

Hong Kong Human Rights Commission
Society for Community Organization
Comments on an outline of the topics to be covered in the third report of
the Hong Kong Special Administrative Region under
the International Covenant on Economic, Social and Cultural Rights

The Government is preparing for the submission of the third report of the Hong Kong Special Administrative Region (HKSAR) under the United Nations (UN) International Covenant on Economic, Social and Cultural Rights (the Covenant). It will form part of the second periodic report of the People's Republic of China under the Covenant. The outline of the report is important which sets out the broad subject headings and individual topics for the Committee of the United Nations to consider the implementation of the Convention in Hong Kong.

At the outset, we strongly urge the Government to publish a draft report for public consultation before submitting the periodic report to the UN Committee on Economic, Social and Cultural Rights (CESCR). Actually, the CESCR has repeatedly encouraged the State Party to engage NGOs in the process of discussions prior to the submission of periodic report (see para. 130 of the CESCR Concluding Observations 2005). It is submitted that the present practice of just issuing an outline of topics for the periodic report for consultation would not be adequate engagement of NGOs.

The implementation of the Covenant in Hong Kong is far from satisfactory that a shadow report would be prepared by our Commission afterwards in order to unveil the real situation in Hong Kong. The following issues/situations are highly recommended to be included in the Governmental report in accordance with the Articles of the Covenant as follows:

Article 1: Progress and development of democracy

- Absence of roadmap and real timetable for the universal suffrage of the Chief Executive and the Legislative Council even if the majority supporting the introduction of the universal suffrage immediately.
- Absence of true democracy in the election mechanism in Hong Kong

Article 2: Progressive realization of the rights recognized in the Covenant and the exercise of those rights without discrimination

- The SAR Government and the Judiciary in Hong Kong treated the ICESCR as a “promotional” and “inspirational” in nature but not a legally binding Covenant.

- Absence of the domestic legislation of the ICESCR which is dissimilar with the ICCPR implemented by the passage of Bill of Rights.
- Absence of legislation against age discrimination and discrimination on the ground of sexual orientation.
- Equal Opportunities Commission does not reform in accordance with the Paris Principles that the chairperson and the chief executive is the same person, which lack of accountability and monitoring. Moreover, the selection mechanism of the new chairperson is not transparent and accountable to the general public.
- Absence of the National Human Rights Institution (Human Rights Commission) in Hong Kong
- The waiving of the financial eligibility criteria is only applicable to legal cases related the ICCPR, Bill of Rights but not other international covenants enforced in Hong Kong, like ICESCR, CEDAW, CERD, CRC, CAT, etc.,.

Article 3: Equal rights of men and women

- The formation of the Women's Commission does not comply with the Paris Principles
- The review of the Sex Discrimination Ordinance has been conducted over 10 years without any amendment being carried out.

Article 4: Permissible limitations of Covenant rights &

Article 5: Prohibition on destruction of any rights and freedoms recognized in the Covenant

Derogations from the fundamental human rights recognized by ICESCR in recent years:

- the introduction of the new population policy on 1 January 2004 which increased the residency requirements for the application of Comprehensive Social Security Assistance from one year to seven years.
- the introduction of the new population policy on 1 January 2004 which required the welfare applicant must also have resided in Hong Kong continuously for at least one year immediately before the date of application (absence from Hong Kong up to a maximum of 56 days during the one-year period is treated as residence in Hong Kong).
- The introduction of 'point system' from 2005 to a single person who applies for public rental housing which results to a long waiting time, probably over 10 to 15 years.
- The introduction of Formulary Drug List from 2006 that patients are required to purchase the drugs by their own if the drugs are not on the List.
- The prohibition of the children was born in Hong Kong, whose parents are not Hong Kong residents, to receive Comprehensive Social Security Assistance on the

grounds of better use of public resource.

Article 6: Choice of occupation and labor rights

- Absence of economic policy to assist the middle age, low-skill labors to have more working opportunities under economic restructuring and financial tsunami.
- The worsening situation of youth unemployment and under-employment in Hong Kong.
- Absence of legislation to prohibit age discrimination in the course of employment.
- Asylum seekers and refugees are denied the right to work and vocational training.

Article 7: Right to enjoy just and favorable conditions of work

- The potential problem of the hourly rate of the proposed minimum wage to low income labors.
- Absence of statutory maximum working hours for workers.
- Lack of implementation plan for the concept of “Equal pay for work of equal value”.
- No legislation to protect labors from unfair dismissal.

Article 8: Right to trade union membership

- No legislation to protect the collective bargaining power of employees.

Article 9: Right to social security

- the introduction of the new population policy in 1 January 2004 which increased the residency requirements for the application of Comprehensive Social Security Assistance from one year to seven years.
- the introduction of the new population policy in 1 January 2004 which required the welfare applicant must also have resided in Hong Kong continuously for at least one year immediately before the date of application (absence from Hong Kong up to a maximum of 56 days during the one-year period is treated as residence in Hong Kong).
- Absence of timetable to review the basic standard of living for the welfare recipients since mid-1990s.
- Cancellation of the special grants for welfare recipients in 1999 and in 2003 respectively and absence of plan to be resumed.
- Lack of unemployment assistance for unemployed persons.
- Inadequate assistance-in-kind to asylum seekers.

Article 10: Protection of the family

- Problems for the split families in mainland China that the betterment of the family members was undermined.

- Split families that the parents are divorces or deceased are not eligible for applying one-way permit from mainland China. The parents are also eligible for receiving welfare in Hong Kong that the best interest of the child was also ignored.
- The problems of after-school caring services for low-income families.
- Absence of Children's Commission or Child ombudsman to monitor the policy and legislation related to children's rights and the family.

Article 11: Right to an adequate standard of living

- Absence of the anti-poverty policy and poverty line to monitor the poverty situation in Hong Kong.
- The poor situation of inadequate housed persons at urban slums and lack of assistance for the applicants of rental public housing in the course of waiting allocation of housing.
- The widening of poverty gap in Hong Kong while the Government did not have many long-term strategies to handle the problem of income disparity.

Article 12: The right to health

- The deterioration of the public healthcare services, e.g. lengthened waiting time, inadequate service availability, stringent waiving system causing the grassroots hard to bear the service fees.
- Absence of mental health policy to deal with mental health problem.
- Some effective but expensive drugs, e.g. drugs curing orphan diseases costing near 1 million HK Dollars, are not subsidized by the Government.
- The absence of an effective complaint mechanism, which is harmful to public health and patient's rights.

Article 13 and Article 14: Right to education

- Absence of 15-year free education that students from low-income families have to bear heavy financial burden in order to afford those learning related expense while they are receiving education at schools.
- The application criterion of the Student Financial Assistance provided by the Government is too mean and the coverage of the assistance is too narrow.
- The learning voucher provided to the children at kindergarten level is not able to cover the school fee as well as other school expenses.
- No internet subsidy was provided to the welfare recipients or children from low-income families.
- The training course and subsidy for the inmates and prisoners at the custodial institution are too limited and insufficient.
- Absence of adaptation courses for the adult new immigrants from Mainland China.
- Lack of qualification recognition mechanism for academic or professional

qualifications obtained from Mainland China.

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