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Panel on Constitutional Affairs

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 18 February 2013**

**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") on the concluding observations issued by the United Nations ("UN") Human Rights Committee ("HRC") after consideration of the second report of 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 Affairs¹ ("the CA Panel") in respect of the third report of HKSAR.

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. The first report of HKSAR in the light of ICCPR was submitted to UN in early 1999 and was heard by HRC in November 1999. Since 1999, HRC has changed to specify the date for the submission of the next report of HKSAR in the

¹ With effect from the 2008-2009 legislative session, issues relating to human rights have been placed under the purview of the Panel on Constitutional Affairs.

concluding observations issued after consideration of a report submitted by HKSAR.

4. The second report of HKSAR in the light of ICCPR was submitted to HRC in January 2005. After consideration of the second report of HKSAR at its hearing held on 20 and 21 March 2006, HRC 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**).

Major issues raised by the HA Panel on the concluding observations issued by HRC after consideration of the second report of HKSAR

5. The HA Panel discussed the concluding observations issued by HRC after consideration of the second report of HKSAR and the Administration's initial response to the concluding observations with deputations 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 concerns raised by members at these meetings are summarized in paragraphs 6 to 14.

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

6. Some members queried the applicability of the reservation in relation to Article 25 of ICCPR² to HKSAR. They pointed out that the court had already expressed the view that the justification given by the Government for maintaining the reservation was not legally sound. Moreover, HRC had repeatedly pointed out that once an elected 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 HRC 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

² "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 of ICCPR and without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and (c) to have access, on general terms of equality, to public service in his country." (Article 25 of ICCPR)

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 HRC'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 HRC's recommendations and in responding to their concerns. The Administration explained to the HA Panel that a recommendation made by HRC 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.

11. In response to the enquiry on whether the Administration would consider setting up a task force joined by representatives of non-governmental organizations ("NGOs") to work out concrete proposals for taking forward the recommendation of establishing the human rights commission, the Administration advised that currently it had no plan or timetable for setting up such an institution but welcomed the participation of NGOs in the work of protecting human rights and 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

12. Some members held 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 of PRC ("NPCSC") advice on the human rights implications arising from the interpretation.

13. 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.

14. 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.

15. Members may wish to refer to the background briefs (LC Paper Nos. CB(2)1291/05-06(02) and CB(2)746/07-08(02)) prepared by the Legislative Council ("LegCo") Secretariat for the past discussions of the HA Panel on the first and the second reports of HKSAR in the light of ICCPR.

Discussions of the CA Panel on the third report of HKSAR

16. In June 2010, the Constitutional and Mainland Affairs Bureau issued the outline of topics to be included in the third report for public consultation. The CA Panel discussed the outline of topics with deputations and the Administration at its meeting on 21 June 2010. The HKSAR's third report (issued to Members vide LC Paper No. CB(2)2663/10-11) had been submitted to UN and the report was made public on 23 September 2011. The CA Panel discussed the third report at its meeting on 21 November 2011. The major issues raised by members at these meetings are summarized in paragraphs 17 to 25 below.

Development of democracy

17. At the CA Panel meeting on 21 June 2010, some members expressed concern that the Administration's constitutional reform package for electing the Chief Executive ("CE") and for forming LegCo in 2012 and the Democratic Party's proposal on "one-person-two-votes" for returning the five new District Council FC seats in 2012 did not conform to Article 25 of ICCPR. They reiterated that HRC 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 of HKSAR as to whether its definition of the principles of universality and equality was different from that held by HRC.

18. 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* 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.

19. At the CA Panel meeting on 21 November 2011, some members reiterated their concerns about the legislative arrangement for implementing universal suffrage for selecting CE in 2017 and for forming LegCo in 2020. The Administration advised that universal suffrage was the ultimate aim of Hong

Kong's constitutional development and NPCSC made a decision on 29 December 2007 on issues relating to universal suffrage. The Administration stressed that Hong Kong would have universal suffrage because of BL and not ICCPR and there was no provision in ICCPR regarding the model for the implementation of universal suffrage to be adopted by parties which ratified ICCPR.

