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Panel on Constitutional Affairs

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

**Report of the Hong Kong Special Administrative Region for the
United Nations Human Rights Council Universal Periodic Review**

Purpose

This paper provides background information on the Report of the Hong Kong Special Administrative Region ("HKSAR") submitted as part of the Report of the People's Republic of China ("China Report") to the United Nations Human Rights Council ("UNHRC") for the first Universal Periodic Review ("UPR"), and gives an account of the discussions of the Panel on Constitutional Affairs ("the CA Panel") in respect of the Report of HKSAR.

Background

The UPR mechanism

2. UNHRC was created by the UN General Assembly Resolution 60/251 of 15 March 2006 to replace the UN Commission on Human Rights. Among its primary responsibilities, UNHRC was charged with the responsibility to "undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States".

3. Under the UPR mechanism, Member States are required to submit to UN a report describing, inter alia, framework for the promotion and protection of human rights, implementation of international human rights obligations, identification of achievements, challenges and constraints. The human rights records of all UN Member States are reviewed once every four years. In November 2008, the HKSAR Report was submitted (as part of the China Report) to UNHRC for the first UPR of the human rights situation of individual Member States. The HKSAR Report is in **Appendix I**. It covers the following key issues –

- (a) background information about Hong Kong;
- (b) the legal framework within which human rights are protected;
- (c) measures to promote human rights through public education and publicity;
- (d) developments on major aspects including constitutional development, the political appointment system, enactment of the Independent Police Complaints Council Ordinance as well as promotion of the rights and interests of ethnic minorities, women, children and persons with disability; and
- (e) measures to encourage community involvement and contribution from the civil society as well as exchange of views with the public.

Hearing and adoption of the HKSAR Report

4. The China Report was considered by UNHRC Working Group at its hearing held in Geneva on 9 February 2009. Officials from relevant Bureaux and Departments of the HKSAR Government attended the hearing as part of the Chinese delegation. The Report of the UNHRC Working Group was adopted by UNHRC in June 2009. The extracts (which are relevant to HKSAR) from the UNHRC Working Group's report on China are in **Appendix II**.

Discussions of the CA Panel

5. The CA Panel discussed the HKSAR Report with the Administration and deputations on 19 January 2009. At the Panel meeting on 7 July 2009, the Administration briefed members of the outcome of UPR by UNHRC on the HKSAR Report, which was part of the China Report submitted to UNHRC. The major issues raised by members at these two Panel meetings are summarized in ensuing paragraphs.

Content of the HKSAR Report

6. Some members expressed dissatisfaction with the HKSAR Report and criticized that it only gave a superficial account of the existing policies on human rights issues and the general measures without covering various government acts which had infringed human rights. They considered that there had been a deterioration of human rights protection since the Reunification, and that the HKSAR Report should have given an account of the various incidents of infringement of human rights. Examples of such incidents, as pointed out by these members, included the abolition of the two municipal councils, the

retention of the appointed membership of District Councils, the deferment of constitutional development by ruling out dual universal suffrage in 2012, the implementation of laws that were inconsistent with the Basic Law and the Hong Kong Bill of Rights, the imposition of an injunction to prohibit the "Citizen Radio Station" from broadcasting, the provision of a defective mechanism for handling police complaints, and cases of police abuses.

7. Some other members, however, were of the view that opinion polls conducted in the past 10 years had indicated that the public did not perceive deterioration in the human rights situation in Hong Kong. These members considered that progress had been made in a number of areas, including the protection of privacy, equal opportunities, the freedom of the press and speech, etc. in Hong Kong.

8. The Administration explained that there was constraint on the length of the HKSAR Report. UNHRC had required that a national report for UPR should not exceed 20 pages. As the HKSAR Report formed only a section of the China Report, which also included a section on Macau, the HKSAR Report was limited to a few pages only. The Administration pointed out that the HKSAR Report, apart from setting out the existing framework and measures for the promotion and protection of human rights, had also set out the latest development on human rights matters. Besides, if Member States had any queries about the HKSAR Report before the related hearing, representatives of the HKSAR Government would also provide supplementary information to UNHRC through the Central People's Government.

9. The Administration also advised that the HKSAR Report had covered important areas such as relevant international human rights treaties, local legislation on protection of human rights, as well as several areas of public concern (such as constitutional development and implementation of the political appointment system) and some issues previously raised by UN treaty bodies. The Administration explained that as some of the human right issues were covered by other UN conventions of which China was a State Party, the Administration would prepare a more detailed report on those issues for submission to UN in accordance with the relevant established procedures. When the Panel was briefed on the outcome of UPR at its meeting on 7 July 2009, the Administration informed members that at the hearing held by UNHRC Working Group on 9 February 2009, the HKSAR team had responded to questions raised by other delegations, and had reported progress of the latest development regarding the electoral methods for selecting the Chief Executive and for forming the Legislative Council ("LegCo") in 2012.

