

Article 2: Ensuring to all individuals the rights recognised in the Covenant

Human rights institution

2.1 The Committee reiterated its recommendation for establishing an independent human rights institution, which was echoed by some of the local commentators. Some commentators also proposed to establish a similar commission with a clear mandate on children's rights. The issue of setting up an independent human rights institution has recently been considered by the Government in the context of the Review of Jurisdiction of the Office of The Ombudsman.

2.2 The Review was conducted by The Ombudsman and the Review Report was submitted to the Administration in two parts in 2006 and 2007 respectively. The issue of whether The Ombudsman should assume the role of a human rights commission to protect and promote human rights was examined in Part 2 of the Review Report. It pointed out that while The Ombudsman was not explicitly charged with human rights responsibilities, the essence of the Office's work was to ensure the protection of individual rights by public administration. Under the existing mechanism for protection of human rights in Hong Kong, various statutory bodies, including The Ombudsman, the Equal Opportunities Commission (EOC) and the Office of the Privacy Commissioner for Personal Data (PCPD), had a role to play as provided for under the respective ordinances. The question of whether one single institution should be set up to oversee all issues on human rights protection in Hong Kong was a policy issue to be examined by the Government.

2.3 Having considered the Review Report, the Government is of the view that in Hong Kong, human rights are fully protected by law. The legislative safeguards are enshrined in the Basic Law, the Hong Kong Bill of Rights Ordinance (HKBORO) (Cap. 383) and other relevant ordinances. They are buttressed by the rule of law and an independent judiciary. Hong Kong has an existing institutional framework of organisations which helps promote and safeguard different rights, including the EOC, the PCPD, The Ombudsman, and the legal aid

services. The Government's performance in promoting and safeguarding human rights is open to scrutiny through regular reports to the United Nations and is constantly watched over by the LegCo, the media and various human rights NGOs. The Administration considers that the existing mechanism has worked well. There is no obvious need for establishing another human rights institution to duplicate the functions of or supersede the existing mechanism.

2.4 We, therefore, remain of the view that an additional independent monitoring mechanism is not necessary to give effect to the Covenant or its requirements.

The Equal Opportunities Commission

2.5 The functions and powers of the EOC remains largely the same as reported in paragraph 23 of Part II of the initial report in relation to Article 2, except that under the newly enacted Race Discrimination Ordinance (RDO) (Cap. 602), the EOC is also entrusted with the functions and powers to work towards the elimination of racial discrimination and promote equality of opportunity and harmony between persons of different racial groups. It deals with individual complaints, provides legal assistance to aggrieved persons, and conducts formal investigations under the RDO. The Government has provided additional resources to the EOC for undertaking these tasks. The EOC issued a Code of Practice on Employment under the RDO which came into operation in July 2009. The Code gives practical guidance to prevent racial discrimination and harassment, and to promote racial equality and harmony in employment-related matters. A detailed account of the EOC's latest work is provided in paragraphs 54 and 92 to 101 of the HKSAR Common Core Document.

2.6 Some commentators raised concern on the composition of the Selection Board for the recruitment of the new EOC Chairperson in 2009. The Selection Board was tasked to consider the candidates fairly on the basis of specified requirements and recommend the most suitable candidate to the Chief Executive for appointment. Members of the Selection Board have extensive experience and knowledge respectively in the medical, education, social services and other fields. The Selection

Board was chaired by a non-official member. It had considered carefully about 100 candidates drawn from the open recruitment exercise. After the appointment, the new EOC Chairperson has worked closely with Members of the EOC, who represent a fairly balanced mix of expertise and representatives of various sectors, including the interests of women, ethnic minorities and persons with disabilities, to enhance the elimination of discrimination and promotion of equality.

Review of the Work of the Equal Opportunities Commission

2.7 As mentioned in paragraph 22 of Part II of the previous report, the EOC completed a review in 2002 on its complaints handling procedures, organisational structure and other related matters. Since the previous report, the complaint handling division of the EOC has been re-organised to ensure better staff deployment and work efficiency in the light of the findings and recommendations made in the review. The EOC also accords high priority in raising operational effectiveness of its staff through continuous training. When the RDO came into full effect in July 2009, additional staff were recruited to cope with the increased workload. For continuous improvement, the complaint handling procedures are under constant review with the latest enhancement made in June 2010 to achieve higher efficiency and effectiveness.

2.8 The EOC has raised a proposal to set up an Equal Opportunities Tribunal to handle alleged cases of discrimination under the existing anti-discrimination ordinances. Some commentators supported this proposal. The EOC is initiating discussions with the community and stakeholders before further pursuing the proposal with the Government. The Government will continue to liaise with the EOC on the proposal and study the recommendations after the EOC's further deliberation with the community.

