

Hong Kong Human Rights Commission

**Submission to Home Affairs Bureau,
Hong Kong Special Administrative Region**

on its

**Outline of the topics to be covered
in the second report on HKSAR**

under

the International Covenant on Civil and Political Rights

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General comments

Obligation to implement UN recommendations

1. The Hong Kong Human Rights Commission (HKHRC) remains seriously critical of the fact that most of the recommendations stated in the concluding observations of the Human Rights Committee ('the Committee') on Hong Kong Special Administrative Region's (HKSAR) initial report under the International Covenant on Civil and Political Rights have not been implemented by the Hong Kong government ('the government'). The government should strictly comply with its international obligations, and provide the means to implement the recommendations of the Committee as soon as possible.

The contents of the report

2. HKHRC would also like to express its concern on the drafting of the government report. In the past most of the government reports have only described and restated the existing policies. However, the government has not mentioned how it plans to implement the recommendations of the Committee or how it will enforce the recommendations through legislation.

Inclusion of more NGOs in the consultation process

3. HKHRC is also highly critical of the consultation process for the drafting of the report under ICCPR. At present the government only consults the public on the *outline* of the reports, thus not giving NGOs a chance to comment on the final draft of the full report. This makes the consultations of the outline less meaningful because the outlines are rather vague in content. Furthermore the consultation process seems to be a closed door process because not many NGOs are involved. HKHRC believes that the general public should be much more involved, and the government should take positive and concrete steps to include more groups. The government should publicize the draft report and invite for public views. In this context it is of special importance that advisory bodies and statutory bodies are invited to submit reports in the areas of concern. These bodies include the Independent Police Complaints Council (IPCC), the Equal Opportunities Commission (EOC), the Ombudsman and the Privacy Council.

National Human Rights Commission

4. HKHRC urges the government to explain to the Committee why it has not yet established a National Human Rights Commission (NHRC). Although the concluding observations of the Committee since 1995 has stated that an independent statutory body should be established to monitor and investigate human rights and the implementation of ICCPR, the HKSAR government has failed to do so.

Legal status of the ICCPR

5. The government should restate the legal status of the ICCPR in Hong Kong to show the public that the government strictly complies with the provisions of the ICCPR, and state clearly that the provisions are not promotional but indeed have full and immediate effect.

Article 23 of the Basic Law

6. The government should in detail explain the implementation of article 23 of the Basic Law. HKHRC is highly critical of the fact that the government has enacted a National Security (Legislative Provisions) Bill ('the Blue Bill') to implement article 23, despite wide public opposition against the implementation. Also, the government should explain why the consultation period only amounted to 3 months, given the importance of the subject. HKHRC is seriously concerned that the Blue Bill enables the government to prosecute political dissidents on national security grounds and believes that the Blue Bill will lead to a contraction of the public sphere. The Blue Bill seriously violates a number of human rights such as the right to freedom of thought, freedom to hold opinions without interference, freedom of expression, freedom of the press and right to freedom of association with others. HKHRC believes that there is no need for such a Blue Bill and urges the government to evaluate the impact of the Blue Bill on Hong Kong society. Especially HKHRC is worried by the fact that the government has not considered the Johannesburg Principles nor considered the necessity of a human rights protection mechanism.

Article 1

7. The HKHRC is critical of the fact that the implementation of the accountability system for principal officials of 1 July 2003 has not been followed up by an independent body that can evaluate the system from a human rights perspective.
8. In the concluding observations from November 1999 the Human Rights Committee reiterated its concerns that the electoral system of the Legislative Council does not comply with articles 2, para.1, 25 and 26 of the Covenant. The government should explain why it has ignored the Committee's concern for democratic representation in HKSAR. It should further explain why the possible amendment of the transitional electoral system can first take place after 2007.
9. The government should explain why it has not eliminated the system of functional constituency despite the fact that it has been criticized by the Committee that it violates articles 2, paragraph 1, 25(b) and 26 of the ICCPR.