Setting up of a human rights institution

20. Some members reiterated that the Administration should set up an independent human rights institution, as repeatedly recommended by HRC, to investigate and monitor human rights violations in HKSAR. The Administration reiterated its stance that given a comprehensive framework for the protection and promotion of human rights was in place 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 HRC, such recommendations were not legally binding. The Administration advised that ICCPR allowed each State Party to implement appropriate measures, taking account of its own situation, to discharge its obligations under ICCPR.

Support measures for non-Chinese speaking students

21. Some members urged the Administration to provide more support measures for non-Chinese speaking children and enhance the employment opportunities of ethnic minorities. They expressed concern that the number of ethnic minorities students attaining higher level of education was disproportionately low as compared with the majority of local students who were ethnic Chinese due to lack of a policy support to cater for their needs. Besides, many ethnic minorities had experienced difficulties in securing Government jobs due to their failure to meet the Chinese language proficiency requirement.

22. The Administration advised that the Education Bureau had implemented a series of measures to provide education support for non-Chinese speaking students since 2006-2007 academic year and it would take time to evaluate the effectiveness of these support measures. In 2011, 17 out of a total of 64 non-Chinese speaking students applying for admission to post-secondary institutions were admitted, representing a success rate of 27%. The Administration added that individual Government Departments would have regard to their respective operational needs and job requirements whilst stipulating the language requirement for their job vacancies.

Investigation of complaints against the Police

23. Some members reiterated that an independent mechanism for the investigation of complaints against Police should be set up and the recommendations made after an investigation should be made legally binding on relevant authorities. The Administration advised that the Independent Police Complaints Council ("IPCC") was made a statutory and independent body since the commencement of the IPCC Ordinance (Cap. 604) on 1 June 2009. The Administration considered that the operation of IPCC, which comprised 24 non-official members from a wide spectrum of the community, had been effective since its inception. The Administration pledged to provide the necessary resources for IPCC to ensure effective performance of its role.

Torture claims

24. Some members expressed concern on whether the handling of torture claims by the Administration had complied with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 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. The Administration was of the view that 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.

Press freedom

25. In response to the concern about incidents of restrictions on media news coverage by the Police, the Administration explained that the Police would liaise with the event organizers with a view to reaching a consensus on the arrangements for news reporting activities taking into account the time, location, number of participants of a public activity. The major considerations of the Police included striking a balance among public safety, public order and the disruption caused to the nearby area and traffic arrangement, so as to ensure that the activity would be conducted in a safe and orderly manner. As long as Police operations would not be affected, media news coverage would be facilitated as far as practicable.

Recent development

26. The hearing of HRC on the third report of HKSAR will be conducted on 12 and 13 March 2013 in Geneva. The Panel will further discuss the third report with deputations and the Administration at the meeting on 18 February 2013.

Relevant motions/questions and papers

27. At the Council meeting of 30 May 2012, Hon Cyd HO raised an oral question on whether the lack of timetable of the Government for eliminating discrimination against different sexual orientations had contravened ICCPR. The question raised by Ms Cyd HO and the reply of the Secretary for Constitutional and Mainland Affairs are in **Appendix III**. Details of other questions and motions relating to ICCPR raised/moved at Council meetings since the first LegCo and relevant papers available on the LegCo website (<http://www.legco.gov.hk>) are in **Appendix IV**.

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**International Covenant on Civil and
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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 -

Appendix III

Press Releases

LCQ2: The Government is committed to eliminating discrimination

Following is a question by the Hon Cyd Ho and a reply by the Secretary for Constitutional and Mainland Affairs, Mr Raymond Tam, in the Legislative Council today (May 30):

Question:

Last year, the United Nations Human Rights Council passed a resolution, expressing grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity. Since 1995, Hong Kong has enacted several anti-discrimination ordinances and set up the Equal Opportunities Commission. However, these ordinances only deal with discrimination against sex, family status, disabilities and races, and Hong Kong has not enacted any legislation with regard to discrimination against sexual orientation, resulting in people of different sexual orientations not being able to build families under statutory procedures and not being entitled to treatment on par with that enjoyed by legally married couples in respect of various aspects such as public housing application, tax allowance for spouses, healthcare insurance, application for entry of family members for family reunion, criminal liabilities and estates handling, etc., and this situation has persisted for quite a number of years. The authorities' efforts in eliminating discrimination against different sexual orientations are limited to including same-sex cohabitation relationship in the Domestic and Cohabitation Relationships Violence Ordinance, publishing the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation, setting up a working group for case follow-up, and subsidising activities with a small amount of funding. In this connection, will the Government inform this Council:

