

香 港 人 權 監 察

HONG KONG HUMAN RIGHTS MONITOR

**Submission to the Legislative Council
in respect of the forthcoming special and full reports by the HKSAR
Government to the Committee on Economic, Social and Cultural Rights
under the International Covenant on Economic, Social and Cultural Rights**

7 February 2003

GENERAL ISSUES

Special Report by the Hong Kong authorities due on 30 June 2003

The *Concluding Observations of the Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.58)* dated 21 May 2001 states in Paragraph 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."

Due to this concern, the Committee requested the Hong Kong SAR to come up with immediate measures by requiring a special report on the progress on such legislation by the Hong Kong authorities in addition to a full report to be submitted in accordance with the normal reporting cycle. It stated its request in Paragraph 48 of its Concluding Observations,

"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."

Unfortunately, in paragraph 2 of the paper provided by the Administration, *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*", the Government claims,

"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."

The Government's claim that those requests have been overtaken by events is total wrong. The Legislative Council should not be misled by such a statement.

China ratified the Covenant on 27 March 2001. The Committee considered the China Report on Hong Kong on 27 and 30 April 2003. It adopted the Concluding Observations on 11 May 2001 (See paragraph 1 of the Concluding Observations: Enclosure I) and released its latest version on 21 May 2001. It is obvious that when the Committee drafted the Concluding Observations and stated its requests for the two reports, it was well aware of the reporting cycle for China's full reports. The wordings indicates that the Committee expected that Hong Kong's next full period report to be included as part of the first report from China as prescribed by the Resolution. With this knowledge, the Committee particularly requested a special report on this issue of legislation relating to racial discrimination for closer and earlier monitoring. It did not intend for the HKSAR to evade its obligation to report back to the Committee specifically on this issue by hiding behind the Central Government's report cycle.

It is unclear whether the Government is indicating that it will not submit the special report sought by the Committee. If this is the case it is a deliberate attempt by the Government to avoid timely scrutiny by the Committee on the Government's efforts, if any, in enacting laws to prohibit race discrimination in the private sector. It is disgraceful and the justification is unsound.

The Government has expressed its view in its paper to LegCo *Reporting under the United Nations Human Rights Treaties* that "there is no question of Hong Kong submitting reports independently with the single and special exception of the ICCPR pending China's ratification of that treaty." Human Rights Monitor wants to point out that it is obvious that the Committee has not overlooked the fact that the HKSAR needs to submit its report through the People's Republic of China in the name of "*the initial report submitted by China on article 1 to 15 of the Covenant as applied in the Hong Kong Special Administrative Region*". In the identification heading at the top of the Concluding Observations, there are wordings: "CHINA: HONG KONG SPECIAL ADMINISTRATIVE REGION". Such a "country report", though

branded as “Report by China”, may consist of solely materials on Hong Kong issues. It is particularly true in the case of the special report due on 30 June 2003 because it is a report specifically on Hong Kong issues requested by the Committee with the knowledge of China’s normal reporting schedule. We should also note that when Hong Kong was under British rule, the Committee accepted reports solely related to Hong Kong in the name of reports by the United Kingdom.

The proper thing for the Government to do is to prepare the special report and submit it on or before 30 June 2003 as required by the Committee, independent of the preparation and submission of its full report.

In addition to the developments on the outlawing of race discrimination in the private sector, the Government should address the split family/right of abode issues which were taken up by the Committee in the Chairperson’s letter to China dated 17 May 2002 (Enclosure II). The special report should minimally include information regarding the developments on the split family/right of abode issues since its reply to the Committee.

Moreover, both China and the HKSAR have the obligation to keep the people of Hong Kong informed of what they have submitted to the United Nations treaty bodies on issues of implementation of human rights treaties in Hong Kong. It would be another retrograde step in human rights reporting if the Central and HKSAR Governments kept the reply to UN treaty bodies a secret. Human Rights Monitor urges the authorities to release the reply to the Legislative Council and the public.