Article 2

10. Regarding Human Rights Education the government should state in detail the measures taken to ensure genuine human rights education in primary and secondary schools. Also it should explain whether it has any strategy to educate civil servants, the disciplinary forces and the judiciary on human

rights aspects and procedures. Furthermore the government should state whether it has any further plans to assist NGOs in promoting human rights.

11. The government should explain why there is still no National Human Rights Commission to monitor human rights violations.
12. The government should include in its report why the government has not yet taken any steps to make the Complaints Against Police Office an independent body or why there is no other body to empower the IPCC.
13. The government should explain in more detail the role and functions of the Equal Opportunities Commission and how it promotes equal opportunities.

Article 3

14. The government should include in its report what has been done to ensure enactment of legislation against age discrimination.
15. The government should explain what steps it has taken to review the Mandatory Provident Fund, in the light of the fact that it does not include any kind of protection for housewives.
16. The government should in its report not only state the functions and role of the Women's Commission, but also make a detailed review of it. It should explain why the Women's Commission has no authority to review policies and state whether it has any plans to give the Women's Commission such authority. Furthermore it should state who is represented in the Women's Commission.
17. The government should explain why it has not taken any measures to promote affirmative action in the government advisory bodies to promote the inclusion of women in public life and politics.

Article 5

18. The government should review or amend the Public Order Ordinance and the Societies Ordinance. In the concluding observations of the Committee of 1999 the Committee expresses concern that the Public Order Ordinance can be applied to restrict the right to freedom of expression. The government should therefore explain why it has not yet eliminated the notification system of the Public Order Ordinance, which requires organizers of demonstrations to obtain a "notification of no objection" from the police before demonstrations may proceed.

19. The government should explain why it has enacted legislation to implement article 23 of the Basic Law, despite the fact that article 5 of the ICCPR prohibits governments to limit existing rights.

Article 6

20. The government should report how many people have died during detention, and explain what measures it has taken to prevent such deaths.

Article 7

21. The government should explain what positive steps it has taken to cooperate with Mainland China on an extradition agreement on fugitive offenders to make sure that no people will face death penalty. The government should explain what effective protection exists against the risk of imposition of the death penalty or of torture or inhuman, cruel or degrading treatment.
22. The government should explain if there are any new measures to protect detainees on the Mainland. It should review whether the existing services are effective in helping the detainees and their families, and describe in detail if there are any effective appeal mechanisms.
23. The government should give an account of why it has not yet abolished the two week rule, despite severe criticism from migrant groups, NGOs and several UN bodies.
24. The government should review whether the newly imposed levy on the employers of domestic helpers violates article 8 of the Bill of Rights.

Article 9

25. The HKHRC requests the government to state the reasons why the recommendations of the Law Reform Commission have not been fully implemented. Especially the government should explain why there is still no limit on the detention time by law.
26. The government should explain why the Force Procedure Manual does not hold the status of a statutory document.

Article 10

27. Regarding prisoners belonging to ethnic minorities the government should regularly publicize statistics on the number of detainees.

28. The government should state whether there exists any policies to protect ethnic minority offenders. HKHRC also asks the government to state what services are provided specially for ethnic minorities.

Article 12

29. The HKHRC is critical of the fact that the government has not taken any measures to prevent the Boundary Facilities Improvement Tax, which violates the liberty of movement.

Article 13

30. The HKHRC asks the government to explain what legal grounds and proceedings exist in arresting two-way permit holders. It should give an account of whether there exists any protection or measures to prevent two-way permit holders from being illegally detained or illegally repatriated.

Article 14

31. HKHRC strongly requests the government to declare that it under no circumstances will request the National People's Congress (NPC) to seek reinterpretation of the Basic Law, since it violates the system of "One Country, Two Systems".
32. The government should provide statistics on the number of offenders being charged without any legal representation.
33. The government should review the Legal Aid Ordinance with the aim of exploring the possibilities of providing legal aid to persons charged for serious offences.
34. The government should state the number of residents entitled for legal aid, especially those related to medical negligence. The restricted access to legal aid means that some victims of malpractice are barred from having a fair trial.

Article 17

35. The government should explain why it has not yet amended The Interception of Communications Ordinance, despite the recommendations in the Law Reform Commission's report.