(a) of the effectiveness in eliminating discrimination achieved by the Government's efforts to eliminate discrimination against different sexual orientations since 1995;

(b) why the authorities did not draw up a concrete timetable for eliminating discrimination against different sexual orientations in the aforesaid policy areas of housing, taxation, healthcare, immigration matters, criminal liabilities and marriage of same sex couples, etc., and whether any assessment has been conducted to ascertain if the authorities have thus contravened Article 26 of the International Covenant on Civil and Political Rights that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law"; and

(c) given the efforts of civil society to promote the acceptance of different sexual orientations in society through popular culture since 1995, whether the authorities conduct any opinion poll on a regular basis to track the changes in people's attitudes as well as explain and highlight to community groups which are against equal opportunities for people of different sexual orientations the obligation and responsibility for Hong Kong to implement the Universal Declaration of Human Rights and observe the Hong Kong Bill of Rights Ordinance?

Reply:

President,

The Government is committed to eliminating discrimination in the community, and promotes the message of equal opportunities through various means, including legislation, issue of code of practice, promotion and publicity activities, and education.

On parts (a) and (c) of the question, the Government launched the Equal Opportunities (Sexual Orientation) Funding Scheme in 1998. An important objective of the Scheme is to provide funding support to worthwhile community projects thereby promoting equal opportunities for people of different sexual orientations or transgendered persons. Over the years, we sponsored a total of 137 projects and programmes, including seminars, workshops, drama and music performances, exhibitions, production of information leaflets and design of websites targetting at teachers, students, social workers, families of people of different sexual orientations and transgendered persons as well as the general public. In addition, we made use of different publicity means such as posters, radio broadcast, various open competitions, roving exhibitions and seminars to bring out the message of equal opportunities for people of different sexual orientations and transgendered persons. That everyone should enjoy equal rights and liberty is a fundamental notion behind the Universal Declaration of Human Rights and the Hong Kong Bill of Rights Ordinance.

We note that in recent years, surveys on sexual orientation and gender identity have been conducted by non-government organisations (NGOs). There appears to be increasing open-mindedness towards the subject of homosexuality. This is no longer a taboo or an "unspeakable" subject. In particular, the younger generation tends to have a higher level of acceptance of people of different sexual orientations and transgendered persons. Moreover, there is a declining trend of discrimination against homosexuals in the workplace. All these indicate that education and publicity efforts of the Government and NGOs bear fruit.

On part (b) of the question, public views are still divided on the question as to whether legislation should be enacted to prohibit discrimination on the ground of sexual orientation. Some members of the community urge the Government to legislate against discrimination in this area as soon as possible, while some others raise objection having regard to various considerations like religious beliefs and family values. As the Government pointed out in its report submitted in September 2011 to the United Nations Human Rights Committee in the light of the International Covenant on Civil and Political Rights, at this stage, self-regulation and education, rather than legislation, are the most appropriate and pragmatic means of addressing discrimination in this area. The Government will however continue to monitor public opinion closely.

In the area of employment, the Government issued the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation in 1998 to facilitate self-regulation on the part of employers and employees in eliminating discriminatory practices in employment and to promote equal employment opportunities among all persons, irrespective of their sexual orientation. The Government has already committed itself to following the practices set out in the Code.

The laws of Hong Kong and policies in a number of different areas are premised on the system of monogamous marriage between a man and a woman. At present, same sex marriage is not recognised in Hong Kong. Therefore, in certain policy areas, the treatment of same sex partners is not the same as married persons. The treatment of unmarried partners of opposite sexes is also not the same as married persons. This cannot be interpreted simply as discrimination against people of different sexual orientation. As to whether same sex marriage should be recognised, this involves fundamental values and complicated matters and it is unlikely that the community could come to a consensus on this in the near future.