Public participation and reporting

The nature of the reporting process and involvement of NGOs has been dealt with in our recent submissions to the LegCo Panel on Home Affairs (Enclosures III & IV). Human Rights Monitor repeats its appeal to the Government to make the reporting exercise a process of policy formulation and review involving NGOs, the Legislative Council and the Hong Kong public. The draft reports (and the final report) should be open to the public from time to time at different stages to ensure transparency of the process and constant input from interested parties to the process.

We also urge the Central and HKSAR authorities to ensure that reports by China and reports by Hong Kong to treaty bodies will be submitted in good time. Every effort should be made to stop the trend of declining efforts to ensure timely reports by the

HKSAR. If necessary, the HKSAR Government should request the Chinese authorities to submit China reports consisting only of the part relating to the HKSAR to treaty bodies which are willing to accept such reports to avoid delays.

Implementation of UN recommendations

We would like to make sure that the HKSAR authorities adopt and implement the recommendations by all UN treaty bodies, or, if appropriate, to use its influence to ensure the Central Authority adopts such recommendations. It is important that all relevant policy bureaus, department and public agencies are involved in devising a plan of action to implement such recommendations. Close consultation should be conducted in the formulation of such a plan and in the monitoring of the progress of its implementation.

The Government should adopt measures to ensure that Government officials and legal representatives understand the rights enshrined in the Covenant are enforceable and are not merely "promotional" or "aspirational".

The Legal Aid Ordinance should also be amended to empower the Director of Legal Aid to waive the means test in a case based on the Covenant. Such a power is available now for cases based on the International Covenant on Civil and Political Rights and its local replica, the Hong Kong Bill of Rights Ordinance.

Democracy

The Concluding Observations of the Committee on Economic, Social and Cultural Rights highlighted, "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." The Human Rights Monitor calls on the Government to adopt immediate measures to address this problem.

Human Rights Commission (or Authority) and institutions to promote human rights

The Committee, the Human Rights Committee and the (former) High Commissioner for Human Rights have expressed concern that Hong Kong does not have a Human Rights Commission or Authority. It has repeatedly called for the establishment of such an institution. Moreover, the Hong Kong Legislative Council adopted a resolution before the Handover supporting the establishment of such an institution.

However, no human rights institution has been established.

The Human Rights Monitor calls on the Government to commit to the establishment of such a body based on the *Principles relating to the status and functioning of national institutions for protection and promotion of human rights (the Paris Principles)*. It is particularly important to allay the public fear if legislation under Article 23 is enacted, although such an institution is important in its own right.

Moreover, the Government needs to outline under Part I of its report (*General Profile of the Hong Kong Special Administrative Region*) whether there is a trend, as observed by the Human Rights Monitor, of the Government using its power of contract renewal to retaliate against the heads (current or previous) of statutory watchdogs in Hong Kong like the Ombudsman, the Privacy Commissioner and the Chairperson of the EOC, who act against the Government while independently discharging their legal and moral duties. An explanation should be given of any adverse impact of those problematic appointment decisions (or non-renewal decisions) on the independence and credibility of the watchdogs or their capability to protect the economic, social and cultural rights of Hong Kong residents, visitors and other persons.

IMPORTANT ISSUES ON SUBSTANTIVE RIGHTS TO BE REPORTED

The following is a list of issues which need to be included in the Report to the Committee. Human Rights Monitor drafted this list within tight time constraints; it is by no means an exhaustive one.

Race discrimination

- The problems related to the two-week rule: in particular, its effect of preventing FDWs from leaving any unscrupulous employers who abused or unlawfully exploited them.
- The legal and policy justification for: 1) denying Foreign Domestic Workers' (FDW – the Government prefers the term “Foreign Domestic Helpers” or “FDH”) entitlement to permanent residence; 2) any tax or levy pertaining to FDWs or their employers; and 3) other discriminatory measures, like the exclusion of them from the scheme of Mandatory Provident Fund.
- Regarding laws to outlaw race discrimination, has the Government committed to

legislating against race discrimination by private actors? If not, reasons for its failure to do so.

- The failure of the Race Relations Unit to resolve some complaints due to the lack of such laws
- The problems of discrimination, especially those based on the grounds of race, sexual orientation, political opinion, in local educational institutions, including universities, and efforts to compensate for such human rights violations and measures for the prevention of further discrimination.