The Ombudsman

2.9 The role of The Ombudsman is essentially as explained in paragraphs 35 to 39 of Part II of the initial report in relation to Article 2 and updated in paragraphs 49 to 53 of the HKSAR Common Core Document. The Ombudsman's jurisdiction now covers 23 public

bodies, rather than the 17 previously reported. The Ombudsman (Amendment) Ordinance of December 2001 added the EOC and the PCPD under the jurisdiction of The Ombudsman. Consequent to a review conducted by The Ombudsman, four more public bodies, namely, the Auxiliary Medical Service, the Civil Aid Service, the Consumer Council and the Estate Agents Authority have been brought under the jurisdiction of The Ombudsman from 2 July 2010.

2.10 In the year 2009-10, The Ombudsman received 13 789 enquiries and 4 803 complaints. A total of 126 complaints were investigated, of which The Ombudsman found 75 substantiated or partially substantiated, and The Ombudsman made 141 recommendations to redress grievances and improve public administration. The other complaints were concluded after preliminary inquiries, with remedial action and improvement measures suggested where due. The Ombudsman also completed seven direct investigations, making 62 recommendations in relation to them. The Government has accepted and acted on almost all The Ombudsman's recommendations. The practices to ensure transparency remain as explained in paragraph 39 of Part II of the initial report.

Complaints against the Police

2.11 The Committee reiterated its view that investigation of complaints against the Police should be carried out by an independent body, the decisions of which are binding on relevant authorities. Similar views were expressed by some commentators. Under the two-tier police complaints system, the Complaints Against Police Office (CAPO) is responsible for handling and investigating complaints lodged by members of the public against members of the police force. CAPO operates independently from other Police formations to ensure its impartiality in handling complaints. The Independent Police Complaints Council (IPCC) is an independent civilian oversight body specifically appointed to monitor and review the CAPO's handling and investigation of complaints. Members of the IPCC appointed by the Chief Executive are drawn from a wide spectrum of the community.

2.12 The Independent Police Complaints Council Ordinance (Cap. 604) codifies the above police complaints system. The Ordinance came into force on 1 June 2009 and turned the IPCC into a statutory body. It clearly sets out the IPCC's role, functions and powers in the police complaints system, as well as the obligations of the Police to comply with the requirement made by the IPCC under the Ordinance. There are effective checks and balances to ensure that the complaints lodged with CAPO are handled thoroughly, fairly and impartially.

2.13 In gist, CAPO submits a detailed investigation report on each reportable complaint to IPCC and is required to address queries and suggestions from the IPCC on the report. Where the IPCC members have doubts about the investigation of a particular complaint, they may invite the complainants, complainees and any other person who is or may be able to provide information or other assistance to interviews. If the IPCC is not satisfied with the result of a CAPO investigation, it may ask CAPO to clarify any doubts or reinvestigate the complaint. It may also bring the case to the personal attention of the Chief Executive. The IPCC also monitors CAPO's investigations into reportable complaints through the IPCC Observers Scheme, under which IPCC members and a wide pool of observers undertake, on a scheduled or surprise basis, observations of the interviews and collection of evidence conducted by the Police during investigation of complaints to ensure that these processes are conducted in a fair and impartial manner.

2.14 The above shows that the statutory framework provided for under the IPCC Ordinance has enhanced the transparency of the police complaints system and reinforced the independent monitoring role of the IPCC.

Human rights education

2.15 The updated framework for the promotion of human rights is set out in paragraphs 61 to 86 of the HKSAR Common Core Document. Detailed information on human rights education in schools and outside school, and among the general public, public officials, professionals, judges and judicial officers is set out in paragraphs 13.87 to 13.100 of the HKSAR's third report under International Covenant on Economic, Social

and Cultural Rights (ICESCR), in relation to Article 13 of that Covenant. HKSAR's third report under ICESCR forms part of the second periodic report of the People's Republic of China under the ICESCR. In response to commentators' comments, we set out specific information on human rights education in schools and civic and national education in the ensuing paragraphs. Additional information on human rights education for staff of the disciplined forces is also set out below.

