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Panel on Constitutional Affairs

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 21 November 2011**

**Third Report of the Hong Kong Special Administrative Region
in the light of the International Covenant on Civil and Political Rights**

Purpose

This paper gives an account of the discussions of the Panel on Home Affairs ("the HA Panel") in respect of the concluding observations issued by the United Nations ("UN") Human Rights Committee in respect of the second report on the Hong Kong Special Administrative Region ("HKSAR") in the light of the International Covenant on Civil and Political Rights ("ICCPR") and the discussions of the Panel on Constitutional Affairs ("the CA Panel") in respect of the outline of topics to be included in the third report.

Background

2. The Government of the United Kingdom ("UK") extended ICCPR to Hong Kong in 1976. Article 39 of the Basic Law ("BL") provides that the provisions of ICCPR as applied to Hong Kong shall remain in force. On 22 November 1997, the Ministry of Foreign Affairs in Beijing announced that in order to fully realize the "one country, two systems" principle, separate reports on the implementation of ICCPR and the International Covenant on Economic, Social and Cultural Rights ("ICESCR") in HKSAR would be submitted to the UN treaty monitoring bodies. The Government of the People's Republic of China ("PRC") ratified ICESCR in 2001. The Government of PRC has signed but has not yet ratified ICCPR.

3. Formerly, reports in the light of ICCPR were required every five years. Since 1999, the Human Rights Committee has specified the date for the submission of the next report in its concluding observations issued after consideration of the report submitted by HKSAR.

4. The second report on HKSAR in the light of ICCPR was submitted to the Human Rights Committee in January 2005. After consideration of the second

report on HKSAR at its hearing held on 20 and 21 March 2006, the Human Rights Committee issued its concluding observations on 30 March 2006, a copy of which was issued vide LC Paper No. CB(2)1653/05-06(01) on 4 April 2006 (**Appendix I**). The Administration's report on its follow-up to the concluding observations (without appendices) was issued vide LC Paper No. CB(2)369/07-08(01) on 16 November 2007 (**Appendix II**).

Discussions of the HA Panel on the concluding observations in respect of the second report

5. The HA Panel discussed the concluding observations issued by the Human Rights Committee after consideration of the second report on HKSAR and the Administration's initial response to the concluding observations with depositions at its meeting on 9 June 2006. The Panel further discussed the Administration's follow-up to the concluding observations at its meeting on 11 January 2008. The major issues raised by members at these two meetings are summarized in paragraphs 6 to 20 below.

Reservation in relation to Article 25 of ICCPR and establishment of an elected legislature

6. Ms Margaret NG pointed out that the court had already expressed the view that the justification given by the Government for maintaining the reservation in relation to Article 25 was not legally sound. Moreover, the Human Rights Committee had repeatedly pointed out that once an elected Legislative Council ("LegCo") was established, its election had to conform to Article 25 of ICCPR.

7. The Administration maintained its view that the reservation in relation to Article 25 of ICCPR did apply to Hong Kong and there was no obligation under ICCPR as applied to HKSAR to introduce universal suffrage at the present stage. The Administration considered that its submissions made to the Human Rights Committee in respect of the interpretation were based upon principles stated in the Vienna Convention on the Law of Treaties, e.g. Articles 31 and 32, and the Government's approach to the interpretation of the reservation was firmly based on international law principles.

8. Members may wish to note that in *Lee Miu Ling v Attorney General* (1995) 5 HKPLR 181, Keith J made an obiter dictum in his judgment that section 13 of the Hong Kong Bill of Rights Ordinance (Cap. 383) ("HKBORO") (which mirrored the reservation made against Article 25(b) of ICCPR) was, to the extent that it related to LegCo, a dead letter, after the Letters Patent were amended to provide for a wholly elected LegCo in 1995. In *Chan Yu Nam v Secretary for Justice* (HCAL32/2009 and HCAL55/2009), Andrew Cheung J considered that the reservation of British Government relating to Article 25(b) of ICCPR had the

effect of permitting elections for functional constituencies ("FCs") in general and corporate voting in particular to be practiced in Hong Kong. Andrew Cheung J also considered Keith J's obiter dictum that the reservation in relation to Article 25(b) of ICCPR was spent in his judgment. Andrew Cheung J was of the view that Keith J was addressing the position in Hong Kong in 1995 when the Letters Patent had been amended to provide for a wholly elected legislature and his view did not affect the position back in 1990 when BL was promulgated and the application of ICCPR to Hong Kong was still subject to the British reservation and thus there was no question of the reservation having become spent at that time even under Keith J's reasoning.

