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Panel on Constitutional Affairs

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 30 April 2018**

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

Purpose

This paper gives an account of the discussions of the Panel on Constitutional Affairs ("the Panel") on the First and Second Reports of the Hong Kong Special Administrative Region ("HKSAR") for the United Nations Human Rights Council ("UNHRC") Universal Periodic Review ("UPR").

Background

2. UNHRC was created by the United Nations ("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.

First Report of the Hong Kong Special Administrative Region

4. The Administration consulted the public on the outline of the First Report of HKSAR for UPR from 2 to 13 September 2008. In November 2008, the First Report of HKSAR (as part of the Report of the People's Republic of China ("China Report")) was submitted to UNHRC for UPR of the human rights situation of individual Member States.

5. The China Report was considered by UNHRC Working Group at its hearing on 9 February 2009. 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 at Annex B to LC Paper No. CB(2)2064/08-09(03).

Major issues raised at meetings of the Panel

6. The Panel discussed the First Report of HKSAR for 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. At the 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 ("CE") 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.

Second Report of the Hong Kong Special Administrative Region

12. The Administration consulted the public on the outline of the Second Report of HKSAR for 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 (**Appendix I**) 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).

13. The hearing of the second UPR on China took place on 22 and 25 October 2013. On 25 October 2013, the UNHRC Working Group on UPR adopted its review report on China. None of the recommendations in the report was specifically on HKSAR.

Major issues raised at the meeting of the Panel

14. At the meeting on 18 February 2013, the Panel discussed and received public views on the proposed outline of the Second Report of HKSAR for UPR. The Panel discussed the outcome of UPR on the HKSAR Report on 16 December 2013.

15. Noting that less than two weeks were allowed for the consultation on the outline of the First Report of HKSAR, some members considered that the consultation arrangement for the outline of the Second Report of HKSAR had been improved with the consultation period extended to six weeks this time. Some members suggested that 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.

16. Some members considered that the HKSAR Government failed to fulfil the international obligation to ensure that the implementation of universal suffrage in Hong Kong conformed with the principles of universal and equal suffrage stipulated in Article 25 of the International Covenant on Civil and Political Rights ("ICCPR").¹ In their view, the restrictions imposed by the Decision of the Standing Committee of the National People's Congress ("NPCSC") in 2007 on the composition of the nomination committee and the nomination of candidates for the selection of CE in 2017 were in contravention of Article 25 of ICCPR.

17. The Administration advised that the design and establishment of any political structure had to have regard to the historical background and local characteristics of the relevant place. Therefore, in taking forward the constitutional development of Hong Kong towards the ultimate aim of universal suffrage, it was necessary to comprehend the legal framework based on the Basic Law and the relevant Interpretation and Decisions of NPCSC.

18. Some members enquired about the measures to be taken by the Administration, including the legal means, to address the issue of discrimination faced by sexual minorities. The Administration advised that a focused study on discrimination experienced by sexual minorities in Hong Kong had been commissioned, and that the findings of the study could form a basis for the Advisory Group on Eliminating Discrimination against Sexual Minorities to further consider how to take forward its work. A consultant had been appointed

¹ According to Article 25 of ICCPR, "[e]very citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 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;

"(c) To have access, on general terms of equality, to public service in his country."

for the study which was expected to be completed in 2014. The relevant study planned by the Equal Opportunities Commission ("EOC") in this area had yet to commence.²

Recent development

19. On 3 April 2018, the Administration issued an outline of the Third Report of HKSAR for UPR for public consultation which will close on 7 May 2018. The Administration will consult the Panel on the outline at the meeting on 30 April 2018.

Relevant papers

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

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² EOC published the Report of the Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status in January 2016.

**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 February and March 2013 to consult the public. A consultation document published by the HKSAR Government was sent to a broad spectrum of the community, including the Legislative Council (LegCo), relevant non-governmental organisations (NGOs), interested members of the public and the media, and 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 LegCo and the Human Rights Forum. The HKSAR Government has carefully considered all the comments received.

Framework and measures for promotion and protection of human rights

2. As stated in the previous report, in the HKSAR, human rights are fully protected by law. The legal safeguards are provided in the Basic Law of the HKSAR of the People's Republic of China, the Hong Kong Bill of Rights Ordinance and other relevant ordinances. They are buttressed by the rule of law and an independent judiciary. In addition, there are a number of organisations which help promote and safeguard different rights, including the Equal Opportunities Commission, the Privacy Commissioner for Personal Data (PCPD), the Ombudsman, the Independent Police Complaints Council (IPCC), and the legal aid services. The HKSAR Government's performance in promoting and safeguarding human rights is open to scrutiny through periodic reports to the United Nations (UN) human rights treaty monitoring bodies and is constantly watched over by the LegCo, the media, various human rights NGOs and the community at large. Since the last review, the HKSAR Government continued to attach great importance to promoting human rights through public education and publicity.

Achievements and challenges

3. The Basic Law provides that the ultimate aim is the election of the Chief Executive (CE) and all Members of the LegCo by universal suffrage in light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. According to the decision adopted by the Standing Committee of the National People's Congress (NPCSC) in December 2007, the election of the CE may be implemented by universal suffrage in 2017, and 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.

4. In the summer of 2010, the reform package put forth by the HKSAR Government for the elections of the CE and LegCo in 2012 was passed by a two-thirds majority of all the members of the LegCo, given consent by the CE and endorsed by the NPCSC. For the first time since its establishment in 1997, the HKSAR has completed the constitutional procedures required to amend the electoral methods for the CE and the LegCo. The two elections were held successfully in March and September 2012 respectively.

