

香港人權監察 HONG KONG HUMAN RIGHTS MONITOR

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Submission to the UN Human Rights Committee

**on the draft list of issues for the consideration of the report
of the Hong Kong Special Administration Region (HKSAR)
of the People's Republic of China (CRPD/C/CHN-HKG/1)
on the implementation
of the International Covenant on Civil and Political Rights (ICCPR)**

August 2012

Article 2

1. Please provide information including research and review reports on the effectiveness of the existing human rights mechanisms in Hong Kong. Please provide supporting documents to prove the effectiveness of the existing human rights mechanisms and whether there is any need to establish a statutory independent human rights commission.
2. Please explain the measures taken by the HKSAR Government to ensure the independence and effectiveness of various human rights bodies required of by the Paris Principles, in particular having Mr. WK Lam serving his dual role as the Chairperson of the Equal Opportunities Commission (EOC) and the Convener of Executive Council; Independent Police Complaints Council (IPCC) without powers for investigation, classification of complaints and penalty; and the recent appointment of Commissioner on Interception of Communications and Surveillance.
3. Please provide information on the effectiveness of current human rights

education and civic education in schools and explain if it complies with UN human rights education principles. Why did the HKSAR dismantle/dissolve[??] the human rights education working group in 2007? What measures in respect of human rights education was taken and planned for the preparation of universal suffrage for the Chief Executive in 2017 and legislative Council elections in 2020 respectively?

4. Please provide information on the new curriculum of Moral and National Education and its implementation. Please explain the reasons for replacing the subject of civic education with that of moral and national education, and if such national education complies with the universal human rights values.¹

Article 3

5. Please explain if the government has any concrete plan and timetable to elevate the Women's Commission to a genuine central monitoring mechanism with a pluralistic composition, broad jurisdiction, independence and autonomy in its work, adequate resources and civil participation in the process of member selection. Alternatively, if there is any plan to establish a new central monitoring mechanism on women's issues.

Article 7

6. Please provide information on the new legislation for establishing a statutory mechanism in the HKSAR for processing torture claims. Is the mechanism able to meet a "high standard of fairness" required of by the HKSAR Court? What will happen to those claims already concluded before the legislation comes into force? What protections and rights for successful CAT claimants does the legislation codify? How does the legislation respond to the calls from the UN and others for the HKSAR Government to combine CAT and Refugee screening and recognition? If this is not covered, does this mean the HKSARG maintains its position that it is free to remove/refoul refugees who have been recognized by the UN?

Article 8

¹ The China Model National Conditions Teaching Manual published with a subsidy from the HKSAR Government by the National Education Services Centre describes China's present government as "a progressive, selfless, and united ruling team".

7. What measures have been taken by the HKSAR to end the complaints of employment trafficking and debt bondage contracts in the HKSAR? Would the HKSAR Government negotiate with the Indonesian authorities to take measures to end the charging Indonesian MDWs of huge agency fees so as to end their serious indebtedness in the HKSAR leading to their further vulnerability to further exploitation and abuses in Hong Kong?² What measures have been taken by the HKSAR to end the Two-Week Rule, a measure which is only applicable to MDW and has also contributed to their vulnerability?

Article 9

8. The Report on Arrest in relation to the powers of stop, search, arrest and detention was published by the Law Reform Commission (LRC) in 1992, but the recommendations of the LRC have not yet been fully implemented. Please explain the status of the recommendations and when all the recommendations will be implemented.

Articles 12 & 13

9. In the past few years a number of Chinese dissidents were denied entry into the HKSAR. The Government refuses to comment on individual cases and reiterated that these cases of denied entry were based on established immigration policies. Please provide information on Chinese dissidents, Falun Gong followers and artists (e.g. Danish artist *Jens Galschiot* who created the *Pillar of Shame* in memory of the June 4th crackdown in China in 1989, and Shen Yun Performing Arts) being denied entry into the HKSAR in the past 5 years, including number of cases and involved dissidents, reasons for denied entry and the related immigration and other policies. How is the immigration policy consistent with the obligations to respect Covenant rights on the HKSAR?

