List of issues for the Pre-sessional Working Group
to be taken up in connection with the consideration of
the third periodic report of
China: The Special Administrative Region of Hong Kong
concerning the rights covered by the article 1 – 28 of
the International Covenant on Civil and Political Rights
(ICCPR)

July 2012
Hong Kong Human Rights Commission

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I. General legal framework within which the covenant is implemented

Implementation of the recommendations of the Committee

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 SAR Government (‘the Government’). Please explain how the government can comply strictly with its international obligations and implement the recommendations of the Committee.

National Human Rights Commission

2. The Committee already stated in its concluding observations (1995) that an independent statutory body should be established to monitor and investigate human rights and the implementation of ICCPR. However the Government has failed to establish such a body. Please explain why the Government has not yet established a National Human Rights Commission (NHRC) in view of the lack of a comprehensive human rights protection mechanism, and the fact that areas of human rights enshrined in the ICCPR are not fully covered by present legislation.

Legal status of the ICCPR

3. At present, the provisions of the ICCPR as applied to Hong Kong have been incorporated into the laws of Hong Kong by the introduction of the Hong Kong Bill of Rights Ordinance. However, the Ordinance binds only the Government, all public authorities and any person acting on behalf of the Government or a public authority but not private persons or bodies. Please explain whether the Government intends to extend the provisions to private sectors in order to provide a comprehensive legal protection as stated by the ICCPR.

Derogations and reservations of the ICCPR

4. Before the change of sovereignty, the British Government had made several derogations and reservations towards the ICCPR, including areas such as the power of the armed forces and persons detained in penal establishments, juveniles under detention, immigration legislation, the decision concerning the deportation for a person not having the right of abode in Hong Kong, the establishment of Executive and Legislative Councils etc. Please explain whether the Government would review the necessity of those derogations and the progress for such a review.
Legislation under Article 23 of the Basic Law

5. In 2003 the Government proposed to have national security legislation according to article 23 of the Basic Law and elicited widespread concern in the local and international community. The government has enacted a National Security (Legislative Provisions) Bill (‘the Blue Bill’) to implement article 23, despite wide public opposition against the implementation. However, the consultation period only amounted to three months and many legal scholars and practitioners criticized that the proposed legislation seriously violated 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. Under strong opposition by the general public, the proposal was adjourned while the Government had not announced any timetable for re-introducing such legislation.

6. Please indicate clearly whether the Government has a time schedule for such legislation and how the consultation process would be designed in order to ensure that the proposed legislation fully complies with the provisions of the ICCPR.

Issues relating to the Implementation of Parts I, II and III and Article 40 of the Covenant

Article 1: Progress and development of democracy

7. The government should explain how the accountability system for principal officials can make the administration more accountable to the public when the principal officials have not been elected or are under the appointment of an elected Chief Executive. Please discuss whether the government would have an independent monitoring body to evaluate the system from a human rights perspective.

8. While the Central People’s Government of China decided that the timetable for universal suffrage for the Chief Executive and Legislative Council “may” be implemented in 2017 and 2020 respectively instead of “shall” be implemented, please explain clearly if the universal suffrage shall be realized in 2017 and 2020. Please also explain what the actual meaning of universal suffrage according to the interpretation of the Government, including if the functional constituency is still existed, the existence of company vote as well as if each vote carried the same weight.

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 (para.1), 25(b) and 26 of the ICCPR.

10. The government should comment on the NPCSC’s interference with the election of the Chief Executive in 2012 and whether this has contravened with the Covenant or the Basic Law.
11. The government should comment whether its dealing with the issue of voluntary resignations by Legislative Councilors is in compliance with the Covenant.

**Article 2: Ensuring to all individuals the rights recognized in the Covenant**

12. The government should explain how it can ensure to all individuals the rights recognized in the Covenant when it lacked an independent Child Commission and Human Rights Institution which is in line with the Paris Principles.

