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Panel on Constitutional Affairs

**Updated background brief prepared by Legislative Council Secretariat
for the meeting on 21 January 2019**

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

Purpose

This paper gives an account of the discussion of the Panel on Constitutional Affairs ("CA Panel") on the third report of the Hong Kong Special Administrative Region ("HKSAR") under the International Covenant on Economic, Social and Cultural Rights ("ICESCR").

Background

2. The Government of the United Kingdom extended ICESCR to Hong Kong in 1976. The Government of the People's Republic of China ("PRC") notified the United Nations ("UN") in June 1997 that the provisions of ICESCR as applied to Hong Kong would remain in force from 1 July 1997.

The first and second reports of the Hong Kong Special Administrative Region

3. The first report of HKSAR under ICESCR was submitted 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. PRC 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 China's initial report, in May 2003. CESCR considered China'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. Members may wish to refer to the relevant background briefs [LC Paper Nos. CB(2)1998/04-05(01) and CB(2)727/09-10(06)] prepared by the

Legislative Council ("LegCo") Secretariat for the past discussions of the Panel on Home Affairs¹ on the first and second reports of HKSAR under ICESCR.

The third report of the Hong Kong Special Administrative Region

6. The CA Panel discussed the outline of topics to be covered in the third report of HKSAR under ICESCR at its meetings on 18 January 2010 and received public views on 10 February 2010. HKSAR's third report was submitted to UN, as part of China's second report, in June 2010, and the report was published on 21 October 2010. At its meeting on 20 December 2010, the CA Panel discussed the third report with the Administration. In anticipation of the relevant UN hearing, which was held on 8 May 2014, the CA Panel received public views on the third report on 17 February 2014. CESCR issued its concluding observations on 24 May 2014 [Annex B to LC Paper No. CB(2)1758/13-14(03)]. The CA Panel discussed the outcome of the relevant UN hearing with the Administration on 16 June 2014.

7. Members may wish to note that in June 2013, CESCR published a list of issues to be taken up in connection with the consideration of the third report of HKSAR. The Administration's written response to the list of issues was issued in April 2014 vide LC Paper No. CB(2)1348/13-14.

Major issues discussed regarding the third report of the Hong Kong Special Administrative Region

Employment protection and labour rights

8. Some members expressed concern that the Administration had not introduced a bill on collective bargaining despite the trade unions' repeated requests. These members also sought details of the Administration's measures to protect employees' rights to participate in trade unions and to offer protection against unfair dismissal.

9. According to the Administration, the Labour Department encouraged and promoted voluntary and direct dialogue between employers and employees and their respective organizations at the enterprise and industry levels. The Administration was of the view that collective bargaining between employers and employees' unions compelled by law might strain the relationship between employers and employees and thus be counter-productive. The Administration advised that the rights of employees' participation in trade unions were

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

protected under the Hong Kong Bill of Rights Ordinance (Cap. 383) and the Employment Ordinance (Cap. 57) ("EO"). An employee who was unreasonably dismissed might claim remedies against his employer. To strengthen the protection for employees, the Government would introduce a bill to amend EO 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.²

10. Some members criticized the Administration for its failure to introduce any measures (e.g. standard working hours, statutory overtime pay and rest breaks) to address the long working hours of employees in Hong Kong. The Administration advised that the Standard Working Hours Committee appointed in April 2013 had been following up working hours issues through, among others, conducting a wide public engagement exercise to listen to the views of the community, and a dedicated survey to collect detailed working hours statistics. Besides, working hours and meal breaks, like other terms of employment, were determined by employment contracts but subject to the relevant statutory requirements. Neither the Minimum Wage Ordinance nor EO prescribed that meal breaks should be paid or not.

11. Some members also took the view that the present non-alignment of statutory holidays with general holidays was in contravention of Article 7 (right to enjoy just and favourable conditions of work) of ICESCR. At the Panel's request, the Administration provided a written response in July 2014 vide LC Paper No. CB(2)2046/13-14(01).

Protection of the rights of foreign domestic helpers

12. Some members expressed concern about the protection of the rights of foreign domestic helpers ("FDHs"). They pointed out that many FDHs dared not complain against their employers for fear of losing their jobs or being expelled from their employers' home. Some other members raised concern over CESCR's recommendations about repealing the "two-week rule" and the "live-in requirement" for FDHs. In their view, the removal of these requirements might worsen the problem of frequent job-hopping of FDHs, and pose hardship to some employers who had to take care of the elderly and children.

13. The Administration advised that the labour laws in Hong Kong, including EO and the Employees' Compensation Ordinance, were all along applicable to

² The Employment (Amendment) Bill 2016 ("the Amendment Bill 2016") was introduced into LegCo in March 2016 and had lapsed at the end of the Fifth LegCo. The Employment (Amendment) Bill 2017, which was largely the same as the Amendment Bill 2016, was introduced into LegCo in May 2017 and was passed in May 2018.

both local and imported workers, including FDHs, affording FDHs equal statutory rights and benefits as local workers. Various promotional and educational efforts had also been made to promote FDHs' understanding of their labour rights and channels available to them for seeking redress. The Administration further advised that the "two-week rule" was necessary for maintaining an effective immigration control. The "live-in requirement" for FDHs should also be retained, given that the importation of FDHs was allowed against the background of a proven shortage of local live-in domestic helpers.

