

Legislative Council Panel on Home Affairs

**Implementation of international human rights treaties
in Hong Kong: 2003**

Introduction

1. In a paper that we submitted to the Panel at its meeting on 9 May 2003, we undertook to examine the resource implications of providing progress reports (as proposed by a Member at the Panel's meeting on 17 April that year). Having completed that process, we advised the Panel that we could provide short annual overviews of developments relating to the six treaties which applied to the Hong Kong Special Administrative Region (HKSAR) and which entailed an obligation to submit periodic reports to the United Nations Treaty Monitoring Bodies (TMBs). Those treaties were (and remain) the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹, and the Convention on the Rights of the Child (CRC).

2. We advised the Panel that we envisaged issuing the reports in the first half of each calendar year and that they would cover developments in the preceding calendar year. Thus, this – the first such report – covers developments in 2003 and the second, which we will issue in 2005, will cover developments in 2004. This being the first report of its kind, the format is experimental and, like our reports to the TMBs, is susceptible to evolutionary development on the basis of feedback from Panel Members.

3. In preparing the report, we have taken into account the fact that the last 12 months have been a particularly heavy period for reporting under

¹ The CEDAW is under the purview of the Secretary for Health, Welfare and Food. Accordingly, the section on the Convention (section E below) was contributed by the Health, Welfare and Food Bureau.

the United Nations (UN) treaties with reports to be submitted under the ICESCR, the ICCPR, the CEDAW, and the CRC. Those reports have addressed the issues in detail and we have confined discussion to significant developments during the period under report (calendar year 2003). We have also adhered to our original commitment to providing an overview and have therefore addressed only the most significant developments in the areas covered by each particular treaty. The interpretation of the term ‘significant’ – that is to say, what issues should or should not be included – has been at the discretion of responding bureaux.

(A) International Covenant on Economic, Social and Cultural Rights (ICESCR)

Background

4. The Government of the United Kingdom extended the ICESCR to Hong Kong in 1976. The Government of the People’s Republic of China (PRC) notified the UN in June 1997 that the provisions of the ICESCR as applied to Hong Kong shall remain in force from 1 July 1997. In 2001, the Government of the PRC ratified the ICESCR. Reports are required every five years. The first report of the HKSAR under the ICESCR was submitted to the UN in mid 1999 and was heard by the UN Committee on Economic, Social and Cultural Rights at the end of April in 2001. The HKSAR's second report under the ICESCR was submitted to the UN in June 2003 as part of the PRC's initial report.

New measures to promote employment

5. In 2003, the Labour Department launched several new employment initiatives to promote employment for groups particularly hard-hit by unemployment, namely the middle-aged and the young –

- (a) **the “District Employment Programme for the Middle-aged” (April):** a pilot project whereby non-governmental organisations (NGOs) help middle-aged unemployed persons secure jobs close to their homes;

- (b) **the “Re-employment Training Programme for the Middle-aged” (May):** to encourage employers to engage middle-aged unemployed workers and provide them with on-the-job training. Under the Programme, employers receive a monthly training allowance of \$1,500 per trainee so engaged, for up to three months; and
- (c) **the “Graduate Employment Training Scheme” (August):** to help fresh university graduates (class of 2003) to secure employment with on-the-job training. Employers accepting graduates under the Scheme receive a monthly training allowance of \$2,000 for each trainee so engaged, for a maximum period of six months.

Improvements to existing measures to promote employment

6. In 1999, we launched a new initiative – the Youth Pre-employment Training Programme – to address the problem of youth unemployment. The Programme provides pre-employment training to school leavers aged 15 to 19. In the financial year 2003-04, we expanded the programme by 6,000 places, bringing the total of such places to 18,000. New training courses have been added to provide greater diversity and to meet new market needs.

7. In 2002, we introduced the Youth Work Experience and Training Scheme to provide work experience and on-the-job training for young people aged between 15 and 24, whose educational level was below degree level. In 2003, the Scheme reached its target of placing 10,000 trainees in training vacancies, eight months ahead of schedule. Special employment programmes tailored to the needs of specific industries or occupations have also been introduced under the Scheme through strategic partnership with employers, NGOs and training institutes.

