to comment on the operation and efficacy of the Bedspace Apartments Ordinance (Chapter 447)." We shall respond to these concerns in this section of the report.

## **Article 12 - The right to health**

### **Health and healthcare**

52. In this section of the report, we shall advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 412 to 429 and 442 to 466 of the initial report.

Topics will include -

Legal provisions

Policy

Establishment of the Health, Welfare and Food Bureau

General health of Hong Kong's population

Control of communicable diseases

Avian flu

Different forms of specific health/medical care

Health education



Provision of hospital services

Hospital manpower requirements

Deaths and injuries in hospital

Traditional Chinese medicine

International co-operation

HIV/AIDS

Public Health Laboratory Centre

Expansion of Women Health Services

The Adolescent Health Programme

Enhanced food safety control regime (risk assessment)

Hazard Analysis Critical Control Point: a preventive and proactive approach to food safety assurance recommended by the World Health Organisation

Legislation on the control of chemical residues in food and food animals

### **Persons with disabilities**

53. In this section of the report, we shall advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 430 to 441 of the initial report. Topics will include -

Services and facilities for disabled persons

The Disability Discrimination Ordinance and its implementation

‘Code of Practice on Education’ (2001)

### **Services and facilities for the mentally ill**

54. In paragraph 20 of its concluding observations of May 2001, the Committee expressed its regret that "in relation to the care of persons with mental illness, the HKSAR is reluctant to authorise the prescription of new drugs that are more costly but more effective and have been shown to produce fewer side effects for the mentally ill. In addition, the Committee notes with concern the apparent lack of initiative on the part of the HKSAR to undertake public education to combat discrimination against those with mental disabilities." In paragraph 45, the Committee recommended that "the HKSAR undertake a comprehensive review of mental health policy and adopt effective measures to ensure that persons with mental illness enjoy the right to adequate and affordable health care. The Committee urges the HKSAR to provide public education to combat discrimination against persons with mental illness." We shall respond to these concerns in this section of the report.

### **Environment and industrial hygiene**

55. In this section of the report, we shall advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 467 to 496 of the initial report. Topics will include -

Environmental protection strategy -

- The 1999 Policy Address agenda on the environment: the plan to achieve sustainable development for Hong Kong
- The Sustainable Development Unit

- The Sustainability Assessment System
- Control of water pollution
- Commission of Stage I of Harbour Area Treatment Scheme in December 2001
- Improvement of beach water quality since the last report
- Improvement of water quality of Victoria Harbour

Disposal of special wastes -

- The use of Chemical Waste Treatment Centre to treat medical waste
- Plan to build a separate treatment facility for animal carcasses

Waste reduction -

- Review of the “Waste Reduction Framework Plan”
- Control of air pollution
- Comprehensive vehicle emission reduction programme: measures taken since launch in 1999 and the results
- Co-operation with the Mainland to improve regional air quality

Control of noise pollution -

- Amendment of the Noise Control Ordinance (2001) (management of bodies corporate to be liable for noise offences committed by those bodies).
- New programme to address traffic noise impact of existing roads

Environmental education -

- Increase of capital of the Environment and Conservation Fund

Country parks and conservation areas -

- Expansion of designated conservation areas.

Occupational health

### **Article 13 -Right to education**

56. In this section of the report, we shall advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 497 to 579 of the initial report. Topics will include -

Provision in law

Access to education and educational attainment

- Nine years' free and compulsory<sup>1</sup> education
- Senior secondary, technical and tertiary education
- Private schools
- Financial assistance for needy students

Expenditure on education as percentage of GDP

Profile of educational attainment

Pre-primary education

Primary and secondary education

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<sup>1</sup> Please see also footnote (3) in relation to Article 2 on the terms used.