Split families and right of abode

- The failure of the Hong Kong and Mainland authorities in giving “the most careful attention to all the human rights dimensions of the issue” and “to undertake immediate measures for a just and humane solution to the problem.”
- The Government’s failure to ensure that families will remain united.
- The history of the policy of the Mainland to allow a parent to join his/her spouse and settle in Hong Kong but bring along only one child, leaving the other children behind, and the damages done to these families by such a policy. The number of:
 - a) children effected by this policy by being left behind in Mainland China.
 - b) children that have come to Hong Kong and have been refused the right to settle and have been returned to Mainland China either “voluntarily” or by compulsion.
 - c) children that in fact have been removed.
 - d) homes that have been raided in order to send these children back.
 - e) homes that have been broken into by force for this purpose.
 - f) children not permitted to settle in Hong Kong and not eligible to join a queue currently for settlement in Hong Kong to reunite with their family here.

What measures will be taken to remedy the damage done to those who have been denied entry for settlement with their family in Hong Kong by such a policy.

- Whether the population policy being proposed by the Chief Secretary would sacrifice the right to family reunion for these children.

Education and university administration

- The Government's understanding of its obligations to ensure the right to education for all children regardless of legal status: whether all children, including illegal immigrants, overstayers, claimants, refugees, asylum seekers have the right to normal school education. The measures adopted in respect to children claiming right of abode, and children detained or accommodated in children's home or other penal institutions.
- Measures to ensure equal access to education by children of ethnic minorities and the problems they have experienced in the past few years.
- The protection of the freedom of expression for teachers and administrative staff in local universities, in the light of the rules adopted by some local universities preventing them voicing their grievances in public based on the argument that there are already internal grievances redress channel in the universities.

Children

- Inform and update the Committee on the Government's measures to aid those in Juvenile Homes, with special reference to the recommendations proposed by the Human Rights Monitor in its HK Juvenile Homes Report 2001.
- Measures to ensure that children of ethnic minorities will be treated equally and fairly by police officers, in particular, their need to be accompanied by their parents or a social worker of their own choice, who speaks their native language, and to be reprimanded by the Superintendent rather than being automatically charged and tried before a court of law.

Article 23 and political harassments

- Would police investigation become a means of harassing groups like Falun Gong?
- Given a court order is needed to ban a terrorist group, the reasons why artistic groups, newspapers and trade unions are not given the same legal safeguards. Are they considered more dangerous than terrorist group and deserve more expeditious means of banning them?
- Would an artist, e.g. a playwright, be penalized (say, by way of prosecution) under Article 23 because the authorities find his works of arts "instigating a foreigner to invade the PRC"?
- How to prevent the chilling effects due to Article 23 legislation from undermining the artistic expression, directly by criminalising them or indirectly by staving off possible funders, partners and service providers?

- How to ensure that the freedoms of expression, to artistic creation, and to engage in cultural activities by manipulating the funding mechanism run by the Home Affairs Bureau under the new proposals submitted in the consultation documents on cultural activities?
- Why Falun Gong followers' have been denied access to public indoor venues after some officials of the Central Authority expressed their concern of their use of public venues?
- Why the exhibitors at the art show by Epoch Times had to be harassed and what are the legal and administrative basis for such acts, such as requiring the removal of catalog from the venue?

Enclosure I

UNITED
NATIONS



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***Concluding observations of the Committee on Economic, Social and
Cultural Rights (Hong Kong) : China. 21/05/2001.
E/C.12/1/Add.58. (Concluding Observations/Comments)***

Convention Abbreviation: CESCR
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**

