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Panel on Home Affairs

Background brief prepared by Legislative Council Secretariat

**Submission of reports by the Hong Kong Special Administrative Region
under United Nations human rights treaties**

Purpose

This paper sets out the reporting cycle in respect of submission of reports by the Hong Kong Special Administrative Region (HKSAR) under United Nations (UN) human rights treaties. It also gives an account of previous discussions held by Legislative Council (LegCo) Members on the timing and procedures for submitting reports under UN human rights treaties since the first term of LegCo.

UN human rights treaties that entail a reporting requirement

2. The following six UN human rights treaties which apply to the HKSAR entail a reporting requirement -

- (a) International Covenant on Economic, Social and Cultural Rights;
- (b) International Covenant on Civil and Political Rights;
- (c) International Convention on the Elimination of All Forms of Racial Discrimination;
- (d) Convention on the Elimination of All Forms of Discrimination against Women;
- (e) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and
- (f) Convention on the Rights of the Child.

The reporting requirements as well as the timing and procedures for submitting reports under these six treaties are described in paragraphs 3 to 40 below.

International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights

Submission of reports through China's Permanent Representative to UN

3. China's Permanent Representative to UN notified the UN Secretary General on 4 December 1998 that in accordance with the provisions of the "Sino-British Joint Declaration on the question of Hong Kong" and the Basic Law, and taking into account the fact that the People's Republic of China was not yet a State Party to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the Chinese Government would, in the light of the relevant provisions of the two Covenants, entrust its Permanent Mission to UN with transmitting the reports by the HKSAR to the UN Secretary General.

International Covenant on Economic, Social and Cultural Rights

4. The International Covenant on Economic, Social and Cultural Rights follows a five-year reporting cycle.

5. As the People's Republic of China was not yet a State Party to the Covenant at that time, the first report on the HKSAR under the Covenant was submitted to UN by the Permanent Representative of the Chinese Mission to UN on 4 June 1999.

6. In its Concluding Observations issued on 11 May 2001 after consideration of the HKSAR's first report, the UN Committee on Economic, Social and Cultural Rights requested the HKSAR to submit information on its progress in implementing the Committee's recommendation that the HKSAR should extend its prohibition of racial discrimination in legislation into the private sector by 30 June 2003.

7. The Central People's Government (CPG) ratified the International Covenant on Economic, Social and Cultural Rights on 27 March 2001 and the treaty took effect in China on 27 June 2001, China is required to submit its initial report under that Covenant within two years from that date. The second report on the HKSAR under the Covenant will form part of the China's initial report under that Covenant.

International Covenant on Civil and Political Rights

8. The reporting cycle of the International Covenant on Civil and Political Rights is five years.

9. CPG signified the International Covenant on Civil and Political Rights on 5 October 1998. As CPG has not yet ratified the Covenant, the first report on the HKSAR under the Covenant was submitted to UN by the Permanent Representative of the Chinese Mission to UN on 11 January 1999.

10. The UN Human Rights Committee issued its Concluding Observations after consideration of the HKSAR's first report on 15 November 1999. The Committee set the date for submission of the next report as 31 October 2003 in the Concluding Observations.

Meeting of the Panel on Home Affairs on 27 July 1998

11. The Panel on Home Affairs discussed the preparation of reports by the HKSAR on the implementation of the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Right with the Administration at its meeting on 27 July 1998.

12. Responding to some members' concern about the role of CPG in the preparation of reports by the HKSAR under human rights treaties, the Administration stressed that it was the understanding that CPG would not make any amendment to the content of the reports being prepared by the HKSAR for submission to UN. Moreover, CPG would not give suggestions or comments on the content of the HKSAR's reports.

13. In response to members' questions about the process for the submission of reports to UN, the Administration explained that as CPG was not yet a State Party to the two Covenants (CPG ratified the International Covenant on Economic, Social and Cultural Rights on 27 March 2001 as mentioned in paragraph 7 above), the HKSAR's reports under these two Covenants would not need to be forwarded to CPG. The submission process was for the HKSAR Government to forward the reports under these two Covenants to the Office of the Ministry of Foreign Affairs (MFA Office). The MFA Office would then send the reports to the Chinese Permanent Mission to UN for onward transmission to the UN Secretary General.

