

**For information  
on 20 May 2013**

**Legislative Council Panel on Constitutional Affairs**

**Hearing of the United Nations Human Rights Committee on the  
Third Report of the Hong Kong Special Administrative Region  
in the light of the  
International Covenant on Civil and Political Rights**

**Purpose**

As requested by Members at the Panel meeting held on 18 March 2013, this paper sets out the hearing of the United Nations (UN) Human Rights Committee on the third report of the Hong Kong Special Administrative Region (HKSAR) in the light of the International Covenant on Civil and Political Rights (ICCPR).

**Background**

2. The UN Human Rights Committee considered the third Report of the HKSAR in the light of the ICCPR at its 2954<sup>th</sup> and 2955<sup>th</sup> meetings, on 12 and 13 March 2013. A nine-member government delegation led by the Permanent Secretary for Constitutional and Mainland Affairs attended the hearing to provide further information to the Human Rights Committee. The Committee adopted its concluding observations at its 2974<sup>th</sup> meeting on 26 March 2013 (Geneva time) and issued them on 28 March (Geneva time).

3. At the beginning of the hearing, after Ambassador LIU Zhenmin, Permanent Representative of the People's Republic of China to the UN, introduced the HKSAR delegation to the UN Human Rights Committee, the Permanent Secretary for Constitutional and Mainland Affairs mentioned in the opening remarks some notable achievements in human rights protection made since the second report in 2005. These include the enactment of the Race Discrimination Ordinance in 2008, the introduction of a statutory screening and appeal mechanism to process torture claims in 2012, and the major enhancement of legal aid services in the HKSAR in 2011 and 2012. In respect of constitutional development and the progress towards universal suffrage, the HKSAR Government is fully committed to attaining universal suffrage for both the Chief Executive (CE) and the Legislative Council (LegCo) elections in accordance with the Basic Law and the decision of the Standing Committee of the National People's Congress in December 2007. We will, at an appropriate juncture, launch public consultations on the election methods for the LegCo

election in 2016 and the CE election in 2017, and initiate the required constitutional procedures accordingly. On equal opportunities for sexual minorities, HKSAR Government considers it essential that the community should have a rational and informed discussion. The HKSAR Government will continue to listen to different views from various sectors

4. The subsequent discussions focussed on our response to the HRC's "list of issues" (**Annex A**)<sup>1</sup>.

### **Concluding Observations**

5. The UN Human Rights Committee issued the advance unedited version of its Concluding Observations on 28 March 2013 (**Annex B**). The Concluding Observations include a number of concerns of the UN Human Rights Committee, which are in line with those it raised during the hearing. The Administration's position on the various issues of concerns raised by the UN Human Rights Committee is set out in the press release (**Annex C**) issued on the same day the UN Human Rights Committee issued its Concluding Observations. The Concluding Observations have also been uploaded to the website of the Constitutional and Mainland Affairs Bureau for public information.

### **Submission of information and the next report**

6. The UN Human Rights Committee has set the deadline for the submission of the next report as 30 March 2018, and required that the HKSAR provide information on the implementation of the Committee's recommendation on three areas within one year, namely the implementation of universal and equal suffrage for future elections; adoption of measures to ensure that all workers enjoy their basic rights independently of their migrant status; and intensification of efforts to improve the quality of Chinese language education for ethnic minorities and non-Chinese speaking students with an immigrant background. We will, in accordance with established mechanism, submit the relevant information to the UN via the Central People's Government.

7. Members are invited to note the content of this paper.

### **Constitutional and Mainland Affairs Bureau May 2013**

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<sup>1</sup> The concerned response has been submitted to the Panel on Constitutional Affairs for reference on 26 March 2013.

**Constitutional and legal framework within which the Covenant is implemented (arts. 2, 25 and 26)**

1. In view of the comments provided by the HKSAR Government in paragraphs 49 to 52 of its periodic report, please comment on the Report on Review of Jurisdiction of the Office of the Ombudsman which states that although various public bodies have been charged with different functions concerning the protection and promotion of citizen's rights, "each of these organisations is charged with protecting and / or promoting certain aspects of human rights, but none is empowered to discharge the full scope of functions envisaged for a HRC [Human Rights Commission]", i.e. a national human rights institution in line with the Paris Principles. Please provide information as to any steps taken to ensure the independence and effectiveness of the Equal Opportunities Commission (EOC), particularly given the dual role of its chairperson, as both the head of EOC and as Convener of Executive Council.

Protection of human rights in Hong Kong

1.1 The Ombudsman's observation on human rights issue is found in the second part of the Report on Review of Jurisdiction of the Office of the Ombudsman, where its paragraph 1.5 under Part 2 states clearly that the Ombudsman is mindful that these are essentially policy matters within the responsibility of the Government, and the Legislative Council (LegCo) where legislative and funding support is required. The Ombudsman, therefore, has not advocated any particular course of action. Instead, the Review offers a snapshot impression of recent developments in areas such as the protection and promotion of human rights and some pointers to possible implications for the ombudsman system if such developments were to be pursued in Hong Kong.

1.2 As elaborated in paragraphs 2.1 to 2.4 of the HKSAR report, in Hong Kong, human rights are fully protected by law. The legislative safeguards are enshrined in the Basic Law, the Hong Kong Bills of Rights Ordinance (HKBORO) (Cap. 383) and other relevant ordinances. They are buttressed by the rule of law and an independent judiciary. Under the existing institutional framework in Hong Kong, there are a number of organisations which help promote and safeguard different rights. These organisations include the Equal Opportunities Commission (EOC), the Privacy Commissioner for Personal Data (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, various human rights non-governmental organisations (NGOs) and the community at large. The Government maintains the view that this existing mechanism of protecting human rights has worked well and that there is no obvious need to establish another human rights institution to duplicate the functions of or supersede the existing mechanism.

1.3 The EOC is an independent statutory body established under the Sex Discrimination Ordinance (Cap. 480). Its functions include working towards the elimination of discrimination, promoting equality of opportunity and harmony, working towards the elimination of harassment and vilification, handling complaints, assisting persons aggrieved by discrimination by way of conciliation and other assistance, and issuing and revising codes of practice, under the four existing anti-discrimination ordinances in the areas of sex, disability, family status and race.

1.4 The Ombudsman is an independent corporation sole established under The Ombudsman Ordinance (Cap. 397). Through independent, objective and impartial investigation, the Ombudsman redresses grievances and addresses issues arising from maladministration in the public sector and brings about improvement in the quality and standard of and promote fairness in public administration.

1.5 The PCPD is an independent corporation sole established under the Personal Data (Privacy) Ordinance (PDPO) (Cap. 486). The functions and powers of the Commissioner include, inter alia, monitoring and supervising compliance with the provisions of PDPO; preparing codes of practice for guidance in complying with the provisions of PDPO; promoting awareness and understanding of, and compliance with, the provisions of PDPO; examining any proposed legislation that the Commissioner considers may affect the privacy of individuals in relation to personal data; carrying out inspections; undertaking research; and liaising and co-operating with his counterparts outside Hong Kong.

1.6 The aforementioned statutory bodies operate independently from the Government in terms of their functions and powers as well as staffing and financial management. Together, these statutory bodies cover the core human rights issues of common concern. Whether they operate separately or under a single statutory platform such as a “Human Rights Commission” is a policy matter which does not adversely affect or lessen the protection of human rights afforded to the people of Hong Kong.

1.7 The provision of the legal aid services will be elaborated in paragraphs 16.1 to 16.13.

#### Chairperson of the Equal Opportunities Commission

1.8 The Executive Council is an organ for assisting the Chief Executive (CE) in policy-making, to whom the CE will consult before making important policy decisions etc., but the CE is not bound by its opinion. The incumbent Chairperson of the EOC was appointed as the Convenor of the Non-official Members of the Executive Council on 1 July 2012. In fact, the EOC is a fully independent statutory body that operates separately from the Government. This notwithstanding, the incumbent EOC Chairperson has publicly announced on 11 July 2012 that he would continue to carry out his duties as the Chairperson of the EOC dutifully and diligently, and be vigilant to avoid any real or perceived conflicts in serving his dual role during his remaining term of office at the EOC. The Government is currently conducting the recruitment process of the post of the Chairperson of the EOC, as the incumbent Chairperson will leave his office in the first quarter of 2013 upon expiry of the term of his office and appointment of a new Chairperson. The recruitment process is at its final stage.

<p>2. Please provide examples of cases in which the provisions of the Hong Kong Bill of Rights Ordinance which had incorporated the Covenant were applied by the courts. In particular, please provide examples of cases in which the court referred to the work of the Committee in interpreting the Bill of Rights and cases, if any, in which the Bill of Rights was applied to supersede conflicting laws. Please also explain the status of the Bill of Rights in relation to the Basic Law.</p>
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2.1 The application of the International Covenant on Civil and Political Rights (ICCPR) to Hong Kong is provided for at the constitutional level in Article 39 of the Basic Law. Article 39(1) provides that the provisions of the ICCPR as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR. Article 39(2) further provides that the rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of Article 39(1).

2.2 The Hong Kong Bill of Rights (BOR), terms of which are almost identical to those of the ICCPR, is set out in section 8 of the HKBORO which incorporates into the law of Hong Kong the provisions of the ICCPR as applied to Hong Kong. The HKBORO binds the Government and all public authorities and any person acting on behalf of the Government or a public authority. The HKBORO is a piece of ordinary legislation but since the BOR is the embodiment of the provisions of the ICCPR as applied to Hong Kong, the courts have held that it is entrenched by Article 39 of the Basic Law.

2.3 Since the enactment of the HKBORO, there are around 1,000 judgments (excluding oral judgments) which included references to the HKBORO according to the Legal Reference System of the Judiciary. These include Court of Final Appeal (CFA) cases (e.g. *Leung Kwok Hung & Others v. HKSAR* and *Lam Siu Po v. Commissioner of Police*), Court of Appeal cases (e.g. *MA v Director of Immigration*), and Court of First Instance cases (e.g. *Wong Hin Wai v Secretary for Justice*).

2.4 Below are three examples of cases in which the court referred to the work of the Committee in interpreting the BOR and cases in which the BOR was applied to supersede conflicting laws.

2.5 In *Leung Kwok Hung & Others v HKSAR* [2005] 3 HKLRD 164 (at paragraph 106) the CFA noted that the Committee had expressed concern in paragraph 19 of its 1999 Concluding Observations on Hong Kong (CCPR/C/79/Add 117) that the Public Order Ordinance (Cap. 245) could be applied to “restrict unduly” enjoyment of freedom of assembly. In conclusion, the CFA held that the discretion of the Commissioner of Police to restrict the right of peaceful assembly for the purpose of “public order (*ordre public*)” provided for in sections 14(1), 14(5) and 15(2) of the Public Order Ordinance was unconstitutional on the ground that it did not satisfy the constitutional requirement of “prescribed by law” and was inconsistent with the right to freedom of assembly in Article 27 of the Basic Law and Article 17 of the BOR.

2.6 In *Koon Wing Yee v Insider Dealing Tribunal* [2008] 3 HKLRD 372 (at paragraphs 65 and 97), the CFA referred to paragraph 15 of General Comment No. 32 and paragraph 7 of General Comment No. 13 and held that proof beyond reasonable doubt was the appropriate standard to be applied for the purpose of Article 11 of the BOR. The CFA held that section 23(1)(c) of the Securities (Insider Dealing) Ordinance (Cap. 395) (repealed) was invalid for violation of Articles 10 and 11 of the BOR. At paragraph 101 of the judgment, the CFA commented that the General Comments are a valuable jurisprudential resource which is availed of by the Committee in its adjudicative role. While the General Comments are not binding on the court, they provide influential guidance as to how the Covenant is and will be applied by the Committee when sitting as a judicial body in making determinations.

2.7 In *Lam Siu Po v Commissioner of Police* [2009] 4 HKLRD 575 (at paragraphs 18, 59 and 112), the CFA referred to General Comment No. 32 and published communications of the Committee concerning Article 14 of the Covenant. The CFA held that Article 10 of the Bill of Rights applied to the police disciplinary proceedings in question and that certain procedural rules laid down in the Police (Discipline) Regulations (Cap. 232, sub. leg. A) were unconstitutional as being contrary to Article 10 of the BOR.

<p>3. With reference to the information provided in paragraphs 7 to 43 of the HKSAR’s periodic report, please indicate what further steps have been taken to ensure that the next CE and LegCo elections take place by universal suffrage in compliance with the Covenant. Please describe the conditions for nomination, e.g. age limits, and any other qualifications or restrictions.</p>
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3.1 As explained in the third report, the HKSAR is committed to attaining the ultimate aim of electing the CE and all the members of the LegCo by universal suffrage in accordance with the Basic Law.

3.2 The Basic Law prescribes the ultimate aims of electing the CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures, and of electing all the members of the LegCo by universal suffrage, in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress (Articles 45 and 68). As set out in the “Decision on Issues Relating to the Methods for Selecting

the CE of the Hong Kong Special Administrative Region and for Forming the LegCo of the Hong Kong Special Administrative Region in the Year 2012 and on Issues Relating to Universal Suffrage” adopted by the Standing Committee of the National People’s Congress in December 2007 (the NPCSC’s Decision), the election of the fifth CE of the HKSAR in the year 2017 may be implemented by the method of universal suffrage. And after the CE is elected by universal suffrage, the election of the LegCo of the HKSAR may be implemented by the method of electing all the members by universal suffrage.

3.3 Article 44 of the Basic Law provides that “the CE of the HKSAR shall be a Chinese citizen of not less than 40 years of age who is a permanent resident of the Region with no right of abode in any foreign country and has ordinarily resided in Hong Kong for a continuous period of not less than 20 years”.

3.4 As set out in the NPCSC’s Decision, in electing the CE of the HKSAR by the method of universal suffrage, a broadly representative nominating committee shall be formed. The nominating committee may be formed with reference to the current provisions regarding the Election Committee in Annex I to the Hong Kong Basic Law. The nominating committee shall in accordance with democratic procedures nominate a certain number of candidates for the office of the CE, who is to be elected through universal suffrage by all registered electors of the HKSAR, and to be appointed by the Central People’s Government.

3.5 As to how the CE candidates should be nominated in accordance with democratic procedures and the procedures for electing the CE by universal suffrage, the HKSAR Government will address these issues and consult the various sectors of the community in the process of formulating the method for electing the CE in 2017.