13. The government should state whether it has any further plans to assist NGOs in promoting human rights.

14. The government should explain how the police force can withhold the credibility of their investigations when the Complaint against Police Office lacks independence. Please also explain why complaints are handled internally by CAPO despite the establishing of the Independent Police Complaints Council and its lack of jurisdiction over the police force. In addition, it should explain why no independent complaint mechanisms exist in other disciplinary forces, including the Immigration Department, Correctional Services Department, Customs and Excise Department as well as the Independent Commission Against Corruption.

15. Please discuss why the Government does not introduce a comprehensive legislation against all forms of discrimination, including age, sexual orientation, religious beliefs or other status.

16. Please explain how the Equal Opportunities Commission (EOC) can promote equal opportunities when an independent Equal Opportunities Tribunal does not exist. The government should also justify the appointment of Lam Woon Kwong as the chairperson of EOC and explain whether a conflict of interest exists with his responsibilities as Convener of the Executive Council.

17. Administrative appeal cases are heard in an administrative appeal board, in which government departments can arrange legal representatives to defend themselves. However, legal aid is not available for the appellants. Please explain why no legal aid was provided for those appellants, including those related cases heard by other appeal-like mechanisms, such as Immigration Tribunals.

**Article 3: Equal rights of men and women**

18. Since the establishment of the Family Council in 2007, there have been concerns over the effectiveness of the Women’s Commission as this dilutes the gender specific focus of the Commission. The government should describe how the Women’s Commission’s authority can be preserved and clarify its function and role, in comparison with other commissions under the Family Council.

19. The government should explain why it has continuously failed to review the Mandatory Provident Fund, in light of the fact that it does not include any kind of protection for housewives.
20. The government claimed that improvements in the female participation in public life and politics can be seen in the increase in the appointment of female non-official members of advisory and statutory bodies and directorate officers in the civil service. However, female participation in decision-making boards, the Legislative Council, District Councils and other key areas in the government remain low. Please indicate whether there are any further measures to promote the inclusion of women in these key areas, such as introducing benchmark minimum of female members in each of these governmental institutions.

21. Please indicate whether appropriate measures are implemented to combat the increase in both domestic and sexual violence against women in Hong Kong.

**Article 6: The rights to life**

22. The government should explain why some deaths during the detention of the Police and the Correctional Services Department were not examined and are pending the Coroner’s request respectively, report how many people have died during detention, and explain any measures it has taken to further prevent such deaths.

23. The government should publish the evaluation of the Child Fatality Review to the public as soon as possible, in order to prevent the increase in child fatality as a result of domestic violence, homicide suicide and parent committing suicide with his/her child.

24. The Convention Relating to the Status of Refugees has not yet been extended to Hong Kong although China has signed the Convention. The government therefore sees no obligation to provide food and shelter to asylum seekers, nor does it allow them to work. The government should explain why no food and shelter is provided to asylum seekers while awaiting their refugee status determination.

**Article 7: No torture of inhuman treatment and no experimentation without consent**

25. 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.

26. The government should explain whether there are any new measures to protect Hong Kong people detained 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.

27. Although there were no instances of the alleged use of torture by disciplined forces in Hong Kong, the definition under the Crimes (Torture) Ordinance remains unsatisfactory. Being vulnerable to immigration abuse does not justify the need of extending the Convention Against Torture. Please explain whether the government has any plans to review the Crimes (Torture) Ordinance in order to
make the definition of torture consistent with the definition in the Convention Against Torture.

28. The government should explain whether it has any plans to set up a single screening mechanism to process claims under the Refugee Convention and if so, propose a time schedule for its progress.

29. Pepper sprays have been deployed by the government to suppress citizens involved in recent peaceful assemblies. The government should justify the rationale behind the usage of such degrading treatment against those who are involved in peaceful assemblies.

**Article 8: No slavery or servitude; no forced or compulsory labor**

30. Please explain why the Government has not yet abolished the two-week rule, the lack of mandatory provident fund legislation and the denial of permanent residence for foreign domestic workers, despite severe criticism from migrant groups, NGOs and several UN bodies.

