

Legislative Council Panel on Home Affairs
Implementation of International Human Rights Treaties:
Monitoring Mechanisms

Purpose

This paper describes the monitoring mechanisms for the implementation in Hong Kong of the applicable international human rights treaties¹.

Existing mechanisms

2. Implementation of the treaties is monitored in several ways -
 - (a) **through the United Nations (UN) reporting process:** as the Panel is aware, the UN treaties entail the obligation to submit periodic reports and any additional ones for which the treaty bodies may call. The treaty monitoring bodies themselves are the international community's appointed monitors and carry out their monitoring functions through their assessment of the reports submitted by governments, non-governmental organisations (NGOs), and other bodies, and also through the related hearings process. The process of compiling reports is in itself a monitoring function in that it requires governments to take stock of human rights protections in their jurisdictions as they are at any one time and in the light of comments made by the treaty monitoring bodies and by local and international observers;
 - (b) **through the domestic judicial avenue:** there are numerous legal protections for the individual rights guaranteed in the treaties which are binding on the Government of the Hong Kong

¹ Namely the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child; the International Convention on the Elimination of All Forms of Racial Discrimination; and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Special Administrative Region at the international level. Rights that are implemented in our domestic legal system are interpreted and given effect through the Courts, which do have reference to views and comments of treaty monitoring bodies and international human rights jurisprudence. Hong Kong has a strong and independent judiciary that rules impartially on claims that specific rights have been infringed, whether by the Government or by private individuals or bodies. In this respect, the Courts are the ultimate guardians of rights protection in any jurisdiction, such as Hong Kong, where the rule of law prevails;

- (c) **by the Legislative Council:** Members of the Legislative Council, in particular members of the Panel, frequently call on the Administration to account for its performance in regard to human rights protections, both in general terms and in respect of issues that impinge on the treaties;
- (d) **through the specialised bodies:** the Equal Opportunities Commission (EOC), the Office of the Privacy Commissioner for Personal Data (PCO), the Women's Commission, and the Ombudsman exist with the express purpose of monitoring the issues within their respective remits. With the exception of the EOC and the PCO, these bodies do not always entail questions of human rights. But they play a vital role in ensuring good governance and that is one of the pre-conditions for the security of human rights protections in any jurisdiction;
- (e) **by NGOs:** NGOs play an active role in monitoring implementation of the human rights treaties, in Hong Kong as in other jurisdictions. They play a vital role in the monitoring process by bringing matters of concern to the attention of the public, legislators and the international community; and
- (f) **through the media:** Hong Kong has a free and active media corps that does not hesitate to report possible breaches of human rights, exposing those involved and the issues themselves to the glare of domestic and international publicity.

3. Thus, there are ample mechanisms, both domestic and international, for ensuring that the Government delivers on its commitments under the international treaties. However, there may be different views as to what such delivery should entail. By way of example, a question that has given rise to disagreement is whether Hong Kong needs an independent

institution - usually referred to as a Human Rights Commission - to undertake a central monitoring role. Some local and international commentators have called on us to establish such a body.

4. Our view is that the existing measures - laws, policies, and practices - are consistent with the requirements of the treaties². However, some commentators believe that, by not proceeding on the basis of those recommendations, Hong Kong is in danger of breaching its international obligations. But that is not the case: none of the treaties contain provisions that require governments to establish a central monitoring body for human rights.

Way forward

5. At the Panel's meeting on 11 April 2003, it was suggested that, to strengthen the existing mechanisms, the Administration should submit annual reports to the Legislative Council on the implementation of the applicable treaties. These would be additional to those submitted to the UN in accordance with our treaty obligations. Members of the Panel asked us to respond to this suggestion.

6. We are not convinced of the need for an additional mechanism but have no objection in principle to providing progress reports as proposed at the meeting on 11 April. However, doing so would place new demands on the Bureau's resources, which are primarily in place to service our reporting obligations under the UN treaties. We will therefore need to examine the implications of accepting these additional tasks. We will advise the Panel of our conclusions shortly.

Home Affairs Bureau
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² A special exception is the question of our compliance with the the International Convention on the Elimination of All Forms of Racial Discrimination. This is an issue that we are actively addressing.