9. For a historical account of development on the issue of the reservation made in respect of Article 25(b) of ICCPR, members may refer to the information paper prepared by the LegCo Secretariat [LC Paper No. CB(2)1652/09-10(02)] which is available at http://www.legco.gov.hk/yr09-10/english/hc/sub_com/hs52/papers/hs520531cb2-1652-2-e.pdf.

Non-implementation of the Human Rights Committee's recommendations and setting up of a human rights commission

10. Some members queried the justification for the Administration's view that the recommendations made by the UN treaty monitoring bodies were not legally-binding. They considered that the Administration was not sincere and lacked commitment in implementing Human Rights Committee's recommendations and in responding to their concerns. These members were of the view that it was unacceptable that the Administration kept ignoring completely the serious concerns especially those on the police complaints mechanism and the implementation of universal suffrage which had been repeatedly raised by Human Rights Committee for a number of years.

11. The Administration explained to the HA Panel that a recommendation made by Human Rights Committee was accepted by the Administration to be binding insofar as it reflected obligations imposed on the HKSAR Government under ICCPR. However, the Administration was not obliged to follow a recommendation which, in its view, did not arise from any obligation under ICCPR, such as the recommendation of setting up a human rights commission in HKSAR. The Administration considered that that was merely a recommendation of Human Rights Committee on how to ensure that ICCPR could be properly implemented.

12. Echoing the deputations' concern that the Administration seemed to be backtracking on its stance in respect of the establishment of a human rights commission, Mr Albert HO expressed the view that checks and balances were

required in an open and pluralistic society. The Administration should empower a statutory body or non-governmental organizations ("NGOs") to perform such a function. Instead of ruling out any plans or timetable in the immediate future, Mr HO asked whether the Administration would consider setting up a task force joined by representatives of NGOs to work out concrete proposals for taking forward the recommendation of establishing a human rights commission.

13. The Administration responded that it had all along maintained the same position regarding the establishment of a human rights commission, i.e. it saw no obvious need for it. Although the Administration currently had no plan or timetable for setting up such an institution, it welcomed the participation of NGOs in the work of protecting human rights. The Administration also welcomed the opportunity to exchange views on the matter with representatives of NGOs at meetings of the Human Rights Forum.

Procedures by which an interpretation of BL provisions could be made

14. Mr Albert HO expressed the view that the issues subject to interpretation should be made known under the procedures of interpretation of BL, so that the Administration could give the Standing Committee of the National People's Congress ("NPCSC") advice on the human rights implications arising from the interpretation.

15. The Administration responded that there were three ways in which NPCSC could give an interpretation of the provisions of BL -

- (a) the Court of Final Appeal ("CFA") could make a reference and, in this case, the Court would determine the documents to be submitted to NPCSC;
- (b) CE could make a request and, in this situation, the Administration should be able to consider sending submissions on human right matters; and
- (c) NPCSC could make an interpretation on its own initiative. In this situation, it was not clear whether the Administration had any avenue to forward submissions on human right matters.

16. The Administration further pointed out that, if NPCSC were to make any further interpretation of BL provisions in the future, it would have to take into account the obligation which existed under BL39, i.e. to ensure that the provisions of ICCPR, among other things, would continue to remain in force and to be implemented in HKSAR, and no law could contravene that obligation. Any interpretation of BL provisions, whether by HKSAR courts or by NPCSC, would have to take into account that obligation.

17. Mr Albert HO expressed strong disagreement with the stance of the Administration that the interpretation of BL by NPCSC did not affect the independence of the Judiciary, the rule of law or Hong Kong's high degree of autonomy. He considered that the NPCSC's decisions overrode any judgment of the courts and any decision of the HKSAR Government. The Administration explained that in accordance with the provisions of BL, HKSAR was authorized to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication. BL158(1) provided that the power of interpretation of BL should be vested in NPCSC. The Administration did not see any conflicts arising from these constitutional arrangements.

