



International Covenant on Civil and Political Rights

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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)

1. The Human Rights Committee considered the third periodic report of the Hong Kong Special Administrative Region of the People's Republic of China, (Hong Kong, China,) (CCPR/C/CHN-HKG/3) at its 2954th and 2955th meetings (CCPR/C/SR.2954 and 2955), held on 12 and 13 March 2013. This report is the third submitted by the People's Republic of China after the return of Hong Kong, China, to Chinese sovereignty on 1 July 1997. At its 2974th meeting (CCPR/C/SR.2974), held on 26 March 2013, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of Hong Kong, China's third periodic report and expresses its satisfaction with the constructive dialogue with the delegation of the Government of Hong Kong, China. It appreciates the written replies (CCPR/C/CHN-HKG/Q/3/Add.1) to the Committee in response to its list of issues, while regretting that they were only provided a few days before the 107th session. The Committee thanks the delegation for the additional detailed information provided orally during the consideration of the report.

B. Positive aspects

3. The Committee welcomes the ratification of the following international instruments:

- (a) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 20 February 2008;
- (b) The Convention on the Rights of Persons with Disabilities, on 1 August 2008.

4. The Committee welcomes the following legislative and other measures taken since the consideration of Hong Kong, China's second periodic report:

- (a) The adoption of the Immigration (Amendment) Ordinance (2012);
- (b) The amendments to the Personal Data (Privacy) Ordinance (2012);
- (c) The amendments to the Domestic Violence Ordinance (Cap. 189) (2009).

C. Principal subjects of concern and recommendations

5. The Committee takes note of Hong Kong, China's view that the power of interpretation of the Basic Law by the Standing Committee of the National People's Congress (NPCSC) is "in general and unqualified terms" and the principle is fully acknowledged and respected by Hong Kong, China's courts (CCPR/C/CHN-HKG/3, para. 322). However, the Committee remains concerned that a mechanism of binding constitutional interpretation by a non-judicial body may weaken and undermine the rule of law and the independence of judiciary (arts. 2 and 14).

Hong Kong, China, should ensure the proper functioning of judicial structures in accordance with the Covenant and with principles governing the rule of law. As previously recommended (CCPR/C/HKG/CO/2, para.18), it should also ensure that all interpretations of the Basic Law, including on electoral and public affairs issues, are in full compliance with the Covenant.

6. The Committee notes Hong Kong, China's indication that universal and equal suffrage for the Chief Executive elections in 2017 and for the Legislative Council elections in 2020 may be granted. The Committee expresses concern about the lack of a clear plan to institute universal suffrage and to ensure the right of all persons to vote and to stand for election without unreasonable limitations, as well as Hong Kong, China's position in maintaining its reservation to article 25(b) of the Covenant (arts. 2, 25 and 26).

Hong Kong, China, should take all necessary measures to implement universal and equal suffrage in conformity with the Covenant as a matter of priority for all future elections. It should outline clear and detailed plans on how universal and equal suffrage might be instituted and ensure enjoyment by all its citizens, under the new electoral system, of the right to vote and to stand for election in compliance with article 25 of the Covenant, taking due account of the Committee's general comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service. It is recommended to consider steps leading to withdrawing the reservation to article 25(b) of the Covenant.

7. The Committee regrets that there is no independent statutory body to investigate and monitor violations of human rights guaranteed by the Covenant in a comprehensive manner. The Committee is moreover concerned that the proliferation of bodies focusing on the rights of specific groups may militate against greater effectiveness on the part of Hong Kong, China, in fulfilling its obligations under the Covenant and against greater clarity in its overall policy on human rights (art. 2).

Hong Kong, China, should strengthen the mandate and the independence of the existing bodies, including the Ombudsman and the Equal Opportunities Commission. It is also recommended to revise the multiplicity of the existing bodies whose mandate does not afford effective protection of all Covenant rights. Furthermore, the Committee reiterates its previous recommendations (CCPR/C/HKG/CO/2, para. 8) that Hong Kong, China, consider establishing a human rights institution, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), with adequate financial and human resources, with a broad mandate covering all international human rights standards accepted by Hong Kong, China, and with competence to consider and act on individual complaints of human rights violations by public authorities and to enforce the Hong Kong Bill of Rights Ordinance.

8. While noting the view of Hong Kong, China, that the definition of the crime of torture under the Crimes (Torture) Ordinance is consistent with international standards, the Committee shares the concerns raised by the Committee against Torture in 2008 that the

terms contained in Sections 2(1) and 3(4) of the Ordinance in practice contain loopholes that might prevent effective prosecution of torture and allow possible defences for acts of torture (art. 7).

Hong Kong, China, should bring its legislation in line with international standards, in particular, it should recognize the non-derogable character of the prohibition of torture and should therefore eliminate any possible defences for the crime of torture in accordance with article 7 of the Covenant.

9. While noting with appreciation the Hong Kong, China's cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR) to ensure protection of refugees and asylum seekers, the Committee regrets that Hong Kong, China, maintains a position not to seek the extension of the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol, and that persons facing deportation proceedings are not always covered by safeguards established in the Covenant. The Committee expresses concern about allegations that deportation operations are not properly monitored by the relevant oversight bodies (arts. 2, 6, 7 and 13).

