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Panel on Constitutional Affairs

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 16 November 2020**

Fourth Report of the Hong Kong Special Administrative Region in the light of the International Covenant on Civil and Political Rights

Purpose

This paper summarizes the past discussion of the Panel on Constitutional Affairs ("the CA Panel") on the outline of topics for inclusion in the fourth report of the Hong Kong Special Administrative Region ("HKSAR") in the light of the International Covenant on Civil and Political Rights ("ICCPR").

Background

International Covenant on Civil and Political Rights

2. The Government of the United Kingdom ("UK") extended ICCPR to Hong Kong in 1976. Article 39 of the Basic Law provides that the provisions of ICCPR as applied to Hong Kong shall remain in force. On 22 November 1997, the Ministry of Foreign Affairs in Beijing announced that in order to fully realize the "One Country, Two Systems" principle, separate reports on the implementation of ICCPR and the International Covenant on Economic, Social and Cultural Rights ("ICESCR") in HKSAR would be submitted to the United Nations ("UN") treaty monitoring bodies. The Government of the People's Republic of China ("PRC") ratified ICESCR in 2001. The Government of PRC has signed but has not yet ratified ICCPR.

The first, second and third reports of Hong Kong Special Administrative Region

3. Formerly, reports in the light of ICCPR were required every five years. The first report of HKSAR in the light of ICCPR was submitted to UN Human Rights Committee ("HRC") in early 1999 and heard by HRC in November 1999. Since 1999, HRC has changed to specify the date for the submission of the next report of HKSAR in the concluding observations issued after consideration of a report submitted by HKSAR.

4. The second report of HKSAR in the light of ICCPR was submitted to HRC in January 2005. After consideration of the second report of HKSAR at its hearing held on 20 and 21 March 2006, HRC issued its concluding observations on 30 March 2006 (LC Paper No. CB(2)1653/05-06(01)). The Administration's report on its follow-up to the concluding observations was issued vide LC Paper No. CB(2)369/07-08(01) on 16 November 2007.

5. The third report of HKSAR in the light of ICCPR was submitted to HRC in May 2011. After consideration of the third report of HKSAR at its hearing held on 12 and 13 March 2013, HRC issued its concluding observations on 28 March 2013 (LC Paper No. CB(2)1117/12-13(01)). The Administration's report on its follow-up to the concluding observations was issued vide LC Paper No. CB(2)1502/13-14(03) on 13 May 2014.

6. Members may wish to refer to the background briefs (LC Paper Nos. CB(2)1291/05-06(02), CB(2)746/07-08(02) and CB(2)602/17-18(04)) prepared by the Legislative Council ("LegCo") Secretariat for the past discussions held by relevant Panels¹ on the first, second and third reports of HKSAR in the light of ICCPR.

The fourth report of Hong Kong Special Administrative Region

7. In accordance with the established practice, the Administration published an outline of the topics to be included in the fourth report of HKSAR in the light of ICCPR ("the HKSAR's fourth report") for public consultation between 1 December 2017 and 12 January 2018. The HKSAR's fourth report (issued to members vide LC Paper No. CB(2)37/19-20) had been submitted to HRC and was made public on 20 September 2019.

Past discussion of the Panel on Constitutional Affairs

8. At the meeting on 4 January 2018, the CA Panel discussed the outline of topics for inclusion in the HKSAR's fourth report with deputations and the Administration. The major issues of concern raised by members at the meeting are summarized below.

Co-location arrangement at the West Kowloon Station of the Guangzhou-Shenzhen-Hong Kong Express Rail Link

9. Some members considered that the decision of the Standing Committee of the National People's Congress ("NPCSC") approving the co-operation

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 placed under the purview of the CA Panel.

arrangement between the Mainland and Hong Kong to implement the co-location arrangement violated Article 18 of the Basic Law, which stipulated that national laws could not be applied to Hong Kong, and ruined the independence of the Judiciary of HKSAR. They requested the Administration to cover this in the HKSAR's fourth report. These members also took the view that as the Government of PRC had not yet ratified ICCPR, it was necessary to state in the HKSAR's fourth report that, under the co-location arrangement, a part of HKSAR would become the Mainland Port Area subject to the jurisdiction of the Mainland and would no longer be subject to the implementation of ICCPR. Some other members, however, held the view that NPCSC's decision on the co-location arrangement had solid legal basis and the legitimacy of the decision should not be questioned. They did not consider that the rule of law in Hong Kong had been undermined.

10. The Administration explained that the HKSAR's fourth report would consist mainly of (a) information/explanations about any significant developments since the submission of the previous report in 2011; (b) updates of developments that were ongoing at the time HRC considered the previous report in 2013 and in respect of which the Administration had undertaken to inform HRC of future progress or outcome; and (c) responses to the concerns and recommendations raised in HRC's concluding observations on the previous report and updates on the Administration's responses to HRC's follow-up to the concluding observations. The Administration advised that information which fell within the above scope and were related to Articles 1 to 27 of ICCPR would be covered in the HKSAR's fourth report as appropriate.