Investigation of complaints against the Police

18. A concern was raised on the independence of the Complaints Against Police Office ("CAPO") given that CAPO was responsible to a Deputy Commissioner of Police and its investigations were conducted by police officers. The Administration responded that CAPO was an independent unit of the Police Force, operating separately from other formations of the Police Force. CAPO's handling of complaints was closely monitored by Independent Police Complaints Council ("IPCC"), which was an independent civilian body comprising non-official members from a wide spectrum of the community. IPCC would examine all investigation reports submitted by CAPO which was required to address any query raised by IPCC and would re-investigate the case if IPCC so requested. With the enactment of the IPCC Bill, IPCC would be converted into a statutory body and would further enhance the transparency and credibility of the police complaints systems.

Right of abode ("ROA")

19. Ms Emily LAU considered that the Administration should exercise discretion to allow the remaining ROA claimants who did not succeed in their appeals to CFA to stay in Hong Kong, as their number was relatively small now and their wishes for family reunion should be respected.

20. The Administration explained that it was fully committed to the rule of law in dealing with the ROA issue, and had taken into account its international obligations and local laws in handling the ROA issue. The wishes for family reunion, however, were not an absolute right, and governments worldwide required people who wished to join their families to submit applications for processing in accordance with local laws and policies.

Discussions of the CA Panel on the outline of topics in respect of the third report

21. The Constitutional and Mainland Affairs Bureau issued the outline of topics to be included in the third report in June 2010 for public consultation. The CA Panel discussed the outline of topics with deputations and the Administration at its meeting on 21 June 2010. The issues raised by members at the meeting are summarized below.

Development of democracy

22. Dr Margaret NG and Ms Audrey EU expressed concern that the Administration's constitutional reform package for electing the Chief Executive and for forming LegCo in 2012 and the Democratic Party ("DP")'s proposal on "one-person-two-votes" for returning the five new DC FC seats in 2012 (the "DP's proposal") did not conform to Article 25 of ICCPR. They reiterated that the Human Rights Committee had repeatedly pointed out that once an elected LegCo was established, its election had to conform to Article 25 of ICCPR. They considered that the Administration's reliance on the reservation made in respect of Article 25(b) to justify the non-compliance of the electoral system for the formation of LegCo with that provision was not legally sound. In addition, the provisions of ICCPR including Article 25 had been incorporated in the laws of Hong Kong by way of HKBORO. They requested the Administration to explain in the third report as to whether its definition of the principles of universality and equality was different from that held by the Human Rights Committee.

23. In the view of Ms Cyd HO, the Administration should clarify in the third report whether NPCSC had its own definition of universal suffrage, and if so, the difference between its definition and that of ICCPR. The Administration should also clarify the meaning of "gradual and orderly progress", "broadly representative" and "democratic procedures" stipulated in BL45, and the meaning of "reasonable threshold" and "balanced participation".

24. The Administration explained that the Central People's Government notified the UN Secretary General in June 1997 that the provisions of ICCPR as applied to Hong Kong would remain in force beginning from 1 July 1997. In other words, those provisions which did not apply to Hong Kong (including Article 25(b) of ICCPR for which a reservation had been made by the UK Government when extending ICCPR to Hong Kong in 1976) would also not be applied to HKSAR. In the case of *Chan Yu Nam v Secretary for Justice* (HCAL32/2009 and HCAL55/2009) in 2009, the High Court was of the view that such reservation continued to apply to the HKSAR. The Administration also advised that Article 21 of Hong Kong Bill of Rights mirrored Article 25 of ICCPR and the reservation made in respect of Article 25(b) was specifically provided for in section 13 of HKBORO.

Setting up of a human rights institution

25. Mr Ronny TONG called on the Administration to set up an independent human rights institution, as repeatedly recommended by the Human Rights Committee, to investigate and monitor human rights violations in HKSAR. He considered that the existing institutional arrangements were not effective for the implementation of the rights guaranteed under ICCPR.

26. The Administration reiterated its stance that given a comprehensive framework for the protection and promotion of human rights in HKSAR, the Administration did not see the need to establish another human rights institution to duplicate the functions of the existing mechanism. While the Administration respected the recommendations of the Human Rights Committee, such recommendations were not legally binding. ICCPR allowed each State Party to implement appropriate measures, taking account of its own situation, to discharge its obligations under ICCPR.

Gender mainstreaming and women's participation in public affairs

27. Ms LI Fung-ying enquired about the contents to be covered under the subject of "equal pay for work of equal value" for men and women in the third report. She also expressed concern that despite the advocate of gender mainstreaming, there remained a relatively small number of women participating in public affairs including serving on advisory and statutory bodies. She enquired whether the Administration would include in the third report measures to address those inadequacies.

