

**Economic and Social Council**

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**Committee on Economic, Social and Cultural Rights****Concluding observations on the second periodic report of  
China, including Hong Kong, China, and Macao, China<sup>\* \*\*</sup>**

*(Note: this document only contains extracts of paragraphs concerning the Hong Kong  
Special Administrative Region (HKSAR))*

1. The Committee on Economic, Social and Cultural Rights considered the second periodic report of China (E/C.12/CHN/2), including the third periodic report of Hong Kong, China (E/C.12/CHN-HKG/3), and the second periodic report of Macao, China (E/C.12/CHN-MAC/2), on the implementation of the International Covenant on Economic, Social and Cultural Rights at its 17th and 18th meetings (see E/C.12/2014/SR.17–18), held on 8 May 2014, and adopted, at its 40th meeting, held on 23 May 2014, the following concluding observations.

**A. Introduction**

2. The Committee welcomes the timely submission of the second periodic report of the People's Republic of China, including Hong Kong, China, and Macao, China. The Committee also takes note with appreciation of the written replies which it received to its list of issues (E/C.12/CHN/Q/2/Add.1, E/C.12/CHN/Q/2/Add.2 and E/C.12/CHN/Q/2/Add.3) and welcomes the constructive dialogue held with the State party's delegation, composed of experts from many ministries, including representatives of Hong Kong, China, and Macao, China.

**B. Positive aspects**

6. The Committee takes note with appreciation of the measures adopted by Hong Kong, China, to promote economic, social and cultural rights, which included:

- (a) The adoption of a statutory minimum wage in 2011;
- (b) The establishment of the high-level Commission on Poverty in December 2012 and the introduction of the first official poverty line.

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<sup>\*</sup> The present concluding observations comprise three parts: part one (paras. 1–38) relating to China; part two (paras. 39–52) relating to Hong Kong, China; and part three (paras. 53–60) relating to Macao, China.

<sup>\*\*</sup> Adopted by the Committee at its fifty-second session (28 April–23 May 2014).

## **D. Principal subjects of concern and recommendations: Hong Kong, China**

### **Domestic applicability of the Covenant**

39. The Committee notes with concern that, according to article 39 of the Basic Law of Hong Kong, China, the provisions of the Covenant as applied to Hong Kong shall be implemented through the laws of the Hong Kong Special Administrative Region. The Committee therefore notes with regret that the Covenant has not been incorporated in the legislation of the Special Administrative Region and that its provisions are thus not directly applicable by courts and tribunals.

**The Committee recommends that Hong Kong, China, take all appropriate measures to incorporate the provisions of the Covenant in domestic legislation and to guarantee their direct applicability by the domestic courts.**

### **National human rights institution**

40. The Committee notes that the Equal Opportunities Commission has a limited mandate and regrets that Hong Kong, China, has not taken any further steps to establish an independent national human rights institution (art. 2.1).

**The Committee urges Hong Kong, China, to establish a national human rights institution with a broad mandate to promote and protect human rights, including economic, social and cultural rights, in line with the Paris Principles, and to provide it with adequate financial and human resources.**

### **Non-discrimination**

41. The Committee is concerned about the prevalent and widespread discrimination against some disadvantaged and marginalized groups, such as migrants and internal migrants, asylum-seekers and refugees, as well as on the grounds of sexual orientation and gender identity, particularly in employment, education, health care and housing. The Committee notes with concern the absence of comprehensive anti-discrimination legislation and regrets that the Race Discrimination Ordinance does not include discrimination on the grounds of nationality, citizenship, resident status or the length of residence in Hong Kong, China (art. 2, para. 2).

**The Committee recommends that Hong Kong, China, take steps to adopt comprehensive anti-discrimination legislation in compliance with article 2, paragraph 2, of the Covenant and taking into account the Committee's general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights. The Committee reiterates its previous recommendation (E/C.12/1/Add.107, para. 91) and urges Hong Kong, China, to eliminate the widespread discriminatory practices against migrants and internal migrants from other parts of China. The Committee also urges Hong Kong, China, to take adequate measures to ensure that lesbians, gays, bisexual and transgender persons are able to fully enjoy their economic, social and cultural rights without any discrimination.**

### **Refugees and asylum seekers**

42. The Committee is concerned that the absence of comprehensive legislation granting protection to refugees and asylum seekers prevents them from enjoying economic, social and cultural rights, particularly in accessing legal employment, vocational training and adequate housing (arts. 6 and 11).