14. A member asked whether the Administration had ever considered seeking delegation of authority from CPG for the HKSAR to forward its reports directly to UN, in order to fully demonstrate the "one country, two systems" principle. The Administration had explained that under UN procedures, the responsibility for submitting these reports rest with the sovereign countries concerned. Arrangements had been made for the HKSAR's reports under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights to route through the Chinese Permanent Mission to UN instead of CPG.

Meeting of the Panel on Home Affairs on 21 January 1999

15. The Panel on Home Affairs again discussed the HKSAR's report in the light of the International Covenant on Civil and Political Rights with the Administration at its meeting on 21 January 1999.

16. The Administration informed the Panel at the meeting that the HKSAR Government had forwarded the report to the Chinese Permanent Mission to UN through the HKSAR Beijing Office for onward transmission to UN on 11 January 1999 without routing through CPG. The Administration said that the submission process had fully realised the "one country, two systems" principle as the report was entirely prepared by the HKSAR Government, and CPG had made no amendment to the content.

Meeting of the Panel on Home Affairs on 23 September 1999

17. The Panel on Home Affairs discussed the HKSAR's report in the light of the International Covenant on Civil and Political Rights with deputations and the Administration at its meeting on 23 September 1999.

18. In response to criticisms about not releasing the report for public consultation before submission to UN, the Administration said that an outline of topics to be covered in the report had been published for public consultation and the views received had been taken into account when drafting the report. The Administration emphasised that it was not possible to have consensus on all issues and that the Report was basically a government report. The Administration also responded that non-government organisations were encouraged to submit their own reports to LegCo or directly to the UN Committee.

Question raised at Council meeting on 19 June 2002

19. At the Council meeting on 19 June 2002, Hon Emily LAU raised an oral question concerning the timing of submission of the HKSAR's next reports under the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, the pre-drafting consultations on these reports, and the Government's decision on whether or not to introduce legislation to prohibit acts of racial discrimination in the private sector.

20. The Secretary for Home Affairs (SHA) informed Members that the HKSAR's second report under the International Covenant on Economic, Social and Cultural Rights would form part of the China's initial report under that Covenant. CPG had asked the HKSAR to submit by April 2003 a contribution to its initial report under the Covenant.

International Convention on the Elimination of All Forms of Racial Discrimination

21. The International Convention on the Elimination of All Forms of Racial Discrimination follows a two-year reporting cycle.

22. The People's Republic of China is a State Party to the International Convention on the Elimination of All Forms of Racial Discrimination. The first report of the HKSAR under the Convention was submitted as part of the China's combined eighth and ninth periodic reports to UN by the Permanent Representative of the Chinese Mission to UN on 3 October 2000.

23. In its Concluding Observations issued on 9 August 2001 after consideration of the HKSAR's first report, the UN Committee on the Elimination of Racial Discrimination recommended the State Party to submit its tenth periodic report jointly with its eleventh periodic report, which would be due on 28 January 2003, and address all the points raised in that Observations in the next report. The Administration has advised that it will initiate the drafting process when CPG calls for the HKSAR's contribution to the China's next report.

Question raised at Council meeting on 19 June 2002

24. In response to the oral question raised by Hon Emily LAU at the Council meeting on 19 June 2002 (paragraph 19 above refers), SHA informed Members that the HKSAR's second report under the International Convention on the Elimination of All Forms of Racial Discrimination would form part of the China's next report under that Convention. As with all reports under treaties to which China was a State Party, the timing of submissions was dependent on that of CPG's submissions to UN. CPG would inform the HKSAR in due course of the date by which it intended to submit its report under the International Convention on the Elimination of All Forms of Racial Discrimination.

25. Hon Emily LAU expressed concern that the HKSAR would not be able to submit its next report under the International Convention on the Elimination of All Forms of Racial Discrimination in time, which would be due on 28 January 2003, since the HKSAR would not start any preparation work pending instruction from CPG. She asked whether the HKSAR would communicate with CPG to see whether it intended to adhere to the timetable set down by UN.

26. SHA responded that the HKSAR had not yet received notification from CPG of its intended submission timetable under the International Convention on the Elimination of All Forms of Racial Discrimination. The HKSAR would certainly initiate the drafting process as quickly as possible once the notification was received and would try its best to adhere to the timetable. He added that the HKSAR had not missed any of the timetables as set by UN and he did not see any reason to believe that the HKSAR would miss that one.

