

立法會 *Legislative Council*

LC Paper No. CB(2)1179/18-19(04)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 15 April 2019**

**Third report 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 discussion of the Panel on Constitutional Affairs ("the Panel") on the outline of topics for inclusion in the third report of the Hong Kong Special Administrative Region ("HKSAR") for the United Nations Human Rights Council ("UNHRC") Universal Periodic Review ("UPR").

Background

Universal Periodic Review mechanism

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.

The first report of the Hong Kong Special Administrative Region

4. The first report of HKSAR (as part of the Report of the People's Republic of China ("China Report")) was submitted to UNHRC for its UPR of the human

rights situation of individual Member States in November 2008. The China Report was considered by UNHRC's Working Group on UPR ("the Working Group") at its hearing on 9 February 2009. The report of the Working Group was adopted by UNHRC in June 2009. The extracts (which are relevant to HKSAR) from the Working Group's report on China are at Annex B to LC Paper No. CB(2)2064/08-09(03).

The second report of the Hong Kong Special Administrative Region

5. The second report of HKSAR for UPR was submitted to UNHRC as part of the China Report in August 2013. The relevant hearing of the second UPR on China took place on 22 and 25 October 2013. On 25 October 2013, the Working Group adopted its review report on China. None of the recommendations in the report was specifically on HKSAR.

6. Members may wish to refer to the background brief [LC Paper No. CB(2)1265/17-18(04)] prepared by the Legislative Council ("LegCo") Secretariat for the past discussions of the Panel on the first and second reports of HKSAR for UPR.

The third report of the Hong Kong Special Administrative Region

7. In line with established practice, the Administration issued an outline of topics for inclusion in the third report of HKSAR for UPR for public consultation between 3 April and 7 May 2018. The report was submitted to UNHRC as part of the China Report in August 2018, and was made available to the public on 18 October 2018.

Discussion of the Panel on Constitutional Affairs on the third report of the Hong Kong Special Administrative Region

8. At the meeting on 30 April 2018, the Panel discussed the outline of topics for inclusion in the third report of HKSAR for UPR with deputations and the Administration. The major views and concerns expressed by members at the meeting are summarized below.

Rights of sexual minorities

9. Some members expressed dissatisfaction that while UN had repeatedly asked the HKSAR Government to legislate to protect sexual minorities against discrimination, the Administration had all along maintained its stance that it was a contentious issue and it would take steps to enhance public awareness of the rights of sexual minorities. The Administration was requested to provide a timetable for enacting the relevant legislation as soon as possible, taking into

account the findings of the Report on Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status issued by the Equal Opportunities Commission ("EOC") in January 2016.

10. Some other members, however, considered that the issue of outlawing discrimination on the ground of sexual orientation was controversial, and administrative measures and public education were equally effective in combating discriminatory acts in this regard. They further suggested that public education in this area should highlight the importance of safeguarding the freedom of religious belief and the principle on matters relating to religious organizations as enshrined under Article 141 of the Basic Law.

11. The Administration advised that it was actively taking forward the strategies and measures recommended by the former Advisory Group on Eliminating Discrimination against Sexual Minorities, including:

- (i) enhancing public education and publicity efforts through different channels as well as encouraging more organizations to adopt the Code of Practice against Discrimination in Employment on Ground of Sexual Orientation;
- (ii) setting up a 24-hour hotline for sexual minorities since January 2018 to provide immediate support, counseling and referral services for sexual minorities and their families; and
- (iii) devising training resources for personnel in specific fields, including social workers, health care professionals, human resources professionals and teachers, with a view to enhancing their sensitivity towards sexual minorities.

12. Some members expressed concern that since the Advisory Group on Eliminating Discrimination against Sexual Minorities had concluded its work in December 2015, there was no available channel to enhance communication between the Administration and the sexual minorities. Some members also suggested that the issue of "gender recognition" should be covered in the third report of HKSAR, and sought details of the work progress of the Inter-departmental Working Group on Gender Recognition. There was also a view that better support should be provided to intersex children, e.g. assessment of sexual orientation should be provided prior to receiving relevant operation.