- Floating classes
- Whole-day primary schooling
- Level of subsidy at the senior secondary level

#### Teachers

- Remuneration
- Teacher quality
- Teacher education

#### Quality Education Fund

#### Language policy - biliteracy and trilingualism

#### Medium of instruction

- Teacher education: mother tongue teaching and improving language teaching standards
- Opportunities for ethnic minorities to learn their mother tongue

#### Post-secondary education

- Expansion of the post-secondary sector
- Financial assistance for post-secondary students

#### Higher education

- Admissions policy
- Supply of tertiary places
- Fees and financial assistance for students
- Tuition fees for UGC-funded institutions
- Financial assistance for tertiary students

- Access for non-Chinese speakers

#### Adult education

- Local opportunities for adult education
- Continuing and professional education at the tertiary level
- Other providers of continuing education
- Continuing Education Fund

#### Vocational training and re-training

- Apprenticeship

#### Education for students with disabilities

- Primary and secondary school education for disabled children
- Disabled persons: accessibility of school buildings
- Access to tertiary education for students with disabilities
- Special vocational training programmes for disabled persons
- Vocational assessment service for the disabled

#### Education of prisons inmates

- Prisoners' Education Trust Fund

#### Education for children of Vietnamese asylum seekers

#### Education of Mainland children pending verification of residential status

#### Education for newly arrived children/young people from Mainland China

#### Civic education, human rights education and education against discrimination -

- School curriculum and other measures

- Programmes for teachers
- Public education on rehabilitation for the disabled
- The work of the Equal Opportunities Commission
- Human rights education outside schools
- Basic Law Promotion Steering Committee: public education on the  
Basic Law

#### **Article 14 - Free and compulsory primary education**

57. We will advise the Committee that the position remains as explained in paragraph 580 of the initial report.

#### **Article 15 - Right to cultural life, scientific progress and its application**

58. In this section of the report, we shall advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 582 to 619 of the initial report. Topics will include -

Provision in law

Policy on culture

Culture and Heritage Commission

Hong Kong Arts Development Council

Hong Kong Academy for Performing Arts

Hong Kong Arts Centre

The Leisure and Cultural Services Department

Libraries

Museums

Antiquities and Monuments Office

Processing of applications to use performing venues of the Leisure and Cultural Services Department

Science and technology

- Prevention of the use of scientific/technological developments for the purposes contrary to the enjoyment of human rights

Protection of intellectual property rights

Country parks and conservation areas

### **Article 16 - Submission of report**

59. In paragraph 46 of its concluding observations of May 2001, the Committee requested that the HKSAR disseminate its concluding observations as widely as possible among its citizens. And, in paragraph 48, the Committee requested the HKSAR to submit information on its progress in implementing the Committee's recommendation in paragraph 30 (race discrimination) by 30 June 2003. The Committee requested the HKSAR to submit its full second periodic in accordance with the prescribed dates of submissions.

60. In May 2001, we distributed copies of the concluding observations to the Legislative Council, NGOs, the Judiciary, and all Government bureaux. We also uploaded them onto the Internet. The present outline



and consultation exercise is the initial stage of the drafting process that will lead to the submission of our second report, which will form part of China's initial report under the Covenant.

**Home Affairs Bureau**

**November 2002**

# **INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

## **PREAMBLE**

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

## **PART I**

### **Article 1**

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## **PART II**

### **Article 2**

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

### **Article 3**

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

#### Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

#### Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

### **PART III**

#### Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and

cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

## Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
  - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

## Article 8

1. The States Parties to the present Covenant undertake to ensure:

- (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (b) The right of trade unions to establish national federations or confederations

and the right of the latter to form or join international trade-union organizations;

- (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

## Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

## Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

## Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

- (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
- (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

## Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

### Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively



pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

#### Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

#### Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

- (a) To take part in cultural life;
- (b) To enjoy the benefits of scientific progress and its applications;
- (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

## **PART IV**

### **Article 16**

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

### **Article 17**

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it

will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

#### Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

#### Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

#### Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

#### Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

#### Article 22

The Economic and Social Council may bring to the attention of other organs of

the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

#### Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

#### Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

#### Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

### **PART V**

#### Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

## Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

## Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

## Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of

the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

### Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 26;
- (b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

### Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

## **Application of the Covenant to the Hong Kong Special Administrative Region**

With regard to the application of the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as "the Covenant") to the Hong Kong Special Administrative Region (hereinafter referred to as the HKSAR), the Government of the People's Republic of China notified the United Nations Secretary-General on 20 June 1997 that the provisions of the Covenant as applied to Hong Kong shall remain in force beginning from 1 July 1997.

