

SOCIETY FOR COMMUNITY ORGANIZATION

**List of issues for the Pre-sessional Working Group
to be taken up in connection with the consideration of
the Fourth Periodic Report of
the Hong Kong Special Administrative Region of the People's
Republic of China
concerning the rights covered by the article 1 – 28 of
the International Covenant on Civil and Political Rights (ICCPR)**

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I. General legal framework within which the covenant is implemented

Implementation of the recommendations of the Committee

1. Hong Kong experienced a lot of major human rights issues from mid-2019. Those development has not been incorporated into the Fourth Periodic Report. The Government of the Hong Kong Special Administrative Region (HKSAR) should submit a follow up report covering the development in Hong Kong since mid-2019 and explain how the development impacting on the ICCPR rights.
2. Society for Community Organization (SoCO) remains seriously critical of the lack of action by the HKSAR Government in implementing the recommendations made by the United Nations Human Rights Committee ('the Committee'), which are stated in the concluding observations of the Committee's third report on the HKSAR under the International Covenant on Civil and Political Rights (ICCPR). Please explain how the HKSAR Government ('the Government') can comply strictly with its international obligations and implement the recommendations of the Committee.

National Human Rights Commission

3. 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 HKSAR Government has failed to establish such a body for more than 25 years. Please explain why the Government has not yet established a statutory human rights commission, given the current 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

4. 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 the private sector in order to provide comprehensive legal protection as stated by the ICCPR.

Derogations and reservations of the ICCPR

5. Before the change of sovereignty, the British Government had made several derogations and reservations towards the ICCPR for Hong Kong, 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 of a person not having the right of abode in Hong Kong, the establishment of Executive and Legislative Councils etc. Please explain whether

the HKSAR Government would review the necessity of those derogations and the progress of such a review.

National Security Law

6. In May 2020, the National People's Congress (NPC) of China passed a resolution to authorize the NPC Standing Committee (NPCSC) to legislate National Security Law for HKSAR in the form of national law. It aroused widespread concern in the local and international community. The national law imposed directly by the Chinese Government towards Hong Kong may seriously violate a number of human rights, including but not limited to the right to freedom of thought, freedom to hold opinions without interference, freedom of expression, freedom of the press and the right to freedom of association with others. The Chinese Government and the HKSAR Government should give full explanation how the legislation would be in line with ICCPR.

II. 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 HKSAR Government should explain how the Principal Officials Accountability System has made the administration more accountable to the public, given that the principal officials are neither democratically chosen nor under the appointment of an democratically elected Chief Executive. Please discuss whether the Government would establish an independent monitoring body to evaluate the system from a human rights perspective.

8. The Central People's Government of China decided in 2007 that universal suffrage of the Chief Executive and the Legislative Council of the HKSAR may be implemented in 2017 and 2020 respectively. However, up till 2020, HKSAR is still lack of full democracy. Please indicate clearly what plan the Chinese Government and the HKSAR Government are going to implement to achieve the goal of universal suffrage of the Chief Executive and the Legislative Council of the HKSAR in the near future. Please also elaborate on the HKSAR Government's interpretation of universal suffrage, in terms of the existence of the functional constituencies, the corporate vote as well as the equal weighting of each citizen's vote.

9. The HKSAR Government should explain why it has not yet eliminated the system of functional constituencies despite the fact that it has been criticized by the Committee for violating articles 2 (para.1), 25(b) and 26 of the ICCPR.

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

10. The HKSAR Government should state whether it has any further plans to assist NGOs in promoting human rights.

11. The HKSAR Government should explain how the police force can maintain the credibility of their investigations when the Complaints Against Police Office (CAPO) lacks independence. Please also explain why complaints are handled internally by CAPO despite the establishment of the Independent Police Complaints Council, and why it lacks jurisdiction over the police force. The HKSAR Government should also comment on the lack of trust to the present police complaint system by majority Hong Kong people since mid-2019. 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.

12. Please discuss why the Government has not introduced comprehensive legislation against all forms of discrimination, including age, sexual orientation, religious beliefs or other statuses.
13. Please explain how the Equal Opportunities Commission (EOC) can promote equal opportunities when an independent equal opportunities tribunal does not exist.
14. 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 is provided for these appellants, including those in related cases heard by other appeal-like mechanisms, such as the Immigration Tribunal.

Article 3: Equal rights of men and women

15. The HKSAR 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.
16. The HKSAR Government claimed that improvements in 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 remains low. Please indicate whether there are any further measures to promote the inclusion of women in these key areas, such as introducing a benchmark for the minimum number or proportion of female members in each of these governmental institutions.
17. 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

18. The Government should explain why some deaths that occurred during detention by 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.
19. The Convention Relating to the Status of Refugees (Refugees Convention) has not yet been extended to Hong Kong although China has signed the Convention. The HKSAR Government therefore sees no obligation to allow refugees to work and settle in Hong Kong. The HKSAR Government should explain why the Refugees Convention could not be extended to Hong Kong.