28. The Administration explained that the third report would cover, among others, the latest development on equal rights of men and women since it was last reported. In this regard, the principle of equal pay for work of equal value was set out in the Code of Practice on Employment under the Sex Discrimination Ordinance issued by the Equal Opportunities Commission ("EOC"). In 2008, EOC also published a series of guidebooks advising employers that they should maintain the principles of equal pay for equal work and equal pay for work of equal value between men and women, and determine the pay level of each job according to its value to the organization. On gender mainstreaming, there was an increasing number of women serving in the civil service, in particular at the directorate level, in the past 10 years. In addition, the Administration had increased the gender benchmark for appointments to advisory and statutory bodies from 25% to 30%.

Torture claims

29. Dr Margaret NG enquired whether the handling of torture claims by the Administration had complied with Article 3 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

30. The Administration advised that it had briefed the Panel on Security at its meeting held in December 2009 on the enhanced mechanism for screening torture claims and the pilot scheme to provide publicly-funded legal assistance to torture claimants who met the requirements. Hong Kong's relative economic prosperity in the region and its liberal visa regime would make the territory vulnerable to possible abuses if the UN 1951 Convention relating to the Status of Refugees ("CSR") was applied to Hong Kong. The Administration had a firm policy of not granting asylum and its established position on CSR remained unchanged.

Residents in distress or detained outside Hong Kong

31. Ms Miriam LAU enquired what would be reported under the notification system between HKSAR and the Mainland authorities on HKSAR residents detained in the Mainland. In her view, the Office of the Government of HKSAR in Beijing and the Hong Kong Economic and Trade Office in Guangdong merely served as a mail box between families of Hong Kong residents detained in the Mainland and the Mainland authorities.

32. The Administration explained that while the Government could not intervene in the judicial system or administrative operations of the Mainland when providing assistance to Hong Kong residents under the principle of "One Country, Two Systems", it would look after their legal rights under the Mainland law. The assistance that could be provided by the HKSAR Government included, among others, notifying the family of a detainee about the detention upon receipt of a notification from a Mainland law enforcement agency ("LEA"), passing requests of the family of a detainee to the Mainland LEA, and following up the case with the Mainland LEA based on the information provided by the family of a detainee if the case had not been reported under the notification system. The Administration also provided a hotline for families of Hong Kong residents who were detained overseas.

Privacy protection

33. Mr Ronny TONG pointed out the observation made by the Law Reform Commission ("LRC") in its reports relating to privacy that the existing law did not provide sufficient protection against unlawful or arbitrary interference with an individual's right to privacy as guaranteed under Article 17 of ICCPR and its recommendation to put in place a statutory framework for such purpose. He pointed out that although the enactment of the Interception of Communications and Surveillance Ordinance (Cap. 589) ("ICSO") regulated interception of communications and covert surveillance by LEAs, the problems about the lack of protection and redress to individuals whose privacy or correspondence had been interfered remained unaddressed. Mr TONG enquired when the Administration would introduce such legislation.

34. The Administration advised that in its report on Regulating the Interception of Communications, LRC had made a number of recommendations which had far-reaching implications. The media had expressed concern that the proposals in the report might undermine press freedom. Other sectors had also expressed concerns on the recommendations made by LRC. The Administration added that given that HKBORO had already provided the necessary protection to individuals' right to privacy and ICSO had regulated the activities of LEAs, the Administration had no intention to introduce such legislation for the time being.

Relevant motions and questions moved/raised at Council meetings

35. A motion moved by Ms Emily LAU at the Council meeting of 1 March 2006 urging the Government to implement the recommendations of UN Human Rights Committee was negated. A motion moved by Dr Margaret NG at the Council meeting of 7 January 2009 urging the Government to ensure that the election of CE and LegCo were implemented in accordance with Article 25 of ICCPR was also negated.

36. Details of the questions relating to ICCPR raised at Council meetings since the first LegCo are in **Appendix III**.

Recent development

37. The third report which was submitted to UN in September 2011 has been issued to Members vide LC Paper No. CB(2)2663/10-11 on 23 September 2011.