#### **Non-discrimination and equality (arts. 2, 3 and 26)**

4. With reference to the information provided in paragraphs 354 to 362 of the HKSAR’s periodic report, please provide information on the practical implementation of the Race Discrimination Ordinance (RDO), including examples of case law. What measures have been taken to ensure that all Government functions and powers are brought within the scope of the RDO? Please also provide updated information on the progress made in amending the Sex Discrimination Ordinance (SDO) and Disability Discrimination Ordinance (DDO), as proposed by the EOC in its 1999 Equal Opportunities Legislative Review Report.

#### Race Discrimination Ordinance

4.1 Since the Race Discrimination Ordinance (RDO) (Cap. 602) came into full operation in July 2009, the EOC has received 181 complaint cases lodged under the RDO as at 31 December 2012. In the same period, the EOC initiated investigation into 39 cases which might constitute racial discrimination and handled 1 388 enquiries on specific incidents related to the RDO. (This number does not include the general enquiries received by the EOC hotline.)

4.2 Most of the complaint cases are related to the provision of service and goods (98), including different treatments in service delivery and quality of goods based on the ground of race; failure to provide information in Chinese, English or ethnic minority languages leading to the detriment of the aggrieved persons, etc. Complaint cases in the field of employment (49) mainly involve terms and conditions of employment, promotion and dismissal. As most of the cases that went into conciliation were successfully resolved by the EOC, there has been no case law under the RDO so far.

4.3 As pointed out in paragraph 27.2 of the HKSAR's third periodic report, the Government issued the "Administrative Guidelines on Promotion of Racial Equality" (the Administrative Guidelines) in 2010 to provide general guidance to concerned Government bureaux and departments and public authorities to promote racial equality. The EOC has also published a "Code of Practice on Employment" under the RDO which provides practical guidance on how to comply with the RDO in relation to employment matters, and a "Guide for Foreign Domestic Helpers and their Employers" which provides a general overview of the provisions of the RDO as they apply to employers and foreign domestic helpers (FDHs).

#### Government functions and powers

4.4 The Basic Law and the HKBORO has specifically prohibited the Government from engaging in racially-discriminatory acts in performing its duties. Apart from the legal remedies available under the HKBORO, there is a combined framework which deals with complaints against Government departments, and it includes the EOC, the Ombudsman, the Complaints against Police Office, each bureau's and department's complaint channels, and the LegCo. These safeguards have been operating effectively. Moreover, section 3 of the RDO specifically provides that the Ordinance "binds the Government". The Ordinance also prohibits racial discrimination by both public and private sectors in specified areas such as the provision of services and facilities.

#### The EOC's legislative proposals on the anti-discrimination ordinances

4.5 Following the EOC's submission of its proposals to amend the anti-discrimination ordinances in 1999, the Government had studied the proposals in detail, and agreed in principle to take forward a number of proposals. Several of those proposals in relation to harassment have been implemented in connection with the enactment of the RDO in 2008.

4.6 Notwithstanding the above, the EOC has subsequently reviewed its proposals and put forward the Proposals for Law Amendment (2011) in August 2011. Some of the proposals made by the EOC in 2011 are identical to those it made in 1999. The Government is now examining the proposals in their entirety, taking into consideration developments in recent years. We will take into account the 2011 proposals in our review in the light of the views of stakeholders. After we have completed the review, we will work with the EOC on how the proposals should be taken forward.

5. Please indicate the legislative or administrative measures, including recent court decisions, if any, relating to the protection against discrimination on the grounds of language, religion, political or other opinion, sexual orientation or age.
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5.1 Although there is currently no law which specifically deals with discrimination on grounds of language, religion, political or other opinion, sexual orientation or age, there are sufficient safeguards at the constitutional and statutory levels. Article 25 of the Basic Law stipulates that "All Hong Kong residents shall be equal before the law". Article 22 of the BOR provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. A person who considers that his right to equality has been infringed may seek relief before the courts.

5.2 Furthermore, in respect of promoting equal opportunities on grounds of sexual orientation, the Government has instituted comprehensive public education and administrative measures, with a view to fostering in the community a culture of mutual understanding, tolerance and mutual respect. These include:

- (a) implementing the Equal Opportunities (Sexual Orientation) Funding Scheme which provides funding support to community projects aimed at promoting equal opportunities on grounds of sexual orientation and gender identity;
- (b) promoting the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation both within the civil service and in the public sector to promote equal opportunities for people of different sexual orientations in employment;
- (c) broadcasting Announcement in the Public Interest, launching poster advertising campaigns and design competitions, organising roving exhibitions, and producing and distributing souvenirs among sexual minorities groups, non-governmental organisations (NGOs), youths and the general public to promote equal opportunities for sexual minorities;
- (d) maintaining a hotline for enquiries and complaints on issues relating to sexual orientation and gender identity; and
- (e) convening the Sexual Minorities Forum and through other appropriate channels to exchange views with NGOs on issues concerning sexual minorities in Hong Kong.

5.3 Over the past five years (from 2007-08 to 2011-12), the Government has allocated about \$7.8 million to promote equal opportunities on grounds of sexual orientation and gender identity. In 2012-13 alone, more than \$2.72 million has been earmarked for such work.

5.4 The Government will inject more resources, increase the efforts and strengthen the work programmes on public education and publicity, endeavouring to eliminate acts of discrimination against people of different sexual orientation and transgendered persons in society.

5.5 As for legislative measures against discrimination on grounds of sexual orientation, there are diverse views within the community on whether or not legislation against discrimination on ground of sexual orientation should be enacted. The Government will continue to listen carefully to different views on this subject in the community.

<p>6. With regard to paragraph 73 of the HKSAR's periodic report, please indicate any further measures taken to ensure women's participation in different areas of public affairs, including decision-making boards, the LegCo and District Councils. Please elaborate on the respective mandates of the Women's Commission and the additional commissions under the Family Council and describe how these mechanisms coordinate their activities.</p>
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#### Women's participation in public affairs

6.1 The Government, in collaboration with the Women's Commission (WoC), has been taking measures to enhance women's participation in different areas of public affairs. As regards electoral affairs, the WoC wrote in July 2011 to encourage political parties to explore and promote greater participation of women in the 2011 District Council Election and the 2012 LegCo Election as well as to incorporate women's concerns and aspirations into their political platforms.

6.2 As regards participation in government advisory and statutory bodies (ASBs), the WoC issued letters in July 2010 to women's associations and professional institutions inviting them to encourage their female members to provide their curriculum vitae to the Central Personality Index maintained by the Government in order to further enhance women's participation in ASBs. In April 2012, the Home Affairs Bureau (HAB) also wrote to professional bodies and institutions responsible for nominating or recommending candidates for participation in ASBs, appealing to these organisations to nominate / recommend more women candidates who are willing and able to contribute to the work of ASBs to participate in ASBs. The HAB will continue to urge bureaux and departments to pay attention to the women's participation rate in ASBs under their purview.



As at end 2012, the women's participation rate was around 33%, which is over the benchmark target of 30%.

6.3 Moreover, the WoC adopted the theme of women's leadership training for the "Pilot Funding Scheme for Women's Development" launched at end 2011, which provided resources for women's groups in organising various programmes with a view to enhancing women's participation in public affairs.

#### Mandate of the Family Council and the Women's Commission

6.4 On mandate, the Family Council is responsible for providing advice to the Government on formulation of policies and strategies for supporting and strengthening the family. With effect from 1 April 2013, the established approach of including family perspectives in the policy-making process will be further enhanced by the introduction of a mandatory assessment of family implications for all policies. Heads of Bureaux are also encouraged to consult the Family Council on new policies which may carry family implications. To implement the initiatives and to strengthen its advisory role, the Family Council will be reconstituted under a new non-official Chairman with effect from April 2013. This new measure should work to enrich public discussion of major Government policies and ensure that public discussions are better informed with family perspectives and considerations.

6.5 On the other hand, the WoC is tasked to promote the well-being and interests of women in Hong Kong. As such, it

- (a) advises the Government on the development of a long term vision and strategies related to the development and advancement of women;
- (b) advises the Government on the integration of policies and initiatives which are of concern to women, which fall under the purview of different Policy Bureaux;
- (c) keeps under review, in the light of women's needs, services delivered within and outside the Government, identifies priority areas for action, and monitors the development of new or improved services;
- (d) initiates and undertakes surveys and research studies on women's issues and organises educational and promotional activities; and
- (e) develops and maintains contact with local and international women's groups and service agencies with a view to sharing experiences and improving communication and understanding.

6.6 Under the reconstituted Family Council, the Chairpersons of the WoC, the Commission on Youth and the Elderly Commission will continue to be appointed as ex-officio members of the Family Council. This enables the WoC to offer views to the Family Council from comprehensive women's perspectives, and facilitates communication and co-operation between the WoC and the Council. With this mechanism in place, the WoC as well as the other two Commissions form a close partnership with the Family Council.

#### **Violence against women, including domestic violence (arts. 3 and 7)**

7. Please provide updated statistical data covering the period under review on the number of complaints filed concerning all forms of violence against women and the number of convictions handed down, including the sentences imposed and the compensation awarded to the victims. With reference to information provided in paragraphs 295 to 304 of the HKSAR's periodic report, please include further information on the practical implementation of the Domestic and Cohabitation Relations Violence Ordinance (Amended 18 of 2009 s. 4), including examples of case law.

7.1 The Government has put in place relevant legislation to provide protection to women against violence. For example, the Crimes Ordinance (Cap. 200) and the Offences Against the Person Ordinance (Cap. 212) provide criminal sanctions against acts of violence including sexual abuse, assaults, etc. Between 2005 and October 2012, a total of 2 196 defendants have been convicted for criminal offences related to domestic violence incidents. 571 of them were sentenced to imprisonment, including 14 who were sentenced to life imprisonment. 410 were sentenced to probation ranging from seven to 24 months whereas 378 were fined. The remaining offenders were subject to a community service order, a suspended sentence of imprisonment, a training centre order, a detention centre order, a drug addiction treatment centre order, a bind over order, a hospital order, or a rehabilitation centre order. We do not maintain the data on compensation awarded to the victims.

7.2 Apart from the criminal law framework, the Domestic and Cohabitation Relationships Violence Ordinance (DCRVO) (Cap. 189), formerly Domestic Violence Ordinance (DVO), offers civil remedies for victims of domestic violence in the form of an injunction order. The court is also empowered to require the abuser to attend an anti-violence programme with a view to changing his/her abusive attitude and behaviour. In 2010 and 2011, the Judiciary issued 18 and 55 injunction orders respectively under the DCRVO. Case law in relation to the Ordinance is not available as no proceeding concerning the Ordinance has been concluded with a judgment since the Ordinance came into operation on 1 January 2010. There were, however, cases decided under the now repealed DVO. For example, in *P v L* [2007] 1 HKLRD 26, the husband assaulted the wife on the mistaken belief that she had cut off the air conditioner to his room. The wife applied to the court for a non-molestation order and an order to oust her husband from the matrimonial home under section 3(1)(a) and (c) of the DVO respectively. After considering the facts of the case, the court held that the husband was not of a violent character and his conduct did not justify the making of an ouster order. However, the husband should have restrained himself from using any physical force on the wife and a non-molestation order was made to ensure that he did so in future.

7.3 According to the “Central Information System on Spouse / Cohabitant Battering Cases and Sexual Violence Cases” maintained by the Social Welfare Department (SWD) to capture information of domestic violence cases reported by different parties including the Hong Kong Police Force (the Police), the Hospital Authority (HA), schools, casework units, etc., there were 2 616 (82.4% of total cases) and 1 646 (84.5% of total cases) female victims among the newly reported spouse / cohabitant battering cases in 2011 and 2012 (January - September) respectively. Among the newly reported sexual violence cases, there were 333 (97.9% of total cases) and 150 (100% of total cases) female victims in 2011 and 2012 (January - September) respectively. To strengthen support for these victims particularly those undergoing judicial proceedings, the SWD has been providing subvention for a non-governmental organisation to operate the Victim Support Programme for Victims of Family Violence. It provides emotional support and relevant information on judicial proceedings and community support services to the victims concerned so as to alleviate their feeling of fear and helplessness.

**Right to life, prohibition of torture and other cruel, inhuman or degrading treatment (arts. 6 and 7)**

8. With reference to the information provided in paragraphs 82 to 88 of the HKSAR’s periodic report, please provide updated disaggregated statistical data regarding deaths in custody during the period under consideration, broken down by place of detention, sex, age, ethnicity of the deceased and cause of death. Please give detailed information on the results of the investigations into all deaths and the measures taken to prevent suicides and other sudden deaths in detention centres.

The Hong Kong Police Force

8.1 The Police attaches great importance to carrying out the duty of care to detained persons. Various measures have been introduced, including conducting frequent and irregular timed cell checks, installing Closed-Circuit Television (CCTV) inside the cell complex to monitor sudden incidents, and providing enhanced training to Police officers in handling detained persons including those with serious illness or mental disorder. The Police has also completed a detention facilities upgrade programme to eliminate potential danger points e.g. removing ligature points in cells to prevent self-harming acts in order to enhance safety of detained persons.

8.2 From 2005 to end of 2012, 19 persons died in the official custody of the Police. Under the Coroners Ordinance (Cap. 504), the Coroner has completed examination of 18 cases so far and one case is pending the Coroner's inquest. For the 18 cases examined, none of them was found to be caused by unlawful killing. Two of the deceased were found to have committed suicide, nine to have died by natural causes, five by accident, two were concluded by the Coroner as open verdict cases.

8.3 The table below provides a breakdown by the cause of death:

Year / Cause of death	2005	2006	2007	2008	2009	2010	2011	2012
Natural Causes	0	0	1	2	3	3	0	0
By Accident	0	1	1	0	1	1	1	0
Suicide	1	1	0	0	0	0	0	0
Open Verdict	1	1	0	0	0	0	0	0
Pending for Inquest	0	0	0	0	0	0	0	1
Total	2	3	2	2	4	4	1	1

8.4 For the 19 persons who died in the official custody of the Police as set out above, they include 17 Chinese, one Indian and one Pakistani. The table below provides a breakdown by their age and sex:

Age	Male	Female
21-30	1	2
31-40	1	1
41-50	4	-
51-60	4	1
61-70	1	1
71-80	-	1
81-90	-	1
>90	-	1
Total	11	8

8.5 The table below provides a breakdown by place of detention:

Place of Detention	No. of Deceased
Hospital	12
Police Station	1
Magistrates' Court Police Cell	1
Others	5
Total	19

## The Correctional Services Department

8.6 There were 101 death cases of persons under the custody of the Correctional Services Department (CSD) between 1 July 2005 and 30 June 2010 (please refer to **Appendix I** for the statistics). Majority of those inmates died of natural causes. All dead cases were reviewed by the Coroner.