10. Some members suggested that the HKSAR Report should have at least covered six to seven key areas of concern on human rights issues in Hong Kong. They further suggested that the future HKSAR Reports should put more weight

on the part of "Achievements and challenges" which should set out the major challenges and constraints faced by HKSAR in the protection of human rights and the measures undertaken by the Administration to meet up the challenges.

Public consultation on the proposed outline of the HKSAR Report

11. Some members criticized the Administration for allowing insufficient time for the public and LegCo Members to give views on the outline of the HKSAR Report as the consultation exercise had lasted for only about two weeks (i.e. 2 to 13 September 2008). These members considered that the consultation exercise was a sham and queried the validity of the outcome of the consultation exercise.

12. The Administration advised that the proposed outline of the report had been sent to a broad spectrum of the community, including LegCo, the relevant non-government organizations, members of the Human Rights Forum and the Ethnic Minorities Forum, etc. and distributed through the district offices and on the Internet. Also, the Administration had issued a press release on the proposed outline of the report and informed the media about the work schedule. The Administration undertook that it would learn from the experience and improve the relevant arrangements in future.

Recent development

13. According to the Administration, the second UPR on China is scheduled to take place in October 2013. The next report of HKSAR under UPR will be due in 2013. On 1 February 2013, the Administration issued a consultation document and an outline of the next report of HKSAR (LC Paper No. CB(2)589/12-13(01)) to seek the views of the public. The consultation period will end on 8 March 2013. The Administration will consult the Panel on the outline at the meeting on 18 February 2013.

Relevant papers

14. A list of the relevant papers available on the LegCo website (<http://www.legco.gov.hk>) is in **Appendix III**.

**Report of the Hong Kong Special
Administrative Region for
the United Nations Human Rights Council
Universal Periodic Review**

Methodology and consultation

In preparing this part of the report, the Hong Kong Special Administrative Region (HKSAR) Government conducted an exercise in September 2008 to consult the public. The HKSAR Government published a consultation document which contained the background and objectives of the review, a proposed outline of the report and an appeal to the public for comments. This document was sent to a broad spectrum of the community, including the Legislative Council, relevant non-governmental organisations (NGOs), interested members of the public and the media, and was distributed through the District Offices and on the internet. During the consultation period, the HKSAR Government also collected views from representatives of NGOs at the Human Rights Forum. The HKSAR Government carefully considered all the views and comments received.

Background information

2. The HKSAR was established on 1 July 1997 as a Special Administrative Region of the People's Republic of China. In accordance with the Basic Law of the HKSAR of the People's Republic of China, the HKSAR enjoys a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication.

3. The Chief Executive is the head of the HKSAR. He leads the Government of the HKSAR and is responsible for implementing the Basic Law, signing bills and budgets passed by the Legislative Council,

promulgating laws, making decisions on government policies and issuing executive orders.

4. The Legislative Council is the legislature of the HKSAR. It has 60 Members, with 30 Members returned by geographical constituencies through direct elections and 30 Members by functional constituencies.

5. The legal system of the HKSAR is founded on the rule of law and an independent judiciary. Under the principle of “One Country, Two Systems”, the HKSAR’s legal system differs from that of the Mainland, and is based on the common law. The Court of Final Appeal is the highest appellate court in the HKSAR. All judges are qualified legal practitioners and have security of tenure, which is protected by the Basic Law.

Framework and measures for promotion and protection of human rights

6. In the HKSAR, human rights and freedoms are guaranteed constitutionally by the Basic Law, including equality before the law, freedom of speech and of the press, freedom of association, of assembly and of demonstration, freedom from unlawful search of or intrusion into homes or other premises, freedom and privacy of communication, freedom of movement, freedom of religious belief and right to social welfare in accordance with law. The Basic Law also provides for the rights of HKSAR permanent residents to vote and to stand for election in accordance with law.

7. A total of 15 international human rights treaties apply to the HKSAR. As regards local legislation, the Hong Kong Bill of Rights Ordinance was enacted specifically to give effect in local law to the provisions of the International Covenant on Civil and Political Rights as applied to the HKSAR. The Ordinance binds the HKSAR Government and all public authorities. Further human rights protection is accorded by specific legislation, including the Sex Discrimination Ordinance, Disability Discrimination Ordinance, Mental Health Ordinance, Family Status Discrimination Ordinance, Race Discrimination Ordinance and Personal Data (Privacy) Ordinance.