Relevant papers

38. A list of relevant papers, minutes of meetings and reports is in **Appendix IV**.



International Covenant on Civil and Political Rights

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ADVANCED UNEDITED VERSION

Consideration of reports submitted by States parties under article 40 of the Covenant

Concluding Observations of the Human Rights Committee

Hong Kong Special Administrative Region (HKSAR)

1. The Human Rights Committee considered the second periodic report of the Hong Kong Special Administrative Region (HKSAR) (CCPR/C/HKG/2005/2) at its 2350th and 2351st meetings (CCPR/C/SR.2350-2351), on 20 and 21 March 2006. This report is the second submitted by the People's Republic of China after the return of the HKSAR to Chinese sovereignty on 1 July 1997. The Committee adopted the following concluding observations at its 2364th and 2365th meetings (CCPR/C/SR.2364), on 30 March 2006.

A. Introduction

2. The Committee welcomes the submission of HKSAR's second periodic report, which was elaborated in conformity with the reporting guidelines, and the constructive dialogue with the delegation who provided comprehensive replies to the written and oral questions formulated by the Committee. The Committee welcomes also the wide publicity given to the report, the list of issues and its previous concluding observations. The Committee appreciates the process of consultations undertaken by the HKSAR for the preparation of the report, which included consultations with civil society.

B. Positive aspects

3. The Committee welcomes initiatives taken to respond to the needs of minority communities, such as the establishment of the Ethnic Minorities Forum and the

provision of funding for community level projects. It also welcomes the public education efforts carried out to foster a culture of mutual understanding and respect among people of different races.

4. The Committee notes with appreciation the initiatives undertaken to promote non-discrimination on the grounds of sexual orientation.

5. The Committee welcomes the putting in place, following a judgement of the Court of Final Appeal, of administrative procedures for the assessment of claims of torture made by persons facing deportation.

6. The Committee welcomes the withdrawal of the National Security (Legislative Provisions) Bill introduced in 2003 under article 23 of the Basic Law, in view of the serious concerns which the Bill raised regarding the protection of rights under the Covenant.

7. The Committee welcomes the measures taken in order to tackle domestic violence, including preventive measures, crisis intervention, support services for victims, treatment of offenders and the ongoing revision of the legislative framework.

C. Principal subjects of concern and recommendations

8. The Committee regrets that the HKSAR has not implemented a number of recommendations contained in its previous concluding observations (CCPR/C/79/Add.117). It remains concerned regarding the limited mandate and powers of the Ombudsman, including its lack of oversight function of the police, and the Equal Opportunities Commission (article 2).

The HKSAR should consider the establishment of an independent human rights institution compliant with the Paris Principles.

9. The Committee remains concerned that investigations of police misconduct are still carried out by the police themselves through the Complaints Against Police Office (CAPO), and that the Independent Police Complaints Council (IPCC) does not have the power to ensure proper and effective investigation of complaints or for the effective implementation of its recommendations (article 2).

The HKSAR should ensure that the investigation of complaints against the police is carried out by an independent body, the decisions of which are binding on relevant authorities.

10. The Committee remains concerned at the absence of adequate legal protection of individuals against deportation to locations where they might be subjected to grave human rights violations, such as those contrary to articles 6 and 7 of the Covenant.

The HKSAR should establish an appropriate mechanism to assess the risk faced by individuals expressing fears of being victims of grave human rights violations in the locations to which they may be returned.

11. The Committee is concerned at reports that Hong Kong residents detained on the Mainland encounter difficulties in having contact with their families in Hong Kong (article 10).

The HKSAR should take measures to ensure that the notification system between the Regional and Mainland authorities is complied with and that cases of detention are notified promptly to the relatives in the Region.

12. The Committee remains concerned that no clear legislative framework exists regarding the capacity of law enforcement agencies to intercept communications and carry out covert surveillance (article 17).

The HKSAR should enact legislation on the matter which is in full conformity with article 17 of the Covenant and provide a mechanism of protection and redress to individuals claiming interference with their privacy or correspondence.

13. The Committee is concerned about reports of intimidation and harassment against journalists and media personnel, frequently in connection with debates on political issues (article 19).

The HKSAR should take vigorous measures to prevent and prosecute harassment of media personnel, and ensure that the media can operate independently and free from government intervention.

14. The Committee is concerned that the current definition of the offences of treason and sedition in the Crimes Ordinance is too broad (articles 19, 21, 22).

The HKSAR should amend its legislation regarding such offences to bring it into full conformity with the Covenant.

