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Panel on Constitutional Affairs

**Updated background brief prepared by Legislative Council Secretariat
for the meeting on 17 February 2014**

**Reports of the Hong Kong Special Administrative Region under
the International Covenant on Economic, Social and Cultural Rights**

Purpose

1. This paper provides background information on the reports of the Hong Kong Special Administrative Region ("HKSAR") to the United Nations ("UN") under the International Covenant on Economic, Social and Cultural Rights ("ICESCR"). It also gives an account of the discussion of the Panel on Constitutional Affairs ("CA Panel") on the third report of HKSAR, which has been incorporated as part of the second report of the People's Republic of China ("PRC") under ICESCR.

Background

2. The Government of the United Kingdom extended ICESCR to Hong Kong in 1976. The PRC Government notified UN in June 1997 that the provisions of ICESCR as applied to Hong Kong would remain in force from 1 July 1997.

3. ICESCR followed a five-year reporting cycle. The first report of HKSAR under ICESCR was submitted by the Central People's Government ("CPG") to UN in mid-1999 and was heard by the UN Committee on Economic, Social and Cultural Rights ("CESCR") in April 2001. CESCR issued its concluding observations on the first report of HKSAR on 11 May 2001.

4. CPG ratified ICESCR on 27 March 2001 and the treaty took effect in China on 27 June 2001. HKSAR's second report under ICESCR was submitted to UN, as part of PRC's initial report, in June 2003. CESCR considered PRC's initial report (including the second report of HKSAR) on the implementation of ICESCR at its meetings in April 2005, and issued its concluding observations on the second report of HKSAR on 13 May 2005.

5. HKSAR's third report under ICESCR was submitted to UN, as part of PRC's second report, in June 2010. The report was made available to the public on 21 October 2010.

Discussions on the reports of HKSAR under ICESCR by relevant Panels

First report of HKSAR

6. The Panel on Home Affairs¹ ("HA Panel") discussed the first report of HKSAR and the relevant concluding observations issued by CESCR at its meetings on 26 February 2001 and 16 July 2001 respectively. For details of the issues discussed at these meetings, members may refer to the background brief on ICESCR prepared by the Legislative Council ("LegCo") Secretariat [LC Paper No. CB(2)1998/04-05(01)].

Second report of HKSAR

7. The HA Panel discussed the outline of topics to be covered in the second report of HKSAR at its meetings on 10 January and 7 February 2003. The HA Panel discussed the second report of HKSAR on 11 June 2004, as well as the relevant concluding observations issued by CESCR at its meeting on 21 June 2005. For details of the issues discussed at these meetings, members may refer to the background briefs on ICESCR prepared by the LegCo Secretariat [LC Paper No. CB(2)1998/04-05(01) and CB(2)727/09-10(06)].

Third report of HKSAR

8. The CA Panel discussed the outline of topics to be covered in the third report of HKSAR at its meetings on 18 January and 10 February 2010. At its meeting on 20 December 2010, the CA Panel discussed the third report with the Administration. The issues raised by members at these meetings are summarized in paragraphs 9 to 24 below.

Major issues discussed regarding the third report of HKSAR

Application of ICESCR to Hong Kong

9. Some members expressed concern that according to Article 39 of the Basic Law, the provisions of ICESCR and international labour conventions as applied to Hong Kong should remain in force and be implemented through the laws of HKSAR, but the Administration had not enacted domestic legislation to

¹ With effect from the 2008-2009 legislative session, issues relating to human rights have been transferred from the HA Panel to be under the purview of the CA Panel.

entrench ICESCR. Some other members expressed the view that as Article 2(1) of ICESCR did not require the implementation of the rights guaranteed in the Covenant in one go, the Administration should enact law only when needed, taking into account public aspirations and the local circumstances.

10. According to the Administration, although HKSAR had not specifically enacted a single piece of legislation to implement ICESCR, as in the case of International Convention on Civil and Political Rights, the rights enshrined in ICESCR were protected by the Basic Law and other domestic laws, such as the Education Ordinance (Cap. 279) and the Employment Ordinance (Cap. 57). In addition, Article 2(1) of ICESCR clearly indicated that ICESCR did not impose an obligation for immediate enforcement but allowed States Parties to take steps progressively to achieve the rights guaranteed therein. There was also no obligation under ICESCR to implement it by legislation alone.

11. On the application and non-application of specific provisions of ICESCR, the Administration advised that following China's ratification of ICESCR in March 2001, the PRC Government had notified the UN Secretary-General of the following statement on the application of ICESCR to HKSAR -

- (a) Article 6 of ICESCR did not preclude the formulation of regulations by HKSAR for employment restrictions, based on place of birth or residence qualifications, for the purpose of safeguarding the employment opportunities of local workers in HKSAR; and
- (b) "National federations or confederations" in Article 8.1(b) of ICESCR shall be interpreted, in this case, as "federation or confederations in HKSAR" and this Article did not imply the right of trade union federations or confederations to form or join political organizations or bodies established outside HKSAR.

Except for the above reservations, all provisions of ICESCR applied to Hong Kong and had been implemented through various legislative and administrative measures.