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. Some members expressed concern about the increase in the number of tenants living in subdivided units and sought the Administration's response to the suggestion of reinstating rent control. The Administration advised that as announced in the 2014 Policy Address, the Government had decided to adopt a new housing target to supply a total of 470 000 flats over a 10-year period, with 60% of them being public housing. Of these, the supply target of Home Ownership Scheme ("HOS") flats would be increased to an annual average of about 8 000 units for the next 10 years. With the new supply target (i.e. an annual average of about 20 000 public rental housing flats and 8 000 HOS flats), the supply of public housing in the next 10 years would be increased by 36% when compared to the Government's pledge in 2013. The Administration was concerned about the implications of the territory-wide application of rent control in terms of the potential increase in rents and the likelihood of a reduction in supply. The Government would need to study this issue carefully before coming to a decision.

Establishment of a human rights institution

16. 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 the Chief Executive 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.

Discrimination on the ground of sexual orientation

17. Some members criticized the Administration for its failure to take measures to eliminate discrimination against sexual minorities despite the repeated calls from CESCR since 1996 to enact legislation to tackle discrimination on the ground of sexual orientation and gender identity. Some other members, however, expressed concern that such legislation, if enacted, might give rise to reverse discrimination and the community would become more divided.

18. The Administration considered that outlawing discrimination on the ground of sexual orientation and gender identity was a controversial issue which must be tackled prudently. The Administration advised that the Advisory Group on Eliminating Discrimination against Sexual Minorities ("Advisory Group") was set up in June 2013 for exchange of views amongst different stakeholders. The Advisory Group had decided to carry out a study on discrimination experienced by sexual minorities, through recruiting 200 sexual minorities from different socio-economic background. The study would provide a solid basis to facilitate the Advisory Group to formulate recommendations on strategies and measures, and was expected to be completed by end of 2014.³ The Administration also pledged to continue to strengthen the promotion of equal opportunities for sexual minorities through public education and publicity.

³ Members may refer to the background brief prepared by the LegCo Secretariat [LC Paper No. CB(2)851/17-18(06)] for information on developments on outlawing discrimination on the ground of sexual orientation and gender identity.

19. Members enquired whether "civil unions for same-sex partners" administered by consulates in Hong Kong for their respective sending states' nationals were recognized in Hong Kong. At the Panel's request, the Administration provided a written response in October 2014 vide LC Paper No. CB(2)76/14-15(01).

Discrimination against people from the Mainland

20. Some members considered that the Administration failed to attach importance to the problem of discrimination against and the difficulties encountered by new arrivals from the Mainland. They also expressed concern about the incidents of harassment of Mainland tourists by local people. These members considered that the Race Discrimination Ordinance (Cap. 602) ("RDO") should be amended to cover discrimination against people from the Mainland.

21. The Administration advised that RDO protected people from discrimination on the ground of their race, colour, descent or national or ethnic origin. As such, the above types of harassment fell outside the scope of RDO. Besides, the Administration provided a range of services to new arrivals to facilitate their integration into the local community. Nevertheless, the Discrimination Law Review ("DLR") conducted by the Equal Opportunities Commission ("EOC") would consult the public on, among others, whether RDO should protect people from discrimination on the ground of their nationality, citizenship, Hong Kong residency or related status.⁴

Public mental health services

22. Some members raised concern about the lack of a comprehensive mental health policy in Hong Kong and the shortage of doctors in public hospitals. Concern was also raised about the long waiting time for psychiatric services, e.g. about 15 weeks in the Kowloon West Cluster. These members requested the Administration to conduct a comprehensive review on the services currently available to psychiatric patients to identify room for improvement.

23. The Administration advised that it attached great importance to the mental well-being of the public and had been providing comprehensive mental

⁴ As part of DLR, EOC conducted a public consultation exercise from July to October 2014. In March 2016, EOC made its submissions to the Government on the DLR. In its submissions, EOC recommends that the Government should conduct public consultations and then introduce protection from discrimination on grounds of nationality, citizenship and residency status under RDO (i.e., recommendations 24 and 25 in DLR).

health services for persons in need including prevention, early identification, timely intervention, treatment and rehabilitation. The Administration sought to provide multi-disciplinary and cross-sectoral services to persons with mental health problems through collaboration by a number of policy bureaux and departments. To further strengthen efforts on this front, the Review Committee on Mental Health was set up in May 2013 and would study the existing policy on mental health with a view to mapping out the future direction for development of mental health services. To address the manpower shortage, apart from an intake of 420 medical students each year by the medical faculties of the two universities, the Hospital Authority had started the recruitment of non-local doctors to practise with limited registration since 2012.

Right to education

24. 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.

25. 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

26. The Government is preparing for the submission of the fourth report of HKSAR under ICESCR and has prepared an outline of topics to be included in the fourth report for public consultation between 24 December 2018 and

4 February 2019. The CA Panel will receive public views on the outline of topics for the fourth report at its next meeting on 21 January 2019.

Relevant papers

27. A list of relevant papers available on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
15 January 2019

Appendix

Relevant documents on reports of the Hong Kong Special Administrative Region under the International Covenant on Economic, Social and Cultural Rights

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	18 January 2010 (Item IV)	Agenda Minutes
	10 February 2010 (Item V)	Agenda Minutes
	20 December 2010 (Item IV)	Agenda Minutes
	17 February 2014 (Item IV)	Agenda Minutes
	16 June 2014 (Item III)	Agenda Minutes

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