Convention on the Elimination of All Forms of Discrimination against Women

27. The Convention on the Elimination of All Forms of Discrimination against Women follows a four-year reporting cycle.

28. The People's Republic of China is a State Party to the Convention on the Elimination of All Forms of Discrimination against Women. The first report of the HKSAR under the Convention was submitted as part of the China's combined third and fourth periodic report in 1998. The UN Committee on the Elimination of Discrimination against Women issued its Concluding Comments after consideration of the HKSAR's first report on 3 February 1999. The second report on the HKSAR under the Convention will form part of the China's next report, which is due for submission to UN on 3 September 1998. The Administration has been notified by CPG to submit the second report on the HKSAR by March 2003 for incorporation into the China's next report.

Meeting of the Panel on Home Affairs on 9 November 1998

29. The Panel on Home Affairs discussed the initial report on the HKSAR under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women with deputations and the Administration at its meeting on 9 November 1998.

30. In response to concerns about the delay in submitting the HKSAR's initial report under the Convention on the Elimination of All Forms of Discrimination against Women, the Administration explained that the HKSAR's report was in fact completed on schedule. However, as the People's Republic of China was a State Party to the Convention, the HKSAR's report had to be incorporated into the China's report and was submitted to UN in August 1998. Nevertheless, the HKSAR Government had updated its report for transmitting it to the MFA Office.

31. With reference to the Administration's practice of publishing the reports on human rights treaties only after submission to UN, Hon Emily LAU enquired about the practice in other countries. A deputation informed members that countries like Australia, Netherlands and those in Scandinavia had the practice of making their reports public once they were completed. He suggested that the State Parties could seek the consent of the relevant UN Committees for doing so.

Meeting of the Panel on Home Affairs on 8 November 2002

32. The Panel on Home Affairs discussed the second report to be prepared by the HKSAR under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women with deputations and the Administration at its meeting on 8 November 2002.

33. In response to the concerns raised by deputations on the consultation process of the second report to be prepared by the HKSAR under the Convention on the Elimination of All Forms of Discrimination against Women, the Administration explained that it would be more desirable to consult non-government organisations and members of the public in the initial stage when the report was being drafted instead of at a later stage when the draft report was completed. After public consultation, the Administration would prepare the second report taking into consideration the result of the consultation. The Government bureaux and departments concerned would be requested to contribute to the report and their contributions would be examined by the Health, Welfare and Food Bureau before incorporating them into the report. In view of the tight schedule, there would not be sufficient time to conduct further public consultation.

34. The Administration further explained that the Health, Welfare and Food Bureau would consult the Women's Commission on the draft report before submitting it to the Chief Executive's Office for approval. The report would then be submitted to CPG for incorporation into the China's report. After the China's report was submitted to UN, the HKSAR's second report would be released through the media and uploaded onto the websites of the Health, Welfare and Food Bureau and the Women's Commission.

35. Some members were of the view that the Administration should release the initial draft of the second report for another round of consultation. Another member held a different view. He said that the second report to be submitted by the HKSAR under the Convention on the Elimination of All Forms of Discrimination against Women was a government report, and there was no need for that report to incorporate all the views expressed by concern organisations. Members requested that the Administration should provide the Panel with a copy of the initial draft when it was submitted to the Women's Commission. The Administration undertook to consider members' request.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

36. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment follows a four-year reporting cycle.

37. The People's Republic of China is a State Party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Convention. The first report of the HKSAR under the Convention (originally due on 2 November 1997) was submitted in May 1999, together with the third periodic report of China. The Committee against Torture issued its Conclusions and Recommendations on 9 May 2000 after consideration of the HKSAR's first report. The second report on the HKSAR under the Convention will form part of

the China's next report, which was due for submission to UN on 2 November 2001.

Convention on the Rights of the Child

38. The Convention on the Rights of the Child follows a five-year reporting cycle.

39. As requested by the Committee on the Rights of the Child, the United Kingdom Government submitted an updating report under the Convention in 1997.

40. The People's Republic of China is a State Party to the Convention on the Rights of the Child. According to the Administration, the first report on the HKSAR under the Convention on the Rights of the Child was due on 31 March 1999. The first report on the HKSAR will form part of the China's second report, which CPG expects to submit to UN by the end of 2002.