31. In the absence of statutory minimum wages and maximum working hour, please indicate how the Government ensures that the workers, especially the low-skilled and low-income workers, would not be exploited due to long working hours and an income which is far from the subsistence level as provided by employers.

**Article 9: Liberty and security of person**

32. Please provide statistics on the number of claimants of torture and asylum seekers that have been deported. Furthermore please explain whether there exists any safeguard against *refoulement* given the fact that the Bill of Rights (article 9) does not confer a right of review in respect of a decision to deport a person not having the right of abode in Hong Kong or a right to be represented for this purpose before a competent authority. Lastly the government should explain what positive steps it has taken to review the Crimes (Torture) Ordinance to incorporate the principle of non-refoulement.

33. Given arbitrary detention of asylum seekers and claimants of torture, please explain whether there are any plans to review the Immigration Ordinance to comply with article 28 and 41 of the Basic Law which protects non-residents against arbitrary or unlawful arrest, detention or imprisonment. Furthermore please explain whether there are any plans to withdraw the exception in the Bill of Rights Ordinance (Part III, para. 11) on immigration legislation as regards persons not having the right to enter and remain in Hong Kong.

34. Please explain why the recommendations made in 1992 by the Law Reform Commission concerning the limitation of the arrest power of the police have not yet been fully implemented. Especially, there is no limit on the detention time by law. Please also indicate whether there is any timetable to review the recommendations with reference to the change of social need and international human rights standards.
35. The police have disclosed its Police General Order for the general public. However, many significant chapters, including the procedures for arrest, interception and detention remain undisclosed. Please explain this arrangement and the reasons for the order not being a statutory document. Please explain whether other related disciplinary forces would also disclose their working guidelines to the public in order to increase its transparency.

36. The government should explain how complaints regarding disciplinary forces in Hong Kong can be handled fairly when there are not processed by independent complaint mechanisms.

37. The government should justify the proportionality and necessity of strip searches and how it can be administered fairly when there are no administrative guidelines or an independent complaint mechanism to monitor.

**Article 10: Right of persons deprived of their liberty**

38. Despite normal prisoners being treated fairly, it was reported that many asylum seekers and claimants of torture, who have been detained by the Immigration Department or the Correctional Services Department, have complained that they were ill-treated during detention. The same complaints also existed in the detention cells controlled by Correctional Services Department. Please discuss how the Government improves the conditions of detention and whether there are any measures for improving the present situation.

39. Please provide statistics on the number of asylum seekers and claimants under the Convention Against Torture who are under detention and please explain whether legal aid is provided for these asylum seekers and torture claimants.

40. Apart from providing interpretation services, the government should state whether there exists any policy to protect ethnic minority offenders. The government should to state what culturally sensitive services are provided specially for ethnic minorities.

**Article 12: Liberty of movement**

41. Please explain whether the Government would plan to introduce the Boundary Facilities Improvement Tax and evaluate the residence requirements of various social welfare benefits, which would violate the liberty of movement.

42. The government should explain certain people were prohibited from entering and leaving Hong Kong based on factors such as their political background.
Article 13: Restrictions on expulsion from Hong Kong

43. As many people have reported that they have been wrongly identified as breaching their conditions of stay, please clearly illustrate what legal grounds and procedures 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.

44. Please explain whether legal aid would be provided for the defendants who are accused for overstaying at Hong Kong more than two years. Please also explain the reasons why the Duty Lawyer Services is not provided for people who are accused of overstaying for less than two years.

45. The government should explain whether the empowerment of the Chief Executive to issue a removal order or a deportation order according to the relevant provisions of the Immigration Ordinance is justifiable under the Covenant.

46. The government should justify the expulsions of people merely on the basis of their political motives and whether such incidents occur in accordance with law with reasons reviewed by competent authority.

Article 14: Equality before courts and right to fair and public hearing

47. As the National People’s Congress Standing Committee of the Central Government had already sought reinterpretation of the Basic Law for four times after the change of sovereignty, which violates the system of “One Country, Two Systems”, please explain how the Government can ensure that the ruling of the judiciary of the Hong Kong SAR will not be affected by the mainland authority. Please declare that under no more circumstances would the Government seek a reinterpretation of the Basic Law.