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

20. The HKSAR Government should explain whether there are any new measures to protect Hong Kong citizens detained in mainland China. It should review whether existing services are effective in helping detainees and their families, and describe in detail if there are any effective appeal mechanisms.

21. The definition under the Crimes (Torture) Ordinance remains unsatisfactory. Please explain whether the HKSAR 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.
22. More serious weapons have been deployed by the Government to suppress citizens involved in recent peaceful assemblies. The HKSAR Government should justify the rationale behind degrading treatment against those who are involved in peaceful assemblies.

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

23. Please explain why the HKSAR 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.
24. In the absence of legislation regulating the maximum number of working hours, please indicate how the HKSAR Government can ensure that the workers, especially the low-skilled and low-income workers, would not be exploited due to long working hours.

Article 9: Liberty and security of person

25. 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 Hong Kong Bill of Rights (Article 9) confers neither a right of review in respect to a decision to deport a person not having the right of abode in Hong Kong, nor a right to be represented for this purpose before a competent authority. Lastly, the HKSAR Government should explain what positive steps it has taken to review the Crimes (Torture) Ordinance to incorporate the principle of *non-refoulement*.
26. Please explain whether there are any plans to withdraw the exception in the Bill of Rights Ordinance (Part III, para. 11) on immigration legislation with regards to persons not having the right to enter and remain in Hong Kong.
27. Please explain why the recommendations made in 1992 by the Law Reform Commission concerning the limitation of the police's power to arrest have not yet been fully implemented. Especially, there is no limit on detention time prescribed 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.
28. The police have disclosed the Police General Order to the general public. However, many significant chapters, including the procedures for arrest, interception and detention remain undisclosed. Please explain this arrangement in view of the conclusion by Ombudsman that the non-disclosure of certain chapters is not appropriate. Also please explain why the General Order cannot be a statutory document in order to increase its binding effect on the Police Force. Please explain whether other related disciplinary forces would also disclose their working guidelines to the public in order to increase transparency.
29. The HKSAR Government should explain how complaints regarding disciplinary forces in Hong Kong can be handled fairly when they are not processed by independent complaint mechanisms.

Article 10: Right of persons deprived of their liberty

30. The HKSAR Government should explain whether it has any plans to set up an independent monitoring mechanism with investigative powers to ensure that the human rights of people in custody are protected.
31. The HKSAR Government should explain the low number of substantiated complaints handled by the Complaints Investigation Unit of the Correctional Services Department, and how it plans to ensure that prisoners do not fear retaliation in the form of solitary confinement, disciplinary hearings or added sentences due to making complaints in prison. Please explain whether there are any plans to set up a fully independent complaints body to oversee the investigation of complaints in prisons.
32. The HKSAR Government should provide the latest figures on the number of people placed in solitary confinement and the length of such confinement, with a breakdown on the number of juveniles, and mentally ill who have been placed in solitary confinement. The HKSAR Government should explain whether it conducts regular reviews of the use of solitary confinement of people in custody.
33. The HKSAR Government should provide statistics on the number of work injuries in prison, the number of people who have been granted payments under the ex-gratia scheme and the reason why prisoners who work are not covered by any labour law protection when it comes to work injuries. It should explain whether it plans to enact legislation so that prison workers enjoy equal rights with free workers in respect of injuries, occupational disease or death caused by accidents arising out of and in the course of employment. It should explain whether it has any plans to review the ex-gratia payment policy, so that the eligibility criteria are relaxed, so they also covers temporary incapacity, occupational diseases and death.
34. The HKSAR Government should explain whether it has plans to enter into more bilateral agreements with countries in order to transfer foreign prisoners. It should explain whether it proactively negotiates agreements with countries from which its foreign prisoner population comes from. The HKSAR Government should comment on whether it has any plans to ratify the European Convention on the Transfer of Sentenced Persons in order to enter into agreements with multiple countries at the same time.
35. The HKSAR Government should comment on whether it has any plans to extend the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) to allow independent international monitoring of police stations and all places of detention.
36. According to the concluding observations of the Human Rights Committee, Hong Kong should strengthen the mandate and independence of the Ombudsman¹. Please explain whether there are plans to amend the Ombudsman Ordinance, so that the IPCC, CAPO and the Police is included in Chap 397, Schedule 1, Part I.
37. Please explain whether there are plans to empower the Justices of Peace to monitor and visit institutions under the control of the Police, by amending the Justices of the Peace Ordinance Chap 510, and include in Schedule 1, Part I on custodial institutions all institutions under the control of the Police.