Foreign domestic helpers

8. Significant issues in the reporting period included the following –

- (a) **the minimum allowable wage:** the minimum allowable wage is subject to annual review. In conducting that review, the Government takes a broad judgment as to the appropriate level of the wage by taking into account Hong Kong's general economic and employment situation as reflected by a basket of economic indicators. It was on that basis that we took the decision to reduce the monthly wage level by \$400 (or 10.9%) from \$3,670 to \$3,270, with effect from 1 April 2003. We address this topic in greater detail in our second report under the ICCPR, which is to be published shortly;
- (b) **imposition of the Employees Retraining Levy:** the levy was introduced on employers of foreign domestic helpers in October 2003 under the Employees Retraining Ordinance (Chapter 423). The decision reflects the fact that, like their counterparts in other sectors who employ workers under other labour importation schemes, employers of foreign domestic helpers enjoy the benefits of services offered by imported rather than local workers. We therefore considered it reasonable for them to contribute towards the training and retraining of the local workforce, particularly the lower skilled, by paying a levy in the same way as did employers of workers under other labour importation schemes. The need for the levy was clearly demonstrated in a manpower projection commissioned by the Government in 2002, which indicated that, by 2007, there would be a surplus of some 134,000 workers with educational attainment of lower secondary and below. There was therefore a pressing need to train and retrain the local workforce to keep pace with Hong Kong's economic restructuring. The levy is to be paid by employers. Should an employer deduct the levy or any part of it from a helper's salary, that employer would be committing an offence under section 32 of the Employment Ordinance (Chapter 57) and would be liable to prosecution and, upon conviction, to a maximum fine of \$100,000 and one year imprisonment;

- (c) **underpayment of wages:** the Government takes such underpayment seriously and assists helpers who have been underpaid to file claims against their employers. Upon obtaining sufficient evidence, employers who breach the provisions in the Employment Ordinance (Chapter 57) on wage protection will be prosecuted. In early 2003, we established a special task force comprising representatives of the Labour Department, the Immigration Department, and the Police to formulate strategies to combat the underpayment of wages and malpractices on the part of employment agencies. Members of the task force exchange intelligence on suspected cases, plan enforcement action, and remind employers and employment agencies not to breach the law through educational measures and publicity. And, in early 2003, we established an intelligence system with migrant worker groups and NGOs to provide a channel for them to report cases of underpayments.

9. These efforts have proved effective and there have been successful prosecutions. In 2003, for example, an employer was sentenced to four months' imprisonment for conspiracy to defraud and making false representations that he would pay his helper at least the minimum allowable wage.

Town planning

10. In 2003, we introduced a Bill to amend the Town Planning Ordinance (Chapter 131). The aim was to forward proposals that had won general support in the consultations on the 1996 White Bill and that would produce immediate benefits to the community. The Amendment Bill focuses on streamlining the town planning process, enhancing public involvement in and transparency of the planning system, and strengthening enforcement controls over unauthorised developments in the rural areas. The Legislative Council is currently examining the Bill.

'Hong Kong 2030: Planning Vision and Strategy' (HK2030 Study)

11. We began the HK2030 Study in 2001 with a view to formulating an integrated development land use, transport and environmental strategy to guide Hong Kong's development up to 2030. The study will include an examination of the pace of the development of new towns, taking into account the most recent forecasts of population growth in the medium and long terms. The aim is to achieve sustainable development by balancing Hong Kong's long-term economic, social, housing and environmental needs.

12. In early 2001, we consulted the public on the planning objectives that should guide the HK2030 Study and the key subjects that should be covered. In early 2002, we consulted them on the key planning issues that were critical to the formulation of development options and the evaluation criteria. Currently, we are consulting the public on the development scenarios and the initial development options. Upon completion of the consultation, we will proceed to the final stage of the Study in which we will work out a preferred long-term development strategy. We aim to complete the exercise in 2005.

Protection of the Harbour Ordinance 1997

13. Hong Kong's Victoria Harbour is of outstanding natural beauty and a major attraction to visitors. In June 1997, to protect and preserve it, the former Legislative Council passed a Member's 'Bill on the Protection of the Harbour' (now Chapter 531). The Ordinance establishes a principle of presumption against reclamation within the Harbour limits. It requires all public officers or bodies to have regard to this principle in the exercise of their powers.