Right to trade union membership and labour issues

12. Some members expressed concern that the Administration had not introduced a bill on collective bargaining despite the trade unions' repeated requests. They considered that the Administration should reflect the situation in the third report of HKSAR. These members also requested that the Administration should include in the third report legislative measures to ensure

reinstatement or re-engagement of an employee who had been dismissed unreasonably and unlawfully.

13. The Administration advised that it had already explained to CESCR that imposing collective bargaining by statute would have long-term implications on Hong Kong's labour relations system and could affect adversely Hong Kong's economic competitiveness. Given the predominance of small and medium enterprises which accounted for 98% of the companies in Hong Kong, the Government considered such law inappropriate for Hong Kong. The Administration, however, would introduce a bill to amend the Employment Ordinance to empower the Labour Tribunal to make a compulsory order for reinstatement or re-engagement of an employee who had been dismissed unreasonably and unlawfully. (In December 2013, the Administration informed the Manpower Panel that the Administration was working to resolve certain legal issues with a view to finalizing the amendment bill for introduction into LegCo at the earliest possible time.)

Right to an adequate standard of living

14. Some members expressed concern about the increase in the number of people living in poverty and the widening income disparity in the territory. They urged the Administration to establish a poverty line and formulate policies to alleviate the poverty problem. They also expressed concern about the effectiveness of the existing housing policies in addressing the housing needs of street sleepers.

15. The Administration advised that a pragmatic and multi-pronged approach was adopted to tackle poverty and to assist the disadvantaged groups. Apart from providing financial assistance, the Administration provided training and retraining opportunities with a view to enhancing the skills and competitiveness of the disadvantaged groups. The Government had also facilitated transfer of social benefits to reduce income disparity through taxation and provision of social welfare, including a wide range of free and heavily subsidized services in education, healthcare, and housing. In his 2010-2011 Policy Address, the Chief Executive ("CE") had outlined the overall strategy in combating poverty. The Government would invest in education, enhance social mobility, provide work incentive subsidy, and a social security net through the Comprehensive Social Security Scheme ("CSSA") for the needy. Any eligible persons, including street sleepers, who passed the income and asset test could apply for public rental housing.

16. Some members also expressed concern about the issue of poverty among the elderly, including the long waiting time for the elderly to be allocated a

residential care place and inadequate provision of medical services for the elderly. They asked why the Administration did not expedite its work in buying more places from private care homes and in building more residential care homes for the elderly.

17. The Administration advised that with the aim to support the aging in place policy, the Government had provided a range of subsidized home-based and centre-based community care services to the elderly. More than 25 000 elderly people had benefited from these community services. The resources allocated for the provision of subsidized residential care places for the elderly had been increased by more than 60% since 1997. The Government was providing some 26 000 subsidized residential care places for the elderly, representing 44% of the total number of residential care places for the elderly in Hong Kong. Since 1998, the Government had enhanced its scheme by buying residential places from private care homes to improve the provision of residential care places for the elderly.

Establishment of a human rights institution

18. Some members considered that the Administration should establish an independent human rights institution with a broad mandate as recommended by CESCR to oversee issues on human rights protection. They expressed concern that the independence of the Office of The Ombudsman, the Equal Opportunities Commission and the Office of the Privacy Commissioner for Personal Data would be undermined, as these statutory bodies were headed by former senior civil servants. The Administration maintained the view that as an extensive mechanism for human rights protection in Hong Kong was already in place, there was no obvious need for another human rights institution. The Administration advised that in appointing heads of the independent statutory bodies, selection boards were set up to recommend to CE the most suitable candidate for appointment in accordance with established procedures and relevant legislative provisions. The appointed candidates would independently discharge their duties as stipulated in the corresponding legislation.

Protection for persons with disabilities ("PWDs")

19. Some members expressed concern about the problem of accessibility faced by PWDs and urged policy bureaux and departments to enhance co-ordination in the provision of a barrier-free environment for PWDs. The Administration advised that following the legislative amendments to the Building (Planning) Regulations (Cap. 123F) in August 2008, newly constructed buildings had to meet a series of new requirements in the provision of barrier-free access to and the use of the building and its facilities by PWDs.

Since 2000, the Government had improved the access facilities of 147 Government premises. The Labour and Welfare Bureau would continue to advise individual policy bureaux/departments to review the policies/measures under their purview to provide a barrier-free living environment for PWDs.

Discrimination on the ground of sexual orientation

20. Some members considered that the Administration should justify its refusal to introduce legislation to outlaw discrimination on the ground of sexual orientation and explain why homosexuals were deprived of the right to form a family. They enquired whether the Administration had any plan to protect the rights of sexual minorities. The Administration advised that marriage, in accordance with the law of Hong Kong, involved a heterosexual relationship. As the views in the community on the need to legislate against discrimination on the ground of sexual orientation were diverse, it was not an appropriate time to consider introducing legislation in this area. The Administration would continue to promote non-discrimination and equal opportunities for all through public education and publicity.