¹ United Nations Human Rights Committee: “Concluding observations on the third periodic report of Hong Kong, China, adopted by the Committee at its 107th session (11-28 March 2013)” Paragraph 7 (CCPR/C/CHN-HKG/CO/3)

Article 12: Liberty of movement

38. Please explain whether the HKSAR Government plans to introduce the Boundary Facilities Improvement Tax and to evaluate the residence requirements of various social welfare benefits, which would violate the liberty of movement.
39. The HKSAR Government should explain why 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

40. The HKSAR 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 ICCPR.

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

41. As the NPCSC of the Central Government had already sought reinterpretation of the Basic Law for 5 times after the change of sovereignty, most of them violating the system of “One Country, Two Systems”, please explain how the Chinese Government and the HKSAR Government can ensure that the rulings of the HKSAR judiciary will not be affected by mainland Chinese authorities.
42. 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 HKSAR Government would extend its legal services for persons detained by different disciplinary forces, including the Police Force, Immigration Department, Independent Commission Against Corruption, Customs & Excise, etc.,
43. The HKSAR Government should explain how legal aid services are meeting the policy objectives set by the Legal Aid Department when they remain unavailable to a substantial amount of people and are not provided by an independent legal aid body.

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

44. The HKSAR Government should explain whether there is any plan and timetable to improve the legal protection on privacy.

Article 18: Freedom of thought, conscience and religion

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

Article 19: Freedom of opinion and expression

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

47. The freedom of opinion and expression of the followers of Falun Gong have been seriously restricted by the HKSAR Government. Please explain how this is justified under the provisions of ICCPR.
48. The HKSAR Government should explain how the Radio Television Hong Kong (RTHK) can fulfill its inherent press and media duties when it is not independent and autonomous from the government.
49. The HKSAR 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

50. 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 HKSAR Government should state any attempts to correct these issues and outline the rundowns of possible reformations of this ordinance.
51. The HKSAR Government should publish the statistics of requests of assemblies which were rejected on the basis of national security and public order and provide grounds for such rejections.
52. Please justify the usage of the "notice of no objection" procedure under the Public Order Ordinance in making it more difficult for people to obtain permission for peaceful assemblies.
53. Unauthorized assemblies are different from unlawful assemblies under the law and the penalty which entails a successful prosecution for unlawful assembly is relatively significant. Unauthorized assemblies, though peaceful in the whole process, may still be regarded as criminal offence. Please explain whether this deters people from exercising their right of peaceful assembly.
54. 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

55. It is concerned that the Societies Ordinance gives the HKSAR Government power to ban specific organizations. Please discuss whether the HKSAR Government would eliminate the power of banning specific organizations as stated by the Societies Ordinance.
56. 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

57. Regarding the adverse situation of split families, the HKSAR 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 HKSAR Government plans to engage in discussions with the Central Government to seek the power to approve such applications.
58. Please clarify whether the HKSAR Government recognizes the rights for homosexual and transgender partners to marry and form a family.
59. Please discuss whether the discretionary power of the Director of Immigration to approve applications for dependent visas without recognizing the right to family reunion violates ICCPR.

Article 24: Rights of children

60. Although a Commission on Children was established in mid-2018, but the set up was not in line with the Paris Principles. The HKSAR Government should explain how it can ensure to all individuals the rights recognized in the Covenant when it lacks an independent children's commission and human rights institution which is in line with the Paris Principles.
61. According to the present public housing policy, applicants with more than half of their family members who 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 and established their permanent resident status, or children who were born outside Hong Kong while the parent (either father or mother) is a permanent resident, will not be affected by the requirement. However, there are still 14,000 applications are still frozen which may still include the children. Please explain how the rights of those children and their family members can be protected under the present policy.
62. Since the grounds for claiming the right of abode has been narrowed, the HKSAR Government should explain whether children have sufficient legal protection and whether this inhibits family reunions.

Article 25: Right to participate in public life

63. The abolishment of the Regional and Urban Councils in 1999 infringed the right to participation in public affairs, while the District Board was not strengthened as promised. Please explain whether any other new channels for participation in public affairs will be implemented.
64. Please explain the reasons for restricting the right to vote of residents who have resided in Hong Kong for less than seven years. 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.

Article 26: Right to equal protection before the law

65. Although the Race Discrimination Ordinance attempts to address racial problems, flaws such as not including other languages, containing discrimination based on nationality and immigrants and not fully covering the government's duties and functions expose certain people such as foreign domestic workers and mainland Chinese to exploitation. The HKSAR Government

should explain whether they have made any attempts to address these issues.

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

Article 27: Rights of ethnic minorities

67. Despite 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 the HKSAR Government plans to integrate ethnic minorities fully into Hong Kong society and whether there are any affirmative actions for improving the employment condition for ethnic minorities.
68. Please also explain whether ethnic minority children are provided with the opportunity to learn their mother tongue language.