13. According to the Administration, EOC had stepped up efforts to maintain communication with the sexual minorities and the Administration would also consider how to enhance communication with them. The Administration advised that the Inter-departmental Working Group on Gender Recognition had

conducted a public consultation exercise which ended on 31 December 2017. A total of about 17 000 submissions had been received. The Administration needed more time to study the submissions.

Rights of persons in custody

14. Some members stressed that it was necessary to protect the welfare and rights of persons in custody. They suggested that an independent body should be set up to review and monitor the operation of correctional institutions to protect the basic human rights of persons in custody. In response to these members' suggestion, the Administration provided a written response on the rights of persons in custody on 11 September 2018 (**Appendix I**).

15. Some members expressed concerns about the limited quantity and variety of the library collections of correctional institutions for loan by local and non-local persons in custody, and that the maximum number of books to be borrowed by persons in custody was set too low. In their view, there were insufficient books in other languages (e.g. African) to meet the needs of persons of various nationalities in custody. These members suggested that correctional institutions might acquire more books from the public libraries or relevant embassies for persons in custody who were non-ethnic Chinese. At the Panel's request, the Administration has provided a written response to these concerns (**Appendix II**).

Coverage of and public consultation on the third report

16. Some members were of the view that various acts of the Government had infringed human rights in recent years, including the alleged political interference from the Central People's Government ("CPG") in violation of the principle of "one country, two systems", regression in freedom of press and expression, and using the rule of law as a pretext for selective prosecution. They enquired whether these acts would be covered in the third report of HKSAR.

17. The Administration advised that it did not concur with the above remarks. According to the Administration, there were various achievements under the principle of "one country, two systems". The Administration stressed that Hong Kong was an open society and the freedom of expression was well protected. Hong Kong people were also free to exercise their rights lawfully.

18. Some members requested the Administration to make available the draft third report for public comment before it was submitted to CPG for inclusion in the China Report to UNHRC, and to report the progress of its work in following up the recommendations of UNHRC. The Administration advised that it had been the established practice of the HKSAR Government to provide outlines of topics for inclusion in the HKSAR reports to be submitted under various

international human rights treaties (including the UPR mechanism) for public consultation prior to the preparation of the relevant reports. The outline of topics for inclusion in the third report for UPR had been widely issued to stakeholders and the Administration would publish the report after UNHRC had received it. The Administration considered that the above request was not in line with the established practice. At the Panel's request, the Administration has provided a written response to the request (**Appendix III**).

19. Some members expressed concern that since the third report would consist of three pages only, it might not include the views and suggestions of deputations on various issues (e.g. the rights of ethnic minorities ("EMs") and persons with disabilities). The Administration explained that public views were welcome during the public consultation exercise. The views received would be taken into account in drafting the report. With regard to the rights of EMs, the Administration advised that it attached great importance to efforts to support EMs and had earmarked \$500 million in the 2018-2019 Budget to strengthen the relevant support services. A cross-bureau steering committee chaired by the Chief Secretary for Administration was set up in 2018 to co-ordinate, review and monitor the relevant support services and enhance internal collaboration.

Recent development

20. On 6 November 2018, the Working Group of UNHRC held a review meeting to examine the third report submitted by China (covering HKSAR) and adopted the review report on China on 9 November 2018. UNHRC formally adopted the outcome report of its Working Group on China on 15 March 2019.