8.7 Among the 101 cases examined by the Coroner, 17 of the deceased were found to have committed suicide, 73 due to natural causes, one due to dependence on drugs, three due to accidents, three due to misadventure and four were concluded as open verdict cases.

8.8 No misconduct was found on the part of the CSD except for one case, in which three CSD officers were found guilty of inflicting grievous bodily harm on an inmate in Lai Chi Kok Reception Centre in 2009. All three officers were sentenced to imprisonment but are appealing against the convictions.

8.9 The CSD is committed to providing a secure, safe, humane, decent and healthy environment for people in custody. Various measures have been put in place, including regular monitoring of inmates, with a view to identifying those who need special attention, installation of the CCTV systems, modifications of cells and building structure, and provision of relevant training to the CSD staff regularly.

<p>9. Please provide an update concerning the Crimes (Torture) Ordinance, or other efforts to enact a definition of the crime of torture consistent with international standards. With reference to the information provided in paragraph 92 of the HKSAR's periodic report, please provide statistical data on complaints of acts of torture and ill-treatment received by the Complaints against Police Office (CAPO) since the examination of the second periodic report. Please include information on investigations, disciplinary and criminal proceedings, convictions, penal or disciplinary sanctions applied and measures taken for the rehabilitation and compensation offered to victims. Please indicate in how many cases the CAPO's investigation was not endorsed by the Independent Police Complaint Council (IPCC) and the reasons for this.</p>
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## Crimes (Torture) Ordinance

9.1 There is no update concerning the Crimes (Torture) Ordinance (Cap. 427) since the submission of the HKSAR's third periodic report. The Government remains of the view that the offence of torture under the Crimes (Torture) Ordinance, read with the defence of lawful authority provided therein, is not inconsistent with international standards. Under section 3(1) of the Ordinance, a public official or person acting in an official capacity commits the offence of torture if he intentionally inflicts severe pain or suffering on another in the performance of his official duties. Given the wide scope of the offence, it is necessary to provide for the defence of "lawful authority, justification or excuse" in section 3(4) to cover matters such as the use of reasonable force to restrain a violent suspect / prisoner. It is not intended to, nor would the court be asked, to interpret it as authorising conduct intrinsically equivalent to torture.

## Complaints of acts of torture and ill-treatment received by the Complaints against Police Office and the Independent Police Complaints Council

9.2 According to the existing two-tier police complaint handling mechanism, the Complaints against Police Office (CAPO) has an obligation under the Independent Police Complaints Council Ordinance (IPCC Ordinance) (Cap. 604) to submit a detailed investigation report on each reportable complaint to the Independent Police Complaint Council (IPCC) for rigorous examination and is required to address queries and suggestions from the IPCC on the

report. If the IPCC is not satisfied with the result of a CAPO investigation, it may ask the CAPO to clarify any doubts or reinvestigate the complaint. From 2009 to March 2012, a total of 6 549 queries or suggestions were made by the IPCC to the CAPO. Out of these queries or suggestions, 4 384 (67%) were accepted by the CAPO and the remainder were met with satisfactory explanations from the CAPO. During the same period, the IPCC raised 1 551 queries regarding the classification of findings. As a result, the CAPO re-classified a total of 674 investigations results. The IPCC may also ask for interview with persons related to the case to clarify matters. From 2009 to March 2012, the IPCC invited 32 persons to attend interviews. From 1 June 2009, the establishment of the statutory IPCC, to November 2012, there has been no incident that the CAPO's investigation was not endorsed by the IPCC.

9.3 There was no complaint of torture or ill-treatment received by the CAPO from 2005 to November 2012 and no disciplinary or criminal proceedings have been brought against any officer for torture or ill-treatment in that period.

10. According to the information provided in paragraphs 59 to 62 of the HKSAR's periodic report, the IPCC, despite its statutory status, has only advisory and oversight functions and its members are appointed by the CE. In this regard, and in light of the Committee's previous concluding observations (CCPR/C/HKG/CO/2, para. 9), please provide information on measures taken, if any, to establish a fully independent mechanism mandated to receive and investigate complaints on police misconduct and empowered with the executive authority to formulate binding recommendations in respect of investigations conducted and findings regarding such complaints. Is the HKSAR considering establishing independent complaint mechanisms in other law enforcement departments, such as the Immigration Department, Correctional Services Department, Customs and Excise Department and the Independent Commission against Corruption? Please include information on the number of reported cases of torture or ill-treatment committed by officials of the above-mentioned law enforcement departments since the consideration of the HRSAR's second periodic report and the penalties imposed on perpetrators of such acts.

10.1 With the implementation of the IPCC Ordinance on 1 June 2009, the IPCC has become an independent statutory body which has statutory functions and powers, including observing, monitoring and reviewing the handling and investigation of reportable complaints by the Police. The IPCC also makes recommendations and reports in respect of the handling or investigation of such complaints, and identifying any fault or deficiency in the practices or procedures adopted by the Police that has led or might lead to reportable complaints. The IPCC Ordinance imposes a statutory duty on the Police to comply with the IPCC's requirements, further enhancing the IPCC's independence in dealing with complaints against the Police.

10.2 The 24 members of the IPCC appointed by the CE are drawn from a wide spectrum of the community, covering the legal, health services, education, social welfare, communication, and commercial sectors etc. The IPCC is chaired by a Senior Counsel with three LegCo members as the Vice-Chairmen. The number of IPCC members was increased from 18 to 24 in 2010.

10.3 Section 8(1)(c) of the IPCC Ordinance clearly sets out the IPCC's function to identify any fault or deficiency in any practice or procedure adopted by the Police that has led to or might lead to reportable complaints, and to make recommendations (as the Council considers appropriate) to the Commissioner of Police or the CE or both of them in respect of such practice or procedure.

10.4 The IPCC also monitors the CAPO's investigations into reportable complaints through the statutory IPCC Observers Scheme, under which IPCC members and a wide pool of non-official 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. The number of observations conducted by the IPCC increased from 1 808 observations (including 331 surprise observations) in 2009 to 2 010 observations (including 643 surprise observations) in 2011. An addition of 20 Observers were appointed to the IPCC Observers Scheme in November 2010, increasing the total number of Observers to 110.

10.5 The two-tier complaints handling system has been operating effectively, and has built in sufficient checks and balances to ensure that complaints are handled fairly, impartially and thoroughly. With the commencement of the IPCC Ordinance in 2009, the number of complaints received by CAPO in 2009 surged by 58% from 2 672 in 2008 to 4 231 in 2009, reflecting strong public acceptance of and confidence in the newly established statutory IPCC.

10.6 As for other law enforcement agencies, including the Immigration Department (ImmD), the CSD and the Customs and Excise Department (C&ED), they are also subject to oversight by the Ombudsman in respect of maladministration, including their complaint mechanisms. The respective complaint mechanisms have been working effectively and the Government does not have any plan to introduce any change at this stage. As for the Independent Commission Against Corruption which is accountable to the CE directly and operates independently from the Administration, it has its own complaint mechanism and the Administration will not seek to interfere with it. The number of reported cases of torture or ill-treatment committed by officials of these agencies is elaborated below.

#### Reported cases of torture or ill treatment

10.7 In the C&ED, there were 129 complaints of assault and threat against its officers between 1 July 2005 and 30 June 2010. All were found unsubstantiated after the Police's criminal investigation.

10.8 There was no report of torture as defined in the Crimes (Torture) Ordinance involving the CSD. Three CSD officers were found guilty of inflicting grievous bodily harm on an inmate in the Lai Chi Kok Reception Centre in 2009. All three officers were sentenced to imprisonment but are appealing against the convictions.

10.9 The ImmD has not received any torture or ill-treatment complaints during the stated period.

10.10 There was no complaint of torture or ill-treatment received by the Police from 2005 to November 2012.

<p>11. In its previous concluding observations, the Committee recommended the HKSAR to establish an appropriate mechanism to assess the risk faced by individuals expressing fears of being victims of grave human rights violations in the locations to which they may be returned. Please provide updated information on the process to amend the Immigration Ordinance (Cap. 115), inter alia, to provide for a process for determining claims made by persons in HKSAR for non-refoulement protection. Please provide information about the number of persons, broken down by country of origin, who had been granted asylum or humanitarian protection, and the number of those who have been returned, extradited or expelled since the consideration of the HKSAR's second periodic report. Please provide details of the grounds on which they were sent back, including a list of countries to which individuals were returned.</p>
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11.1 The Immigration (Amendment) Ordinance 2012 came into operation on 3 December 2012. It provides for a statutory screening mechanism for determining claims made by persons in

Hong Kong for non-refoulement protection under Article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

11.2 The amendment Ordinance provides that, among other things, a torture claimant may not be removed from Hong Kong to a torture risk State, until his torture claim is finally determined as unsubstantiated or withdrawn. A torture claim must be accepted as substantiated if there are substantial grounds for believing that the claimant would be in danger of being subjected to torture if removed or surrendered to a torture risk country, and all relevant considerations are to be taken into account in determining a torture claim.

11.3 Under the statutory mechanism, after a claimant has submitted the ground of the claim and supporting facts in a torture claim form, the responsible immigration officer must arrange an interview for the claimant to further provide information and answer questions relating to the claim. Decisions on torture claims must be given to the claimants in the written form and with reasons for the decisions. Claimants aggrieved by such decisions have a right to lodge an appeal to the Appeal Board set up under the amendment Ordinance, which may decide to hold an oral hearing if it considers that the appeal cannot be justly determined otherwise.

11.4 The Government is fully committed to fulfilling our obligation under the CAT. As mentioned above, a torture claimant may not be removed from Hong Kong to a torture risk State until his torture claim is withdrawn or finally determined as unsubstantiated. The Government is also committed to providing publicly-funded legal assistance to all torture claimants (whether or not they are detained or released on recognisance), subject to means and merits tests, during the screening process. The availability of publicly-funded legal assistance to torture claimants will be further elaborated in paragraph 16.13 below.

11.5 As at 30 November 2012, the ImmD has, since 24 December 2009, completed screening of 2 641 torture claims under an enhanced torture claim screening mechanism (under which claimants have access to publicly-funded legal assistance to ensure high standards of fairness are met). Claimants aggrieved by the ImmD's decisions might lodge formal petitions, which were determined by impartial adjudicators (who were all former judges or magistrates). 1 266 unsubstantiated claimants lodged petitions between 24 December 2009 and 30 November 2012. Adjudicators upheld the ImmD's decisions in all petitions. Some 1 120 persons whose torture claims were finally determined as unsubstantiated were removed from Hong Kong. There is one torture claimant (a Sri Lankan) whose torture claim has been substantiated under the previous screening mechanism before 24 December 2009.

11.6 Hong Kong has returned no person with a substantiated torture claim.

11.7 Separately, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol do not apply to Hong Kong. Rather, the United Nations High Commissioner for Refugees (UNHCR) performs refugee status determination for asylum seekers in Hong Kong. On the UNHCR's advice that an illegal immigrant or overstayer has lodged a refugee claim with its Office, the Director of Immigration may exercise discretion on a case-by-case basis to temporarily withhold the removal or deportation action against the asylum seeker pending determination of his refugee status, and if his claim is accepted, pending resettlement to a third country.

**Liberty and security of the person and treatment of persons deprived of their liberty (arts. 9 and 10)**

12. With reference to the information provided in paragraph 130 of the HKSAR's periodic report, please provide updated information, including statistics, disaggregated by sex, age and ethnicity, on the number of pretrial detainees and convicted prisoners and the occupancy rate of all

places of detention

12.1 Please refer to **Appendix II** for the statistics.

13. Please include information on the number of persons deprived of their liberty in psychiatric hospitals and other institutions for persons with psychosocial disabilities. What is the situation with respect to alternative forms of treatment, such as community-based rehabilitation services and other forms of outpatient treatment programmes?

13.1 As at 30 September 2012, there were around 890 patients who were compulsorily detained in the psychiatric in-patient units of mental hospitals under the HA and the Psychiatric Centre of the CSD.

13.2 Out of these 890 patients, around 800 patients are currently detained at the psychiatric in-patient units of the HA's mental hospitals, under an order made by the court or magistrate, on the basis of medical testimony that the patient is suffering from mental disorder of a nature or degree which warrants his/her detention in a mental hospital for observation (or for observation followed by medical treatment) for at least a limited period, and ought to be so detained in the interests of his/her own health or safety or with a view to protecting that of other persons.

13.3 The remaining of about 90 patients are compulsorily detained at the Psychiatric Centre of the CSD under a hospital order made by the court or magistrate, on the basis of medical testimony that a convicted offender is suffering from mental disorder, and under the condition that ordering the convicted offender's compulsory detention for psychiatric treatment is the most suitable method of handling the case.

#### Community mental health support services

13.4 The Government is mindful of the needs of persons with mental health problems and their family members / carers, and keeps under review the operation of and demand for community support services to ensure that the services would keep pace with changing circumstances. In view of the growing demand of mental health community support services, the SWD has already launched the district-based and one-stop service delivery mode of the Integrated Community Centre for Mental Wellness (ICCMW) operated by NGOs across the territory in October 2010, providing comprehensive and one-stop community support services ranging from prevention to risk management for discharged mental patients, persons with suspected mental health problems, their families / carers and residents living in the district.

13.5 The services provided by the ICCMW include casework counselling, therapeutic and supportive groups, outreaching services, day training, drop-in services, social and recreational activities, public education programmes to enhance community understanding of mental health, and where necessary referral of cases to the HA for clinical assessment or psychiatric treatment; and community support services for patients with severe mental illness to tie in with the HA's Case Management Programme.

#### Residential care services

13.6 Apart from providing community support services, the Government also provides a range of subsidised residential care services through NGO operators to meet the diversified residential care needs of persons with mental illness who are assessed by their attending psychiatrists to be mentally suitable for group living in the community. These services include:



- (a) Long Stay Care Home (1 507 places as at December 2012): It provides long term residential care and active maintenance services to discharged chronic mental patients to provide them with the necessary abilities to progress to more integrated living in the community with support services;
- (b) Half-way House (1 509 places as at December 2012): It provides community rehabilitation service for ex-mentally ill persons after a period of medical treatment to facilitate re-integration into the community; and
- (c) Supported Hostel for Ex-mentally Ill Persons (83 places as at December 2012): It provides group home living for ex-mentally ill persons who can only live semi-independently with a fair amount of assistance from hostel staff in daily activities.

#### Medical social services

13.7 Besides, as at December 2012, 243 medical social workers under the SWD were stationed in psychiatric hospitals or out-patient clinics to provide timely psychosocial intervention for mental patients and their families and to help them cope with or solve problems arising from mental illness. Through collaboration with other disciplines, medical social workers would arrange appropriate rehabilitation and social services for the patients with a view to facilitating their re-integration into the community.