**The Committee recommends that Hong Kong, China, adopt legislation on asylum-seekers and refugees in order to improve their enjoyment of economic, social and**

**cultural rights, granting them access to legal employment, including vocational training, and adequate housing.**

#### **Migrant domestic workers**

43. The Committee is concerned about the unfavourable working conditions faced by migrant domestic workers in Hong Kong, China, particularly due to the “two-week rule”, whereby migrant domestic workers have to leave the territory within two weeks upon termination of their contracts, as well as the requirement for migrant domestic workers to live in the employing household. The Committee regrets that Hong Kong, China, has not taken any concrete measures to repeal these rules, and that migrant domestic workers are therefore exposed to abuse and exploitation. Furthermore, the Committee is concerned about the exclusion of migrant domestic workers from the Minimum Wage Ordinance, social security and maternity leave protection (arts. 7 and 10).

#### **The Committee recommends that Hong Kong, China:**

(a) **Adopt a comprehensive law to regulate domestic work and ensure that migrant domestic workers enjoy the same conditions as other workers regarding remuneration, protection against unfair dismissal, rest and leisure, limitation of working hours, social security and maternity leave protection;**

(b) **Take immediate action to repeal the two-week rule and the live-in requirement and eliminate conditions that render migrant domestic workers vulnerable to compulsory labour and sexual assault;**

(c) **Provide effective mechanisms for reporting abuse and exploitation in light of the difficulty some domestic workers have in accessing telecommunications services;**

(d) **Establish an inspection mechanism for monitoring the conditions of work of domestic workers, in particular migrant workers.**

#### **Trade union rights**

44. The Committee notes with concern that, despite the recognition of the right to strike, trade unionists dismissed for participating in a strike cannot be reinstated, and can only claim for compensation. The Committee regrets that Hong Kong, China, has not adopted legislation on collective bargaining (art. 8).

**The Committee strongly recommends that, in line with its obligations under article 8 of the Covenant, Hong Kong, China, take all necessary measures to amend the Employment Ordinance to allow the reinstatement of trade unionists arbitrarily dismissed for participating in trade-union activities. The Committee also recommends that Hong Kong, China, accelerate the process of adopting legislation on collective bargaining.**

#### **Residence requirement for applicants for social security**

45. While noting the information provided by Hong Kong, China, on the recent ruling by the Court of Final Appeal, declaring unconstitutional the seven-year residence requirement for applicants for social security benefits under the Comprehensive Social Security Assistance Scheme, the Committee remains concerned about the limited scope of the implementation of such decision. The Committee also regrets that, under the seven-year residence requirement, new immigrants, including those from other parts of China, have been exposed to unreasonable restrictions in accessing social security benefits (art. 9).

**The Committee recommends that Hong Kong, China, take all necessary measures to repeal any residence requirement for applicants under the Comprehensive Social Security Assistance Scheme, taking into account that it provides a safety net, and ensure that all individuals and families, particularly new immigrants, including those from other parts of China, have equal access to social security schemes on a non-discriminatory basis.**

#### **Comprehensive Social Security Assistance Scheme**

46. The Committee is concerned that the Comprehensive Social Security Assistance Scheme may not provide adequate protection to low-income families and persons with disabilities (art. 9).

**In line with its previous recommendation (E/C.12/1/Add.107, para. 96), the Committee recommends that Hong Kong, China, take immediate steps to review the eligibility criteria for the Comprehensive Social Security Assistance Scheme and to ensure that all persons in need are entitled to the benefits thereof.**

#### **Right of abode policies**

47. The Committee continues to be concerned about the adverse impact of right of abode policies, which impose restrictions on residents of other parts of China with regard to obtaining residence permits, and cause many families to be separated (art. 10).