15. The Committee notes with concern that, as a result of the right of abode policies, many families remain separated or their members feel necessitated to stay in HKSAR illegally. In some cases, family members who have been repatriated to the Mainland are not even provided with two-way permits to visit their families in HKSAR (articles 23 and 24).

The HKSAR should ensure that its policies and practices regarding the right of abode fully take into consideration its obligations regarding the right of families and children to protection enshrined in articles 23 and 24 of the Covenant.

16. Notwithstanding the measures adopted by the HKSAR to tackle the problem of domestic violence, concerns persist, including regarding the handling of cases by the police and the funding of social services to assist the victims (articles 3, 23, 24).

The HKSAR should make sure that police officers receive proper training to deal with cases of domestic violence and ensure adequate allocation of resources for protection and provision of assistance to the victims.

17. The Committee is concerned about allegations of threats and acts of vandalism against some legislators during the run up to elections in 2004 and it regrets that the HKSAR did not provide it with information on the difficulties caused to legislators of the Democratic Party (articles 19 and 25)

The HKSAR should investigate allegations of harassment of legislators, ensure that they do not recur and take the necessary steps for full compliance with articles 19 and 25.

18. The Committee recalls that in the concluding observations regarding the part of the fourth periodic report of the United Kingdom of Great Britain and Northern

Ireland relating to Hong Kong, adopted on 1 November 1995, it referred to the reservation made by the United Kingdom according to which article 25 b) did not require the establishment of an elected legislature in Hong Kong. The Committee took the view that once an elected Legislative Council is established, its election must conform to article 25 of the Covenant. As stated at that time, and reiterated in its concluding observations on the initial report of the HKSAR, adopted on 4 November 1999, the Committee still considers that the electoral system in Hong Kong does not meet the requirements of article 25, as well as articles 2, paragraph 1 and 26 of the Covenant. Furthermore, the Committee is concerned that the implementation of the procedure for interpretation of the Basic Law, such as on electoral and public affairs issues, does not include adequate arrangements to ensure that such interpretations are in compliance with the Covenant (articles 2, 25, 26).

All necessary measures should be taken whereby the Legislative Council is elected by universal and equal suffrage. It should be ensured that all interpretations of the Basic Law, including on electoral and public affairs issues, are in compliance with the Covenant.

19. While welcoming the measures taken by the HKSAR to combat racial discrimination, the Committee remains concerned at the absence of relevant specific legislation (article 26).

The Committee urges the HKSAR to adopt the necessary legislation in order to ensure full compliance with article 26 of the Covenant.

20. The Committee sets 2010 as the date for the submission of the HKSAR's third periodic report. It requests that the present concluding observations be published and widely disseminated to the general public, as well as to the judicial, legislative and administrative authorities.

21. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the HKSAR should submit within one year information on the follow-up given to the Committee's recommendations in paragraphs 9, 13, 15, 18. The Committee requests the HKSAR to include in its next periodic report information on its remaining recommendations and on the implementation of the Covenant as a whole.

International Covenant on Civil and Political Rights

Report of the Hong Kong Special Administrative Region

**on its follow-up to the Concluding Observations
of the Human Rights Committee**

**on the second periodic report
of the Hong Kong Special Administrative Region**

March 2007

Introduction

1. Following consideration of the second periodic report of the Hong Kong Special Administrative Region (HKSAR), the Human Rights Committee adopted, on 30 March 2006, the concluding observations which are reproduced at Annex A of this report. Paragraph 21 thereof specifically requested the HKSAR to “submit within one year information on the follow-up given to the Committee’s recommendations in paragraphs 9, 13, 15, 18.”

2. The relevant recommendations were –

THAT the HKSAR should –

- (a) ensure that the investigation of complaints against the police is carried out by an independent body, the decisions of which are binding on relevant authorities (*paragraph 9*);
- (b) take vigorous measures to prevent and prosecute harassment of media personnel, and ensure that the media can operate independently and free from government intervention (*paragraph 13*);
- (c) ensure that its policies and practices regarding the right of abode fully take into consideration its obligations regarding the right of families and children to protection enshrined in articles 23 and 24 of the Covenant (*paragraph 15*);

AND THAT

- (d) all necessary measures should be taken whereby the Legislative Council is elected by universal and equal suffrage. It should be ensured that all interpretations of the Basic Law, including on electoral and public affairs issues, are in compliance with the Covenant (*paragraph 18*).

3. In accordance with the Human Rights Committee's request, this report sets out, under respective headings, the HKSAR's follow-up and response to the recommendations.