8. The protection of human rights is buttressed by the rule of law and an independent judiciary. In addition, there is an extensive institutional framework of organisations which help promote and safeguard different rights. These include a comprehensive legal aid system, the Equal Opportunities Commission, the Office of the Privacy Commissioner for Personal Data, the Ombudsman, the Independent Police Complaints Council, as well as various administrative channels for complaints and redress. The effectiveness of these mechanism and organisations is closely monitored by the Legislative Council, the media and the public.

9. The HKSAR also attaches great importance to promotion of human rights through public education and publicity. Human rights topics form part of the school curriculum at different levels and are included in the syllabuses of a wide range of subjects. Courses on various aspects on human rights are offered by tertiary institutions. Outside of schools, government bureaux and departments organise activities to promote aspects of human rights relevant to their functional responsibilities and provide financial assistance to community

organisations to promote public involvement in the endeavours. The HKSAR Government also organises human rights training and education for civil servants.

10. The promotion of human rights is also an important part of relevant organisations' work. For instance, the Equal Opportunities Commission operates regular programmes to provide public education against discrimination and to promote equal opportunities. The Committee on the Promotion of Civic Education produces and distributes educational materials and sponsors programmes to foster community awareness of the rights of the individual. The Women's Commission promotes the well-being and interests of women in all aspects of life.

Achievements and challenges

11. Since its establishment, the HKSAR has been taking steps to promote and protect human rights. Steady progress has been made. The key developments are highlighted below.

12. On constitutional development, the Basic Law provides that the ultimate aim is the election of the Chief Executive (CE) and all Members of the Legislative Council (LegCo) by universal suffrage in accordance with the principle of gradual and orderly progress. In December 2007, following extensive public consultation on the models, roadmap and timetable for implementing universal suffrage, the HKSAR Government submitted a report to the Standing Committee of the National People's Congress (NPCSC). Consequently, the NPCSC decided that the election of the CE may be implemented by universal suffrage in 2017, and that after the CE is elected by universal suffrage, the election of the LegCo of

the HKSAR may be implemented by the method of electing all the members by universal suffrage.

13. Between 2008 and 2012, the third-term HKSAR Government will endeavour to roll forward Hong Kong's electoral methods to a mid-way point. It will undertake public consultation to determine the two electoral methods for 2012. Between 2012 and 2017, the fourth-term HKSAR Government and the LegCo will address together the method for implementing universal suffrage for the election of the CE.

14. The political appointment system of the HKSAR Government was implemented in 2002. Under the system, the principal officials (Secretaries of the HKSAR Government) are political appointees who serve coterminous with the CE in these positions for a term of five years. This represents a major step forward in the system of governance as it has widened the pool of candidates for appointment of principal officials and also requires the principal officials to shoulder political responsibility. Two additional tiers of political appointees (i.e. Under Secretaries and Political Assistants) were created in April 2008. Under the political appointment system, the civil service continues to remain permanent, meritocratic, professional and politically neutral.

15. The more recent initiatives to enhance the protection of human rights include the enactment of the Race Discrimination Ordinance in July 2008. During the legislative process, the HKSAR Government received a number of requests for amendments to the proposed legislation. The HKSAR Government has made certain amendments to address some of the requests and is of the view that the Ordinance, as amended, represents a major step forward in our commitment to combat racial discrimination.

To reinforce existing services, the HKSAR Government is planning the establishment of four regional support service centres for ethnic minorities to provide interpretation service to facilitate their access to public services and to organise language training and other programmes to promote their integration into the community. The HKSAR Government is also drawing up administrative guidelines for relevant bureaux and departments to facilitate their formulation and implementation of policies to promote racial equality.

16. The Independent Police Complaints Council Ordinance was also enacted in July 2008. The Ordinance aims to convert the existing Independent Police Complaints Council into a statutory body and thus enhances the independence of the Council as well as the transparency of the police complaints system.

17. With regard to the interests of women, the Sex Discrimination Ordinance was enacted in 1995. In 2001, the Women's Commission was established to promote the well-being and interests of women in Hong Kong, and to monitor the implementation of Convention on the Elimination of All Forms of Discrimination Against Women.

18. To protect the rights of persons with disabilities, the Disability Discrimination Ordinance has been in force since 1995. With the ratification of the Convention on the Rights of Persons with Disabilities by the Central People's Government, this Convention has been applied to the HKSAR since 31 August 2008.