Article 14

10. Currently there are two offences against assaulting police officers with similar

² It is reported by academics, NGOs and foreign government reports that many Indonesian migrant domestic workers have become seriously indebted after paying huge recruitment agency fees to certain Indonesian agencies, a sum of about 90% of their first seven months of salaries. Since these MDWs are seriously in debt and the Two-Week Rule (A MDW needs to leave HKSAR within 14 days upon termination or expiry of their employment contract -- and therefore she needs to pay agency fees once again for finding another employer) makes it difficult for them to face premature termination of their contracts by the employers, these MDWs have to put up with poor working conditions and various exploitation and even physical and sexual abuses.

legal provisions but very different penalties.³ What measures has the HKSAR Government taken to prevent arbitrary or selective prosecution by law enforcement agencies, including whether the decision to prosecute any suspects for the two offences be taken by the Department of Justice instead of the police force in line with natural justice? Does the HKSAR Government plan to review or combine the two offences?

Article 17

11. The Personal Data (Privacy) Ordinance has been amended in 2012 to better protect the right to privacy in the HKSAR. Please provide information on the amendments on the Personal Data (Privacy) Ordinance. Why did the HKSAR Government propose the opt-out mechanism (a data subject is assumed to have agreed to have his personal data used for such purposes unless he explicitly notify the data user his objection) in respect of direct marketing, and even for transfer or sale of personal data to a third party? To what extent is the amended Personal Data (Privacy) Ordinance consistent with the obligation of the HKSAR to respect and to protect the right to privacy of people in the territory?
12. Social activists and human rights NGOs have been criticizing the Police Force for filming, videotaping and recording their demonstrations in public place for infringing their right to privacy and for generating fear among the protestors that such information could be used for political surveillance and for police or government retaliation against them afterwards. They also objected to the expanding use of cameras for filming the public. What are the laws for authorizing or regulating such police activities? Please provide information on any police orders and guidelines for restricting and regulating the videotaping, copying, access, uses, safekeeping, transfer to others or outside the jurisdiction and destruction of such images and records.

Article 19 Freedom of expression

13. Police was questioned for its hard line approach and infringement of press freedom particularly during China officials' visits in Hong Kong by the press and human rights NGOs. Please provide information on the security arrangements and handling on press during China Vice-Premier Li Keqiang's visit in August 2011 and China President Hu Jintao's visit in June 2012. Please explain if the

³ Section 36(b) of OAPO (Cap. 212) and section 63 of PTO (Cap. 232).

above arrangements comply with freedom of expression protected by the ICCPR.

14. Hong Kong's ranking of press freedom index by Reporters without Borders dropped 20 places from 34 to 54 in 2011/2012. Please provide information on the media policies, number of arrests of journalists and charges, interference of press freedom by policing or Chinese or government officials, designated press area, proposed bills (such as Copyright (Amendment) Bill 2011) and digitalization of information in the police and fire services affecting press freedom.
15. Please explain if the government has any plan or timetable for freedom of information legislation and archival law. If not, why not?
16. Please provide information on the proposed measures or legislations affecting freedom of expression such as copyright law amendment, stalking and obscene review proposals and explain if the proposals are consistent with freedom of expression protected by the ICCPR.
17. Please provide information on the alleged threats to academic freedom in the HKSAR in the suspected cases of infringement of academic freedom in the 2007 Hong Kong Institute of Education incident, the attacks on Sing Ming and Robert Chung, and the incident of the Chief Executive candidates survey by the Hong Kong Baptist University. What measures have been taken by the HKSAR Government to allay such fears?

Article 21 Freedom of assembly

18. The HKSAR Police Force was questioned by the press and human rights groups for its hard line approach and infringement of freedom of peaceful assembly particularly during China officials' visits in Hong Kong. Please provide information on the security arrangements and handling of protests during China Vice-Premier Li Keqiang's visit in August 2011 and China President Hu Jintao's visit in June 2012. Please explain if the above arrangements comply with freedom of assembly and expression protected by the ICCPR. The Independent Police Complaints Council has so far been denied essential information required of for them to discharge their duty to understand if senior level of the police force are responsible for some of the police measures found by the police to be problematic.