14. In January 2004, the Court of Final Appeal (CFA) delivered a judgment regarding, among other things, the interpretation of the Ordinance. In essence, the CFA adopted a test of "overriding public need", meaning "a community need, which includes the economic, environmental and social needs of the community". A need would only be regarded as overriding if it

were compelling and present and if there were no reasonable alternatives. The evidence required to satisfy the “overriding public need” test must be based on cogent and convincing materials. The public officer or public body concerned must assess the evidence in coming to a decision. We will act in accordance with the judgment and ensure that reclamation shall only proceed if the CFA's requirements are met.

Falun Gong: access to public venues

15. In our second report under the ICESCR, we addressed commentators’ concerns about allegations that the Hong Kong Association of Falun Dafa (Falun Gong) had been denied access to public indoor venues. We explained that the Association’s applications for venues had been processed in accordance with a standard system in the same way as those received from other applicants. Not all its applications had been successful. But several had been and we cited specific examples: we take this opportunity to cite a further one in refutation of the earlier allegations. In December 2003, the Association applied for a venue for a performing arts variety show and an experience sharing conference. The Leisure and Cultural Services Department offered them slots at the Tsuen Wan Town Hall, the Tuen Mun Town Hall and the Kwai Tsing Theatre. The Association accepted a slot at the Tsuen Wan Town Hall for January 2004.

(B) International Covenant on Civil and Political Rights (ICCPR)

Background

16. The Government of the United Kingdom extended the ICCPR to Hong Kong in 1976. The PRC is not yet a state party to the Covenant but Article 39 of the Basic Law provides that the provisions of the ICCPR as applied to Hong Kong shall remain in force. Formerly reports were required every five years but this changed to a "case by case basis" in 1999. The HKSAR's first report under the Covenant was submitted to the UN in early 1999 and was heard by the UN Human Rights Committee in November that year. See paragraph 17 below in regard to our second report.

Second Report under the ICCPR

17. At the time of finalising the present report, we were in the process of finalising our second report under the ICCPR. We expect to submit it to the UN shortly and will release it to the public immediately thereafter. In the report, we respond to each of the concerns and recommendations in the UN Human Rights Committee's concluding observations of 15 November 1999 on our initial report. Among others, topics of major interest included the electoral system, rural elections, Hong Kong's ethnic minorities, and the question of legislation to implement Article 23 of the Basic Law.

18. The closing date for the second report was 30 June 2003, though, in several areas, it discussed developments that occurred after that date, where we considered that those developments would be of interest to the Committee. The paragraphs below – except paragraph 19, which advises the Legislative Council of a decision reached in February 2004 – cover developments that occurred after 30 June 2003 but before 31 December that year, which is the closing date for this report.

Equal opportunities

19. In November 2003, the former Chairperson of the Equal Opportunities Commission, Mr Michael Wong Kin-chow – who was appointed in August 2003 – resigned. During Mr Wong's term of office, the employment contract of Mr Patrick Yu as Director (Operations) of the Equal Opportunities Commission was terminated. This aroused considerable public interest and, in February 2004 (shortly after the reporting period), it was decided that the Secretary for Home Affairs should appoint an independent panel of inquiry.

Constitutional development

20. This is discussed extensively in our second report under the ICCPR, particularly in relation to Articles 1 and 25 of the Covenant.

Essentially, the position is that Articles 45 and 68 of the Basic Law provide that the methods for selecting the Chief Executive and for forming the Legislative Council shall be specified in the light of the actual situation in Hong Kong and in accordance with the principle of gradual and orderly progress. The ultimate aims are the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures, and the election of all Members of the Legislative Council by universal suffrage.

21. As Members are aware, recent developments on the subject culminated in the decision made by the National People's Congress Standing Committee (NPCSC) on 26 April 2004. The Constitutional Development Task Force is drafting its third report, which will set out, on the basis of the Basic Law and the NPCSC decision, the areas which may be amended in respect of the methods for selecting the Chief Executive and forming the Legislative Council. The public will be consulted when the report is published.