21. The Panel will discuss the third review of HKSAR by the Working Group at the next meeting on 15 April 2019.

Relevant papers

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

香港特別行政區政府
保安局



香港添馬添美道 2 號

Appendix I

LC Paper No. CB(2)2002/17-18(01)

The Government of the
Hong Kong Special Administrative Region
Security Bureau

2 Tim Mei Avenue, Tamar, Hong Kong

本函檔號 Our Ref.:

來函檔號 Your Ref.:

電話號碼 Tel. No.: (852) 2810 2894

傳真號碼 Fax. No.: (852) 2868 9159

11 September 2018

Ms Joanne MAK
Clerk to the Panel on Constitutional Affairs
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms MAK,

Rights of persons in custody

With regard to the views on the rights of persons in custody (“PICs”) raised by Members and deputations at the meeting of the Panel on Constitutional Affairs on 30 April, in consultation with the Correctional Services Department (“CSD”), our brief reply is as follows:

CSD has all along attached great importance to the management of correctional institutions and the treatment of PICs. It is committed to providing basic necessities, a suitable living environment and adequate custodial care for PICs. Correctional work must be done in accordance with the requirements of the law and the principles of fairness and reasonableness, striking a balance between such factors as security risk, institutional operation and use of resources, so that PICs may receive appropriate and equal treatments.

Facilities in correctional institutions and supplies for PICs

CSD is committed to providing a humane and healthy environment for PICs. For instance, it ensures the size, lighting, heating, ventilation and fittings of all cells are adequate for health in accordance with the law. It also plans and implements various measures to enhance the facilities in correctional institutions according to the actual needs. Institutions will provide hot bathing water to PICs in response to seasonal changes. Water supplies in bathrooms are inspected by the Architectural Services Department or its qualified maintenance contractors on a regular basis to ensure their normal operation.

CSD provides PICs with basic necessities to meet their daily needs and to maintain a decent and healthy living environment during custody and rehabilitation. For example, PICs are provided with a complete outfit of clothing and blankets adequate for warmth, replacement and needs in accordance with statutory requirements. If individual PICs need additional clothing or blankets on medical grounds, the institutional management will provide the required items on the advice of the Medical Officer of the institution. CSD reviews the design and materials of clothing and bedding for PICs from time to time. In 2016, CSD replaced PICs' winter clothing of wool pullovers and nylon padded jackets with double-sided fleece pullovers and 3-layer laminated fleece jackets to enhance the warmth, windproof and moisture permeability functions. Moreover, CSD currently allows PICs to use padded quilt blankets with high warmth value on a trial basis in some correctional institutions for better storage and management.

As regards the collection in institution libraries, at present, the libraries of correctional institutions have a total collection of over 100 000 books in at least 30 different languages other than Chinese and English, such as Vietnamese, Indonesian, Thai, Korean, Spanish, Hindi, Urdu, Swahili, Wolof, etc. In addition, based on the needs of PICs of different nationalities, correctional institutions may borrow from one another books in the relevant languages as necessary. In addition to their library collections, correctional institutions also borrow appropriate books from the Hong Kong Public Libraries and place them in their libraries. These books will be replaced in batches on a regular basis to increase the quantity and variety of books available for borrowing by PICs. Currently, correctional institutions have borrowed over 7 000 books from public libraries. Furthermore, CSD accepts books (including those in Chinese, English and other languages) donated by external organisations or individuals in accordance with the established mechanism.

Complaint mechanism for PICs

CSD has all along attached great importance to the treatment received by PICs and the handling of complaints. Any PIC who is dissatisfied with the treatment received in prison may choose to lodge complaints or express dissatisfaction through various internal and external channels, including The Ombudsman, visiting Justices of the Peace (JPs), Legislative Council Members, etc.


Notices and posters of The Ombudsman are displayed at prominent locations in institutions. PICs may lodge complaints at any time by filling in the Office of The Ombudsman's complaint form available at various locations in the institutions or directly writing sealed letters to the Office of The Ombudsman. If necessary, PICs may request staff of the Rehabilitation Unit in respective institutions to provide them with the address of individual Government officials, JPs or Legislative Council Members. In accordance with section 47C of the Prison Rules, except for special arrangement, a correctional officer shall not open and search a letter from a PIC to a specified person (including the Chief Executive, Members of the Executive Council, Legislative Council and District Council, visiting JPs, The Ombudsman and the Commissioner of the Independent Commission Against Corruption) or from a specified person to a PIC, and shall not read such letter under any circumstances.