On 28 February 2001, the Standing Committee of the National People's Congress of the People's Republic of China made the decision to ratify the Covenant. The Government of the People's Republic of China deposited the instrument of ratification on 27 March 2001. On 20 April 2001, the Government of the People's Republic of China notified the United Nations Secretary-General of the following statement on the application of the Covenant to the HKSAR:

1. Article 6 of the Covenant does not preclude the formulation of regulations by the HKSAR for employment restrictions, based on place of birth or residence qualifications, for the purpose of safeguarding the employment opportunities of local workers in the HKSAR.
2. "National federations or confederations" in Article 8.1(b) of the Covenant shall be interpreted, in this case, as "federations or confederations in the HKSAR" and this Article does not imply the right of trade union federations or confederations to form or join political organizations or bodies established outside the HKSAR.



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Economic and Social Council	Distr. GENERAL <b>UNEDITED VERSION</b> E/C.12/1/Add.58 11 May 2001  Original: ENGLISH
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COMMITTEE ON ECONOMIC, SOCIAL  
AND CULTURAL RIGHTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on  
Economic, Social and Cultural Rights

PEOPLE'S REPUBLIC OF CHINA: HONG KONG SPECIAL ADMINISTRATIVE REGION

1. The Committee considered, at its twenty-fifth session, the initial report submitted by the People's Republic Of China on articles 1 to 15 of the Covenant as applied in Hong Kong Special Administrative Region (E/1990/5/Add.43). The Committee considered this report at its 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> meetings held on 27 and 30 April. After having considered the report, the Committee adopted at its 29th meeting, held on 11 May 2001, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the well-prepared and detailed initial report, which conforms in general with the Committee's guidelines on reporting. The Committee also notes with appreciation the written replies to its list of issues and the additional statistics provided by the HKSAR. The delegation's professionalism and openness contributed to a fruitful and constructive dialogue.

B. Positive aspects



3. The Committee warmly welcomes the ratification of the Covenant by China.
4. The Committee warmly welcomes the HKSAR's withdrawal of reservations to articles 1 and 7 of the Covenant.
5. The Committee welcomes the HKSAR's wide consultations with civil society organisations and other interested parties as part of the preparation of its initial report. The Committee notes with appreciation that the HKSAR made available to the public at large copies of the report.
6. The Committee commends the HKSAR for its efforts to provide adequate housing for Hong Kong residents. In particular, the Committee notes with appreciation that,
  - a) the old temporary housing accommodations have been demolished with their occupants adequately housed in interim housing while waiting to be permanently housed;
  - b) the Government provides interim housing for evicted squatters, victims of domestic violence and divorced families; and
  - c) self-built structures in squatter communities erected before 1982 and therefore protected by relevant housing policy, in most cases have been provided with basic services including water, sanitation and access to roads with a view to improving the living conditions of the residents.
7. The Committee notes with satisfaction that the Equal Opportunities Commission established in 1996 is effectively carrying out its mandate without interference from the government of HKSAR.
8. The Committee notes with appreciation that the Committee's General Comments are valuable source materials consulted frequently by the Human Rights Unit of the Justice Department.
9. The Committee welcomes the delegation's assurance that all rights enshrined in the Covenant contain certain justiciable aspects. Moreover, the Committee notes with satisfaction that the Covenant is invoked in Hong Kong courts.
10. The Committee welcomes the establishment of a Women's Commission in HKSAR.
11. The Committee commends the HKSAR's programme for training unskilled and unemployed workers with the objective of finding employment for them. The Committee notes with appreciation that the Employers Training Board conducts training programmes for unskilled women and provides them with allowances during training courses.

#### C. Factors and difficulties impeding the implementation of the Covenant

12. The Committee notes that issues regarding the right of abode in relation to permanent residence and split families impede the enjoyment of economic, social and cultural rights by the families affected by the reinterpretation (26 June 1999, National People's Congress Standing Committee, NPC-SC) of Article 24 of the Basic Law.
13. While the "ultimate aim is the election of all the members of the Legislative Council by universal suffrage" (article 68, Basic Law), the Committee notes that the current arrangements for the election of the Legislative Council include some undemocratic features which impede the full enjoyment of economic, social and cultural rights in HKSAR.