Investigation of complaints against the Police

4. At present, the Complaints Against Police Office (CAPO), which is responsible for investigating into complaints against the Police, already operates independently of all operational and support formations of the Police Force. Moreover, its handling of complaints is closely monitored by the Independent Police Complaints Council (IPCC), which comprises non-official members from a wide spectrum of the community. There are effective checks and balances to ensure that complaints are handled thoroughly, fairly and impartially. The IPCC examines all investigation reports submitted by CAPO and may invite the complainants, complainees and witnesses to interviews as necessary. It may also ask CAPO to submit for its reference documents or information relevant to a complaint. CAPO will address any queries that the Council may raise about a case and will re-investigate the case if the Council so requests.

5. We are taking steps to convert the IPCC into a statutory body, and are preparing the necessary legislative proposals. This should further enhance the transparency and credibility of the police complaints system.

Prevention and prosecution against intimidation and harassment of legislators and media personnel

6. Hong Kong is one of the safest cities in the world. The HKSAR Government accords utmost importance to protecting the safety and property of the community, as well as safeguarding the freedom of speech and of the press enjoyed by the public and guaranteed under the Basic Law. Government does not tolerate any criminal acts, irrespective of whether they are committed against persons of particular categories or ordinary members of the public.

7. The number of criminal incidents against Legislative Council Members and public affairs commentators is very small. The majority of such cases are also of a relatively minor nature (such as vandalism of

publicity banners or causing nuisance to the complainants). This notwithstanding, the Police attach much importance to these incidents and, given their sensitivity, adopts a proactive approach in their investigation. They conduct careful and thorough investigation into all such cases of complaints and reports, including taking statements from relevant parties, locating witnesses, gathering evidence at scenes of crime, establishing the culprits' profiles, and analysing their modus operandi. Where sufficient evidence is established, the Police will take appropriate action to arrest and to prosecute the offenders. All investigations and proceedings are undertaken in conformity with the rule of law and justice.

8. As requested by members of the Human Rights Committee at the hearing on 20-21 March 2006, the details of the cases of violence and criminal intimidation involving legislators and media commentators from 2002 to 2006 (up to September) is attached at **Annex B** of this report. Where difficulties are encountered in investigations, these commonly relate to the lack of direct links between the culprits and the victims, and the often limited availability of information from the witnesses and victims.

9. At the risk of repetition, we reiterate the HKSAR Government's full commitment to protecting the safety of the public. In particular, we do not tolerate the use of violence or the threat of violence, regardless of whether the victims are ordinary members of the public or well known public figures. Where a witness or a victim is subject to a real and prolonged threat of physical injury, we would offer him protection. The Police will also investigate into such cases and take follow-up actions, including prosecutions, as may be necessary and appropriate.

Right of abode

10. The criteria for eligibility for the right of abode in Hong Kong are prescribed in Article 24 of the Basic Law (BL24) and the Immigration Ordinance (Cap 115). Those prescriptions and laws are consistent with the relevant international human rights treaties applicable to Hong Kong.

11. In January 2002, the Court of Final Appeal handed down judgment on the right of abode cases. Mainland residents who have no

legal right to stay in Hong Kong must return to the Mainland. The Director of Immigration may exercise his discretion on a case-by-case basis to allow individual Mainland residents to stay if there are exceptional humanitarian or compassionate considerations.

12. We fully understand the wishes for family reunion. However, it has to be equally recognised that such wishes are not an absolute right. Governments worldwide require people who wish to join their families to submit, prior to entering the jurisdictions in question, formal applications for processing in accordance with local laws and policies.

13. Eligible Mainland residents who wish to settle in Hong Kong must apply under the One-way Permit Scheme for exit permits from the Mainland authorities in accordance with the relevant national laws and administrative regulations. To ensure orderly entry at a rate that our socio-economic infrastructure can practicably absorb, the Scheme is subject to a daily quota of 150, or 54,750 a year. Applications are assessed by Mainland authorities in accordance with a points-based system. From July 1997 to February 2007, over 500,000 Mainland residents have settled in Hong Kong under the Scheme. Mainland residents may also apply for Two-way Permits from the relevant Mainland authorities to visit their family members in Hong Kong. In 2006, 1,740,120 Two-way permit holders entered Hong Kong on exit endorsement for visiting relatives.