Regular JP visits to custodial institutions are conducted in accordance with provisions under the Prison Rules to ensure that the rights of PICs are protected. All JP visits are unannounced. JPs can visit at any reasonable time during their tour of duty and the institutions concerned will not be notified in advance of the exact date and time of the visit.

Moreover, CSD reviews and enhances the complaints handling mechanism from time to time to improve transparency and credibility in handling complaints, with a view to meeting the objectives of openness, fairness and impartiality. In August 2016, CSD established the CSD Complaints Appeal Board ("CSDCAB"), comprising community stakeholders who were familiar with correctional operations, with 10 JPs appointed as non-official members. To expand the structure of CSDCAB and further enhance the appeal mechanism, the membership of CSDCAB has been increased from 10 to 18 since April 2018. Apart from JPs, religious persons who are acquainted with correctional operations are also invited.

CSD is responsible for providing custodial and rehabilitation services to all PICs sentenced to imprisonment for their offences. Correctional officers have always discharged their duties in a professional and dedicated manner, carrying out enforcement actions in accordance with the laws of Hong Kong and the relevant regulations while taking care of the needs of PICs. We hope that Members will continue to support the work of CSD and its officers.

Yours sincerely,



(Ms Connie Lau)
for Secretary for Security

c.c. Secretary for Constitutional and Mainland Affairs (Attn: Ms Cathy LI)
Commissioner of Correctional Services (Attn: Ms Virginia LEUNG)

香港特別行政區政府
保安局



The Government of the
Hong Kong Special Administrative Region
Security Bureau

香港添馬添美道 2 號

2 Tim Mei Avenue, Tamar, Hong Kong

本函檔號 Our Ref.:

來函檔號 Your Ref.:

電話號碼 Tel. No.: (852) 2810 3435

傳真號碼 Fax. No.: (852) 2868 9159

7 June 2018

Ms Joanne MAK
Clerk to the Panel on Constitutional Affairs
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms MAK,

The question raised by Dr Hon Helena WONG at the meeting of the Panel on Constitutional Affairs on 30 April regarding the quantity and variety of the library collections of correctional institutions has been referred to the Security Bureau for follow-up. In consultation with the Correctional Services Department (“CSD”), I am authorised to reply as follows:

CSD encourages persons in custody (“PICs”) to foster an interest in and use their leisure time for reading. Therefore, libraries have been set up in various correctional institutions to provide PICs with appropriate books.

Currently, the libraries of correctional institutions have a total collection of over 100 000 books in at least 30 different languages other than Chinese and English, such as Vietnamese, Indonesian, Thai, Korean, Spanish, Hindi, Urdu, Swahili, Wolof, etc. In addition, based on the needs of PICs of different nationalities, correctional institutions may borrow from each other books in the relevant languages as necessary.

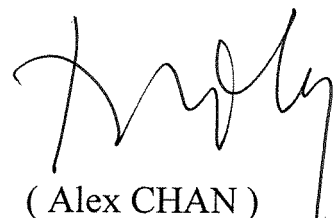
CSD allocates funds to correctional institutions to acquire new books every year. Correctional institutions will acquire appropriate books for

their libraries, having regard to such factors as the languages, interests and learning needs of PICs. In addition to their library collections, correctional institutions also borrow appropriate books from the Hong Kong Public Libraries and place them in their libraries. These books will be replaced in batches on a regular basis to increase the quantity and variety of books available for borrowing by PICs. Currently, correctional institutions have borrowed over 7 000 books from public libraries. Furthermore, CSD accepts books (including those in Chinese, English and other languages) donated by external organisations or individuals in accordance with the established mechanism.