In light of the Committee's previous recommendations (CCPR/C/HKG/CO/2, para.10), Hong Kong, China, should ensure that all persons in need of international protection receive appropriate and fair treatment at all stages, in compliance with the Covenant. The Hong Kong, China, authorities should recognize the absolute character of prohibition of return to a location where the individual faces a real risk of torture or cruel, inhuman or degrading treatment, also emphasized in the judgement of the Court of Final Appeal in *Ubamaka v. Secretary for Security and Anor* (FACV 15/2011, 21 December 2012). Hong Kong, China, is urged not to set an inappropriate high threshold for recognizing a real risk of ill-treatment on return.

10. The Committee is concerned about (a) the application in practice of certain terms contained in the Public Order Ordinance, inter alia, "disorder in public places" or "unlawful assembly", which may facilitate excessive restriction to the Covenant rights, (b) the increasing number of arrests of, and prosecutions against, demonstrators, and (c) the use of camera and video-recording by police during demonstrations (arts. 17 and 21).

Hong Kong, China, should ensure that the implementation of the Public Order Ordinance is in conformity with the Covenant. It should also establish clear guidelines for police and for records for the use of video-recording devices and make such guidelines accessible to the public.

11. The Committee expresses concern about reports of excessive use of force by members of the police force, not compatible with the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials, in particular by the inappropriate use of pepper spray to break up demonstrations to restore order, notably with regard to demonstrations surrounding the annual Hong Kong march on 1 July 2011, the visits of Vice-Premier and President of China, respectively in August 2011 and July 2012 (arts. 7, 19 and 21).

Hong Kong, China, should increase its efforts to provide training to the police with regard to the principle of proportionality when using force, taking due account of the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials.

12. While noting that the statutory framework has reinforced the role of the Independent Police Complaint Council (IPCC), the Committee remains concerned that investigations of police misconduct are still carried out by the police themselves through the Complaints Against Police Office (CAPO) and that IPCC has only advisory and oversight functions to

monitor and review the activities of the CAPO and that the members of IPCC are appointed by the Chief Executive (arts. 2 and 7).

Hong Kong, China, should take necessary measures to establish a fully independent mechanism mandated to conduct independent, proper and effective investigation into complaints about the inappropriate use of force or other abuse of power by the police and empowered to formulate binding decisions in respect of investigations conducted and findings regarding such complaints.

13. The Committee is concerned about reports that Hong Kong, China, has seen deterioration in media and academic freedom, including arrests, assaults and harassment of journalists and academics (arts. 19 and 25).

Hong Kong, China, should, in line with the Committee's general comment No. 34 (2011) on freedoms of opinion and expression, take vigorous measures to repeal any unreasonable direct or indirect restrictions on freedom of expression, in particular for the media and academia, to take effective steps including investigation of attacks on journalists and to implement the right of access to information by public bodies.

14. The Committee notes Hong Kong, China's intention to deal with the offences of treason and sedition in the context of the new legislation implementing article 23 of the Basic Law. However, it remains concerned at the broad wording of the definition of the offences of treason and sedition currently in Hong Kong, China's Crimes Ordinance (arts. 19, 21 and 22).

Hong Kong, China, should amend its legislation regarding the offences of treason and sedition to bring it into full conformity with the Covenant and ensure that the foreseen new legislation under article 23 of the Basic Law is fully consistent with the provisions of the Covenant.

15. The Committee notes the information provided by Hong Kong, China, that the Director of Immigration may exercise her or his discretion on a case-by-case basis to grant permission to the applicants to enter Hong Kong from the Mainland China, as dependants if there are exceptional humanitarian or compassionate considerations. However, the Committee is concerned that many families, reportedly nearly a hundred thousand families composed of parents and their children, remain separated between Mainland China, and Hong Kong, as a result of the right of abode policies (arts. 23 and 24).

The Committee reiterates its previous recommendations (CCPR/C/HKG/CO/2, para. 15) that Hong Kong, China, review its policies and practices regarding the right of abode in accordance with its obligations with regard to the right of families and children to protection under articles 23 and 24 of the Covenant.

16. The Committee notes the efforts made to prevent corporal punishment by parents. However, it is concerned about the continual practice of corporal punishment in the home (art.7).

Hong Kong, China, should take practical steps to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects. Hong Kong, China, should take steps to initiate a full public discussion on corporal punishment by parents on children.

17. While noting that Falun Gong in Hong Kong is a legally registered organization, the Committee regrets restrictions on Falun Gong practitioners in Hong Kong, in particular in relation to the right of movement (arts. 12, 18 and 19).

Hong Kong, China, should ensure that its policies and practices relating to the Falun Gong practitioners conform fully to the requirements of the Covenant.

18. The Committee notes with appreciation a variety of measures and programmes intended to combat domestic violence, but remains concerned at the high incidence of domestic violence in Hong Kong, China, including domestic violence against women and girls with disabilities (arts. 3, 7 and 26).