China: Hong Kong SPECIAL Administrative Region

1. The Committee considered on Economic, Social and Cultural rights the initial report submitted by China on articles 1 to 15 of the Covenant as applied in the Hong Kong Special Administrative Region (HKSAR) (E/1990/5/Add.43) at its 9th, 10th and 11th meetings (E/C.12/2001/SR.9-11), held on 27 and 30 April, and adopted, at its 29th meeting (E/C.12/2001/SR.24), 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 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 withdrawal by HKSAR of reservations to articles 1 and 7 of the Covenant.
5. The Committee welcomes the wide consultations undertaken by HKSAR with civil society organizations and other interested parties as part of the preparation of its initial report. The Committee notes with appreciation that HKSAR made available to the public at large copies of the report.
6. The Committee commends 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 and 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 families separated by divorce; and
 - (c) Self-built structures in squatter communities erected before 1982, and therefore protected by the relevant housing policy, have been provided in most cases 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 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 on 26 June 1999 by the National People's Congress Standing Committee 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 a free trade, free

enterprise and low tax regime for at least 50 years, have had a negative impact on the realization and enjoyment of the economic, social and cultural rights of Hong Kong's inhabitants, which has been exacerbated by globalization.

D. Principal subjects of concern

15. The Committee regrets that 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 fact that the Covenant's status in the HKSAR 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 HKSAR to extend the prohibition of race discrimination to the private sector;
- (c) The failure of HKSAR to prohibit discrimination on the basis of sexual orientation and age;
- (d) The failure of 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 and the lack of adequate regulations on statutory minimum wage, working hours, paid weekly rest, rest breaks and compulsory overtime pay;
- (f) The denial of the right of foreign domestic helpers upon expiration of their contract to freely seek employment and to protection from discrimination, owing to the two-week rule;
- (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 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, HKSAR is reluctant to authorize the prescribing 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 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 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 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 HKSAR that the provisions of the Covenant constitute a legal obligation on the part of the States parties. Thus, the Committee urges HKSAR not to argue in court proceedings that the Covenant is only "promotional" or "aspirational" in nature.

28. The Committee again urges HKSAR to implement the Committee's suggestions and recommendations contained 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 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 failure by HKSAR to prohibit race discrimination in the private sector constitutes a breach of its obligations under article 2 of the Covenant. The Committee calls upon HKSAR to extend its prohibition of race discrimination to the private sector.

31. The Committee also urges HKSAR to prohibit discrimination on the basis of sexual orientation and age.

32. The Committee urges 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 HKSAR to enhance its measures for the promotion of economic, social and cultural rights.

33. The Committee urges HKSAR to provide the Women's Commission with sufficient powers and resources to enable it to improve the status of women in Hong Kong, and to integrate gender in its policy-making and ensure wider participation of women in all spheres of public life.

34. The Committee reiterates its recommendation that 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 obligations as set forth in the Covenant.

35. The Committee urges HKSAR to enact legislation on equal pay for work of equal value as provided for in the Covenant.

36. The Committee urges HKSAR to adopt a comprehensive pension system that provides adequate retirement protection for the entire population, 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 provisions to ensure freedom of trade union activities as provided for under article 8 (c) of the Covenant.

38. The Committee strongly recommends that 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 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, 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 of the Covenant. The Committee reminds HKSAR that any limitations in connection with article 10 must be justified in relation to each element set out in article 4. The Committee urges HKSAR to reconsider extending the "concession" made by HKSAR following the reinterpretation of 26 June 1999.

41. 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 (e.g. by origin of applicant), are made publicly available and tabled in the Legislative Council every six months.

42. The Committee calls upon HKSAR to adopt urgent measures to address the problems leading to youth suicide and all forms of child abuse.

43. The Committee calls upon 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 HKSAR to give urgent attention to the housing rights of all Hong Kong residents, including squatters and those living in roof-top structures and bed-space apartments or cage homes. In its next periodic report, HKSAR is requested to give special attention to the impact of current policies on squatters, roof-top structures and bed-space apartments or cage homes. In particular, the Committee would like HKSAR to comment on the operation and efficacy of the Bed-space Apartments Ordinance (chap. 447).

45. The Committee recommends that 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 HKSAR to provide public education to combat discrimination against persons with mental illness.

46. The Committee requests that HKSAR disseminate these concluding observations as widely as possible among its citizens.

47. The Committee requests HKSAR to address, in its second periodic report, the implementation of these concluding observations.

48. The Committee requests 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 HKSAR to submit its full second periodic report in accordance with the prescribed dates of submissions.



