

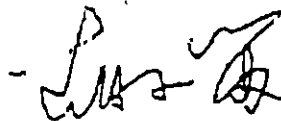
26 July 2002

Dear Mrs. Virginia B. Dandan:

With reference to your letter of 17 May, 2002 to H. E. Ambassador Sha Zukang concerning the right-of-abode issue, I have the pleasure to transfer to you hereby the attached reply from the Government of Hong Kong Special Administration Region (HKSAR).

With warmest regards.

Sincerely



HU Xiaodi

Charge d'affaires a.i.

Ambassador and Deputy Permanent Representative of  
P.R. China to UNOG

Mrs. Virginia B. Dandan  
Chairperson  
UN Committee on Economic, Social and Cultural Rights  
Palais des Nations  
Ch-1211 Geneva 10

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The HKSAR Government would like to reassure the United Nations Committee on Economic, Social and Cultural Rights ("the UN Committee") that, in dealing with right of abode issue, the HKSAR Government remains fully committed to implementing the provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR) as applied to Hong Kong. The HKSAR Government is also fully committed to implementing the suggestions and recommendations made by the UN Committee in its concluding observations ("the Concluding Observations") concerning the HKSAR published in May 2001. Specifically, when formulating and implementing policies and measures that have a bearing on the right of abode, we give the most careful attention to all human rights dimensions, including articles 2(2), 3 and 10 of the ICESCR. When imposing restrictions on entry into and stay in Hong Kong, and as regards entitlement to the right of abode, we have been taking great care to ensure that any restrictions that may bear on the implementation of Article 10 are fully justified in relation to each element set out in Article 4. In this connection, we can confirm that all such restrictions are firmly based on our laws and are compatible

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with the nature of the rights in question, and are solely for the purpose of promoting the general welfare in the Hong Kong community as required by that Article.

The Concession was reconsidered

A recommendation in the Concluding Observations is that the HKSAR Government "reconsider extending the concession" made following the Interpretation ("the Interpretation") issued by the Standing Committee of the National People's Congress (NPCSC) on 26 June 1999. This is also stated to be a subject of concern in your letter. Let me take this opportunity to reassure you that, after receiving the Concluding Observations, the HKSAR did very carefully consider the question of extending the concession having regard to all relevant factors, including our domestic laws and international obligations. In the end, we concluded against making any extension to the concession as this would not be in the interests of Hong Kong.

As you may be aware, the concession is a policy decision announced by the Chief Executive of Hong Kong on 26 June 1999, the day on which the NPCSC issued the Interpretation. The Interpretation clarifies the meaning of those provisions in the Basic Law of the HKSAR which stipulate the conditions under which persons of Chinese nationality born outside Hong Kong to Hong Kong permanent residents (HKPR) are entitled to the right of abode. In short, it limits the right of abode to those persons born to parents at least one of whom had attained the status of HKPR at the time of the person's birth. The Interpretation is consistent with the interpretation of the equivalent provision in the Sino-British Joint Declaration that

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was agreed by the two parties to the Joint Declaration in the Sino-British Joint Liaison Group in 1993.

The concession, on the other hand, is essentially about who would still be entitled to the right of abode despite the Interpretation. It is intended to benefit those who had lodged valid claims for right of abode with the Immigration Department or whose claims had been referred to the Immigration Department by government agencies in the course of their duty.

It is noteworthy that, in right of abode litigation following the Interpretation, Hong Kong's Court of Final Appeal (CFA) not only recognized the Interpretation as valid and binding on Hong Kong courts, but also accepted the legitimacy of the concession and found that Hong Kong's immigration authorities had on the whole not misinterpreted or misapplied it.

It was estimated in 1999 that about 270,000 Mainland residents would be entitled to claim the right of abode under the Basic Law as clarified by the Interpretation. Separately, close to 4,000 right of abode claimants have benefited from the concession which has allowed them to obtain the right of abode in Hong Kong.

#### Right of abode litigation

In line with the Interpretation, our CFA has in subsequent right of abode litigation laid down the key legal principles that would help our Immigration authorities and courts to determine whether a claimant enjoys the right of abode in Hong Kong. Those principles

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are being applied to individual cases pending before our courts. Since 10 January 2002, the date on which the CFA gave judgment on the last group of landmark right of abode cases before it thus far, our courts have disposed of cases concerning 4 840 claimants. Of those claimants, the majority, or 4 248, have failed in their right of abode claims. Another 405 cases have been withdrawn or dismissed. The remaining 150 will be allowed to stay in Hong Kong to settle. The cases concerning another 311 claimants are pending before our courts and we expect them to be determined in the second half of this year. As always, we would fully respect the courts' ruling.

