

Government responds to UN Committee report on human rights

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The Government today (Saturday) responded to the concluding observations made by the United Nations Human Rights Committee (UNHRC) after its hearing in Geneva on the HKSARG's report under the International Covenant on Civil and Political Rights (ICCPR) on November 1 and 2.

A Government spokesman welcomed the Committee's appreciation to the HKSAR delegation for the information we provided and for our willingness to submit further information.

The spokesman noted that the Committee has expressed appreciation of the People's Republic of China for its willingness to participate in the reporting procedure by submitting the HKSAR report and introducing the Hong Kong delegation to the Committee.

The following are the positive aspects mentioned by the Committee in its concluding observations released:

- * The Committee notes that Article 39 of the Basic Law provides that the provisions of the Covenant as applied to Hong Kong shall remain in force and shall be implemented through the law of the HKSAR. The Committee welcomes the fact that the primacy of the Covenant is ensured in domestic legislation by a combination of Articles 39 and 11 of the Basic Law.
- * The Committee welcomes the efforts undertaken by the HKSAR to give publicity to its report and its commitment to give wide dissemination to the Committee's concluding observations.
- * The Committee welcomes the effort undertaken by the HKSAR to educate civil society about human rights. In particular, the Committee welcomes the great number of training courses, workshops and seminars conducted in the HKSAR for all sectors of the population including the civil service, the judiciary, the police and the educational establishments.
- * The Committee welcomes the steps taken by HKSAR to promote gender equality through educational campaigns and appropriate legislation.

The Committee has also raised a number of issues concerning the follow-up action on the previous concluding observations, an independent body to investigate and monitor human rights violations, the request for the interpretation of the Basic Law by the NPCSC, investigation of complaints against the police, the electoral system, the Municipal Councils, the right to privacy, deportation procedures, anti-discrimination legislation, discrimination against women, the age of criminal responsibility,

legislation under Article 23 of the Basic Law, freedom of assembly and association.

“We pay very close attention to the recommendations that the Committee makes and will, where practicable, implement them either in full or in part. But there are cases where governments - as the authorities on the spot - must respectfully differ as to what can or should be done.

“Regarding the interpretation of the Basic Law by the Standing Committee of the National People’s Congress (NPCSC), the Human Rights Committee did not say that the interpretation violated the ICCPR. It only expressed concerns about the implications of a request by the executive branch of government for an interpretation for the independence of the judiciary and the right to a fair trial.

“The SAR Government notes these concerns, but is firmly of the view that judicial independence of HK has not been weakened by the interpretation. As we have explained both to the local community and to the Human Rights Committee, the right of final adjudication of court cases by the Court of Final Appeal is distinct from the right of final interpretation of the NPCSC. The interpretation by NPCSC is entirely legal and constitutional.

“The SARG also emphasises that not one person has been deprived of the right of a fair hearing as a result of the interpretation.

“The interpretation of the Basic Law to resolve the Right of Abode issue received majority support in the Legislative Council. According to opinion polls, it also received wide public support,” the spokesman said.

“Again, as we have explained to the Committee, the pace towards full democracy is clearly set out in the Basic Law and that is the path we must follow. The Basic Law prescribes a mechanism for a decision to be taken on the method for forming the Legislative Council after 2007. Moreover, a reservation was taken out against Article 25(b) of the Covenant when it was extended to Hong Kong in 1976. This means that - in terms of the Covenant’s application to Hong Kong - we are not obliged to have elections on a basis of universal suffrage. However, we will act according to our goal,”

“The proposal to dissolve the Provisional Municipal Councils after the terms of office of their members expire is not a roll back in democracy. Indeed, it will enhance the Legislative Council’s role in monitoring Government’s policies and the use of public funds for municipal services.

“The new ‘District Councils’ will have more directly elected seats, increasing to a total of 390. They will also have an

enhanced role in the monitoring of Government services at the district level. We also believe that the Government's assumption of direct responsibility for food safety and environmental hygiene will improve co-ordination in policy formulation and the delivery of services. It will enable us better to respond to food safety crises and major environmental hygiene incidents. This view received the support of the Legislative Council when it approved the District Councils Bill," the spokesman added.

Regarding deportation procedures, the spokesman noted that our existing procedures provide ample opportunities for |
representations to be made by persons being considered for deportation.

"Claims of risk of facing the death penalty or torture or inhuman, cruel or degrading treatment as a consequence of their deportation are considered carefully. Compassionate grounds are taken into account before deportation orders are made. Where deportation orders have been issued, further representation may be made. In justifiable cases, deportation orders may be suspended or rescinded," the spokesman said.

Regarding the Interception of Communications Ordinance, the spokesman noted that the interception of communications are conducted in strict compliance with the law, ie, Section 33 of the Telecommunication Ordinance and Section 13 of the Post Office Ordinance. There are adequate safeguards built into the existing system to ensure that there is no abuse of powers. The law enforcement agencies concerned have standing orders and guidelines which strictly control the number of persons permitted to have access to information intercepted.

"Moreover, we are now thoroughly reviewing the whole issue of regulation of interception of communications, taking into account the various comments and feedbacks, so as to map out the best way forward," the spokesman added.

In response to the Committee's concern on the age of criminal responsibility, the spokesman said the Law Reform Commission has released a consultation paper on the issue in January 1999 and is still considering various proposals. The Government will pass the recommendation of the Committee to the Commission for their consideration. And the Government will consider the issue in detail when the Law Reform Commission makes the final recommendations to the Government.

The spokesman added that the Government would study all the points made by the Committee carefully.

End/Saturday, November 6, 1999

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