5. The HKSAR Government is fully committed to attaining universal suffrage for both the CE and the LegCo elections in accordance with the Basic Law and the decision of the NPCSC of December 2007. With the experience gained in the 2010 exercise, the HKSAR Government will, at an appropriate juncture, launch public consultations on the election methods for the LegCo election in 2016 and the CE election in 2017, and initiate the required constitutional procedures accordingly.

6. In May this year, the LegCo passed a bill to abolish all appointed seats of the District Councils (DCs) from the next term of the DCs, which will commence in 2016.

7. Another major development since the previous review is the much enhanced screening mechanism for torture claims introduced by the HKSAR Government in December 2009. The mechanism has been underpinned by statute since December 2012. Under the mechanism, claimants are given every reasonable opportunity to establish their claims. Aggrieved claimants may appeal to a statutory Torture Claims Appeal Board comprising former judges or magistrates. A claimant may not be removed from the HKSAR to another country where there are substantial grounds for believing that the claimant would be in danger of being subjected to torture there.

8. On the protection of privacy, in 2012 the Personal Data (Privacy) Ordinance was amended to strengthen the protection of personal data privacy. The amendments include enhancing regulation over the use of personal data in direct marketing and provision of personal data to others for use in direct marketing.

9. The HKSAR Government continues to respect the freedom and rights of peaceful assembly and procession, as enshrined in the Basic Law and the Hong Kong Bill of Rights Ordinance. The Police have been facilitating all lawful and peaceful public meetings and processions while ensuring public order and public safety.

10. To enhance the mechanism for handling of complaints against the Police, the IPCC Ordinance came into force in June 2009, to provide the IPCC an independent statutory status vested with statutory functions and powers to observe, monitor and review the handling and investigation of reportable complaints by the Police. The Ordinance imposes a statutory duty on the Police to comply with the IPCC's requirements, further enhancing the IPCC's independence in dealing with complaints against the Police.

11. Freedom of expression and press freedom are fundamental rights enjoyed by people in the HKSAR. As always, the media reports

freely, commenting extensively and liberally on local and external matters. Applications for licences for broadcasting are considered by an independent regulator fairly and in strict accordance with the law and established procedures.

12. To tackle the issue of poverty, the HKSAR Government set up a high level Commission on Poverty in December 2012 to review the effectiveness of existing poverty alleviation policies, formulate new policies to prevent and alleviate poverty and social exclusion, as well as promote upward social mobility.

13. On labour rights, the HKSAR Government completed a policy study on standard working hours (SWH) and released the study report in November 2012. In April 2013, the CE appointed representatives of various sectors to the SWH Committee, with a view to building consensus and identifying the way forward.

14. In the HKSAR, workers' rights to form and join trade unions are guaranteed by the Basic Law and the Hong Kong Bill of Rights. Members and officers of a registered trade union enjoy a number of rights and immunities under the Trade Unions Ordinance. The Employment Ordinance provides employees with protection against anti-union discrimination. The HKSAR Government is studying the details regarding a proposal about reinstatement or re-engagement of an employee who has been unreasonably and unlawfully dismissed.

15. There has been substantial improvement in the earnings of grassroots employees after the Statutory Minimum Wage (SMW) was introduced in 2011. The SMW rate has increased by HK\$2 to HK\$30 an hour with effect from 1 May this year. The SMW rate is reviewed at least once in every two years.

16. The Race Discrimination Ordinance came into full operation in July 2009. To promote racial equality and ensure ethnic minorities'

(EMs') access to key public services, the HKSAR Government will extend the application of administrative guidelines to 21 bureaux, departments and public authorities later this year.

17. Since the last review, the HKSAR Government has strengthened support services to facilitate EMs' integration into the community. The enhancement measures include increasing the number of support service centres to provide EMs with different kinds of trainings and activities. In 2013, the CE has also announced further measures to enhance the support for non-Chinese speaking (NCS) students¹ in learning the Chinese Language, including, amongst others, parents' participation in summer bridging programmes to facilitate students' early adaptation to the local education system, enhancing the professional competencies of teachers, etc. The HKSAR Government will make further endeavours taking into consideration stakeholders' views.

18. Since the last review, the HKSAR Government has fulfilled and will continue to fulfill, its obligations under the Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of the Child.

19. As in many parts of the world, sexual orientation is a controversial subject in the HKSAR. This notwithstanding, the HKSAR Government's position is clear – no person should be discriminated against on any grounds, including sexual orientation. The HKSAR Government has been undertaking extensive publicity and promotion with a view to fostering in the community a culture of mutual understanding, tolerance and respect. More resources will be injected into this area.

¹ For the planning of education support measures, students whose spoken language at home is not Chinese are broadly categorised as NCS students.

20. During the last review, the HKSAR was recommended to “continue to function according to their realities and preserve different rights of their citizens in accordance with their laws”. The HKSAR Government has made continuous efforts in protection of human rights in the light of actual situation. The HKSAR Government will not underestimate the difficulty and challenges in building up consensus on various controversial issues, such as constitutional development and the protection of rights of sexual minorities, in the coming years. The HKSAR Government will protect and promote the rights of different groups through legal and administrative means, and in close collaboration with different sectors.

**Relevant documents on
Reports 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
	18.2.2013 (Item V)	Agenda Minutes
	16.12.2013 (Item IV)	Agenda Minutes

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