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Panel on Home Affairs

Background brief prepared by Legislative Council Secretariat

**Monitoring mechanism for the implementation of
United Nations human rights treaties
in the Hong Kong Special Administrative Region**

Purpose

This paper gives an account of previous discussions held by the Panel on Home Affairs on monitoring mechanism for the implementation of United Nations (UN) human rights treaties in the Hong Kong Special Administrative Region (HKSAR) since the first term of the Legislative Council (LegCo).

Background

2. The following six UN human rights treaties apply to the HKSAR -
 - (a) International Covenant on Economic, Social and Cultural Rights (ICESCR);
 - (b) International Covenant on Civil and Political Rights (ICCPR);
 - (c) International Convention on the Elimination of All Forms of Racial Discrimination;
 - (d) Convention on the Elimination of All Forms of Discrimination against Women;
 - (e) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and
 - (f) Convention on the Rights of the Child.

3. Implementation of these six human rights treaties is monitored mainly through the UN reporting process. The HKSAR Government submits reports under the six human rights treaties to the respective UN Treaty Monitoring Bodies (TMBs) regularly. The reporting cycles of the treaties range from two to five years.

4. In its reports to UN, the HKSAR Government gives an account of the progress in the implementation of the treaties concerned in the HKSAR. It may also respond to the comments and recommendations made by the UN TMBs on HKSAR's previous reports. The outline of topics to be covered in a report is published for public consultation. According to the Administration, it will take into consideration the views received in preparing the reports and forward submissions received to UN. Non-government organizations (NGOs) may also forward their views to UN directly. After the reports are submitted to UN, the HKSAR Government will publish the reports. The UN TMBs will conduct hearings to discuss the reports on the HKSAR and publish their concluding observations/recommendations on these reports.

5. The Panel on Home Affairs monitors the submission of reports to UN under the six human rights treaties by the HKSAR Government and its progress in following up the recommendations made by the UN TMBs concerned in respect of these reports.

6. When the Panel on Home Affairs discussed the second report to be prepared by the HKSAR Government under ICESCR on 7 February 2003, a member expressed dissatisfaction that the Government had continued to ignore the recommendation of the UN Committee on Economic, Social and Cultural Rights (the UNESCR) and refuse to establish a human rights commission. She considered that in the absence of such an institution, it would not be possible to effectively monitor the implementation of ICESCR in Hong Kong, since the progress of Government efforts in this respect was discussed only once every five years when the HKSAR Government prepared its report to UN. Members agreed that the Panel should follow up on the issue of establishing an effective monitoring mechanism for the implementation of human rights treaties in the HKSAR.

Previous discussions held by the Panel on Home Affairs on monitoring mechanism for the implementation of UN human rights treaties in the HKSAR

7. During previous discussions on the submissions of reports by the HKSAR Government to UN, some members of the Panel on Home Affairs had expressed concern about the Government's inertia in implementing the six human rights treaties and the recommendations made by the respective TMBs. These Panel

members stressed that there was a need to set up a human rights commission as a central monitoring mechanism to protect and safeguard human rights in the HKSAR. The suggestions of setting up a subcommittee/working group under the Panel and submission of annual report by the Administration to LegCo had also been considered for monitoring the implementation of human rights treaties. Relevant discussions are summarized below.

Setting up a human rights commission

8. The UNCESCR and the UN Human Rights Committee (The UNHRC) had repeatedly urged the Hong Kong Government and then the HKSAR Government to set up a human rights commission since 1994. Some Panel members had expressed great disappointment at the Government's objection to setting up a human rights commission to monitor the implementation of human rights treaties in the HKSAR.

9. When the Panel discussed the concluding observations made by UNCESCR on the initial report on the HKSAR under ICESCR with the Administration on 16 July 2001, a member had asked about the circumstances under which the Administration would consider implementing the recommendation of the UNCESCR to establish a human rights commission.

10. In reply, the Administration advised that it did not see any obvious need to set up such an institution since human rights had already been well protected in the HKSAR by the relevant legislation, an independent Judiciary, the legal aid system, The Ombudsman, the press, NGOs, UN and LegCo. The Administration added that the existing framework for the protection and development of human rights had served the HKSAR well. The Administration also clarified that the UNCESCR had not regarded the failure to establish such an institution a breach of any provisions under the Covenant. The Administration assured Panel members that it would review the need to establish a new institution if a major fault had been identified in the existing framework for the protection of human rights. The member, however, did not agree that it was not necessary to establish a human rights commission simply because failure to do so was not regarded a breach of the Covenant.

11. In response to a question from another member about the disadvantages of establishing a human rights institution, the Administration explained that the Government had to prioritize the use of public resources in a responsible manner to meet the needs of society. As the HKSAR's human rights record remained good, the Government did not see any justification for changing its stance at the present stage. The member, however, maintained the view that as the UNCESCR had repeatedly urged the HKSAR to establish a human rights institution, it clearly demonstrated the need and the urgency to do so.

12. When the Panel received a briefing by the Secretary for Home Affairs on the Chief Executive's Policy Address in 2003 on 15 January 2003, a member urged the Government to implement the recommendation of UN TMBs and establish a human rights commission to co-ordinate the formulation of a comprehensive human rights policy and monitor the implementation of the relevant treaties in the HKSAR. She pointed out that such a monitoring mechanism was badly needed to counter-balance the powers of the enforcement authorities which would be increased after the enactment of the proposed legislation for the implementation of Article 23 of the Basic Law.