14. The economic policies of HKSAR, based essentially on the philosophy of “positive non-interventionism”, i.e. keeping taxes low and limiting government expenditure to the provision of essential services, in accordance with Article 5 of the Basic Law, which guarantees its free trade, free enterprise and low tax regime for at least 50 years, have had a negative impact on the realisation and enjoyment of the economic, social and cultural rights of Hong Kong’s inhabitants, the more so as those policies have been exacerbated by globalisation.

D. Principal subjects of concern

15. The Committee regrets that the HKSAR has not implemented a number of the recommendations in its concluding observations of 1996, despite the delegation’s assurance that these must be given effect. The Committee wishes to reiterate in particular its concern on the following issues:

- a) The Covenant’s status in HKSAR’s domestic legal order continues to be different from that of the International Covenant on Civil and Political Rights, the provisions of which have been incorporated into domestic legislation;
- b) The failure of the HKSAR to extend the prohibition of race discrimination into the private sector;
- c) The failure of the HKSAR to prohibit discrimination on the basis of sexual orientation and age;
- d) The failure of the HKSAR to establish a national human rights institution with a broad mandate and its failure to establish adequate alternative arrangements for the promotion of economic, social and cultural rights;
- e) The absence of protection against unfair dismissal, lack of adequate regulation on statutory minimum wage, working hours, paid weekly rest, rest breaks and compulsory overtime pay;
- f) The two-week rule imposed upon foreign domestic helpers upon expiration of their contract denies their right to freely seek employment and to protection from discrimination;
- g) The lack of a comprehensive policy for the protection of children from all forms of abuse;

16. The Committee greatly regrets that some judgements of the High Court in HKSAR express the opinion that the Covenant is “promotional” (*Mok Chi Hung v. Director of Immigration*, judgement of 5 January 2001) or “aspirational” (*Chan To Foon v. Director of Immigration*, judgement of 11 April 2001) in nature. As the Committee has confirmed on numerous occasions, such opinions are based on a mistaken understanding of the legal obligations arising from the Covenant.

17. The Committee is concerned that the Women's Commission may not have appropriate resources and powers to ensure that a gender perspective is integrated into the formulation of policy.
18. The Committee is gravely concerned about the widespread and unacceptable incidence of poverty in HKSAR. It is especially concerned that a large number of older persons continue to live in poverty without effective access to social services.
19. The Committee is deeply concerned that the HKSAR lacks adequate, institutional arrangements to ensure the formulation and implementation of comprehensive, integrated, consistent and effective anti-poverty strategies.
20. The Committee expresses its regret that in relation to the care of persons with mental illness, the HKSAR is reluctant to authorise the prescription of new drugs that are more costly but more effective and have been shown to produce fewer side effects for the mentally ill. In addition, the Committee notes with concern the apparent lack of initiative on the part of the HKSAR to undertake public education to combat discrimination against those with mental disabilities.
21. The Committee is concerned that many individuals, including women who are homemakers, persons with disabilities, and older persons, are excluded from the Mandatory Provident Fund Scheme.
22. The Committee is deeply concerned about the hardship arising from HKSAR's policies on permanent residence and split families.
23. The Committee expresses its concern about the reported increase in the incidence of child abuse and suicide among the youth.
24. The Committee is concerned that the age of criminal responsibility is set at the young age of seven years.
25. While acknowledging that the HKSAR has made progress in relation to housing, the Committee remains deeply concerned that the right to housing of many people in Hong Kong remains unfulfilled. In the Committee's view, bed-space apartments, or cage homes, are an affront to human dignity and roof-top structures constitute a grave risk to the life and health of their inhabitants.
26. The Committee is concerned that the Public Order Ordinance may be used to restrict trade union activities, such as peaceful campaigns to promote labour rights, which are protected by article 8(c) of the Covenant.

#### E. Suggestions and recommendations

27. The Committee reminds the HKSAR that the provisions of the Covenant constitute a legal obligation on the part of the States parties. Thus, the Committee urges the HKSAR not to argue in court proceedings that the Covenant is only "promotional" or "aspirational" in nature.
28. The Committee again urges the HKSAR to implement the Committee's suggestions and recommendations embodied in its concluding observations of 1996, as well as the current ones, and to undertake whatever relevant concrete measures may be necessary towards their implementation.