48. The UNHCR, which is in charge of refugee status determination, does not allow legal counsel to be present in the assessment interviews and there is no independent appeals mechanism. Furthermore legal aid is not granted for asylum seekers. Please explain how the government ensures that the right to a fair trial is protected in the process of assessing refugee status and the reasons why no legal aid can be provided to asylum seekers.

49. Please provide statistics on the number of offenders being charged and the number of persons being detained without any legal representation. As there is an increasing concern over the rights of the detained persons, please state if the Government would extend the legal services for detained persons by different disciplinary forces, including the Police Force, Immigration Department, Independent Commission Against Corruption, Customs & Excise, etc.,
51. The existing income and asset limit for legal aid application is the same in all kinds of cases. As the legal cost for cases related to personal injuries, especially medical negligence, is comparatively high, please illustrate whether the Government would relax the financial eligibility for such cases in order to ensure equal access to justice for the poor through legal aid.

**Article 17: Protection of privacy, family, home, correspondence, honor and reputation**

52. The court has repeatedly criticized for the fact that the existing practices of interception by the disciplinary forces, such as the Independent Commission against Corruption (ICAC), do not comply with the Basic Law. However, the Government has not enforced the Interception of Communications Ordinance, which was already passed by the former Legislative Council just before the change of sovereignty. Please explain the reasons for not enforcing the ordinance and the reasons for introducing the administrative regulation by the Chief Executive instead of proposing legislation in the Legislative Council.

53. The government should explain if the privacy of the students will not be infringed by the school drug-testing scheme. Please also comment on the compulsory drug testing of athletes and whether it violates the Covenant.

**Article 18: Freedom of thought, conscience and religion**

54. The court has criticized the Government for restricting the freedom of Falun Gong followers through political prosecution, even though the followers just practiced their religion through peaceful assembly. Please clarify the Government policy towards Falun Gong and other sensitive religions in the eyes of the Central Government.

**Article 19: Freedom of opinion and expression**

55. The National Flag and National Emblem Ordinance prohibit the display of the National Flag and National Emblem in various ways. Please clarify whether if the ordinance violates the freedom of expression.

56. Please explain why appropriate measures were not implemented during Li Keqiang’s and Hu Jintao’s visits, in August 2011 and July 2012 respectively, to safeguard freedom of opinion and expression and state how this can be prevented in the future.

57. The freedom of opinion and expression of the followers of Falun Gong have been seriously restricted by the government. Please explain how this is justified under the provisions of the Covenant.

58. The government should explain how the Radio Television Hong Kong (RTHK) can fulfill its inherent mission of press and media when it is not independent and autonomous from the government.
59. The government should explain whether measures are taken to prevent the Public Order Ordinance and the Public Entertainment Ordinance from infringing the people’s freedom of expression and opinion.

**Article 21: Right of peaceful assembly**

60. According to the notification system under the Public Order Ordinance, there is an obstruction in the right of peaceful assembly. In addition, the appeal mechanism is flawed and citizens are unaware of possible consequences. The government should state any attempts to correct these issues and outline the rundown of possible reformations of this ordinance.

61. The government should publish the statistics of requests of assemblies which were rejected on the basis of national security and public order and provide the grounds for such rejections.

62. Please explain how the restrictive setting of routes and designated areas of new governmental buildings (such as the Liaison Office of the Central People’s Government) allows people to exercise their freedom of peaceful assembly.

63. Please justify the usage of the “notice of no objection” procedure under the Public Order Ordinance to make it more difficult for people to obtain permission for peaceful assemblies.

64. Unauthorized assemblies are different from unlawful assemblies under the law and the penalty which entails a successful prosecution for unlawful assembly is relatively significant. However, the probability of a successful prosecution for unlawful assemblies is extremely low despite the recent increase in the arrests for unlawful assembly. Please explain whether this deters people from exercising their right of peaceful assembly.