19. Please explain the concept of “core security zone” and the legal basis and procedures for its set up. Is it a convenient administrative replacement of the statutory declaration of a “closed area” to control demonstrations? Why vehicles and passers-by can walk freely in a “core security zone” without security check while protesters are not allowed to demonstrate in it and even pass through? Why was part of the campus of the University of Hong Kong been included and controlled by the police in a “core security zone” with most HKU’s staff members, students, alumni and the public excluded from such areas, including a few HKU student protestors being forcibly removed into a building?
20. Please also provide the number of arrests, charges, convictions and penalty of protestors in the HKSAR disaggregated by year for the past five year. Please provide disaggregated those figures related to demonstrations outside the Liaison Office of the Central People's Government in the HKSAR (the Liaison Office), and information on the police handling on demonstrations and assemblies outside the Liaison Office including the setting outside it, evolutions and changes in the arrangements of protest areas and press areas, “police action areas”, restrictions on the use of demonstration props (like prop coffins) and handing of petition letters as well as reasons and grounds for such measures and changes in the past ten years since the case of Yeung Mei-wan.
21. Please provide annual figures on the number of demonstrations in which pepper spray has been used by the police in the past 5 years and the corresponding instances and number of bottles (disaggregated by sizes) of pepper spray have been used, with the breakdown on its use near the Liaison Office. How would the police explain the growing use of pepper spray in the recent years? Is pepper spray a proper measure used in a demonstration usually crowded with protestors, journalists, observers and bystanders? Is it unlawful for the police to use pepper spray in full contemplation that many innocent others in or near the demonstration would be sprayed “accidentally”? What are the guidelines on the use of such pepper spray and its health and other impacts on those sprayed especially in case the guidelines are not followed strictly?
22. Please provide information on the police’s recent use 2-meter-tall water-filled barriers at the perimeter of demonstration areas to engulf protestors, making their demonstration hardly visible from outside (by their demonstration target, journalists and the general public in the neighbourhood) and blocking their views outside especially of their demonstration targets. Is such shielding and engulfing

of protests by such barriers at the perimeter of a demonstration consistent with human dignity and the freedom of peaceful assembly?

Article 22

23. The Hong Kong Law Reform Commission (LRC) recently recommended establishing a Charity Commission to regulate charitable organizations and to exclude “promoting human rights” from charitable objects and to deny charitable status to organizations for its advocacy and campaigning efforts. Please provide information on the recent proposals from the LRC on Charity Law. How are the LRC’s recommendations consistent with the obligation on freedom of association in the HKSAR?
24. Please provide information on the status of the enactment of national security law under article 23 of the Basic Law. Does the HKSAR Government plan to reintroduce any elements of this Bill? If so, when and what measures have been taken, or are envisaged, to ensure compatibility of these elements with the Covenant.
25. Civil activist groups complain that they are being infiltrated by the police. Please provide information on such accusation, including if the HKSAR Government has any measures to collect intelligence of civil activists and organizations. If yes, what are the measures? How do the police use the intelligence on their law enforcement activities?

Article 23

26. The case of Comilang has given rise to concerns as to the extent the HKSARG is willing to give effect to and fulfil its obligations to preserve protect and defend basic family rights. Please provide information on whether the position of the HK Administration is that these rights apply to and are enforceable by residents and do not extend to non residents. Please explain whether the forming of a relationship between a resident and non-resident means that the resident is equally impoverished, even when that person enjoys the right of abode in HK. Are there any decided cases in which the right to family life alone has been taken as a sufficient ground for reversing a decision by the Director of Immigration in not allowing a person with no right of abode in Hong Kong to stay and settle in Hong Kong?

27. Wives of HKSAR residents in the Mainland cannot enjoy the same obstetric service from public hospital as local women. Children given born in the Mainland would only delay them from joining their fathers in the HKSAR causing more problems to the split family. It is not also in the interest of the HKSAR in delaying their integration into the Hong Kong education system and way of live. Please explain the effects of the Hospital Authority's revised arrangements for obstetric service for non-eligible persons in February 2007 on wives of HKSAR residents in the Mainland. Please provide information on recent arrangements of Hospital Authority on obstetric service for wives of HKSAR residents in the Mainland.