29. The Committee recommends that the HKSAR withdraw its reservation on article 6 and the interpretative declaration replacing its former reservation on article 8.
30. It is the Committee's view that the HKSAR's failure to prohibit race discrimination in the private sector constitutes a breach of its obligations under article 2 of the Covenant. The Committee calls upon the HKSAR to extend its prohibition of race discrimination into the private sector.
31. The Committee also urges the HKSAR to prohibit discrimination on the basis of sexual orientation and age.
32. The Committee urges the HKSAR to establish a national human rights institution consistent with the Paris principles (1991) and the Committee's General Comment No. 10. Until such an institution is established, the Committee urges the HKSAR to enhance its measures for the promotion of economic, social and cultural rights.
33. The Committee urges the HKSAR to provide the Women's Commission with sufficient powers and resources to improve the status of women in Hong Kong and to integrate gender in its policy-making and to ensure wider participation of women in all spheres of public life.
34. The Committee reiterates its recommendation that the HKSAR review its policy in relation to unfair dismissal, minimum wages, paid weekly rest time, rest breaks, maximum hours of work and overtime pay rates, with a view to bringing such policy into line with the HKSAR's obligations as set forth in the Covenant.
35. The Committee urges the HKSAR to enact legislation on equal pay for work of equal value as provided for in the Covenant.
36. The Committee urges the HKSAR to adopt a comprehensive pension system that provides adequate retirement protection for the entire population and in particular for housewives, self-employed persons, older persons and persons with disabilities.
37. The Committee recommends that the Public Order Ordinance be reviewed with a view to amending its provision to ensure freedom of trade union activities as provided for under article 8(c) of the Covenant.
38. The Committee strongly recommends that the HKSAR establish either an inter-departmental anti-poverty unit or an independent anti-poverty commission, to conduct relevant research, formulate anti-poverty strategies and monitor all policies for their impact on poverty.
39. The Committee urges the HKSAR to ensure that Comprehensive Social Security Assistance levels permit recipients a reasonable standard of living consistent with articles 9 and 11 of the Covenant.
40. When formulating and implementing its policies on permanent residence and split families, the HKSAR is urged to give the most careful attention to all the human rights dimensions of the issue, including articles 2(2), 3 and 10. The Committee reminds the HKSAR that any limitations in relation

to article 10 must be justified in relation to each element set out in article 4. The Committee urges the HKSAR to reconsider extending the “concession” made by HKSAR following the NPC-SC’s re-interpretation of 26 June 1999.

41. The HKSAR is urged to enhance the transparency of all relevant processes concerning permanent residence and split families, for example, the Committee recommends that all data, appropriately disaggregated (eg by origin of applicant), is made publicly available, and tabled in the Legislative Council, every six months.
42. The Committee calls upon the HKSAR to adopt urgent measures to address the problems leading to youth suicide and all forms of child abuse.
43. The Committee calls upon the HKSAR to amend its laws to raise the age of criminal responsibility so as to ensure the rights of the child under article 10 of the Covenant.
44. The Committee calls on the HKSAR to give urgent attention to the housing rights of all Hong Kong residents, including squatters and those living in roof-top structures and bedspace apartments or cage homes. In its next periodic report, the HKSAR is requested to give special attention to the impact of current policies on squatters, roof-top structures and bedspace apartments or cage homes. In particular, the Committee would like the HKSAR to comment on the operation and efficacy of the Bedspace Apartments Ordinance (Chapter 447).
45. The Committee recommends that the HKSAR undertake a comprehensive review of mental health policy and adopt effective measures to ensure that persons with mental illness enjoy the right to adequate and affordable health care. The Committee urges the HKSAR to provide public education to combat discrimination against persons with mental illness.
46. The Committee requests that the HKSAR disseminate these concluding observations as widely as possible among its citizens.
47. The Committee requests the HKSAR to address, in its second periodic report, the implementation of these concluding observations.
48. The Committee requests the HKSAR to submit information on its progress in implementing the Committee’s recommendation in paragraph 30 (race discrimination) by 30 June 2003. The Committee requests the HKSAR to submit its full second periodic in accordance with the prescribed dates of submissions.

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