Summary

41. The reporting cycle of reports by the HKSAR under UN human rights treaties is summarised in **Appendix I**.

42. The HKSAR has not submitted the following reports to UN before the due date for submission -

- (a) report under the Convention on the Elimination of All Forms of Discrimination against Women due on 3 September 1998 (paragraph 28 above refers) ;
- (b) report under the Convention on the Rights of the Child due on 31 March 1999 (paragraph 40 above refers) ; and
- (c) report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment due on 2 November 2001 (paragraph 37 above refers).

43. The next report on the HKSAR under the International Convention on the Elimination of All Forms of Racial Discrimination will be due in two months' time, i.e. on 28 January 2003 (paragraph 23 above refers).

44. The next reports on the HKSAR under the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights will be due in seven to 11 months, i.e. on 30 June 2003 and 31 October 2003 respectively (paragraphs 6 and 10 above refer).

Relevant papers

45. A list of the relevant papers is in **Appendix II** for members' easy reference. These papers are available on the Research and Library Information System and the Council's website at <http://www.legco.gov.hk>.

Council Business Division 2
Legislative Council Secretariat
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Reporting cycle of human rights reports

Covenant/Convention	Reporting cycle	Submission of last report	Next report due
1. International Covenant on Economic, Social and Cultural Rights (ICESCR)	5 years	First report due in 1999. Submitted in 1999 and was heard by the United Nations (UN) Committee in April 2001.	30 June 2003 ¹
2. International Covenant on Civil and Political Rights (ICCPR)	5 years	First report due in 1999. Submitted in early 1999 and was heard by UN Committee in Nov 1999.	31 October 2003
3. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	2 years	First report due in 1998. Submitted in late 2000 as part of China's combined 8 th and 9 th reports and was heard by UN Committee on 31 July and 1 August 2001.	28 January 2003 ²

Note 1 : In its Concluding Observations on the Hong Kong Special Administrative Region (HKSAR)'s first report, the UN Committee on Economic, Social and Cultural Rights requested the HKSAR to submit information on its progress in implementing the Committee's recommendation in respect of race discrimination by 30 June 2003. The Central People's Government ratified the Covenant on 27 March 2001 and the treaty took effect in China on 27 June 2001, China is required to submit its initial report under that Covenant within two years from that date. The second report on the HKSAR will form part of the China's initial report.

Note 2 : In its Concluding Observation issued after consideration of the HKSAR's first report, the UN Committee on the Elimination of Racial Discrimination requested HKSAR to submit its second report by 28 January 2003. The Administration will initiate the drafting process (including the pre-drafting consultations) when the Central People's Government calls for its contribution to China's Metropolitan report, of which HKSAR's second report under the Convention will form a part.

Covenant/Convention	Reporting cycle	Submission of last report	Next report due
4. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	4 years	First report due in 1997. Submitted in 1998 as part of China's combined 3 rd and 4 th report and was heard by UN Committee in January/February 1999.	3 September 1998
5. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	4 years	First report due in 1990. Submitted in mid 1999 as part of China's 3 rd report and was heard by UN Committee in May 2000.	2 November 2001
6. Convention on the Rights of the Child (CRC)	5 years	Last report submitted by the UK Government in 1997. (First report due in 2 November 1999, is being prepared and to be submitted as part of China's 2 nd report.)	31 March 1999

Relevant Papers

International Covenant on Economic, Social and Cultural Rights and
International Covenant on Civil and Political Rights

- Minutes of meeting of the Panel on Home Affairs on 27 July 1998
(Agenda item III)
LC Paper No. CB(2)205/98-99
- Minutes of meeting of the Panel on Home Affairs on 21 January 1999
(Agenda item II)
LC Paper No. CB(2)2739/98-99
- Minutes of meeting of the Panel on Home Affairs on 23 September 1999
LC Paper No. CB(2)204/99-00
- Question No. 4 "Legislation Against Acts of Racial Discrimination in Private Sector" of the Official Record of Proceedings of the Council meeting on 19 June 2002

International Convention on the Elimination of All Forms of Racial Discrimination

- Question No. 4 "Legislation Against Acts of Racial Discrimination in Private Sector" of the Official Record of Proceedings of the Council meeting on 19 June 2002

Convention on the Elimination of All Forms of Discrimination against Women

- Minutes of meeting of the Panel on Home Affairs on 9 November 1998
(Agenda item IV)
LC Paper No. CB(2)853/98-99
- Minutes of meeting of the Panel on Home Affairs on 8 November 2002
(Agenda item V)
LC Paper No. CB(2)590/02-03