#### Out-patient treatment programme

13.8 The HA provides patients with, according to their individual clinical need and medical history, psychiatric outpatients services, day hospital and community psychiatric services.

13.9 In line with the international trend to gradually focus on community and ambulatory services in the treatment of mental illness, and to allow the early discharge of mental patients when their conditions are stabilised for treatment in the community, the Government has strengthened its community psychiatric services with a view to allowing more patients who are suitable for discharge to receive treatment in the community so that they can re-integrate into the community and start a new life as early as possible.

13.10 Community psychiatric programmes launched and enhanced in recent years by the HA include the Case Management Programme that provides intensive, continuous and personalised support for patients with severe mental illness, the Crisis Intervention Teams to achieve better crisis intervention in response to referrals and incidents in the community, and the Integrated Mental Health Programme at selected general out-patient clinics which renders support to patients with mild mental illness in the primary care settings.

#### **Elimination of slavery and servitude (arts. 7 and 8)**

14. With reference to the information provided in paragraphs 109-111, please provide information, on an annual basis since 2006, on complaints investigations, prosecutions and convictions, including penalties, for perpetrators of human trafficking. Please indicate what measures, if any, have been adopted to improve and develop training in the identification of victims of trafficking, especially child-victims.

14.1 Information on complaints investigations, prosecutions and convictions for perpetrators of human trafficking is set out at **Appendix III**.

14.2 Police and Immigration officers are on high alert for any potential victims of human trafficking, in particular child victims, in the course of their duties, and would endeavor to identify Trafficking in Persons victims for each operation at the vice-establishments.

14.3 The “Action Card” for “Debriefing of Human Trafficking Victims” had been widely distributed to frontline officers as a checklist / guideline for the Police and Immigration officers to identify potential human trafficking victims.

14.4 Every year, Police and Immigration officers proactively mount about 5 000 anti-vice operations throughout the region with 3 000 to 6 000 prostitutes arrested on average. The Police closely monitor the situation, and there is neither intelligence nor public report that child sex tourism exists in Hong Kong.

14.5 Regular internal training / seminars are held to update frontline law enforcement officers with the latest trend of human trafficking, skill in victim identification, supportive services available to victims, including child victims.

14.6 A joint Workshop on Combating Human Trafficking was held between the law enforcement agencies of Hong Kong (including the Police, the ImmD and the C&ED) and the United States on 1 March 2012 in Hong Kong to share experience on combating trafficking and victim identification.

14.7 Our officers have also maintained close liaison with local Consulates for identifying potential victims, with a view to rendering relevant supporting services.

14.8 Officers of various law enforcement departments would actively take part in international conferences / seminars on human trafficking issues to update themselves with the latest trend of human trafficking and skills in victim identification. Examples of their participation in 2011 and 2012 are:

- (a) the Bali Process – Senior Officials’ Meeting and the 4th Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime held in Indonesia in March 2011;
- (b) the Regional Forced Child Labor / Human Trafficking / Child Sex Tourism Training Conference held in Thailand in April 2011;
- (c) the Bali Process – Immigration Aspects of Airport Security held in Thailand in June 2011;
- (d) the 17th Pacific Rim Immigration Intelligence Conference held in Samoa in October 2011;
- (e) the Trafficking in Persons / Child Exploitation Course in Thailand in July and December 2012;
- (f) the 10th Anniversary Commemorative Conference of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime for Senior Officials at Bali, Indonesia in November 2012; and
- (g) the 2nd Latin American Congress of Migration on Crime Prevention of the trafficking in persons in Latin America held in Medellin, Colombia in November 2012, etc.

14.9 Furthermore, Hong Kong law enforcement agencies maintain close partnership with their counterparts overseas and in the Mainland to combat human trafficking. Some highlights are as follows -

- (a) In October 2010, acting on information from the Philippines Consulate in Hong Kong, the Police arrested a Filipino couple taking part in trafficking into Hong Kong five Filipino women for the purpose of prostitution. The couple had later absconded to the Philippines. Through the Interpol cooperation mechanism, the case was referred to the Filipino authorities for follow up action, and legal action would be

taken in the Philippines against the couple for trafficking persons to Hong Kong. The two fugitives are now wanted by both the Hong Kong Police and the Philippines authorities;

- (b) In June 2011, the Police and the ImmD conducted a joint operation with the Mainland Authority to combat cross-border human trafficking and vice activities. Two persons were arrested;
- (c) In September 2011, the ImmD conducted the Operation “Sky League” at the Hong Kong International Airport with the participation of local consulate representatives of Australia, Canada, France, Germany, the Netherlands, New Zealand, United Kingdom, the United States of America and Macao SAR Police officers. Four persons were arrested and one questionable passport was unearthed; and
- (d) In December 2012, another Operation “Sky League” was conducted by the ImmD at the Hong Kong International Airport, with the participation of local consulate representatives of Australia, Canada, the Netherlands, United Kingdom and the United States of America.

14.10 These operations helped strengthen the international cooperation between Hong Kong, overseas and Mainland law enforcement agencies for deterring transnational human trafficking activities.

15. Please indicate what measures have been taken to prevent that migrant domestic workers, who are subject to the live-in requirements, are protected from working conditions amounting to forced labour or ill-treatment.

15.1 The Government attaches great importance to protecting the well-being of migrant workers, including FDHs, in Hong Kong. Indeed, Hong Kong is one of the few places in the region that grant equal statutory labour rights and benefits (e.g. maternity protection, rest days, statutory holidays, etc.) to local and migrant workers.

15.2 Apart from receiving statutory protection as local workers under labour legislation such as the Employment Ordinance (Cap. 57) and the Employees’ Compensation Ordinance (Cap. 282), FDHs enjoy additional rights and benefits through administrative measures. In this regard, FDHs are further protected by a standard employment contract (the contract) set by the Government. The contract requires that the employer provides the worker with, amongst others, a wage not lower than the Minimum Allowable Wage, suitable accommodation with reasonable privacy for free, free medical treatment, regardless whether the medical condition concerned is work-related or not, and free return passage between Hong Kong and his/her place of origin. These are all benefits which are not usually available to local workers.

15.3 The Government does not tolerate any abuse of FDHs. If FDHs consider their statutory or contractual rights having been infringed and cannot resolve the dispute with their employers, they may approach the Labour Department (LD) for advice and assistance, including free enquiry and conciliation service. If the dispute remains unresolved despite conciliation and the FDH decides to pursue his/her claim further, the LD would refer the case to the Minor Employment Claims Adjudication Board (MECAB) (for claims not exceeding \$8,000) or the Labour Tribunal (for claims exceeding the said amount) for adjudication.

15.4 Alongside the Government’s conciliation and related services to assist FDHs to pursue their civil claims, the LD takes rigorous enforcement action against offences under the labour legislation. Any such claims or complaints will be promptly investigated. Prosecution will be instituted where there is sufficient evidence and the FDH concerned is willing to stand as prosecution witness. Aggrieved workers are encouraged to come forward to lodge complaints with the relevant authorities and to make use of the conciliation service provided by the LD and

adjudication under the independent Judiciary. In the course of civil or criminal investigation, the LD would render assistance to the FDH in applying for extension of stay in HK with the ImmD. Moreover, under exceptional circumstance, e.g. where the employer is unable to continue with the contract because of migration, external transfer, death, financial reasons or there is evidence that the FDH has been abused or exploited, an FDH whose employment is terminated may be allowed by the Director of Immigration to change employer in Hong Kong without having to first return home.

15.5 To promote better understanding of labour rights among FDHs, various publications are produced and disseminated free of charge (some in several FDHs' languages in addition to English). Seminars and information kiosks are held at popular FDHs gathering places, and television and radio commercials as well as publicity videos are screened to ensure that FDHs, their employers and employment agencies are each made aware of their rights and obligations.

**Right to a fair trial and equality before the law (arts. 14 and 26)**

16. With reference to the information provided in paragraphs 172-176 of the periodic report, please provide further information on the legal aid system implemented in HKSAR, including on the criteria for eligibility, functioning and financing of the system. Please indicate whether legal aid is made available to all detained persons and clarify whether asylum seekers have access to legal representation in the refugee status determination procedure.

16.1 The provision of legal aid services by the Legal Aid Department (LAD) is governed by relevant legislation.

16.2 Civil legal aid is provided by the LAD through the Ordinary Legal Aid Scheme (OLAS) and the Supplementary Legal Aid Scheme (SLAS) under the Legal Aid Ordinance (LAO) (Cap. 91) for civil proceedings in the District Court, the Court of First Instance, the Court of Appeal, the CFA, certain coroner's inquests, as well as applications to the Mental Health Review Tribunal. The scope of civil proceedings covered by the OLAS and the SLAS are prescribed in Schedule 2 and Schedule 3 to the LAO respectively. As far as the SLAS is concerned, in addition to claims relating to personal injuries, employees compensation and medical, dental and legal professional negligence, the scope of the SLAS was significantly expanded in November 2012 to cover a wider range of professional negligence claims, negligence claims against insurers or their intermediaries in respect of the taking out of personal insurance products, and monetary claims against the vendors in the sale of completed or uncompleted first-hand residential properties, amongst other types of proceedings.

16.3 Criminal legal aid is provided by the LAD under the Legal Aid in Criminal Cases Rules (LACCR) (Cap. 221D) to provide the services of a solicitor and, if necessary, a barrister to represent an accused person, in committal proceedings in the Magistrates' Court, cases tried in the District Court and the Court of First Instance and all criminal appeals.

16.4 Under section 26 and 26A of the LAO, for civil proceedings, if an applicant is refused legal aid or feels aggrieved by any order or decision of the Director of Legal Aid (DLA) (such as discharge of legal aid), the applicant may appeal to the Registrar of the High Court; or in CFA cases, to a Review Committee made up of the Registrar of the High Court and a representative each of the Hong Kong Bar Association and the Law Society of Hong Kong. The decision of the Registrar or the Review Committee is final.

16.5 Under rule 12 of the LACCR, for criminal proceedings, if an applicant is refused legal aid because the applicant's case / appeal lacks merits, the judge hearing the case / appeal may grant the applicant legal aid provided the applicant is eligible on means. Under rule 13 of the

LACCR, if the case / appeal involves murder, treason or piracy with violence, the judge hearing the case / appeal may grant the applicant legal aid and exempt the applicant from the means test and payment of contribution. Under rule 14B of the LACCR, if an application for legal aid to appeal to the CFA is refused, the appeal arrangement is the same as that of civil proceedings mentioned above.

### Eligibility

16.6 As mentioned in paragraph 46 of the HKSAR Common Core Document, applicants for legal aid must pass the means test (as provided under sections 5 and 5A under the LAO for civil proceedings and rule 4 of the LACCR for criminal proceedings) and merits test (as provided under section 10 of the LAO for civil proceedings, and rule 4 under the LACCR for criminal proceedings) to be granted legal aid. Instances where the DLA may exercise discretion to grant legal aid has already been set out in the same paragraph.

16.7 With effect from May 2011, the financial eligibility limit for the OLAS is \$260,000 in assessed financial resources (mainly the applicant's disposable income and capital with statutory deductions), while that for the self-financing SLAS is \$1.3 million in assessed financial resources. The criteria for assessing applicants' financial resources are set out in the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B). For criminal legal aid case, the assessment criteria follow that of the OLAS.

### Financing

16.8 Funding for the OLAS and criminal legal aid is provided by the Government, and does not have a prescribed funding ceiling. While there is an approved funding amount in the LAD's annual Estimates for administrative purpose, should the need arise, approval would be sought (from the LegCo Finance Committee (FC) as appropriate subject to funding requirements) for supplementary provision for the LAD to continue its delivery of legal aid services as provided under the LAO. The provision for legal aid costs in the 2012-13 Estimates is \$538.8 million.

16.9 As regards the SLAS, it is a self-financing scheme and is mainly funded by the application fees payable by applicants, the interim contributions from aided persons and the final contributions from a percentage deduction of the damages recovered in successful cases. In December 2012, the FC approved the injection of \$100 million into the Supplementary Legal Aid Fund (SLAS Fund) to support the operation of the recently expanded SLAS as mentioned above. The balance of the SLAS Fund was \$188 million as at December 2012.

16.10 At present, persons under Police custody are entitled to be visited by his properly instructed solicitor, or by a solicitor who has been instructed by a third party on behalf of the person so detained, provided that no unreasonable delay or hindrance is caused to the process of investigation or the administration of justice.

16.11 In order to provide simple and concise information on the rights and entitlements to persons under Police custody, the Police have put in place a notice of the rights (the Notice). The following rights in relation to access to legal advice by a person under Police custody are included in the Notice:

- (a) making private telephone calls to, or communicate in writing or in person with, a solicitor or barrister;
- (b) having a solicitor or barrister present during any interview with the Police;

- (c) communicating privately or refusing to communicate with a solicitor or barrister claiming to have been instructed by a third person on behalf of the person under Police custody; and
- (d) being provided with a list of solicitors published by the Law Society of Hong Kong.

16.12 The Notice is served on each and every person under Police custody or involved in the Police's enquiry. In addition, A2-sized posters of the Notice are prominently displayed in report rooms, Police report centres, interview rooms and areas of detention to ensure these persons are reminded of their rights and entitlements while in Police custody.

16.13 Since the implementation of the enhanced screening mechanism for torture claims in December 2009, publicly-funded legal assistance is available to all torture claimants (whether or not they are detained or released on recognisance), subject to means and merits tests, through the Duty Lawyer Service (DLS). At present, over 260 barristers and solicitors who received prior training relating to the CAT are on the DLS' roster to provide such assistance to torture claimants, including assistance to fill in and complete torture claim forms to state the grounds of claims and provide supporting evidence, attending interviews arranged by the immigration officers, and making appeals to and attending oral hearings (if any) before the Torture Claims Appeal Board if the claimants feel aggrieved by the ImmD's decisions. Since the implementation of the enhanced screening mechanism for torture claims in December 2009, 99% of all CAT claimants have applied for and were granted publicly-funded legal assistance through the DLS.

**Prohibition of arbitrary or unlawful interference with privacy, family, home correspondence (art. 17)**

17. With reference to the information provided in paragraph 192 of the HKSAR's periodic report, please provide information on the existence of any legislation or guidelines for police videotaping of public demonstrations. Please also provide information on the content of the amendments to the Personal Data (Privacy) Ordinance adopted in June 2012.

Police videotaping of public demonstrations

17.1 It may be necessary for the Police to make video recordings, such as recording the activities and movement of the crowd participating in public processions, during public order events to facilitate internal review and assessment on policing strategy so that the management of public order events and contingency plans can be improved continuously.