As for the maximum number of books to be borrowed by PICs and the borrowing period, the heads of correctional institutions will allow flexibility in light of the resources available and the needs of PICs. Generally speaking, PICs may borrow a maximum of three books or magazines for one to two weeks each time.

The management of correctional institutions will review and fine-tune the book borrowing arrangement for PICs from time to time to cater for their needs.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Alex Chan', written in a cursive style.

(Alex CHAN)

for Secretary for Security

c.c. Secretary for Constitutional and Mainland Affairs (Attn: Ms Cathy LI)

政制及內地事務局
政府總部
香港添馬添美道2號
政府總部東翼



CONSTITUTIONAL AND MAINLAND AFFAIRS BUREAU
GOVERNMENT SECRETARIAT

EAST WING
CENTRAL GOVERNMENT OFFICES
2 TIM MEI AVENUE, TAMAR
HONG KONG

Our ref.: CMAB/CR 1/34/92

Your ref.: CB2/PL/CA

Telephone no.: 2810 2166

Fax no.: 2840 0657

30 May 2018

Clerk to the Panel on Constitutional Affairs
(Attn: Ms Joanne MAK)
The Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms Mak,

Panel on Constitutional Affairs

At its meeting on 30 April 2018, the Panel on Constitutional Affairs (CA Panel) called for the Government to provide response to the request made by Hon LAM Cheuk-ting to make available the section on the Hong Kong Special Administrative Region (HKSAR) for public comment before it is submitted to the Central People's Government (CPG) for inclusion in the national report to the United Nations (UN) Human Rights Council (HRC) under the Universal Periodic Review (UPR) mechanism, and report the progress of its work in following up the recommendations of the UNHRC.

It has been the established practice of the HKSAR Government to provide an outline of the HKSAR report to be submitted under various international human rights treaties (including the UPR mechanism) for public consultation prior to the preparation of the relevant report. For the current round of public consultation from 3 April to 7 May 2018, the outline of the third report of the HKSAR for the UPR has been widely issued to stakeholders, including the Legislative Council (LegCo), interested NGOs and members of the Human Rights Forum, Committee on the Promotion of Racial Harmony, Ethnic Minorities Forum and Children's Rights Forum, and was made available

on the HKSAR Government website and at the Home Affairs Enquiry Centres of District Offices. The outline was also discussed at the CA Panel on 30 April 2018 at which representatives of interested NGOs presented their views. In this connection, the HKSAR Government would take into account the views expressed by Members and the deputations, together with other views received during the consultation exercise in drafting the HKSAR section of the report.

Given that an extensive public consultation has already been conducted, the HKSAR Government has no plan to launch another round of public consultation prior to the submission of the HKSAR section to the CPG for inclusion in the national report. The Report of the HKSAR will be published after the United Nations Human Rights Council has received it. The Report will be made available to stakeholders, including the LegCo, members of the forums mentioned in the paragraph above and interested NGOs, and will also be accessible to the public at the Home Affairs Enquiry Centres of District Offices, public libraries and the HKSAR Government website.

The HKSAR Government takes UN Treaty Bodies' Concluding Observations very seriously. Under the existing practice, the HKSAR Government will provide information in response to the recommendations of the UN committees on the latter's request. The follow-up reports will also be made available on the HKSAR Government website. Furthermore, in drafting report for any UN human rights treaties, the relevant bureaux / departments will respond to concerns and related recommendations raised in the Concluding Observations on the previous report, as well as provide explanation and update on the implementation progress of the recommendations as appropriate.

Yours sincerely,



(Miss Cathy LI)

for Secretary for Constitutional and Mainland Affairs

**Relevant documents on
Third 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
	18.2.2013 (Item V)	Agenda Minutes
	16.12.2013 (Item IV)	Agenda Minutes
	30.4.2018 (Item III)	Agenda Minutes

Council Business Division 2
Legislative Council Secretariat
11 April 2019