Difficulties encountered by new arrivals from the Mainland

21. Some members considered that the Administration had not attached importance to the problem of discrimination against and the difficulties encountered by new arrivals from the Mainland. They considered that the Race Discrimination Ordinance (Cap. 602) ("RDO") should be amended to cover discrimination against new arrivals from the Mainland given the prevalence of discrimination against them.

22. The Administration advised that RDO also protected new arrivals from the Mainland against discrimination on the ground of race. Besides, the Administration provided a range of services to new arrivals to facilitate their integration into the local community. In his 2010-2011 Policy Address, CE stated that the Permanent Secretary for Home Affairs would lead a dedicated team to step up and co-ordinate efforts in the provision of services to both new arrivals from the Mainland and ethnic minorities. The team would closely monitor the service needs of new arrivals during the adaptation period to ensure that the support services could meet their needs.

Right to education

23. Some members considered that the Administration should address the issues relating to education support to children of ethnic minorities and the right to education of children of refugees and asylum seekers in the third report of

HKSAR. They expressed concern about the admission rate of non-Chinese speaking ("NCS") students to local universities and enquired whether the Government's policy that 18% secondary students in Hong Kong would be provided with subsidized tertiary education was also applicable to ethnic minorities.

24. The Administration advised that NCS students had the same right as Chinese-speaking students to receive education. To facilitate the early integration of NCS students into the local education system and the wider community, the Education Bureau had put in place a series of support measures to help NCS students learn the Chinese language. Since 2007, the General Certificate of Secondary Education ("GCSE") (Chinese) examination had been administered in Hong Kong for students who wished to obtain an alternative Chinese Language qualification. The fee of GCSE (Chinese) examination had also been reduced to a level on a par with the fee of local Chinese examination for eligible students. GCSE (Chinese) qualification was considered for acceptance by the University Grants Committee-funded institutions under the Joint University Programmes Admissions System. As regards refugees and asylum seekers stranded in Hong Kong, the Administration would examine the merits of individual cases for school placement.

Recent development

25. The UN hearing on the third report of HKSAR is tentatively scheduled to be held in early May 2014. In this connection, the CA Panel will discuss the third report of HKSAR with deputations and the Administration at the next meeting on 17 February 2014.

Relevant questions and papers

26. Details of questions relating to ICESCR raised at Council meetings since the First LegCo and relevant papers available on the LegCo website (<http://www.legco.gov.hk>) are in the **Appendix**.

Appendix

Relevant documents on International Covenant on Economic, Social and Cultural 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)
	31 March 1999	Official Record of Proceedings (Written question raised by Hon LEUNG Yiu-chung)
Panel on Home Affairs ("HA Panel")	26 February 2001 (Item II)	Agenda Minutes
Legislative Council	4 April 2001	Official Record of Proceedings Pages 14 – 17 (Written question raised by Hon Cyd HO)
	25 April 2001	Official Record of Proceedings Pages 29 – 33 (Oral question raised by Hon Margaret NG)
	13 June 2001	Official Record of Proceedings Pages 7 – 15 (Oral question raised by Hon SZETO Wah)
		Official Record of Proceedings Pages 15 – 23 (Oral question raised by Hon LAU Chin-shek)
		Official Record of Proceedings Pages 23 – 30 (Oral question raised by Hon James TO)

Committee	Date of meeting	Paper
		<u>Official Record of Proceedings Pages 30 – 45 (Oral question raised by Hon Martin LEE)</u>
		<u>Official Record of Proceedings Pages 45 – 52 (Oral question raised by Hon Michael MAK)</u>
	20 June 2001	<u>Official Record of Proceedings Pages 11 – 19 (Oral question raised by Hon Audrey EU)</u>
		<u>Official Record of Proceedings Pages 35 – 43 (Oral question raised by Hon James TO)</u>
HA Panel	16 July 2001 (Item II)	<u>Agenda</u> <u>Minutes</u>
Legislative Council	10 April 2002	<u>Official Record of Proceedings Pages 35 – 40 (Written question raised by Hon Cyd HO)</u>
	19 June 2002	<u>Official Record of Proceedings Pages 50 – 57 (Oral question raised by Hon Emily LAU)</u>
	20 November 2002	<u>Official Record of Proceedings Page 75 (Written question raised by Hon Emily LAU)</u>
HA Panel	10 January 2003 (Item V)	<u>Agenda</u> <u>Minutes</u>
	7 February 2003 (Item I)	<u>Agenda</u> <u>Minutes</u>
Legislative Council	2 June 2004	<u>Official Record of Proceedings Pages 48 – 57 (Oral question raised by Hon Audrey EU)</u>

Committee	Date of meeting	Paper
HA Panel	11 June 2004 (Item IV)	Agenda Minutes
Legislative Council	6 April 2005	Official Record of Proceedings Pages 15 – 35 (Oral question raised by Hon LEE Cheuk-yan)
HA Panel	21 June 2005 (Item IV)	Agenda Minutes
Panel on Constitutional Affairs ("CA Panel")	18 January 2010 (Item IV)	Agenda Minutes
	10 February 2010 (Item V)	Agenda Minutes
	20 December 2010 (Item IV)	Agenda Minutes

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