17.2 Under the internal guidelines of the Police, the recording of public order events should not target individual participants. Nevertheless, if a breach of the peace or public order has occurred or is likely to occur, the Police officer recording the event may target the behaviour of those individuals who are suspected of causing or involved in that breach. The recording in these circumstances is necessary for the collection of evidence. If the recordings contain personal data, they will be properly dealt with in accordance with the relevant legislation, including the PDPO.

17.3 Only officers who have undergone appropriate training will be deployed for the video recording of public order events. The training includes the understanding of relevant laws and powers, use of equipment, purpose and procedures of the recording.

17.4 The videotapes will be retained for internal review or kept as evidence for court purpose. The Police has clear and stringent guidelines and procedures to handle the materials so recorded, including safe custody, proper handling and timely destruction of these recorded materials. The guidelines govern that only designated enforcement officers can handle such recorded materials and the videotapes shall be destroyed within three months from the date of

recording. If it is necessary to retain the videotapes for more than three months, an authorisation from a Senior Superintendent shall be obtained and this decision shall be reviewed monthly by the authorising officer.

### Personal Data (Privacy) Ordinance

17.5 The salient features of the amendments to the PDPO are set out below:

- (a) introducing an explicit requirement that the data user's response to a data access request must be, subject to any provision of exemption, "in writing";
- (b) relaxing the condition for issue of an enforcement notice: so long as the PCPD holds the opinion, following the completion of an investigation, that the data user is contravening or has contravened a requirement under the PDPO, he may issue an enforcement notice, irrespective of whether there is evidence to show that the contravention will likely be repeated;
- (c) introducing a new offence for repeated and intentional contravention of a requirement under the PDPO;
- (d) introducing a heavier penalty for repeated non-compliance with enforcement notices;
- (e) introducing a new offence for disclosing personal data obtained from a data user without the data user's consent;
- (f) introducing indirect regulation of data processors and sub-contracting activities;
- (g) introducing new requirements and offences relating to the use of personal data in direct marketing and provision of personal data to others for use in direct marketing; and
- (h) introducing a legal assistance scheme under which the PCPD may provide assistance to aggrieved data subjects.

17.6 All the provisions above have come into operation on 1 October 2012, except those in paragraphs (g) and (h) which will come into operation in the second quarter of 2013.

### **Freedom of opinion and expression and association and the right to peaceful assembly (arts. 19, 21 and 22)**

18. In the light of the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression, please provide information on the measures taken to give effect to the right of access to information by public bodies. Please also comment on how freedom of expression is ensured in HKSAR, in particular how a free media is encouraged. What measures are in place to ensure that public broadcasting services operate in an independent manner? Please comment on reports that HKSAR has seen a sharp deterioration in media and academic freedom, including arrests, assaults and harassment against journalists and academics. In this regard, please provide information on the measures taken to address such harassment and to protect person against attacks aimed at silencing those exercising their right to freedom of expression.

### Access to information

18.1 The Government is committed to making available to the public as much government information as possible. First introduced in March 1995, the Code on Access to Information (the Code) has been applicable to the whole of the Government since December 1996.

18.2 The Code enshrines the policy that the Government will make available information that it holds, unless there is justification to withhold it. Under the Code, a person who requests information may apply for a review of the decision of the bureau or department dealing with the request. This person may also lodge a complaint against the bureau or department for failure to

properly apply the Code through the Ombudsman, who is independent of the Government. In 2009, the Ombudsman conducted a direct investigation on the effectiveness of the administration of the Code and put forward 11 recommendations for improvement, all of which have been implemented by the Government, e.g. to organise more, and timely, training for the Access to Information Officer established in each bureau and department; to work with departments to organise more training for other staff; to add a Chinese version of the guidelines to the Government webpage on the Code; to require all departments' homepages to introduce the Code and to be hyperlinked to the webpage on the Code; to provide advice to departments to ensure that departmental guidelines are clear, correct and up-to-date; and to follow up with other public bodies within the Ombudsman's purview for them to adopt the Code or some similar guide.

18.3 The current administrative arrangement generally fulfils the objective to allow members of the public to access information held by the Government. The Government will continue to promote awareness of and compliance with the Code and review the effectiveness of administration of the Code from time to time.

#### Freedom of expression

18.4 The Government is firmly committed to protecting the freedom of speech and of the press, and maintaining an environment in which a free and active press can operate under minimum regulation.

18.5 Freedom of expression and freedom of the press are fundamental rights enjoyed by people in Hong Kong. These rights are enshrined in Article 27 of the Basic Law and the HKBORO.

18.6 Hong Kong has developed a respect for freedom of speech and of the press. As always, the media rigorously performs its role as a watchdog over the Government. It reports freely in Hong Kong, commenting extensively and liberally on local and external matters, and on the policies and work of the Government.

18.7 A free press, with rights and freedoms protected by the Basic Law and the HKBORO, is the most effective safeguard against self-censorship. Ultimately, those working in the field must protect the integrity of their profession.

18.8 The Police fully respects freedom of the press. The Police will carry out their law enforcement duties in an impartial manner which is not affected by the identities of the offenders. The Department of Justice is responsible for the conduct of criminal prosecutions. In the discharge of that function, the Department enjoys an independence which is guaranteed by Article 63 of the Basic Law. A decision as to whether or not to prosecute an individual is made in accordance with the requirements laid down in the Statement of Prosecution Policy and Practice, which is a public document published by the Department of Justice. A decision to prosecute will only be taken after the evidence and the surrounding circumstances have been fully evaluated. Prosecutors discharge their duties with professionalism and act independently without the fear of political interference or improper or undue influence.

#### Public broadcasting services

18.9 The Government has all along attached great importance to safeguarding the editorial independence of the Radio Television Hong Kong (RTHK), the public service broadcaster of Hong Kong. In August 2010, the Government promulgated the RTHK Charter. The Charter clearly enshrines the editorial independence of the RTHK. It also sets out the public purposes and mission of the RTHK and the department's relationship with the Government, the Communications Authority and the Board of Advisors. The broad-based Board of Advisors was established in the



same month to provide advice to the RTHK with a view to improving its service delivery, governance and accountability. The Board is advisory in nature. It has no executive power and does not involve in the day-to-day operation or staffing matters of the RTHK. The ultimate editorial responsibility for the RTHK rests with the Director of Broadcasting. With these enhancements, we are confident that the editorial independence of the RTHK will continue to be maintained and even strengthened.

19. Please comment on reports that police used disproportionate force and imposed heavy restrictions on demonstrators and members of the news media during the annual Hong Kong march on 1 July 2011 and China Vice-Premier Li Keqiang's and China President Hu Jintao's visits in August 2011 and July 2012 respectively. Please also comment on the alleged harassment by police of participants in the "International Day against Homophobia and Transphobia" march organised on 15 May 2011.

#### Freedom of assembly

19.1 The Police respects rights of assembly and freedom of expression. The Police always handles public meetings and processions in a fair, just and impartial manner in accordance with the laws of Hong Kong. It is the Police's operational policy to strike a balance by facilitating all lawful and peaceful public meetings and processions on the one hand and on the other hand reducing the impact of public meetings and processions on other people or road users to ensure public safety and public order. In fact, the number of public order events in Hong Kong has been on the increase in recent years. In 2012, there were a total of 7 529 public order events held in Hong Kong, a rise of 651 or 9.5% when compared with 2011, and a rise of 5 629 or 296% when compared with 2005.

19.2 Prior to the holding of a public order event, the Police will carefully consider various factors including the views of the event organiser and other stakeholders before making a professional assessment. Based upon the results of the assessment, reasonable and proportionate conditions may be imposed to ensure that the holding of the public order event is conducted in a safe and orderly manner. The condition(s) imposed will be stated explicitly beforehand in the "Letter of no Objection" issued to the organiser. Organiser may appeal to the statutory Appeal Board on Public Meetings and Processions if they consider the Police decision unreasonable.

#### Facilitating the media

19.3 Media support is necessary to enable the Police to carry out its duties effectively and it is vital to establish and maintain the confidence of the public through the media. The Police always respects press freedom and media's freedom of reporting, and will take measures to facilitate the work of the media as much as practicable. As regards facilitating the work of the media, the Police has stipulated clear principles and guidelines. The responsibilities of the Police in facilitating the work of the media are clearly defined in the Force Procedures Manual which stipulates that the Police should facilitate the media to film, record or take photographs and opportunities should be provided to the media to get to vantage points to do so.

19.4 The Police will continue to establish good working relationship and maintain communication with the media. On the basis of mutual respect and understanding, it will continue to maintain good relationship with and facilitate the work of the media.

#### Security arrangements for the visit of government leaders

19.5 The Police has the duty to ensure the personal safety of government leaders visiting Hong Kong, regardless of their countries of origin. With the ultimate responsibility for ensuring

the personal safety of visiting leaders, it is also the Police's responsibility to facilitate peaceful demonstrations that may occur during such visits and take measures to balance the rights of all parties involved so as to ensure public safety and public order, to minimise any inconvenience caused to the community and at the same time protect the personal safety of the visiting leaders.

19.6 The Police has conducted a comprehensive review on the policing arrangements for the visit by Vice-Premier LI Keqiang in August 2011. The review focuses on three areas, namely Police liaison with external stakeholders, liaison with the community and the media, and engagement with demonstrators. In reviewing these areas, specific emphasis has been placed on identifying areas of improvement that can be considered for policing similar protective security operations in the future.

19.7 The IPCC issued the *Final Report on Complaint Cases Arising from the Visit by the Vice Premier Mr LI Keqiang* in December 2012, making a number of observations and recommendations in respect of the security arrangements. In the Final Report, the IPCC notes and welcomes that the Police has introduced a number of improvement measures, which aim to facilitate the work of the media and peaceful demonstrations as well as to minimise inconvenience caused to the public. Such measures include strengthening communication with the media and the public on the Police arrangements, and arranging designated press or petition areas at locations close to the venues attended by the government leaders without compromising their personal safety. The IPCC have also sent representatives to observe the Police's handling of large-scale public processions, and made observations that the arrangements were generally in order. The Police has taken into serious consideration the observations and recommendations made by the IPCC with a view to improving their work.

#### The "International Day against Homophobia and Transphobia" march

19.8 The right to hold public meetings, processions or demonstrations are guaranteed under the Basic Law and the HKBORO. The Police endeavours to facilitate all lawful and peaceful public order events and handle all public meetings and processions in a fair, just and impartial manner in accordance with the laws of Hong Kong.

20. With reference to the information provided in paragraph 205, please provide information on any steps taken to bring the wording of the definition of the offences of treason and sedition in the Crimes Ordinance fully into line with the provisions of the Covenant. In this regard, please indicate the status of the enactment of the national security law under article 23 of the Basic Law.
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20.1 The offences of treason and sedition should more appropriately be dealt with in the context of the legislative exercise for Article 23 of the Basic Law. The Government will take into account the Committee's views when the legislative exercise for Article 23 of the Basic Law is launched in future.

21. According to the information before the Committee, restrictions continue to be placed on Falun Gong practitioners in HKSAR. Please comment.
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21.1 The freedom and right of peaceful assembly and procession are enshrined in the Basic Law and the HKBORO. Hong Kong is an open and free society which subscribes to the rule of law. Under the "One Country, Two Systems" principle, the Government remains firmly committed to the protection of fundamental rights and freedoms, including the freedoms of thought, conscience, expression, association, religion and assembly. The exercise of these freedoms by individuals in Hong Kong may be subject to restrictions prescribed by law, which are rational and proportionate for the achievement of a legitimate purpose, such as the protection of public order, or

the rights and freedoms of others. Such laws and restrictions apply to all persons in Hong Kong without discrimination.

**Measures for the protection of the family and minors (arts. 6, 7 and 24)**

22. Please provide information on the measures taken to ensure that HKSAR's policies and practices regarding the right to abode fully take into consideration its obligations regarding the right of families and children to protection enshrined in articles 23 and 24 of the Covenant, as recommended by the Committee in 2006.

22.1 The HKSAR Government has been handling matters of right of abode and split families in accordance with the Basic Law, relevant international conventions as applied to Hong Kong, and relevant local legislation and policies.

22.2 Pursuant to Article 22 of the Basic Law, for entry into the HKSAR, people from other parts of China must apply for approval. Mainland residents who wish to settle in Hong Kong must apply for One-Way Permit (OWP) from the Exit and Entry Administration Offices of the Public Security Bureau of the Mainland at the places of their household registration. On the other hand, Mainland residents may, depending on their purposes of visiting Hong Kong, such as visiting relatives or sightseeing, apply for Exit-Entry Permit (EEP) (commonly known as "Two-Way Permit") and relevant exit endorsement from the Mainland authorities.

22.3 The application, approval and issue of the OWP, the EEP and exit endorsements are not within the remit of the HKSAR Government. However, the HKSAR Government has been reflecting to the Mainland authorities the views of various sectors in Hong Kong. Indeed, the Mainland authorities have from time to time adjusted and refined the arrangements for the OWP, the EEP and relevant exit endorsements. For example, the Mainland authorities have since 2009 shortened the waiting time of applications from separated spouses from five years to four years, and starting from 25 December 2009 introduced a new measure to issue "one-year multiple exit endorsement for visiting relatives" to eligible Mainland residents. Furthermore, after the HKSAR Government has actively reflected the views of Hong Kong people and discussed with the Mainland authorities, they agreed that, starting from 1 April 2011, eligible Mainland "overage children" of Hong Kong residents may apply for the OWP to come to Hong Kong to reunite with their natural parents.

22.4 The ImmD of the HKSAR has also been reflecting to the Mainland Exit and Entry Administration Offices individual cases with special family difficulty and providing special circumstances and background information of the cases. The Mainland authorities have exercised discretion and issued the OWP or "one-year multiple exit endorsement for visiting relatives" to some of these applicants.

22.5 Under the existing immigration policy, eligible Hong Kong residents may sponsor their dependants from other countries to take up residence in Hong Kong. Such applications may be favourably considered provided that standard immigration requirements and specific eligibility criteria are met. The Director of Immigration may exercise his discretion on a case-by-case basis to grant permission to the applicants to enter the HKSAR as a dependant if there are exceptional humanitarian or compassionate considerations. In exercising his discretion, the Director will take into consideration all circumstances of the case with due regard to relevant international conventions applicable to Hong Kong.

23. With reference to paragraphs 89-90 and 297-298 of the HKSAR's periodic report, please provide information on the content of the final report released by the Review Panel of the Pilot Project on Child Fatality Review in January 2011 and the progress made in the implementation of

the recommendations contained in it.