Article 23 of the Basic Law

22. This issue is extensively discussed in chapter 28 of the second report. Essentially our position is that the HKSAR has a constitutional duty to enact legislation to give effect to the provisions of Article 23. The National Security (Legislative Provisions) Bill – that we introduced into the Legislative Council in February 2003 in order to fulfil that obligation – was in full compliance with the international human rights standards enshrined in the ICCPR as applied to Hong Kong. Nevertheless, we recognise that public understanding and acceptance is essential in such an important undertaking and accordingly, in September 2003, we withdrew the Bill from the legislative programme. We will re-examine the issues. There is no predetermined timetable for the exercise.

(C) International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

Background

23. The Government of the United Kingdom extended the ICERD to Hong Kong in 1969. In June 1997, the Government of the PRC notified the UN that the ICERD, to which it acceded – with certain reservations – in 1981, would apply to the HKSAR with effect from 1 July 1997. The Convention requires reports every two years. The HKSAR's first report under the Convention was submitted to the UN in late 2000 as part of PRC's combined eighth and ninth reports. It was heard by the UN Committee on the Elimination of Racial Discrimination on 31 July and 1 August 2001.

Legislation against racial discrimination

24. In June 2003, we announced the decision to introduce legislation against racial discrimination. At the time of finalising this report, we were preparing a consultation paper on the legislative proposals.

Promotion of racial harmony

25. Meanwhile, our work on the promotion of racial harmony has continued. In 2003-04, we spent \$5.74 million on promotion of awareness of racial harmony and equality. Our Race Relations Unit delivered, inter alia, a Community Organiser Training Programme on a pilot basis. The aim was to equip community organisers from the minorities to take a proactive role in their respective communities and in the wider society of Hong Kong. Also ongoing is the Mobile Information Service whose 'Information Ambassadors' provide information and assistance to migrant workers and non-Chinese persons entering for settlement on first arrival at the Airport. Other measures included giving talks to schools, maintaining a hotline for complaints and enquiries, and a mural project.

26. In 2004-05, we provisionally plan to spend \$5.87 million. We shall continue existing long-term initiatives, such as the language classes (we now provide English classes as well as Cantonese), the community organiser training programme, the Equal Opportunities Funding Scheme, the Committee on the Promotion of Racial Harmony, the service guidebooks, and public education campaigns (APIs, posters, and so forth). Other initiatives are currently under consideration.

27. We attach great importance to understanding the concerns of Hong Kong's minority communities and, in July 2003, we convened the first meeting of the Ethnic Minorities Forum to broaden our contact base². Like the longer-established Nepalese Community Forum, attendance is open to community representatives/organisations and NGOs that serve the various communities. Issues discussed in these fora have included such matters as language, education, employment, crime, visa policy, and discrimination. Participants' concerns are relayed to the relevant bureaux/departments, several of which have sent representatives to address subsequent meetings of the fora. They are also conveyed to the internal Steering Committee on New Arrival Services, which is chaired by the Permanent Secretary for Home Affairs and seeks to ensure that new arrivals – whether from the Mainland or elsewhere – are aware of the services available to them, know where and how to obtain those services, and that the services so provided are those that are actually needed.

(D) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

Background

28. The Government of the United Kingdom extended the CAT to Hong Kong in 1992. In June 1997, the Government of the PRC notified the UN that the CAT, which it ratified – with certain reservations – in 1988, would apply to the HKSAR with effect from 1 July 1997. The Convention requires reports every four years. The HKSAR's first report under the Convention was submitted to the UN in mid 1999 as part of China's third report. It was heard by the UN Committee Against Torture in May 2000. See paragraph 29 below in regard to the second report.

29. Our second report under the CAT will form part of China's next report under that Convention, which is due in 2005. The usual pre-drafting consultation period is from 7 May to 18 June 2004.

² Previously, we had maintained contact through the long-established Nepalese Community Forum, and ad hoc meetings with NGOs and community leaders to brief them about such matters as SARS prevention, and upcoming human rights reports.