Human rights education in schools

2.16 Education in schools is an important aspect in the promotion of human rights. From the curriculum perspective, human rights education is integral to the school curriculum. At the various Key Stages, students are provided with ample opportunities to develop concepts and values in relation to human rights. Students' concepts and understanding of human rights are strengthened progressively from a basic understanding of the rights and responsibilities to more complex concepts of human rights through the school curriculum. In the existing school curriculum, important concepts and values on human rights, such as the right to life, freedom, respect for all peoples, non-discrimination and equality are discussed and developed through the teaching and learning activities of General Studies and various Key Learning Areas at different Key Stages. With the introduction of Liberal Studies as a core subject in the New Senior Secondary Curriculum (NSS Curriculum), students are given ample opportunities to discuss important concepts of human rights such as democracy, the rule of law, equality before the law, and the independence of judiciary. Concepts related to human rights education such as Rights and Responsibilities of Citizens, Upholding the Core Values of Our Society, and Social System and Citizenship will be further promoted through a new subject Life and Society to be implemented in September 2012 at the junior secondary level. Students may also get acquainted with the above concepts and values through the school programmes, such as the class teacher periods, assemblies, talks, as well as other learning experiences, including discussion forums, debates, social services and visits.

2.17 In addition to the promotion of students' learning of the concepts and values related to human rights education through the school

curriculum and school programmes, the Education Bureau (EDB) has spared no efforts to enhance teachers' capacity and competency in teaching human rights education. Among others, the EDB has been organising a series of professional development programmes for teachers on themes related to human rights education. These themes include "non-discrimination", "freedom", "human rights and the Basic Law", "intellectual property", "freedom of press and the media", "equality and social harmony", and "rights and responsibilities".

2.18 In support of the promotion of human rights education in schools, the EDB has also produced diversified teaching and learning materials in the form of videos, resources packages, worksheets and websites for reference and use by teachers.

Civic and national education

2.19 The Committee on the Promotion of Civic Education (CPCE) is an advisory body under the Home Affairs Bureau set up in 1986 to promote civic education outside schools in liaison with relevant Government departments. The CPCE continues to promote public understanding of human rights as and when suitable opportunities arise, and provide sponsorship to community organisations to promote education on human rights.

2.20 Some commentators requested the Government to conduct a survey on human rights. Our view is that there are established channels to monitor the human rights situation in Hong Kong, including the EOC, the PCPD, The Ombudsman, and various complain channels of Government departments. We should continue to make use of these channels. Moreover, it would be more effective to deploy the resources available to implement measures or activities which would promote the rights of individuals.

2.21 Regarding national education, it is an established education policy of Hong Kong to develop students' national identity, which is stated as one of the curriculum goals in the curriculum documents. The promotion of national identity is implemented in school curricula, including General Studies and Chinese Language at primary level;

Chinese Language, Chinese History, Civic Education and Geography at junior secondary level. In the NSS curriculum implemented in the 2009/10 school year, Liberal Studies as a core subject is the main vehicle for promoting national identity in students. The EDB will invite the Curriculum Development Council to review the curriculum framework for moral and civic education at primary and secondary levels, and to develop an independent subject on “moral and national education”. This new initiative is expected to be implemented in the 2013/14 school year to further enhance the elements of national education. The EDB also enhances students’ understanding of their motherland and Chinese culture through organising Mainland exchange programmes for teachers and students regularly, inviting scholars and experts from the Mainland to give talks on issues of contemporary China, subsidising schools in organising interflow activities as well as organising student learning activities on Thirty Years of China’s Reform & Opening Up, the 60th Anniversary of the Founding of the People’s Republic of China, and the World Expo 2010. Opportunities for students to participate in Mainland learning and exchange activities will be increased and more exchange activities will be organised together with voluntary groups. In line with the spirit of the current curriculum reform, schools are encouraged to adopt multiple perspectives and equip students with critical thinking skills in analysing issues on contemporary China.

Operational staff of disciplined forces

2.22 As mentioned in paragraphs 70 and 71 of the HKSAR Common Core Document, training of disciplined services invariably includes reference to human rights. The Immigration Department, the Customs and Exercise Department (C&ED) and the Correctional Services Department (CSD) have incorporated lectures on the HKBORO and gender-related training into their regular in-service and training programmes for new recruits. Human rights and equality principles are part of the foundation training for the new recruits and probationary inspectors of the Police. The continued training programmes for in-service Police officers also cover these topics.

2.23 A research unit under the Operations Department of the Independent Commission Against Corruption (ICAC) monitors

developments in relation to the HKBORO and their implications for the Commission's operations. The Training and Development Group of the Commission provides officers with training on the Basic Law, HKBORO, the Interception of Communications and Surveillance Ordinance (Cap. 589) and the ICAC (Treatment of Detained Persons) Order (Cap. 204A). Officers also receive training on the Code on Access to Information, the Personal Data (Privacy) Ordinance (PDPO) (Cap. 486), the Rules and Directions for the Questioning of Suspects and the Taking of Statements issued by the Secretary for Security as well as the Victims of Crime Charter published by the Secretary for Justice. Furthermore, new recruits also receive lectures on the RDO.