**The Committee urges Hong Kong, China, to guarantee and facilitate family reunification for all citizens and permanent residents irrespective of their status or background. The Committee further urges Hong Kong, China, to remove present obstacles for mothers residing in other parts of China to obtaining residence permits to visit their children in Hong Kong, China, thereby ensuring the widest possible protection of, and assistance to, the family.**

#### **Poverty reduction and economic, social and cultural rights**

48. While noting the establishment of the Commission on Poverty, an official poverty line and the Low-income Working Family Allowances, the Committee regrets that Hong Kong, China, has not adopted a comprehensive strategy or specific targets for poverty alleviation. The Committee is also concerned about the unequal distribution of wealth in Hong Kong, China (art. 11).

**The Committee recommends that Hong Kong, China, formulate and implement effective policies and specific targets to reduce poverty, including by reducing inequalities in the distribution of wealth. In this regard, the Committee refers the State party to its 2001 statement on poverty and the Covenant (E/C.12/2001/10).**

#### **Adequate housing**

49. The Committee is concerned about the inadequate investment of Hong Kong, China, in providing affordable and adequate housing, resulting in a high percentage of the population living in informal settlements, industrial buildings, cage-homes and bed-space apartments, which do not have adequate services and utilities (art. 11).

**The Committee recommends that Hong Kong, China, adopt a human rights approach to reconstruction efforts, thereby ensuring appropriate consideration to the availability, affordability and adequacy of housing, including temporary housing for new immigrants and single applicants.**

### **Mental health and lack of medical personnel in the public health sector**

50. Despite the efforts made to improve the access to and coverage of mental health services, the Committee is concerned about the lack of a comprehensive mental health policy in Hong Kong, China. The Committee is also concerned that, despite the expansion of hospitals, there is a lack of doctors, who are absorbed into the higher-paying private health sector (art. 12).

**The Committee recommends that Hong Kong, China, adopt a national mental health policy aimed at making mental health services available and accessible, in particular by adopting legislation that is in line with international standards and by training skilled personnel in this area. The Committee also recommends that Hong Kong, China, develop community-based mental health-care services. In addition, the Committee recommends that Hong Kong, China, adopt measures to provide the public health sector with a sufficient number of doctors and other medical personnel.**

### **Access to education**

51. The Committee is concerned about the information provided by Hong Kong, China, in its replies to the list of issues (E/C.12/CHN/Q/2/Add.2, para. 90) that the Education Bureau for schooling takes decisions on the school enrolment of children of migrants after consultation with the Director of Immigration. The Committee also notes with concern that, despite the measures adopted by Hong Kong, China, to ensure equal access to 12 years of free education, children of ethnic minorities continue to face discrimination in that respect (arts. 13 and 14).

**The Committee recommends that Hong Kong, China, ensure, through legislative and other measures, that all children, including children of migrants, asylum-seekers and refugees and children belonging to ethnic minorities, have free access to compulsory education on an equal basis with other children. The Committee also recommends that the State party take steps to facilitate their access to secondary education.**

### **Chinese language**

52. The Committee is concerned that, despite the recent measures adopted by Hong Kong, China, on the Chinese Language Curriculum second language Learning Framework and the allocation of additional funding to support the learning of Chinese, non-Chinese speaking students continue to be de facto discriminated against in the public education system (arts. 13 and 14).

**The Committee recommends that Hong Kong, China, urgently take all necessary measures to eliminate de facto discrimination against non-Chinese speaking students, including by the reallocation of resources, and to promote their access to education in mainstream schools. The Committee urges Hong Kong, China, to step up its efforts to implement legislation and policies on bilingual education at all levels of education and provide high-quality education in Chinese as a second language.**

## **F. Other recommendations**

61. The Committee notes the absence of reliable statistics that would allow for an accurate assessment of the fulfilment of economic, social and cultural rights in the State party, including Hong Kong, China, and Macao, China.

**The Committee urges the State party, including Hong Kong, China, and Macao, China, to develop systematic data collection and the production and use of statistics for human rights indicators, including for economic, social and cultural rights based upon such data. In this respect, the Committee refers the State party, including Hong**

Kong, China, and Macao, China, to the conceptual and methodological framework for human rights indicators developed by the Office of the United Nations High Commissioner for Human Rights (HRI/MC/2008/3). The Committee requests the State party to include in its next periodic report statistical data on the enjoyment of each Covenant right, disaggregated by age, sex, ethnic origin, urban/rural population and other relevant status on an annual comparative basis.