Since the Reunification, the United Nations Human Rights Committee has twice examined the reports submitted by the HKSAR Government in the light of the International Covenant on Civil and Political Rights. The Committee has never mentioned that the HKSAR Government has violated Article 26 of the Covenant. In fact, the Committee noted with appreciation the initiatives undertaken by the HKSAR Government to promote non-discrimination on the grounds of sexual orientation.

In formulating policies, the Government seeks to balance the views of different parties. When the society is still severely divided on the issue of homosexuality, tenaciously pushing forth legislative proposals in this area will only lead to arguments, divisions and conflicts in the society. This may not be in the best interest of people of different sexual orientations and transgendered persons. Before the time is ripe to take the legislative route, we believe that efforts should continue to be made to promote the concept of equal opportunities through public education and publicity with a view to fostering in the community a culture of mutual understanding and tolerance.

Ends/Wednesday, May 30, 2012
Issued at HKT 12:54

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**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
Legislative Council	14 October 1998	Official Record of Proceedings (Written question raised by Hon Christine LOH)
	2 December 1998	Official Record of Proceedings (Oral question raised by Hon LEUNG Yiu-chung)
	9 June 1999	Official Record of Proceedings (Oral question raised by Hon Ambrose CHEUNG)
	24 November 1999	Official Record of Proceedings Pages 16 - 25 (Oral question raised by Hon YEUNG Sum)
	8 December 1999	Official Record of Proceedings Pages 50 - 60 (Oral question raised by Hon Emily LAU)
	29 March 2000	Official Record of Proceedings Pages 13 - 16 (Written question raised by Hon Cyd HO)
	21 February 2001	Official Record of Proceedings Pages 57 - 61 (Written question raised by Hon Cyd HO)
	12 December 2001	Official Record of Proceedings Pages 37 - 46 (Oral question raised by Hon James TO)
	18 December 2002	Official Record of Proceedings Pages 54 - 62 (Written question raised by Hon LEE Cheuk-yan)

Committee	Date of meeting	Paper
Legislative Council	9 April 2003	Official Record of Proceedings Pages 7 - 8 (Written question raised by Hon Cyd HO)
	20 October 2004	Official Record of Proceedings Pages 93 - 95 (Written question raised by Hon Fred LI)
	1 March 2006	Official Record of Proceedings Pages 39 - 48 (Oral question raised by Hon Emily LAU)
	1 March 2006	Official Record of Proceedings Pages 170 - 248 (Motion moved by Hon Emily LAU)
Panel on Home Affairs	9 June 2006 (Item III)	Agenda Minutes
Legislative Council	25 April 2007	Official Record of Proceedings Pages 7 - 17 (Oral question raised by Hon LEUNG Kwok-hung)
Panel on Home Affairs	11 January 2008 (Item IV)	Agenda Minutes
Legislative Council	2 July 2008	Official Record of Proceedings Pages 69 - 77 (Oral question raised by Hon Emily LAU)
	7 January 2009	Official Record of Proceedings Pages 216 - 326 (Motion moved by Hon Margaret NG)
Panel on Security	1 December 2009 (Item IV)	Agenda Minutes
Legislative Council	28 April 2010	Official Record of Proceedings Pages 70 - 81 (Oral question raised by Hon Albert HO)

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	21 June 2010 (Item III)	Agenda Minutes
Legislative Council	23 June 2010	Official Record of Proceedings Pages 11 - 22 (Oral question raised by Hon Alan LEONG)
	14 July 2010	Official Record of Proceedings Pages 79 - 90 (Oral question raised by Hon LEE Wing-tat)
	18 May 2011	Official Record of Proceedings Pages 72 - 83 (Oral question raised by Hon Albert HO)
Panel on Constitutional Affairs	21 November 2011 (Item V)	Agenda Minutes
Legislative Council	30 May 2012	Official Record of Proceedings Pages 14 - 25 (Oral question raised by Hon Cyd HO)
Panel on Constitutional Affairs	17 December 2012 (Item V)	Agenda
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