13. The member also considered that a mediation mechanism could be set up with the establishment of the human rights institution. It would be more effective in protecting human rights than the existing legal aid system since with such a mechanism in place, disputes over human rights might not need to be resolved at court. Hence, the parties concerned would not be required to pay for huge court costs.

14. The Panel discussed the second report to be prepared by the HKSAR under ICCPR with deputations and the Administration on 11 April 2003. In response to the concerns of members and deputations about the stance of the HKSAR Government on the establishment of a human rights commission, the Administration assured members that it would review past discussions on this subject and consider the issue in the light of the availability of resources, structure of the public administration system, as well as the suitability for setting up such an institution given the prevailing circumstances.

15. A deputation reiterated the importance of an independent statutory human rights commission in monitoring Government policies and programmes in implementing human rights treaties in the HKSAR. It added that other statutory organizations had also played an important role in safeguarding human rights in the HKSAR. However, with the increasing undue influence from the Government, these organizations had encountered more and more difficulties recently in exercising their power in monitoring the work of the Government.

16. A member said that both members and deputations were equally disappointed that despite the repeated requests from the UNHRC, LegCo Members and deputations, the HKSAR Government had still refused to establish a human rights commission. He added that the Home Affairs Bureau, being of the same status as other Bureaux, would not be in a position to monitor the work of the latter in the implementation of ICCPR effectively. He therefore considered that the Chief Secretary for Administration should be charged with this responsibility.

17. A member asked whether it would be more effective if the Equal Opportunities Commission (EOC), which had all along contributed significantly towards the safeguard of human rights in the HKSAR, should be accorded with

this responsibility by widening its scope of work and statutory power, instead of setting up a separate human rights commission. The Chairperson of EOC advised that the monitoring mechanism suggested by the member had been adopted in some other jurisdictions. She advised that there might be other alternatives as well. For instance, the monitoring work might be shared by two separate organizations, the responsibilities of which might be delineated by treaties. She added that the Government might review organizations relating to human rights in the HKSAR in the light of their responsibilities, power and structure, and restructure these organizations, if necessary, in order to establish an effective mechanism in monitoring the implementation of human rights treaties.

Setting up a subcommittee/working group under the Panel

18. When the Panel received a briefing from the Administration on its response to the concluding observations of the UNHRC on the initial report of the HKSAR under ICCPR on 13 March 2000, some members expressed concern that the lack of action on the part of the Administration would make it very difficult for LegCo to monitor the Government's progress in implementing the UNHRC's recommendations. A member suggested that a working group might be formed under the Panel to follow up the Government's progress in implementing the UNHRC's recommendations, say, every two months. Another member, however, pointed out that it might not be fruitful to set up a working group if the Administration could not provide a progress report with substantial information. In response to the suggestion, the Administration indicated that given the complexity of the issues involved, it could not commit itself to producing progress reports on a fixed time period.

19. When the Panel discussed the second report to be prepared by the HKSAR under ICESCR with deputations and the Administration on 7 February 2003, some deputations suggested that the relevant LegCo Panel or its subcommittee should monitor the implementation of ICESCR and assess the Government's budget and relevant policies in the light of the Covenant once a year, and request the Government to report the progress accordingly.

Submission of annual report to LegCo

20. When the Panel discussed the second report to be prepared by the HKSAR under ICCPR with deputations and the Administration on 11 April 2003, the Chairperson of EOC had suggested that the role of LegCo in monitoring the implementation of human rights treaties in the HKSAR could be enhanced by requesting the Government to report its progress of work in promoting human rights to LegCo on an annual basis.

21. In response to the suggestion, the Administration has stated in its paper submitted for discussion at the Panel meeting on 9 May 2003 that it has no

objection in principle to providing progress reports. However, as resources will be incurred, the Administration needs to examine the implications and will advise the Panel of its conclusions shortly.

Relevant papers

22. A list of relevant papers is in **the Appendix** for members' easy reference. These documents can be retrieved from the Research and Library Information System and the LegCo website.

Council Business Division 2
Legislative Council Secretariat
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List of relevant papers

Minutes of meetings of the Panel on Home Affairs

- (a) LC Paper No. CB(2)1595/99-00 -- Minutes of meeting on 13 March
(issued vide LC Paper No. 2000
CB(2)1596/99-00 on 8 April 2000)

(<http://www.legco.gov.hk/yr99-00/english/panels/ha/minutes/ha130300.pdf>)

- (b) LC Paper No. CB(2)175/01-02 -- Minutes of special meeting on
(issued vide LC Paper No. 16 July 2001
CB(2)173/01-02 on 26 October 2001)

(<http://www.legco.gov.hk/yr00-01/english/panels/ha/minutes/ha010716.pdf>)

- (c) LC Paper No. CB(2)1421/02-03 -- Minutes of special meeting on
(issued vide LC Paper No. 15 January 2003
CB(2)1420/02-03 on 13 March 2003)

(<http://www.legco.gov.hk/yr02-03/english/panels/ha/minutes/ha030115.pdf>)

- (d) LC Paper No. CB(2)1686/02-03 -- Minutes of special meeting on
(issued vide LC Paper No. 7 February 2003
CB(2)1729/02-03 on 9 April 2003)

(<http://www.legco.gov.hk/yr02-03/english/panels/ha/minutes/ha030207.pdf>)

- (e) LC Paper No. CB(2)1959/02-03 -- Minutes of meeting on 11 April
(issued vide LC Paper No. 2003
CB(2)1958/02-03 on 7 May 2003)

(<http://www.legco.gov.hk/yr02-03/english/panels/ha/minutes/ha0300411.pdf>)