23.1 Taking into account of the information at Coroner's Court as well as any service reports provided by concerned departments / organisations on relevant child fatality cases, the Review Panel of the Pilot Project on Child Fatality Review with secretariat support from the SWD, summarises its work in its Final Report, including the findings of all the cases reviewed, good practices identified and lessons learnt as well as evaluation of the Pilot Project by the Review Panel. The Final Report also contains the recommendations of the Review Panel on preventive strategies and systems improvement for cases involving death owing to classified causes, responses given and the improvement measures taken by relevant bureaux / departments and service organisations concerned.

23.2 The recommendations in the Final Reports are generally supported by the concerned bureaux / departments, service organisations and stakeholders. In view of the successful experience and positive feedback, the Government has accepted the Review Panel's recommendation of setting up a standing child fatality review mechanism. In May 2011, the Director of Social Welfare appointed 20 multi-disciplinary professionals and parent representative, forming the Child Fatality Review Panel. The Panel has commenced its work by reviewing child death cases occurring since 2008.

24. In paragraph 308 of its periodic report, referring to corporal punishment in the family, the HKSAR states that it "do[es] not consider that legislation at this stage would be the most effective means of dealing with the issue in Hong Kong". Please elaborate on the reasons behind this approach and provide further information on the measures taken or envisaged to strengthen the efforts of HKSAR, including allocated resources, in adequately preventing, combating or punishing the practice of corporal punishment in all settings, including in the home and alternative childcare.

24.1 To safeguard the well-being of children, the SWD and NGOs provide a range of preventive, supportive and remedial welfare services, including public education, parent education, support groups, counselling services, etc. As regards the assistance provided for parents, the SWD and NGOs regularly organise different kinds of parent-child activities, and provide counselling to families encountering child discipline difficulties. In addition, we also raise the awareness of the general public on child protection, through publicity and public education.

24.2 Besides the Offences Against the Person Ordinance which contains an offence of ill-treatment or neglect by those in charge of children, a social worker of the SWD or a Police Officer may initiate care or protection proceedings for a child under the Protection of Children and Juveniles Ordinance (Cap. 213) when there is a need for statutory protection of the child.

24.3 We agree that children should grow up in a safe environment. The Government has already put in place legislation to protect children from physical abuse. Pursuant to the aforementioned Offences Against the Person Ordinance, it is unlawful for a person aged over 16, including a parent, who has the custody, charge or care of a child or young person under the age of 16, to wilfully assault or ill-treat the child or young person, or causes such child or young person to be assaulted, or ill-treated in a manner likely to cause such child or young person unnecessary suffering or injury to his health. If convicted, the person shall be liable to a maximum penalty of 10 years' imprisonment. As regards legislation against corporal punishment by parents on children, it is a complex issue that needs a full discussion by the general public. We need to consider and balance various factors, including parental responsibilities, values and views of different communities, as well as the effectiveness of resorting to the legislative approach, etc. We hope that through different means, parents can be enabled to fulfil their responsibilities while neighbours and relatives can exercise the spirit of mutual help. Coupled with the services provided by the

Government and local organisations, we can together build a community without domestic violence so that children will grow up in a caring and nurturing environment.

**Participation in public affairs (art. 25)**

25. According to the information before the Committee, sections 31, 39 and 51 of the Legislative Council Ordinance and sections 30, 14(2), 19(2)(3) and 24(3) of the District Councils Ordinance exclude people with intellectual or psychosocial disability from voting or standing for election. Please explain the reasons for these exclusions and how they are compatible with article 25 of the Covenant.

25.1 The relevant provisions of the Legislative Council Ordinance (Cap. 542) and the District Councils Ordinance (Cap. 547) provide for a natural person to be disqualified from being registered as an elector and from voting, disqualified from being nominated as a candidate and from being elected as a member, and from holding office as a member, if the person is “found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs”. The disqualification from voting is to ensure that the votes cast at the election truly reflect the free will of the electors and to reduce the risk of voters being subject to undue influence or manipulation, thereby protecting the fairness of the election. The disqualification of candidates / office holders seeks to ensure that the LegCo and District Councils are served by persons who are capable of managing and administering their own property and affairs. These are legitimate aims.

25.2 The restrictions are reasonable and proportionate to these aims. In this connection, it should be noted that a person is not disqualified merely because he or she has an intellectual, psychosocial or mental disability. The disqualification only applies to a person who is found by the Court as incapable, by reason of mental incapacity, of managing and administering his or her property and affairs as under the Mental Health Ordinance. Furthermore, the Mental Health Ordinance stipulates that such finding by the Court has to be made only after an inquiry into the matter. The applicant is required to provide to the Court with two medical certificates made and signed by registered medical practitioners certifying that the mentally incapacitated person is incapable, by reason of mental incapacity, of managing and administering his property and affairs. Moreover, the disqualification will cease to apply if the person is found under the Mental Health Ordinance to have become capable of managing and administering his or her property and affairs.

25.3 In view of the above, it is clear that the disqualification provisions are reasonable and proportionate to the pursuit of important legitimate aims. The disqualification provisions are fully consistent with Article 25 of the ICCPR.

**Rights of persons belonging to minorities (art. 27)**

26. Please provide information on the measures taken to ensure adequate political representation and participation of minorities at all levels of government. Please provide further information on the measures taken to ensure the effective implementation of the 2010 Administrative Guidelines on Promotion of Racial Equality with particular regard to ensuring equal access by ethnic minorities to public services (paras. 372-375 of the HKSAR’s periodic report).

Political representation and participation of minorities in the Government

26.1 The Government encourages ethnic minorities to take part in elections. For example, in the 2012 LegCo election, election briefs and voting procedures were translated into six ethnic minority languages and uploaded onto the election website to provide electors of ethnic

minorities with information on the election and the voting procedures. Similar information, posters and publicity leaflets were also sent to six support services centres for ethnic minorities to enhance their awareness of the election. Key electoral information was also broadcast in ethnic minority languages on radio.

26.2 On participation of ethnic minorities in the Government, in order to maintain a fully biliterate and trilingual civil service, the Government will specify appropriate Chinese and English language proficiency requirements (LPRs) as part of the entry requirements for appointment to each civil service grade. The prevailing arrangement on the LPRs is in accordance with the guidelines of the EOC as set out in its Code of Practice on Employment under the RDO in July 2009, which provides that an employer must ensure that any language requirement for a job is relevant to and should be commensurate with the satisfactory performance of the job. To ensure that the specified the LPRs are relevant to and commensurate with the satisfactory performance of the duties of the concerned grades, Heads of Department / Heads of Grade would review the LPRs taking into account the operational requirements from time to time.

26.3 As for appointments of non-official members to the advisory and statutory bodies, the Government makes such appointments on the basis of the merit of individuals. There is no discrimination on the grounds of race.

#### Administrative Guidelines on Promotion of Racial Equality

26.4 The RDO, which came into full operation in July 2009, aims at protecting the rights of individuals against discrimination, harassment and vilification on the ground of race. The Ordinance binds the Government in all the areas specified therein, such as employment, education and provision of services. Details of the practical implementation of the RDO are elaborated in paragraphs 4.1 and 4.2 above.

26.5 Apart from the enactment of the RDO, the Government promulgated the Administrative Guidelines in 2010 to provide general guidance to relevant bureaux and departments and public authorities to promote racial equality and ensure equal access by ethnic minorities to public services in key areas concerned. On top of compliance with the legal requirements, the relevant bureaux and departments and public authorities should take into account the needs, sensitivities and concerns of different racial groups in various stages of formulating and implementing relevant policies and measures to ensure that persons of different races have equal access to public services.

26.6 In 2013, the Administrative Guidelines will be extended to a total of 21 bureaux and departments and public authorities, covering the key public services which are particularly relevant to meeting the special needs of ethnic minorities and facilitating their integration into the community, namely, medical, education, vocational training, employment and major community services. The Government will keep the scope and coverage of the Administrative Guidelines under review.

27. With regard to paragraphs 384 to 387 of the HKSAR's periodic report, please clarify what progress has been made with regard to ensuring adequate opportunities for minority children to learn their languages, culture, and history.
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27.1 Heeding the demand from the non-Chinese speaking (NCS) students and their parents, the Government is committed to supporting the integration of the NCS students, notably ethnic minority students, into the community, including facilitating their early adaptation to the local education system and mastery of the Chinese Language. We will continue to step up education support to the NCS students which includes, among others, our collaboration with ethnic

minority communities and NGOs to encourage the NCS parents' participation in diversified Chinese activities together with their children to enhance their children's exposure to and use of Chinese, summer bridging programmes specifically for the NCS students progressing to Primary 1 and Primary 4 to be expanded to allow the NCS parents to accompany their children to learn Chinese, an incentive grant scheme to be launched to enhance the professional competencies of Chinese Language teachers in teaching the NCS students with setting of appropriate targets for the NCS students' acquisition of Chinese and a longitudinal study to be conducted to further evaluate the effectiveness of measures to support the NCS students' learning of Chinese, with a view to improving the learning and teaching of the Chinese Language.

27.2 Specifically, learning elements such as “respect for others”, “global understanding”, etc. have been embedded in the school curriculum of primary and secondary education. Regarding the opportunities for the NCS students to learn other languages, cultural and history, the curriculum reform in Hong Kong since 2001 has allowed public sector schools flexibility in designing curriculum units under different Key Learning Areas at different levels of learning, complemented by extended learning activities, to cater for different needs of students including the NCS students. Take the Personal, Social and Humanities Education Key Learning Area for instance, “Cultural and Heritage”, and sub-strands such as “foundation of culture”, “customs and traditions”, and “cultural diversity and interaction”, etc. have been included so that schools with the NCS students would, on the one hand, develop the identity of the NCS students and, on the other hand, reinforce integration through learning and teaching. Schools have been provided with related learning and teaching resources and facilities to organise relevant learning activities and teacher professional development programmes in which experienced school professionals and experts in the fields are invited to share their experience on themes to promote the concepts and values mentioned above.

27.3 With the implementation of the New Academic Structure since 2009, other Language Subjects (including French, German, Hindi, Japanese, Spanish and Urdu that are spoken by an overwhelming majority of the ethnic minorities in Hong Kong) have been included in the senior secondary curriculum, having had due consideration to the feedback of stakeholders and other considerations. Schools have been provided with the Diversity Learning Grant to offer Other Language Subjects as elective subjects at senior secondary levels and encouraged to flexibly deploy resources for activities at other levels to promote minority languages, culture and history to cater for different needs, interests and aspirations of their students.

27.4 Question papers at the Advanced Subsidiary Level (AS-Level) from the Cambridge International Examinations are used for assessment of these Other Language Subjects. Besides, we have, starting from the 2012/13 school year, expanded the examination subsidy for eligible the NCS students to participate in the Chinese Language examinations of the International General Certificate of Secondary Education and General Certificate of Education AS-Level and Advanced Level, in addition to the General Certificate of Secondary Education (Chinese) Examination, to facilitate their academic and career advancement under the multiple progression pathways.

27.5 Education Bureau, as is its usual practice, will continuously provide related professional support to Moral, Civic and National Education, including; professional development programmes targeted at principals / school curriculum leaders / teachers, and learning and bilingual teaching resources (for example, teaching plans for life-events, resource websites, etc.), to assist in enhancing learning and teaching effectiveness.

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**Appendix I**

**Deaths in custody of the Correctional Services Department (Between 1 July 2005 and 30 June 2010)**

Institution		Sex		Age		Nationality *		Cause of Death	
Hei Ling Chau Correctional Institution	1	M	91	<21	4	Chinese	90	Accident	3
Hei Ling Chau Addiction Treatment Centre	4	F	10	21-30	10	Others	12	Dependence on Drugs	1
Hei Ling Chau Addiction Treatment Centre (Anne)	1		101	31-40	15		102	Natural Cause	73
Lai Chi Kok Reception Centre	24			41-50	19			Open Verdict	4
Lai Chi Rehabilitation Centre	1			51-60	36			Suicide	17
Lai King Correctional Institution	1			61-70	6			Misadventure	3
Ma Hang Prison	1			71-80	7				101
Ma Po Ping Prison & Tong Fuk Centre	1			80>	4				
Pak Sha Wan Correctional Institution	1				101				
Pik Uk Correctional Institution	1								
Pik Uk Prison	1								
Stanley Prison	31								
Siu Lam Psychiatric Centre	18								
Shek Pik Prison	1								
Sha Tsui Detention Centre	1								
Tung Fuk Correctional Institution	2								
Tai Tam Gap Correctional Institution	1								
Tai Lam Correctional Institution	1								
Tai Lam Centre for Women	7								
Tung Tau Correctional Institution	2								
	101								

\* CSD generally compiles the statistics based on nationality, instead of ethnicity of the persons in custody.



**Appendix II**

**Number of Persons in CSD Custody (As at 30.6.2012)**

	Sex	
Sentenced Person	M	6517
	F	1568
Remanded Person	M	1150
	F	217
		9452

	Age	
Sentenced Person	<21	755
	21-59	7016
	60+	314
Remanded Person	<21	178
	21-59	1151
	60+	38
		9452

	Nationality *	
Sentenced Person	Chinese	6940
	Others	1145
Remanded Person	Chinese	1116
	Others	251
		9452

Overall Occupancy Rate: 81.9%

\* CSD generally compiles the statistics based on nationality, instead of ethnicity of the persons in custody.

**Trafficking in Person Cases between 2006 and June 2012**

Year	No. of Cases				No. of Persons Convicted <sup>1</sup>	Penalties
	Complaints	Investigations	Prosecutions	Convictions <sup>1</sup>		
2006	3	3	2	1	4	<ul style="list-style-type: none"> <li>➤ An offender was convicted of “Trafficking in persons”<sup>2</sup> and sentenced to imprisonment for 5 years and 9 months.</li> <li>➤ Three other offenders of the same case were convicted of ‘Living on earnings of prostitution’ and sentenced to imprisonment for 19 to 36 months.</li> </ul>
2007	4	4	3	3	9	<ul style="list-style-type: none"> <li>➤ Two offenders of the 1<sup>st</sup> case were convicted of ‘Trafficking in persons’ offence and sentenced to imprisonment for 3 years.</li> <li>➤ Six offenders of the 2<sup>nd</sup> case were convicted of ‘Trafficking in persons’ and ‘Causing Prostitution of another person’ offences and sentenced to imprisonment for 8 months to 36 months</li> <li>➤ An offender of the 3<sup>rd</sup> case was convicted of ‘Living on earnings of prostitution’ and sentenced to imprisonment for 8 months.</li> </ul>
2008	1	1	1	1	1	<ul style="list-style-type: none"> <li>➤ An offender was convicted of 2 counts of ‘Living on earning of prostitution’ and sentenced to imprisonment for 4 months suspended for 18 months.</li> </ul>
2009	3	3	2	1	2	<ul style="list-style-type: none"> <li>➤ Two offenders were convicted of ‘Trafficking in persons’ offence and sentenced to imprisonment for 18 months and 21 months respectively.</li> </ul>

<sup>1</sup> The figures include convictions on the charges of “Trafficking in person” under Cap. 200, as well as other relevant charges (e.g. “Living on earnings of prostitution” and “Causing prostitution of another person”, etc.) upon investigation into trafficking in person cases.