### Removal action

Between 10 January 2002 (the date of the CFA judgment) and 31 March 2002, the HKSAR Government temporarily withheld removal proceedings against all unsuccessful claimants to give them room and time to take care of personal matters before leaving Hong Kong. However, during that period, over 4 700 claimants voluntarily returned to the Mainland. Removal action was resumed on 1 April and about 950 claimants have been sent back to the Mainland by 11 July 2002. We are making arrangements for the orderly removal of the other 1 600 claimants who have lost their court cases for the right of abode.

### Most claimants are adults

The vast majority (93%) of claimants currently in Hong Kong are adults, with the largest numbers falling under the 31 to 40 age group. By seeking to stay with their parents in Hong Kong, many

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are leaving behind in the Mainland their spouses and young children who need them as much as, if not more than, their parents in Hong Kong.

Family reunion programme

We do not have a policy to split families by barring claimants from coming to Hong Kong to join their families forever. What we insist through our immigration policy is that claimants should apply to come to Hong Kong for settlement under the existing legal channel of One-way Permit (OWP) Scheme just like other Mainland residents wishing to settle in Hong Kong. The Scheme is itself a family reunion programme that has been in place for decades. We believe it only fair and just that claimants should also, subject to eligibility, join the queue under the Scheme and await their turn to settle in Hong Kong, with their priority for settlement determined in accordance with its open and transparent criteria just like other Mainland residents.

Compassionate factors are an integral part of the design of the OWP Scheme. It does not, for example, impose any skills or means test on would-be applicants. All that is required is the appropriate family relationship between the applicant in the Mainland and his family member in Hong Kong. Under the OWP Scheme, apart from those with the right of abode, priority for settlement is given to long separated spouses, dependent children under the age of 18 and adult children whose parents have nobody else to depend on in Hong Kong. They are all criteria that are well justified on compassionate and humanitarian grounds. For dependent children, they are expected to obtain an OWP to settle in Hong Kong within

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one year.

### Transparency

Transparency is another key feature of the OWP Scheme. In this respect, as the UN Committee has also recommended enhanced transparency you may wish to note that name lists of successful applicants under the Scheme from the provinces of Guangdong and Fujian, which constitute the vast majority of all successful applicants, are now published in advance in a local newspaper. In addition, hotlines have been set up by the Mainland public security authorities to receive enquiries and complaints. For our part, the HKSAR Government also provides relevant statistics on OWP entrants to Hong Kong's Legislative Council from time to time.

### Annual Intake

Every year, Hong Kong admits and assimilates 54 750 OWP entrants which amount to some 0.8% of our total population. This represents an annual intake rate that is about two to three times those of many western economies much bigger than Hong Kong in geographic or economic terms. Our record on the facilitation of family reunion is thus on par with, if not better than, other civilized societies. We sincerely believe that Hong Kong has been doing its utmost on this front having regard to the capacity of its social, economic and physical infrastructure, as well as to the need to avoid adversely affecting the general interest and welfare of the community, including those of its new immigrants.

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### Family visits

Finally, it must not be forgotten that whilst claimants await their turn to legally settle in Hong Kong under the OWP Scheme, they enjoy increasingly better opportunities for both long and short term reunion. Their family members in Hong Kong in general face little immigration restrictions if they should choose to reside in the Mainland for an extended period of time. Indeed, more and more Hong Kong residents are taking advantage of the growing economic opportunities and the lower cost of living in the Mainland by moving their working or living base there. For claimants residing in the Mainland, whether or not they are on the OWP queue, they can take trips to Hong Kong to visit their family members and to do sightseeing. Those with close relatives in Hong Kong can stay for up to 180 days in a year. Any suggestion that families are forever torn asunder is thus a gross distortion of reality. In fact, a two to three hour bus or train ride will allow most claimants in the Mainland to meet with their relatives in Hong Kong and vice versa.

### Communication with the UN Committee

We hope you find the above information helpful and reassuring. On our part, we stand ready to communicate with you and the UN Committee on this and other issues of interest as and when necessary, and in any event during our next report which becomes due in 2003.

We note that the "deep concerns" expressed in the letter of 17 May 2002 arose "from credible accounts", and that the letter also

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refers to a letter signed by 8 000 parents. It would seem from this that the UN Committee has in effect received a submission from a group of persons. Although procedures for the receipt of such a submission exist in certain other human rights treaties, there is no such procedure under the ICESCR. We would therefore be grateful if the UN Committee would clarify the basis on which it acted in this case.

We also note that, having received a submission, the UN Committee appears to have come to a conclusion in respect of it without giving the HKSAR Government an opportunity to make representations. Since this would seem to be a denial of natural justice we would welcome an explanation as to why the UN Committee acted in this way.

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