Hong Kong, China, should increase its efforts to combat domestic violence by, inter alia, ensuring effective implementation of the Domestic and Cohabitation Relationships Violence Ordinance (DCRVO). In this regard, Hong Kong, China, should ensure the provision of assistance and protection to victims, the criminal prosecution of perpetrators of such violence, and the sensitization of society as a whole to this matter.

19. The Committee notes with concern that, unlike the other Discrimination Ordinances, the Race Discrimination Ordinance (RDO) does not specifically apply to the Government in the exercise of its public functions such as the operations of the Hong Kong Police Forces and Correctional Services Department (art. 26).

The Committee recommends that Hong Kong, China, rectify a key gap in the current Race Discrimination Ordinance, in close consultation with the Equal Opportunities Commission, in order to ensure full compliance with article 26 of the Covenant. Hong Kong, China, should also consider introducing comprehensive anti-discrimination laws, in accordance with the Covenant. Such legislation should impose obligations on the authorities to promote equality and to eradicate discrimination.

20. The Committee is concerned about the persistence of the phenomenon of trafficking in persons in Hong Kong, China, and reports that Hong Kong, China, is a source, destination, and transit point for men, women, and teenage girls from Hong Kong, the mainland of China, and elsewhere in Southeast Asia, subjected to human trafficking and forced labour. The Committee is concerned about the reluctance of Hong Kong, China, to take steps which could lead to the extension of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) to Hong Kong, China, (art. 8).

Hong Kong, China, should intensify its efforts to identify victims of trafficking and ensure the systematic collection of data on trafficking flows to and in transit through the region, review its sentencing policy for perpetrators of trafficking-related crimes, support private shelters offering protection to victims, strengthen victim assistance by ensuring interpretation, medical care, counselling, legal support for claiming unpaid wages and compensation, long-term support for rehabilitation and stability of legal status to all victims of trafficking. The Committee recommends the inclusion of certain practices regarding foreign domestic workers in the definition of the crime of human trafficking. Hong Kong, China, should consider taking steps which could lead to the extension of the Palermo Protocol to Hong Kong, China, in order to strengthen its commitment to fight trafficking in persons in the region.

21. The Committee is concerned about the discriminatory and exploitation suffered by a large number of migrant domestic workers and the lack of adequate protection and redress provided for them (arts. 2 and 26).

Hong Kong, China, should adopt measures to ensure that all workers enjoy their basic rights, independently of their migrant status, and establish affordable and effective mechanisms to ensure that abusive employers are held accountable. It is also recommended to consider repealing the “two-weeks rule” (whereby domestic migrant workers have to leave Hong Kong within two weeks upon termination of contract) as well as the live-in requirement.

22. The Committee is concerned that ethnic minorities are underrepresented in higher education and that no official education policy for teaching Chinese as a second language for non-Chinese speaking students with an immigrant background in Hong Kong has been adopted. The Committee also notes with concern the report of the Equal Opportunities Commission that non-Chinese speaking migrants face discrimination and prejudice in employment due to the requirement of written Chinese language skills, even for manual jobs (art. 26).

In light of the recommendation made by the Committee on the Elimination of Racial Discrimination (CERD/C/CHN/CO/10-13, para. 31), Hong Kong, China, should intensify its efforts to improve the quality of Chinese language education for ethnic minorities and non-Chinese speaking students with an immigrant background, in collaboration with the Equal Opportunities Commission and other groups concerned. Hong Kong, China, should further intensify its efforts to encourage the integration of students of ethnic minorities in public school education.

23. The Committee is concerned about the absence of legislation explicitly prohibiting discrimination on the basis of sexual orientation and reported discrimination against lesbian, gay, bisexual and transgender persons in the private sector (arts. 2 and 26).

Hong Kong, China, should consider enacting legislation that specifically prohibits discrimination on ground of sexual orientation and gender identity, take the necessary steps to put an end to prejudice and social stigmatization of homosexuality and send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation or gender identity. Furthermore, Hong Kong, China, should ensure that benefits granted to unmarried cohabiting opposite-sex couples are equally granted to unmarried cohabiting same-sex couples, in line with article 26 of the Covenant.

24. The Committee is concerned about the disqualification from voting of all persons who are found to be incapable, by reason of their mental, intellectual or psychosocial disabilities of managing and administering their property and affairs under section 31(1) of the Legislative Council Ordinance and section 30 of the District Councils Ordinance (arts. 2, 25 and 26).

Hong Kong, China, should revise its legislation to ensure that it does not discriminate against persons with mental, intellectual or psychosocial disabilities by denying them the right to vote on bases that are disproportionate or that have no reasonable and objective relation to their ability to vote, taking account of article 25, of the Covenant and article 29 of the Convention on the Rights of Persons with Disabilities.

25. Hong Kong, China, should widely disseminate the Covenant, the text of the third periodic report, the written responses it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the region, as well as the general public. The Committee also requests Hong Kong, China, when preparing its fourth periodic report, to broadly consult with civil society and non-governmental organizations.

26. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure Hong Kong, China, should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 6, 21 and 22 above.

27. The Committee requests Hong Kong, China, in its next periodic report, due by 30 March 2018, to provide, specific, up-to-date information on all its recommendations and on the Covenant as a whole.