<sup>2</sup> According to the s.129 of the Crimes Ordinance (Cap. 200), “Trafficking in person” means taking part in bringing another person into, or taking another person out of, Hong Kong for the purpose of prostitution, and is liable for imprisonment of up to 10 years on conviction.

Year	No. of Cases				No. of Persons Convicted <sup>1</sup>	Penalties
	Complaints	Investigations	Prosecutions	Convictions <sup>1</sup>		
2010	4	4	2	2	6	<ul style="list-style-type: none"> <li>➤ An offender of the 1<sup>st</sup> case was convicted of ‘Trafficking in persons’ offence and sentenced to 18-month imprisonment. Another 4 offenders of the same case were convicted of ‘Living on earning of prostitution’ &amp; ‘Money laundering’ offences with sentences ranging from 240-hr Community Service Order to imprisonment for 36 months.</li> <li>➤ An offender of the 2<sup>nd</sup> case was convicted of ‘Living on earning of prostitution’ and ‘Money laundering’ offences and sentenced to imprisonment for 27 months.</li> </ul>
2011	2	2	2	1	1	<ul style="list-style-type: none"> <li>➤ An offender was charged with one count of ‘Trafficking in person’ and one count of ‘Living on earning on prostitution’ offences. He was convicted &amp; sentenced to imprisonment for 20 months and 15 days.</li> <li>➤ Another offender was charged with ‘Living on earning of prostitution’ and the court trial has been fixed in March 2013.</li> </ul>
2012 (Jan-Nov)	1	1	1	Pending court trial at District Court in Jan 2013	N.A.	N.A.

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**ADVANCE UNEDITED VERSION**

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**Human Rights Committee**

**107th session**

11–28 March 2013

Item 8 of the provisional agenda

**Consideration of reports submitted by States parties  
under article 40 of the Covenant**

**Concluding observations on the third periodic report of Hong  
Kong, China**

**Prepared by the Committee**

1. The Human Rights Committee considered the third periodic report of the Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong, China) (CCPR/C/CHN-HKG/3) at its 2954<sup>th</sup> and 2955<sup>th</sup> meetings (CCPR/C/SR.2954 and CCPR/C/SR.2955), on 12<sup>th</sup> and 13<sup>th</sup> March 2013. This report is the third submitted by the People's Republic of China after the return of Hong Kong, China to Chinese sovereignty on 1 July 1997. The Committee adopted the following concluding observations at its 2974<sup>th</sup> meeting (CCPR/C/SR.2974), on 26 March 2013.

**A. Introduction**

2. The Committee welcomes the submission of Hong Kong, China's third periodic report and expresses its satisfaction with the constructive dialogue held between the Committee and the delegation of the Government of Hong Kong, China. It appreciates the written replies (CCPR/C/CHN-HKG/Q/3/Add.1) to the Committee in response to its list of issues, while regretting that they were only provided a few days before the 107<sup>th</sup> session. The Committee thanks the delegation for the additional detailed information provided orally during the consideration of the report.

**B. Positive aspects**

3. The Committee welcomes the ratification of the following international instruments:
- (a) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 20 February 2008; and
  - (b) The Convention on the Rights of Persons with Disabilities, on 1 August 2008.

4. The Committee welcomes the following legislative and other measures taken since the consideration of Hong Kong, China's second periodic report:

- (a) The adoption of the Immigration (Amendment) Ordinance (2012);
- (b) The amendments to the Personal Data (Privacy) Ordinance (2012); and
- (c) The amendments to the Domestic Violence Ordinance (Cap. 189) (2009).

### **C. Principal subjects of concern and recommendations**

5. The Committee takes note of Hong Kong, China's view that the power of interpretation of the Basic Law by the Standing Committee of the National People's Congress (NPCSC) is "in general and unqualified terms" and the principle is fully acknowledged and respected by Hong Kong, China's courts (CCPR/C/CHN-HKG/3, para.322). However, the Committee remains concerned that a mechanism of binding constitutional interpretation by a non-judicial body may weaken and undermine the rule of law and the independence of judiciary (article 2 and 14).

**Hong Kong, China should ensure the proper functioning of judicial structures in accordance with the Covenant and with principles governing the rule of law. As previously recommended (CCPR/C/HKG/CO/2, para.18), it should be ensured that all interpretations of the Basic Law, including on electoral and public affairs issues, are in full compliance with the Covenant.**

6. The Committee notes Hong Kong, China's indication that universal and equal suffrage for the Chief Executive elections in 2017 and for the Legislative Council elections in 2020 may be granted. The Committee expresses concern about the lack of a clear plan to institute universal suffrage and to ensure the right of all persons to vote and to stand for election without unreasonable limitations, as well as Hong Kong, China's position in maintaining its reservation to article 25(b) of the Covenant (articles 2, 25 and 26).

**Hong Kong, China should take all necessary measures to implement universal and equal suffrage in conformity with the Covenant as a matter of priority for all future elections. Hong Kong, China should outline clear and detailed plans on how universal and equal suffrage might be instituted and ensure enjoyment by all its citizens, under the new electoral system, of the right to vote and to stand for election in compliance with article 25 of the Covenant, taking due account of the Committee's general comment No. 25 (1996). It is recommended to consider steps leading to withdrawing the reservation to article 25(b) of the Covenant.**

7. The Committee regrets that there is no independent statutory body to investigate and monitor violations of human rights guaranteed by the Covenant in a comprehensive manner. The Committee is moreover concerned that the proliferation of bodies focusing on the rights of specific groups may militate against greater effectiveness on the part of Hong Kong, China in fulfilling its obligations under the Covenant and against greater clarity in its overall policy on human rights (article 2).

**Hong Kong, China should strengthen the mandate and the independence of the existing bodies, including the Ombudsman and the Equal Opportunities Commission. It is also recommended to revise the multiplicity of the existing bodies whose mandate do not afford effective protection of all Covenant rights. Furthermore, the Committee reiterates its previous recommendations (CCPR/C/HKG/CO/2, para.8) that Hong Kong, China consider establishing a human rights institution, in accordance with the Paris Principles (General Assembly resolution 48/134), with adequate financial and human resources, with a broad mandate covering all international human rights standards accepted by Hong Kong, China and with competence to consider and act on**

**individual complaints of human rights violations by public authorities and to enforce the Hong Kong Bill of Rights Ordinance.**

8. While noting the view of Hong Kong, China that the definition of the crime of torture under the Crimes (Torture) Ordinance is consistent with international standards, the Committee shares the concerns raised by the Committee against Torture in 2008 that the terms contained in Sections 2(1) and 3(4) of the Ordinance in practice contains loopholes that might prevent effective prosecution of torture and allowing possible defences for acts of torture (article 7).

**Hong Kong, China should bring its legislation in line with international standards, in particular it should recognise the non-derogable character of the prohibition of torture and should therefore eliminate any possible defenses for the crime of torture in accordance with article 7 of the Covenant.**

9. While noting with appreciation the Hong Kong, China's cooperation with UNHCR to ensure protection of refugees and asylum-seekers, the Committee regrets that Hong Kong, China maintains a position not to seek the extension of the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol, and that persons facing deportation proceedings are not always covered by safeguards established in the Covenant. The Committee expresses concern about allegations that deportation operations are not properly monitored by the relevant oversight bodies (articles 2, 6, 7 and 13).

**In light of the Committee's previous recommendations (CCPR/C/HKG/CO/2, para.10), Hong Kong, China should ensure that all persons in need of international protection receive appropriate and fair treatment at all stages, in compliance with the Covenant. The Hong Kong, China authorities should recognise the absolute character of prohibition of return to a location where the individual faces a real risk of torture or cruel, inhuman or degrading treatment, also emphasized in the judgement of the Court of Final Appeal in *Ubamaka v. Secretary for Security & Anor* (FACV 15/2011, 21 December 2012). Hong Kong, China is urged not to set an inappropriate high threshold for recognizing a real risk of ill-treatment on return.**

10. The Committee is concerned about (a) the application in practice of certain terms contained in the Public Order Ordinance, *inter alia*, "disorder in public places" or "unlawful assembly", which may facilitate excessive restriction to the Covenant rights, (b) increasing number of arrests of and prosecutions against demonstrators, and (c) the use of camera and video-recording by police during demonstrations (articles 17 and 21).

**Hong Kong, China should ensure that the implementation of the Public Order Ordinance is in conformity with the Covenant. Hong Kong, China should also establish clear guidelines for police and for records of the use of video-recording devices and make such guidelines accessible to the public.**

11. The Committee expresses concern about reports of excessive use of force by members of the police force, not compatible with the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials, in particular by the inappropriate use of pepper spray to break up demonstrations to restore order, notably with regard to demonstrations surrounding the annual Hong Kong march on 1 July 2011, the visits of Vice-Premier and President of China, respectively in August 2011 and July 2012 (articles 7, 19 and 21).

**Hong Kong, China should increase its efforts to provide training to the police with regard to the principle of proportionality when using force, taking due account of the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials.**

12. While noting that the statutory framework has reinforced the role of the Independent Police Complaint Council (IPCC), the Committee remains concerned that investigations of police misconduct are still carried out by the police themselves through the Complaints Against Police Office (CAPO) and that the IPCC has only advisory and oversight functions to monitor and review the activities of the CAPO and that the members of the IPCC are appointed by the Chief Executive (articles 2 and 7).

**Hong Kong, China should take necessary measures to establish a fully independent mechanism mandated to conduct independent, proper and effective investigation into complaints about the inappropriate use of force or other abuse of power by the police and empowered to formulate binding decisions in respect of investigations conducted and findings regarding such complaints.**

13. The Committee is concerned about reports that Hong Kong, China has seen deterioration in media and academic freedom, including arrests, assaults and harassment of journalists and academics (articles 19 and 25).

**Hong Kong, China should, in line with the Committee's general comment No. 34 (2011) on freedoms of opinion and expression, take vigorous measures to repeal any unreasonable direct or indirect restrictions on freedom of expression, in particular for the media and academia, to take effective steps including investigation of attacks on journalists and to implement the right of access to information by public bodies.**

14. The Committee notes Hong Kong, China's intention to deal with the offences of treason and sedition in the context of the new legislation implementing Article 23 of the Basic Law. However, it remains concerned at the broad wording of the definition of the offences of treason and sedition currently in Hong Kong, China's Crimes Ordinance (articles 19, 21 and 22).

**Hong Kong, China should amend its legislation regarding the offences of treason and sedition to bring it into full conformity with the Covenant and ensure that the foreseen new legislation under article 23 of the Basic Law is fully consistent with the provisions of the Covenant.**

15. The Committee notes the information provided by Hong Kong, China that the Director of Immigration may exercise her or his discretion on a case-by-case basis to grant permission to the applicants to enter Hong Kong from the Mainland China as a dependant if there are exceptional humanitarian or compassionate considerations. However, the Committee is concerned that many families, reportedly nearly a hundred thousand families composed of parents and their children, remain separated between Mainland China and Hong Kong, as a result of the right of abode policies (articles 23 and 24).

**The Committee reiterates its previous recommendations (CCPR/C/HKG/CO/2, para.15) that Hong Kong, China should review its policies and practices regarding the right of abode in accordance with its obligations regarding the right of families and children to protection under articles 23 and 24 of the Covenant.**

16. The Committee notes the efforts made to prevent corporal punishment by parents. However, it is concerned about the continual practice of corporal punishment in the home (article 7).

**Hong Kong, China should take practical steps to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects. Hong Kong, China should take steps to initiate a full public discussion on corporal punishment by parents on children.**

17. While noting that Falun Gong in Hong Kong is a legally registered organization, the Committee regrets restrictions on Falun Gong practitioners in Hong Kong, in particular in relation to the right of movement (articles 12, 18 and 19).

**Hong Kong, China should ensure that its policies and practices relating to the Falun Gong practitioners conform fully to the requirements of the Covenant.**

18. The Committee notes with appreciation a variety of measures and programmes intended to combat domestic violence, but it remains concerned at the high incidence of domestic violence in Hong Kong, China, including domestic violence against women and girls with disabilities (articles 3, 7 and 26).

**Hong Kong, China should increase its efforts to combat domestic violence by, inter alia, ensuring effective implementation of the Domestic and Cohabitation Relationships Violence Ordinance (DCRVO). In this regard, Hong Kong, China should ensure the provision of assistance and protection to victims, the criminal prosecution of perpetrators of such violence, and the sensitization of society as a whole to this matter.**

19. The Committee notes with concern that, unlike the other Discrimination Ordinances, the Race Discrimination Ordinance (RDO) does not specifically apply to the Government in the exercise of its public functions such as the operations of the Hong Kong Police Forces and Correctional Services Department (article 26).

**The Committee recommends Hong Kong, China to rectify a key gap in the current Race Discrimination Ordinance, in close consultation with the Equal Opportunities Commission, in order to ensure full compliance with article 26 of the Covenant. Hong Kong, China should also consider introducing comprehensive anti-discrimination laws, in accordance with the Covenant. Such legislation should impose obligations on the authorities to promote equality and to eradicate discrimination.**

20. The Committee is concerned about the persistence of the phenomenon of trafficking in persons in Hong Kong, China and reports that Hong Kong, China is a source, destination, and transit territory for men, women, and teenage girls from Hong Kong, mainland China and elsewhere in Southeast Asia, subjected to human trafficking and forced labor. The Committee is concerned about the reluctance of Hong Kong, China to take steps which could lead to the extension of the Palermo Protocol to Hong Kong, China (article 8).

**Hong Kong, China should intensify its efforts to identify victims of trafficking and ensure the systematic collection of data on trafficking flows to and in transit through its territory, review its sentencing policy for perpetrators of trafficking-related crimes, support private shelters offering protection to victims, strengthen victim assistance by ensuring interpretation, medical care, counselling, legal support for claiming unpaid wages and compensation, long-term support for rehabilitation and stability of legal status to all victims of trafficking. The Committee recommends the inclusion of certain practices regarding foreign domestic workers in the definition of the crime of human trafficking. Hong Kong, China should consider taking steps which could lead to the extension of the Palermo Protocol to Hong Kong, China in order to strengthen its commitment to fight trafficking in persons in its territory.**

21. The Committee is concerned about the discriminatory and exploitation suffered by a large number of migrant domestic workers and the lack of adequate protection and redress provided for them (articles 2 and 26).