36. The government should explain what mechanisms exist to safeguard the privacy of citizens in the proposed Smart ID Card.
37. HKHRC is concerned that the Blue Bill to implement article 23 of the Basic Law gives the Police Force more power to investigate cases.

Article 18

38. HKHRC is concerned that the government has not taken any legal steps to avoid discrimination against religious groups.
39. HKHRC is highly critical of the fact that the Blue Bill on article 23 of the Basic Law includes concepts of national security, sedition, treason, secession and subversion, which can easily widen the scope for infringements on human rights, given the vagueness of the concepts.
40. HKHRC is concerned that the Blue Bill can prohibit local organizations from establishing ties with international organizations. There is a risk that the Blue Bill would be a blockage on the exchange of organizations. Especially HKHRC remains concerned that there will be future difficulties in establishing links between Mainland China and HKSAR.
41. The government should explain why it has restricted the religious freedom of Falun Gong through different means. The government should explain to the Human Rights Committee:
 - a. Why the government has prohibited Falun Gong from renting government areas for religious practice.
 - b. Why the government has denied Falun Gong followers entrance into Hong Kong.
 - c. Why the government has prosecuted Falun Gong followers through political prosecution even though the followers just practiced their religion through peaceful assembly.

Article 19

42. Regarding the implementation of article 23 of the Basic Law, HKHRC is highly critical of the Blue Bill's definition of "seditious publications". In article 9C of the Blue Bill seditious publications means "a publication that is likely to cause the commission of an offence..". Thus even without actually causing an offence, a publication may be deemed as being seditious.
43. The government should state whether it has any further plans regarding the Code on Access to Information. It should state if there are any plans to legislate on the access to information.

44. The HKHRC remains highly critical of the National Flag and National Emblem Ordinance, which violates the freedom of expression.
45. The HKHRC believes that the editorial independence of Radio Television Hong Kong (RTHK) is seriously being undermined. The government should review its policies to investigate whether genuine independence is granted to the RTHK.

Article 21

46. HKHRC is highly critical of the fact that the Police Force has used the Public Order Ordinance (POO) to make public order prosecutions in peaceful demonstrations.

Article 22

47. HKHRC is concerned that the Societies Ordinance gives the government power to ban specific organizations and ties between organizations and foreign political groups.

Article 23

48. Regarding split families HKHRC is critical of the fact the HKSAR has no power to allocate One-way entry permits. The consequences are unfair to split families, which sometimes must wait up to 10 years to be reunited.
49. The National People's Congress Standing Committee's (NPCSC) reinterpretation of the Basic Law in the Right of Abode case has resulted in the government requesting several thousands of right of abode seekers to leave Hong Kong. HKHRC urges the government to give these people the right of abode on discretionary grounds.
50. The government should explain why some two-way permit holders, who have been repatriated to the Mainland, cannot go back to Hong Kong visit their families there.
51. The new welfare policies that now prescribe 7 years of residence to be eligible for Comprehensive Social Security Allowance (CSSA) will severely affect the development of the family. The government should give an account of how it plans to support individuals and families who are not eligible for CSSA in the future.

Article 25

52. The government should state whether it has increased the support to organizations and political parties to create a better atmosphere for the local political parties, to enhance their involvement in public affairs.
53. The abolishment of the Regional and Urban Councils infringes on the right to participation in public affairs. The government should explain why it has not maintained these bodies.
54. The government should review and clarify the roles and functions of the advisory bodies. It should state clearly if it has taken any measures to strengthen their roles and powers.

Article 26

55. The HKHRC is highly critical of the fact that the government has not yet enacted any legislation to prohibit discrimination from private persons on the grounds of age, race, sexual orientation and religion. The Committee has reiterated the concern that legislation should be enacted in order to ensure full compliance with the Covenant. The government should give an account of its plans regarding legislation.

Article 27

56. The government should review the role of the Race Relations Unit and its complaint system, given the lack of legal protection.
57. The government should inform the Committee about how many ethnic minority children are still waiting to be allocated to public schooling.
58. The government should clearly state how it plans to integrate ethnic minorities fully into Hong Kong society.