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Office of the United Nations High Commissioner for Human Rights
Geneva, Switzerland

聯合國經濟、社會、文化權利委員會主席丹丹女士
致中華人民共和國駐瑞士聯合國及國際組織常任代表沙祖康大使函件
(非官方中譯本 由香港人權監察翻譯)

大使閣下：

我謹代表聯合國經濟、社會、文化權利委員會，致函 閣下，就委員會對香港特別行政區（香港特區）所作的審議結論（聯合國 E/C.12/1/Add.58 號文件，現隨函附上以便參考），予以跟進。

中華人民共和國就《經濟、社會、文化權利國際公約》第一到第十五條中適用於香港特區的規定的施行狀況，向委員會呈交首期報告，委員會經審議後，在二零零一年五月十一日通過審議結論，包括多項陳述，當中對香港特區在永久居留權和分隔家庭方面的政策所造成的苦難，委員會已經表示了深切的憂慮。

委員會曾敦促香港特區，在制定和執行有關永久居留權和分隔家庭的政策時，須符合公約第二(二)、第三和第十條的規定，極其仔細地關顧其中涉及的所有人權問題。委員會已經提醒香港特區，任何對第十條權利施加的限制，都一定要合乎第四條所訂的每項規定。委員會更進一步要求香港特區重新考慮擴大因一九九九年六月二十六日釋法而訂定的“寬免政策”。

據可靠資料顯示，約有一萬名爭取居港權人士正面對被逐離港到內地，以致家庭遭受拆散。委員會對此深表關注。委員會同時收到由八千名家長聯署的來信，要求協助，就他們與家人在港家庭團聚的權利，向香港特區申訴。

在委員會通過審議結論一年後的今天，香港特區非但未有實行當中的建議，更違反建議，罔顧前述公約條文所載的權利，委員會對此表示遺憾。

委員會以公約作指引，在強烈的人道考慮驅使下，現敦促香港特區採取即時的措施，為爭取居留權人士尋求公正而人道的辦法，解決他們面對的問題，並確保有關家庭得以保持完整。

此致

中華人民共和國駐瑞士聯合國及國際組織常任代表
沙祖康大使

聯合國經濟、社會、文化權利委員會主席
維珍妮亞·丹丹 謹啓
二零零二年五月十七日

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REFERENCE:

17 May 2002

Your Excellency,

I write to you on behalf of the United Nations Committee on Economic, Social and Cultural Rights, in the context of follow-up to its concluding observations concerning the Hong Kong Special Administrative Region (HKSAR) (E/C.12/1/Add.58, which is attached for your ease of reference).

In its concluding observations adopted on 11 May 2001 after the consideration of the initial report submitted by the Peoples' Republic of China on articles 1 to 15 of the International Covenant on Economic, Social and Cultural Rights as applied in the HKSAR, the Committee expressed, *inter alia*, its deep concern about the hardship arising in HKSAR policies on permanent residence and split families.

In this connection, 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, taking into account the provisions of articles 2(2), 3 and 10 of the Covenant. The Committee reminded HKSAR that any limitations in connection with article 10 must be justified in relation to each element set out in article 4. The Committee further requested the HKSAR to reconsider extending the concession made by HKSAR following the reinterpretation of 26 June 1999.

The Committee now expresses deep concern arising from credible accounts that approximately 10,000 right-of-abode seekers face expulsion from Hong Kong to the mainland and subsequent separation from their families. The Committee has also received a letter signed by 8,000 parents asking assistance from the Committee in their appeal to the HKSAR for their right to stay together as families in Hong Kong.

The Committee regrets that one year after the adoption of its concluding observations, the HKSAR has not implemented the Committee's recommendations but has instead acted in breach of them, notwithstanding the abovementioned rights in the Covenant.

Guided by the Covenant and driven by deep humanitarian concern, the Committee urges HKSAR to undertake immediate measures for a just and humane solution to the problem of abode-seekers and to ensure that families will remain united.

Sincerely,

Virginia B. Dandan
Chairperson
UN Committee on Economic, Social
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