Tackling discrimination on the grounds of sexual orientation and gender identity

11. Some members pointed out that back in 1999, HRC had expressed concerns in its concluding observations on the HKSAR's initial report in the light of ICCPR about the absence of legislative remedies in HKSAR to individuals in respect of discrimination on the ground of sexual orientation, and HRC had recommended then the enactment of necessary legislation. In the concluding observations on the previous report issued in March 2013, HRC had expressed concerns again about the absence of legislation explicitly prohibiting discrimination on the basis of sexual orientation. These members further pointed out that the Equal Opportunities Commission had also recommended that the Government should consider launching a public consultation exercise with a view to legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status. They criticized the Administration for making little progress in this respect. Some other members, however, took the view that the Administration should strive to foster mutual respect among people regardless of whether or not they supported enacting legislation to prohibit discrimination against sexual minorities.

12. The Administration advised that it would carefully consider the views of the community on enactment of legislation to prohibit discrimination against sexual minorities and would handle the subject with caution given its controversial nature. The Administration would also continue its efforts in publicity and public education (e.g. producing Television Announcement in the Public Interest and sensitivity training resources as well as drawing up a charter) to foster in the community the culture and values of inclusiveness and mutual respect and promote equal opportunities for people of different sexual orientation and gender identity.

Rights of persons in custody

13. Some members raised concerns about the complaint mechanism of the Correctional Services Department ("CSD"), which in their view was not effective in protecting the rights of prisoners and juvenile offenders against unfair treatment and abuse by CSD officers. They also expressed disappointment that despite the wide media coverage of a number of relevant cases, CSD did not take concrete action to tackle the problem. These members queried that in the absence of a mechanism to protect the identity of the complainants and an independent investigation mechanism, the persons in custody were not provided with the right to lodge complaints against CSD without fear of retaliation. They urged the Administration to cover the above concerns in the HKSAR's fourth report. At the request of the Panel, the Administration provided a written response to the above issues in February 2018 (LC Paper No. CB(2)930/17-18(02)).

14. Some members noted with concern that two persons in custody had reportedly been diagnosed with stage III and IV cancer respectively due to delayed diagnosis and treatment. They also expressed concerns about a suicide case involving a suspect in custody at a police station in May 2017. The Administration was urged to address public concerns over the lack of a fully independent mechanism to monitor and handle complaints about the inappropriate use of force or other abuse of power by the Police in relation to persons in Police custody.

Immigration control on entry into Hong Kong by visitors

15. Referring to several incidents in 2017 involving refusal of entry of certain persons (including human rights activists) from UK and Taiwan into Hong Kong, some members expressed concerns about whether the number of such cases was on the rise and requested the Administration to include relevant figures in the HKSAR's fourth report. The Administration explained that, in addition to considering whether each visitor satisfied normal immigration requirements, the

Immigration Department also considered whether to allow entry in the light of the individual circumstances of each case in accordance with laws and prevailing policies.

Political rights and submission of the Hong Kong Special Administrative Region's fourth report

16. Some members criticized the HKSAR Government for failing to fulfil its obligations under ICCPR to protect the political rights of Hong Kong people. They expressed concerns that those who exercised their civil and political rights in taking part in peaceful demonstrations to express their views had been subjected to suppression in the past few years, and that duly elected LegCo Members had been disqualified through the interpretation of laws with retrospective effect. These members stressed that the HKSAR's fourth report should cover the aforesaid concerns and must not be lopsided or just praise the policies of the HKSAR Government. Some members also enquired whether the Administration would consult LegCo on the draft HKSAR's fourth report before it was submitted to HRC.

17. The Administration affirmed that Hong Kong residents enjoyed the freedom of assembly, procession and demonstration under the Basic Law. The Administration further explained that it was the established policy of the Police to strike a balance between facilitating the smooth conduct of lawful and peaceful public order events and reducing the impact of such events on the public and road users, and to ensure public safety and public order. Participants of public order events had to abide by the law, behave in a peaceful and orderly manner in the events, and refrain from illegal or violent acts. The Administration stressed that the Police had the responsibility to maintain public safety and public order, as well as protect the lives and properties of the public. Should there be any illegal or violent acts, the Police would, irrespective of the backgrounds of the offenders or victims, handle the matters in accordance with the law in a fair, just and impartial manner.

18. As regards the submission of the HKSAR's fourth report, the Administration informed members that the report would be published after UN had received it. HRC would then issue a list of issues to be taken up in connection with its consideration of the HKSAR's fourth report. The HKSAR Government would provide response to HRC through the Central People's Government and would publish HKSAR's response after HRC had received it. The Administration advised that as such, interested parties would still have ample opportunities to express views and comments to HRC.

Recent developments

19. In August 2020, HRC issued a list of issues to be taken up in connection with its consideration of the HKSAR's fourth report.² In anticipation of the HRC hearing on the HKSAR's fourth report tentatively scheduled for March 2021, the CA Panel will discuss matters relating to the hearing with the Administration at the next meeting on 16 November 2020.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
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² The list of issues is available on HRC's website:
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fCHN-HKG%2fQ%2f4&Lang=en

**Relevant documents on the Fourth Report of
the Hong Kong Special Administrative Region
in the light of the International Covenant on Civil and Political Rights**

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	21 June 2010 (Item III)	Agenda Minutes
	21 November 2011 (Item V)	Agenda Minutes
	18 February 2013 (Item IV)	Agenda Minutes
	20 May 2013 (Item IV)	Agenda Minutes
	19 May 2014 (Item III)	Agenda Minutes
	4 January 2018 (Item IV)	Agenda Minutes
	--	Letter dated 4 January 2018 from Hon SHIU Ka-chun (LC Paper No. CB(2)930/17-18(01)) Administration's response to Hon SHIU Ka-chun's letter (LC Paper No. CB(2)930/17-18(02))