Article 1 & 25: Universal suffrage and election rights

28. Please provide information on the 2012 Constitutional Reform for 2012 Chief Executive Elections and Legislative Council Elections. Please explain whether the 2012 Constitutional Reform including composition of the Election Committee and nomination threshold for the Chief Executive Election and new sector District Council (second) in the functional constituencies is in compliance with the universal suffrage and election rights enshrined in the Article 25 of the ICCPR.

29. Qiao Xiaoyang, the deputy secretary general of the Standing Committee of the National People's Congress (NPCSC) expressed his "personal opinion" on the definition of universal suffrage for Hong Kong in June 2010, including the need to sufficiently consider Hong Kong's legal status, compliance with the executive-led political system, balancing the interests of different sectors and conducive to the development of the capitalist economy as reasonable restrictions. Please explain whether the "sufficient considerations" for universal suffrage in Hong Kong mentioned above is in compliance with universal suffrage enshrined by the ICCPR in the views of HK Government.

30. Please explain the plan for the implementation of universal suffrage in 2017 for Chief Executive and 2020 for Legislative Council including the nomination methods, nomination threshold, eligibility of nomination, to be nominated and to be elected, composition of election committee for Chief Executive Elections and functional constituencies for Legislative Council Elections if any. There are widespread worries that the electoral arrangements for "universal suffrage" in

2017 for Chief Executive would be weakened or tempered in several major aspects of the electoral arrangements. Please provide a summary of such arrangements they worry about. Please also explain whether keeping functional constituencies in universal suffrage election in Hong Kong could be one of the options considered by the HKSAR as a kind of “universal suffrage”.

31. Please provide information on arrangements for filling vacancies in the Legislative Council and explain whether it is in compliance with rights enshrined in the ICCPR, especially articles 1, 25 and 26.
32. Please provide information on vote rigging in 2011 District Council Elections. Please explain the policies and measures taken to prevent vote rigging so as to protect the election rights enshrined by the ICCPR and to facilitate the verification of voters’ address, e.g. through home visits by temporary community liaison officers of the District Offices of the Home Affairs Department.

Article 26

33. HKSAR currently has no legislation against discrimination on the grounds of age, sexual orientation, political opinions and spent criminal record. Does the HKSAR Government plan to introduce legislations against these grounds? If so, when will the HKSAR Government introduce such legislations? If not, what are the reasons and what other measures will the HKSAR Government take to promote and protect equal rights in the HKSAR? Please explain if the administrative measure of restricting sexual offenders’ right to work and rehabilitation without legislation backing is in compliance with article 26 of the ICCPR.
34. There are now 4 anti-discrimination legislations in HKSAR. The HKSAR Government agreed to the Equal Opportunities Commission to amend the Sex Discrimination Ordinance and Disability Discrimination Ordinance in 2000, but over 12 years the Government basically has not honoured the commitment. The Race Discrimination Ordinance still does not cover all Government activities and has been subject to severe criticism by the UN CERD. Moreover, the said 4 legislations basically provide for a complaint or litigation-driven regime to address certain kinds of discriminations but fail to impose positive duty on the Government to promote equal opportunities in a proactive manner. Please explain if the HKSAR Government plans to amend existing

anti-discrimination ordinances? If so, when will the HKSAR Government introduce such amendment proposals? If not, why not?

35. Please explain why the period of a migrant domestic worker working in the HKSAR cannot be regarded as ordinary residence in the territory according to the Immigration Ordinance, a treatment not applicable to expatriates working in other jobs? Some MDWs have obtained leaves to appeal to the Hong Kong Court of Final Appeal (CFA) with a view to challenging the constitutionality of the relevant provision in the Immigration Ordinance denying ordinary residence of MDWs. Will the HKSAR Government request the Standing Committee of the National People's Congress to reinterpret Article 24(2)(4) of the Basic Law to reverse the final adjudication of the CFA if the CFA rules against the HKSAR Government after the pending court proceedings? What are the possible impacts of such a reinterpretation on the HKSAR, especially on the right to fair hearings and other aspect of the rule of law and human rights protection in the HKSAR?