Universal suffrage for election to the Legislative Council

14. For proper perspective, it should be pointed out that, when the Covenant was applied to Hong Kong in 1976, a reservation was made not to apply article 25(b) in so far as it might require the establishment of an elected Executive or Legislative Council in Hong Kong. This reservation continues to apply.

15. Notwithstanding this reservation, the Basic Law promulgated by the National People's Congress in 1990 clearly states that universal suffrage is the ultimate aim of Hong Kong's constitutional development. Thus, the final goal of Hong Kong's evolution towards democracy originates from the Basic Law, and not the Covenant. Both the Central Authorities and the Government are fully committed to achieving the

ultimate aim of universal suffrage in accordance with the Basic Law and the relevant Interpretation and Decision of the Standing Committee of the National People's Congress (NPCSC) of April 2004.

16. Regarding NPCSC's interpretation of the Basic Law, the HKSAR Government's consistent position is that, the power of interpretation of the Basic Law, which is enshrined in the Constitution and the Basic Law, is vested in NPCSC. Such power is in general and unqualified terms. This principle is fully acknowledged and respected in Hong Kong and by the courts of the HKSAR. The exercise of that power by the NPCSC, therefore, has not, and could not have, in any way affected the independence of the Judiciary, the rule of law, or Hong Kong's high degree of autonomy.

- End of report -

**Questions relating to the International Covenant on
Civil and Political Rights raised by
Members at Council meetings since the first LegCo**

Meeting Date	Question
2 December 1998	Hon LEUNG Yiu-chung raised an oral question on the submission of reports by the Government of the Hong Kong Special Administrative Region ("HKSAR") under the International Covenant on Civil and Political Rights ("ICCPR") and the International Covenant on Economic, Social and Cultural Rights ("ICESCR").
9 June 1999	Hon Ambrose CHEUNG raised an oral question on potential breach of the Basic Law ("BL") and relevant International Covenant as a result of dissolution of the Provisional Municipal Councils.
24 November 1999	Dr Hon YEUNG Sum raised an oral question on the Government's follow-up action on the Concluding Observations of the United Nations Human Rights Committee.
8 December 1999	Hon Emily LAU raised an oral question on the need to modify the electoral systems to achieve full compliance with ICCPR.
29 March 2000	Hon Cyd HO raised a written question on the detention of ex-prisoners pending deportation or removal.
21 February 2001	Hon Cyd HO raised a written question on the deportation and removal of persons and the reservation with respect to relevant provision of ICCPR.
12 December 2001	Hon James TO raised an oral question on the Falun Gong followers in Hong Kong and the protection of the freedom of assembly and of speech under BL and ICCPR.
18 December 2002	Hon LEE Cheuk-yan raised a written question on the operation of the Appeal Board on Public Meetings and Processions and measures to ensure that its board members had full understanding of, among others, ICCPR.

Meeting Date	Question
9 April 2003	Hon Cyd HO raised a written question on legal aid applications in respect of litigations relating to breaches of the Hong Kong Bills of Rights Ordinance and/or inconsistency with ICCPR.
20 October 2004	Hon Fred LI raised a written question on the accessibility of polling stations by the mobility-handicapped persons to protect their right to vote at elections.
1 March 2006	Hon Emily LAU raised an oral question on the Administration's plan to enact a new legislation subsequent to the ruling of the Court that the Law Enforcement (Covert Surveillance Procedures) Order was inconsistent with BL30 and that section 33 of the Telecommunications Ordinance was also inconsistent with relevant provisions of BL and ICCPR.
28 April 2010	Hon Albert HO raised an oral question on the Administration's stance regarding the functional constituency system being transitional in paragraph 461(b) of the first report of HKSAR submitted to UNHRC under ICCPR in 1999.

**Relevant documents on Third Report
of the Hong Kong Special Administrative Region
in the light of the International Covenant on Civil and Political Rights**

Committee	Date of meeting	Paper
Panel on Home Affairs	9.6.2006 (Item III)	Agenda Minutes
	11 January 2008 (Item IV)	Agenda Minutes
Panel on Security	1 December 2009 (Item IV)	Agenda Minutes
Panel on Constitutional Affairs	21 June 2010 (Item III)	Agenda Minutes
	--	Third Report of the Hong Kong Special Administrative Region of the People's Republic of China in the light of the International Covenant on Civil and Political Rights

Council Business Division 2
Legislative Council Secretariat
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