**Hong Kong, China should adopt measures to ensure that all workers enjoy their basic rights, independently of their migrant status, and establish affordable and effective mechanisms to ensure that abusive employers are held accountable. It is also recommended to consider repealing the “two-weeks rule” (whereby domestic migrant**



**workers have to leave Hong Kong within two weeks upon termination of contract) as well as the live-in requirement.**

22. The Committee is concerned that ethnic minorities are underrepresented in higher education and that no official education policy for teaching Chinese as a second language for non-Chinese speaking students with an immigrant background in Hong Kong has been adopted. The Committee also notes with concern the report of the Equal Opportunities Commission that non-Chinese speaking migrants face discrimination and prejudice in employment due to the requirement of written Chinese language skills, even for manual jobs (article 26).

**In light of the recommendation made by the Committee on the Elimination of Racial Discrimination (CERD/C/CHN/CO/10-13, para.31), Hong Kong, China should intensify its efforts to improve the quality of Chinese language education for ethnic minorities and non-Chinese speaking students with an immigrant background, in collaboration with the Equal Opportunities Commission and other groups concerned. Hong Kong, China should further intensify its efforts to encourage the integration of students of ethnic minorities in public school education.**

23. The Committee is concerned about the absence of legislation explicitly prohibiting discrimination on the basis of sexual orientation and reported discrimination against lesbian, gay, bisexual and transgender persons in the private sector (article 2 and 26).

**Hong Kong, China should consider enacting legislation that specifically prohibits discrimination on ground of sexual orientation and gender identity, take the necessary steps to put an end to prejudice and the social stigmatization of homosexuality and send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation or gender identity. Furthermore, Hong Kong, China should ensure that benefits granted to unmarried cohabiting opposite-sex couples are equally granted to unmarried cohabiting same-sex couples, in line with article 26 of the Covenant.**

24. The Committee is concerned about the disqualification from voting of all persons who are found to be incapable, by reason of their mental, intellectual or psychosocial disabilities of managing and administering their property and affairs under section 31(1) of the Legislative Council Ordinance and section 30 of the District Councils Ordinance (articles 2, 25 and 26).

**Hong Kong, China should revise its legislation to ensure that it does not discriminate against persons with mental, intellectual or psychosocial disabilities by denying them the right to vote on bases that are disproportionate or that have no reasonable and objective relation to their ability to vote, taking account of article 25, of the Covenant and article 29 of the Convention on the Rights of Persons with Disabilities.**

25. The State party should widely disseminate the Covenant, the text of the third periodic report, the written responses it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee also requests the State party, when preparing its fourth periodic report, to broadly consult with civil society and non-governmental organizations.

26. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 6, 21 and 22 above.

27. The Committee requests the State party, in its next periodic report, due to be submitted on 30 March 2018, to provide, specific, up-to-date information on all its recommendations and on the Covenant as a whole.

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HKSAR Government welcomes constructive dialogue with UN Human Rights Committee

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A spokesperson for the Constitutional and Mainland Affairs Bureau said today (March 28) that the United Nations Human Rights Committee (the Committee) had issued its concluding observations on the third report of the Hong Kong Special Administrative Region (HKSAR) in the light of the International Covenant on Civil and Political Rights (ICCPR).

"We are pleased that the Committee appreciates the constructive dialogue it has with the delegation who provided replies and detailed additional information to written and oral questions formulated by the Committee," the spokesperson said.

The concluding observations were published on March 28 (Geneva time), after the Committee's hearing of the report on March 12 and 13. A nine-member delegation led by the Permanent Secretary for Constitutional and Mainland Affairs, Ms Chang King-yiu, attended the hearing in Geneva.

"In the concluding observations, the Committee commended Hong Kong in a number of important areas, including the ratification of the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict; the enactment of the Immigration (Amendment) Ordinance 2012 to underpin an enhanced screening mechanism for torture claims to ensure high standards of fairness; and the enactment of the legislative amendments to the Domestic Violence Ordinance and the Personal Data (Privacy) Ordinance," the spokesperson said.

The concluding observations also included the Committee's concerns and recommendations in certain areas, which the spokesperson said should be viewed in the proper context.

"Unlike international laws, the recommendations made by the United Nations' treaty monitoring bodies are of an exhortatory nature rather than legally-binding. We appreciate the Committee's goodwill in making those recommendations. But the HKSAR Government has the ultimate responsibility for the governance and well-being of our people and must act as we, as the authorities on the spot, judge to be right in the prevailing circumstances. This being our highest priority, we must sometimes respectfully differ with the Committee as to what can or should be done.

"This notwithstanding, the HKSAR Government respects the Committee's views. We implement the Committee's recommendations, where they are feasible and practicable in the light of Hong Kong's unique circumstances," the spokesperson added.

In relation to the power of interpretation of the Basic Law, the spokesperson said: "the ultimate power of interpretation of the Basic Law is vested in the Standing Committee of the National People's Congress (NPCSC). This power is contained in Article 158 of the Basic Law and is part of our constitutional order. The Government's position is that interpretation of the Basic Law by the NPCSC should only be sought as a last resort."

Regarding the Committee's concerns regarding the constitutional development in the HKSAR, the spokesperson said: "the Basic Law clearly states that universal suffrage of the Chief Executive (CE) and of all members of the Legislative Council (LegCo) is the ultimate aim of Hong Kong's constitutional development. The HKSAR Government is committed to attaining the goal of implementing universal suffrage for the CE and LegCo in accordance with the Basic Law and the relevant interpretation and decisions of the NPCSC. According to the decision adopted by the NPCSC in December 2007, the election of the fifth CE of the HKSAR in the year 2017 may be implemented by the method of universal suffrage. And after the CE is elected by universal suffrage, the election of the LegCo of the HKSAR may be implemented by the method of electing all the members by universal suffrage. The HKSAR Government will launch a comprehensive consultation on the election methods of the CE in 2017 and the LegCo in 2016 and initiate the constitutional procedures at an appropriate juncture."

The Committee has repeated its recommendation to establish an independent human rights institution in Hong Kong. On this, the spokesperson said: "we note the Committee's concern and recommendation in this regard. However, we consider that Hong Kong's current human rights framework, underpinned as it is by the rule of law, an independent judiciary, a comprehensive legal aid system, our three human rights institutions - namely the Equal Opportunities Commission, the Ombudsman, and the Office of the Privacy Commissioner for Personal Data, and a free and vigilant media, provides sufficient protection of human rights in the HKSAR. There is therefore no obvious need to establish another human rights institution to duplicate the functions of or replace the existing mechanism. Moreover, the aforementioned human rights institutions already cover the core human rights issues of common concern. Whether they operate separately or under a single statutory platform such as a 'human rights institution' does not adversely affect or lessen the protection of human rights afforded

to the people of Hong Kong."

The Committee is also concerned about equal opportunities for all, in particular the sexual minorities and ethnic minorities.

"Sexual orientation is a controversial subject in Hong Kong. Our position remains that no person should be discriminated against on any grounds, including sexual orientation. The Administration has instituted comprehensive public education and publicity programmes, with a view to fostering in the community a culture of mutual understanding, tolerance and mutual respect. These include sponsoring worthwhile community projects through the Equal Opportunities (Sexual Orientation) Funding Scheme; promoting the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation to public and private sector organisations; studying the measures adopted by overseas jurisdictions, maintaining a hotline for enquiries and complaints; Announcement in the Public Interest on television and radio, and advertisement at train stations and bus stops, on the Internet and via other media; and exchanging views with sexual minority groups to better understand the specific problems they encounter with a view to mapping out targetted measures to tackle such problems. The Administration will continue to listen to different views from various sectors," the spokesperson said.

On education, the CE has announced further measures to enhance the support for ethnic minority students in learning the Chinese Language, including exploring an incentive grant scheme to enhance the professional competencies of teachers, setting appropriate learning targets for students' acquisition of the Chinese Language, and refining the summer-bridging programme for non-Chinese speaking students to better support their Chinese learning through parent-school cooperation alongside collaboration with ethnic minority communities and non-governmental organisations (NGOs). The Administration would make further endeavours taking into consideration stakeholders' views including NGOs'.

On the Committee's observation relating to the Court of Final Appeal (CFA)'s recent judgment in *Ubamaka Edward Wilson v Secretary for Security & Anor* (FACV 15/2011, December 21, 2012), the spokesperson said that, "the Government fully respects the CFA judgment in the Ubamaka case and will continue to act in accordance with the law in the exercise of powers and discretion and the discharge of duties in relation to immigration control."

The Committee is also concerned about measures to combat human trafficking. On this, the spokesperson said, "Hong Kong has a solid framework of legislation to

underpin our robust efforts to combat human trafficking. Although there is no sign or evidence that Hong Kong is a source or destination for human trafficking or a place of origin for exporting illegal immigrants, our law enforcement agencies and relevant departments will continue to maintain close co-operation with partners and counterparts locally and overseas to combat human trafficking."

Regarding the Committee's concerns regarding separated families between the Mainland and Hong Kong, the spokesperson said, "pursuant to Article 22(4) of the Basic Law, for entry into the HKSAR, people from other parts of China must apply for approval. Mainland residents must apply for one-way permits (OWP) from the Mainland authorities to settle in Hong Kong. Under the policy objective of family reunion, the Mainland authorities have since May 1997 implemented a point-based system, setting out open and transparent eligibility criteria. The Mainland authorities have from time to time refined the OWP scheme; the HKSAR Government will continue to reflect to the relevant Mainland authorities the views of the various sectors as appropriate."

In response to the Committee's comment on Police's handling of public order events, the spokesperson said: "Hong Kong residents enjoy the freedom and rights of assembly and procession which are protected under the Basic Law and the Hong Kong Bill of Rights Ordinance. All people and organisations enjoy the freedom and rights equally. The operational policy of the Police is to endeavour to strike a balance by facilitating all lawful and peaceful public meetings and processions on the one hand, and on the other hand, reducing the impact of such activities on other members of the public or road users and ensuring public order and public safety.

"Regarding the Police complaints handling system, the Independent Police Complaints Council (IPCC) Ordinance clearly sets out the statutory role, functions and powers of the IPCC, as well as the obligations of the Police to comply with the requirement made by IPCC under the Ordinance. Where IPCC members have doubts about the investigation of a particular complaint, they may invite the complainants, complainees and any other person who may provide information or other assistance to interviews. If IPCC is not satisfied with the result of an investigation, it may ask the Complaints Against Police Office to clarify any doubts or reinvestigate the complaint."

Regarding the Committee's concern about any discrimination or exploitation that may be suffered by migrant domestic workers and the lack of adequate protection and redress provided for them, the spokesperson pointed out that: "the HKSAR Government is fully committed to protecting the well-being of its workforce,

including foreign domestic helpers (FDHs) who constitute the majority of our migrant workers. All FDHs enjoy the same and full statutory labour rights and benefits as other local workers. Indeed, Hong Kong is one of the few places in the region that grant equal statutory labour rights and benefits to migrant workers. Migrant workers can also access the whole range of free services provided by the Labour Department, and can seek redress through the legal system, including provision of legal aid as long as the eligibility criteria applicable across the board are met. In addition, FDHs are accorded further protection through a mandatory Standard Employment Contract, which requires employers to pay FDHs not lower than the prevailing Minimum Allowable Wage, and to provide FDHs with free accommodation with reasonable privacy, free food (or food allowance in lieu), free medical treatment, free return passage, etc. These benefits are usually not available to local workers.

"As for the Committee's suggestion of repealing the 'two-week rule', such rule is required for maintaining effective immigration control and eliminating chances of FDHs overstaying in Hong Kong or working illegally after termination of contracts. This policy does not preclude the FDH from applying to work in the HKSAR again after returning to his/her places of origin. Furthermore, an FDH whose contract is prematurely terminated may be allowed to change employer in Hong Kong without returning to his/her place of origin first if they meet the relevant criteria, including his/her employer is unable to continue with the contract because of migration, external transfer, death, or financial reasons or there is evidence that the FDH has been abused or exploited.

"The live-in requirement is the cornerstone of our policy on importing FDHs. As with many other jurisdictions in the world, the HKSAR Government's established policy is to accord priority to local workforce in employment; importation of workers should only be allowed where there is genuine manpower shortage in a particular trade or occupation that could not be filled locally. Under this general principle, FDHs were allowed to work in Hong Kong to meet the shortfall of local live-in domestic workers. Such live-in requirement is made clearly known to the FDHs before their admission into the HKSAR, and specified in the Standard Employment Contract signed by the FDHs before they assume duty."

On the Committee's concern about the practice of corporal punishment at home, the spokesperson said that legislating against corporal punishment at home is highly controversial and we note that such legislation is not a standard arrangement in some overseas jurisdictions. This notwithstanding, every year the Administration organised territory-wide and district-based publicity campaigns and public education programmes to arouse public awareness of the importance of family solidarity and

prevention of domestic violence, including child abuse. It is hoped that through different public education and publicity programmes, parents will better understand their parenting responsibilities, parenting skills and the harm of corporal punishment that might inflict on their children.

In respect of domestic violence, the spokesperson noted the Committee's appreciation of a variety of measures and programmes implemented by the Administration to combat domestic violence. "We can assure the Committee that the Administration will continue to combat domestic violence by adopting a multi-disciplinary model as well as providing a spectrum of preventive, supportive and remedial services to the victims and their families," the spokesperson said.

Under Article 39 of the Basic Law, the provisions of the ICCPR as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR. ICCPR is one of the seven international human rights treaties applied to Hong Kong which carry reporting obligations.

Hong Kong's next report in the light of the ICCPR is due in 2018 and will contain the Government's detailed response to the Committee's recommendations. "In the interim, we will as requested by the Committee provide information on a number of areas in a year's time," the spokesperson said.

The Constitutional and Mainland Affairs Bureau will upload the Committee's concluding observations onto its website and distribute copies to the judicial, legislative and administrative authorities.

A press release and media summary of the hearing is available at the website of the United Nations Office in Geneva

( [www.unog.ch/unog/website/news\\_media.nsf/\(httpNewsByYear\\_en\)/02260CDFADFAE6F2C1257B2D004A66AA?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/02260CDFADFAE6F2C1257B2D004A66AA?OpenDocument) ) .

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