65. Please explain the rationale behind the distinction in the penalty in assaulting a police officer between the Police Force Ordinance and the Offences Against the Person Ordinance and justify why the latter is used more frequently when protestors were arrested.

**Article 22: Freedom of association**

66. It is concerned that the Societies Ordinance gives the government power to ban specific organizations and ties between organizations and foreign political groups. Please discuss whether the Government would eliminate the prohibition for the connection with foreign political organization as stated by the Societies Ordinance.

67. Please explain how workers have the freedom of association when there is an absence of an institutional framework for union recognition and collective bargaining.
Article 23: The family – a vital component of society

68. Regarding the adverse situation of the split families, the SAR Government still 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. Please indicate whether the SAR Government has planning to discuss with the Central Government to seek the power to approve the application.

69. 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. Please explain how the discretionary power of the Social Welfare Department is exercised and its plans to support individuals and families who are not eligible for CSSA in the future.

70. Please clarify the position on whether the Government recognizes the rights for homosexual and transgender partners to marry and form a family.

71. Please discuss whether the discretionary power of the Director of Immigration to approve applications for dependent visas violates the right to family reunion.

Article 24: Rights of children

72. According to the present public housing policy, applicants, where more than half of the family members have resided in Hong Kong for less than seven years, are not eligible for public housing allocation. The Housing Authority relaxed the policy, so that children who were born in Hong Kong are exempted from the requirement. However, the children who were born outside Hong Kong are still affected by the policy, which means that more than 2,000 applications are still frozen. Please explain how the rights of those children can be protected under the present policy.

73. Please explain whether the right to food, shelter and of asylum-seeking or torture claiming children is being infringed given the fact that the government does not provide any assistance whatsoever.

74. Since the grounds for claiming right of abode has been narrowed, the government should explain whether children have sufficient legal protection and whether this inhibits family reunions.

Article 25: Right to participate in public life

75. 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 and to enhance their involvement in public affairs.

76. At present, those prisoners who are serving their prison terms are not allowed to vote during election. Please clarify whether such arrangement would violate the right to vote of sentenced persons and whether there is any timetable to change such arrangements.
77. The abolishment of the Regional and Urban Councils infringes on the right to participation in public affairs and the District Board was not strengthened as promised. Please explain whether any other new channels for participation to public affairs will be implemented.

78. Please explain the reasons for excluding the residents who have resided in Hong Kong less than seven years the right to vote. Please also explain why the eligibility for standing for election has been limited to “all permanent residents of Hong Kong who are Chinese citizens having ordinarily resided in Hong Kong for three years immediately preceding the nomination”, hence excluding people such as ethnic minorities.

79. The government should explain why vandalism against democratic legislators in 2004 received poor responses of the police to investigate and prosecute offenders.

Article 26: Right to equal protection before the law

80. Although the Race Discrimination Ordinance attempts to address racial problems, flaws such as not including other languages, containing discrimination based on nationality and immigrants, not fully covering the government’s duties and functions and others do expose certain people such as foreign domestic workers and mainlanders to exploitation. The government should explain whether they have made any attempts to address these issues.

81. The Government has not yet enacted any legislation to prohibit discrimination from private persons on the grounds of age, race, sexual orientation and religion and this has resulted in unfair treatment before the law. The government should enact the related legislation to ensure full compliance with the Covenant and provide an account of its plans. Please also explain the government’s position as regards to whether new immigrants from Mainland China would be protected against discrimination in the upcoming racial discrimination law and if not, what plans the government has to protect these immigrants from racial discrimination.

Article 27: Rights of ethnic minorities

82. Despite of the improvement of the availability of Chinese language education it was not provided until 2004, hence resulting in indirect discrimination, and the imposition of Chinese language proficiency remains high for non-degree posts. The Civil Service Bureau also claimed flexibility and discretion in employing ethnic minorities but is reluctant in reality. Please illustrate how it planned to integrate ethnic minorities fully into Hong Kong society and whether there are any affirmative actions for improving the employment condition for ethnic minorities.

83. Please also explain whether ethnic minority children are provided with the opportunity to learn their mother tongue language.