30. The report will respond to the concerns and recommendations that the Committee Against Torture expressed in its conclusions and recommendations of May 2000 on our initial report. We shall also advise the Committee of significant developments within the ambit of the CAT. Examples include the enactment (in May 2001) of the Rehabilitation Centres Ordinance (Chapter 567), and the introduction (in March 2004) of the Criminal Procedure (Amendment) Bill 2004.

(E) International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Background

31. The CEDAW was extended to Hong Kong in 1996, with the consent of the PRC and the United Kingdom. In June 1997, the Government of the PRC notified the UN that, with certain reservations, the CEDAW would apply to the HKSAR with effect from 1 July 1997. The Convention requires reports every four years. Our first such report was submitted to the UN in 1998 as part of China's combined third and fourth reports. It was heard by the UN Committee on the Elimination of Discrimination Against Women in January/February 1999.

Second CEDAW report

32. In 2003, we submitted our second report to the Central People's Government. It now forms part of China's combined fifth and sixth periodic reports under the Convention.

33. The report is available on the websites of the Health, Welfare and Food Bureau and the Women's Commission:
 (http://www.hwfb.gov.hk/en/wnew/040205_wo_cedaw.htm and
<http://www.women.gov.hk/eng/document/govern/cedaw/index.htm>
 for English version and
http://www.hwfb.gov.hk/ch/wnew/040205_wo_cedaw.htm or
<http://www.women.gov.hk/big5/document/govern/cedaw/index.htm> for

Chinese version). Printed and CD-ROM versions have been distributed to the Legislative Council and other interested parties.

(F) Convention on the Rights of the Child (CRC)

Background

34. The United Kingdom extended the CRC to Hong Kong in 1994. In June 1997, the Government of the PRC notified the UN that the CRC, which it ratified - with certain reservations - in 1992, would apply to the HKSAR with effect from 1 July 1997. The Convention requires reports every five years. The HKSAR's first report under the CRC was submitted to the UN Committee on the Rights of the Child as part of China's second report in June 2003.

Age of criminal responsibility

35. In our initial report under the CRC, we advised the Committee on the Rights of the Child that we had accepted the recommendations in relation to the minimum age of criminal responsibility in the Law Reform Commission's 'Report on the Age of Criminal Responsibility in Hong Kong'. Among other things, the report had recommended raising the minimum age for criminal responsibility from seven to ten years and continuing to retain the rebuttable common law presumption of *doli incapax*³ for children aged from ten to below fourteen. We accepted that recommendation and, in July 2003, it came into effect with the commencement of the Juvenile Offenders (Amendment) Ordinance 2003⁴.

Child pornography

36. In our initial report, we advised the UN Committee on the Rights of the Child of our intention to legislate against child pornography and child sex tourism. Subsequently in July 2003, the Legislative Council enacted the Prevention of Child Pornography Ordinance (Chapter 579). The Ordinance prohibits the printing, making, production, reproduction, copying,

³ This is a legal presumption that a child is incapable of committing a crime.

⁴ The ordinance amended section 3 of the Juvenile Offenders Ordinance (Chapter 226).

publishing, import, export, possession and advertising of child pornography, as well as the procurement of children for making pornography. It also creates offences of arranging and advertising child sex tours, and applies extra-territorial effect to certain sexual offences against children in the Crimes Ordinance (Chapter 200).

Access to appropriate information: content regulation on the Internet

37. Our policy was to establish a balance between protecting public morals (and the vulnerable young) and preserving the free flow of information and the freedom of expression. In July 1996, we conducted public consultations to assess the views of both the industry and the community on the need to regulate the content of information transmitted on the Internet. The response was overwhelmingly in support of self-regulation. In June 2003, in accordance with that policy and in collaboration with the Hong Kong Internet Service Providers Association, we introduced the Internet Content Rating System (ICRS). This was based on a system developed by the British Internet Content Rating Association (ICRA). The idea is that webmasters declare the content of their websites on a voluntary basis via an online questionnaire and obtain an ICRS content label in return. Internet users can download a free label filtering software to allow or deny access to a particular website based on their own preferences. At least 200 local websites had been so labelled by the end of 2003. We have also established an 'Internet Safety hotline' to handle enquiries and complaints. It is hoped that the ICRS will help to minimise the exposure of children and young people to offensive materials on the Internet.

Home Affairs Bureau

May 2004