19. The interests of the child are primary in the HKSAR Government's formulation and dispensation of legislation and policies

relating to or affecting children. It is also paramount in actions undertaken by courts of law and administrative authorities in charge of child welfare. Children in the HKSAR are now entitled to 12 years of free education in public schools. The HKSAR Government also organises activities and provides funding for community projects to promote public awareness of and respect for children's rights. The HKSAR Government pioneered the Children's Council project and established the Children's Rights Forum to provide a platform for exchange and to solicit the views of children representatives on matters relating to their interest.

20. To encourage community involvement and seek contribution from the civil society, the HKSAR Government maintains continued dialogue with relevant NGO and has in recent years established regular channels including the Human Rights Forum, the Ethnic Minorities Forum, the Sexual Minorities Forum as well as the Children's Rights Forum to facilitate communication, exchange of views and mutual understanding.

21. Through the various channels, the HKSAR Government receives views and suggestions from the public on human rights issues. Some have proposed that the establishment of a Human Rights Commission be considered. Since the HKSAR's existing framework is operating well, the HKSAR Government does not see the need to establish a separate human rights institution to supersede or duplicate existing institutions. We do recognise that, with the development of society, there will be a need for further work and continued demand from different sectors for more to be done. The HKSAR Government will continue to gauge the views of all relevant sectors and balance different interests in the community. The HKSAR Government will also have to ensure that

measures to be taken will suit local circumstances and fit the evolving situation in Hong Kong.

附錄 II
Appendix II

**United Nations Human Rights Council Working Group on the
Universal Periodic Review - Report on China**

Sections relevant to the Hong Kong Special Administrative Region

Section A. Presentation by the State under review

21. The Chinese Government resumed the exercise of sovereignty over Hong Kong and Macao in 1997 and 1999 respectively and established the Hong Kong Special Administrative Region (HKSAR) and the Macao Special Administrative Region (MSAR) under the principle of “One Country, Two Systems”.

22. In the HKSAR, human rights and freedoms were guaranteed by the Basic Law, as well as by, inter alia, the Bill of Rights Ordinance, the Race Discrimination Ordinance, and the Independent Police Complaints Council Ordinance. The rights of special groups were also protected through such mechanisms as the Women’s Commission, the Children’s Council project, the Children’s Rights Forum, and the Ethnic Minorities Forum.

24. In China’s National Report, the HKSAR and MSAR Governments provided separate accounts of the situations in the territories of Hong Kong and Macao. The two regions were represented by their senior officials.

Section B. Interactive dialogue and responses by the State under review

76. Benin noted that China is the country of contrasts, *par excellence*. A country of thousands of years’ civilization, it has transformed itself from a semi-colony of the 19th century and liberated itself from foreign domination in 1949. The vast territory with a population of more than one billion inhabitants, China did not retake its sovereignty over Hong Kong and Macao until 1997 and 1999 respectively, and recently China has known visible inequalities, which constituted the major challenges for the promotion and protection of human rights. Benin stood in solidarity with China regarding solutions to be undertaken to address different problems linked to universal respect for human rights in its vast territory. Benin praised the progress made in respect of human rights and recognized the continuing challenges faced by China. Benin asked about the priorities of China for the promotion and protection of human rights for special administered regions of Hong Kong and Macao, and why China had considered it necessary to have a national human rights action plan for

2009-2010. Benin recommended that the two special administrative regions continue to function according to their realities and maintain respect for different rights of their citizens in terms of respect for their laws.

(Response by China)

100. The HKSAR government is fully committed to promoting and protecting human rights in Hong Kong. Indeed, human rights and freedoms are guaranteed constitutionally by the Basic Law and through various local legislations, including equality before the law, freedom of speech and of the press, freedom of association, of assembly and of demonstration, freedom of religious belief and right to social welfare, and so on. The protection of human rights in Hong Kong is further reinforced by the rule of law and an independent judiciary system. In addition, there is an extensive institutional framework of organisations which help promote and safeguard human rights which is closely monitored by the Legislative Council of Hong Kong, civil society, the media and the general public.

Conclusion and/or Recommendations

114. The recommendations formulated during the interactive dialogue have been examined by China and the recommendations listed below enjoy the support of China:

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39. Hong Kong Special Administrative Region and Macao Special Administrative Region continue to function according to their realities and preserve different rights of their citizens in accordance with their laws (Benin)

**Relevant documents on the Report of
the Hong Kong Special Administrative Region for
the United Nations Human Rights Council Universal Periodic Review**

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	19.1.2009 (Item IV)	Agenda Minutes
	7.7.2009 (Item IV)	Agenda Minutes

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