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**Panel on Constitutional Affairs**

**Updated background brief prepared by the Legislative Council Secretariat  
for the meeting on 16 December 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 Universal Periodic Review ("UPR") undertaken by the United Nations Human Rights Council ("UNHRC"), and gives an account of the discussions of the Panel on Constitutional Affairs ("the Panel") on the Reports of the Hong Kong Special Administrative Region ("HKSAR") submitted respectively for the first and the second UPR.

**Background**

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.

**HKSAR Report for the first UPR**

4. The Administration consulted the public on the outline of the HKSAR Report for the first UPR from 2 to 13 September 2008. In November 2008, the

HKSAR Report (as part of the Report of the People's Republic of China ("China Report")) was submitted to UNHRC for the first UPR of the human rights situation of individual Member States. The HKSAR Report covered the following key issues –

- (a) framework and measures for promotion and protection of human rights; and
- (b) achievements and challenges (e.g. constitutional development, implementation of 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 disabilities).

5. The China Report was considered by UNHRC Working Group at its hearing 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 I**.

#### Major issues raised at meetings of the Panel

6. The Panel discussed the HKSAR Report for the first UPR 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 on the HKSAR Report.

7. 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.

8. 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.

9. 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. 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.

10. 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.

11. Some members 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.

### **HKSAR Report for the second UPR**

12. The Administration consulted the public on the outline of the HKSAR Report for the second UPR from 1 February to 8 March 2013. The HKSAR Report was submitted to UNHRC as part of the China Report in August 2013. The HKSAR Report for the second UPR covered the following key issues –

- (a) framework and measures for promotion and protection of human rights; and

- (b) achievements and challenges (e.g. constitutional development, privacy protection, protection of rights of sexual minorities, women, children, ethnic minorities and persons with disabilities).

### Major issues raised at the meeting of the Panel

13. At the meeting on 18 February 2013, the Panel discussed and received public views on the proposed outline of the HKSAR Report for the second UPR.

14. Noting that less than two weeks were allowed for the consultation on the outline of the HKSAR Report for the first UPR, some members considered that the consultation arrangement for the outline of the HKSAR Report for the second UPR had been improved with the consultation period extended to six weeks this time. Some members suggested that the HKSAR Report should put more weight on the major challenges faced by HKSAR, and the Administration's measures to meet up the challenges. In particular, several major issues of concern, such as the protection of people with different sexual orientations from discrimination, conflicts between Hong Kong and Mainland residents, upholding judicial independence, the issuance of domestic free television licence, should be covered in a focused manner. The Administration advised that although there was a constraint on the length of the HKSAR Report which was limited to three pages, the Administration would take into account the views of members and deputations in drafting the HKSAR Report to ensure that various key areas of concern were covered.

### **Recent development**

15. The hearing of the second UPR on China took place on 22 October 2013. The Panel will discuss the second review of HKSAR by the UNHRC Working Group with deputations and the Administration at the next meeting on 16 December 2013.

### **Relevant papers**

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

**附錄 I**  
**Appendix I**

**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**

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Constitutional Affairs	19.1.2009 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	7.7.2009 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	18.2.2013 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>

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