

An outline of the topics to be covered in the second report on the Hong Kong Special Administrative Region under the International Covenant on Civil and Political Rights

Introduction: the present report

1. In paragraph 21 of its concluding observations of 12 November 1999 on the Hong Kong SAR's initial report under the International Covenant on Civil and Political Rights (the Covenant), the Human Rights Committee ('the Committee') requested the HKSAR to submit its next periodic report by 31 October 2003.

2. By virtue of Basic Law Article 39, the International Covenant on Civil and Political Rights continues to apply to the Hong Kong Special Administrative Region after its establishment. As the People's Republic of China is not yet a State Party to the Covenant, the submission of the report of HKSAR was effected by a special arrangement between the United Nations (UN) and the Central People's Government (CPG) for Hong Kong Special Administrative Region to submit its report to the UN through the CPG.

3. The present outline is preparatory to the drafting of HKSAR's second report. It sets out the broad subject headings and individual topics that we envisage covering in the Report. It is also an invitation to all members of the public to submit their views on the implementation of the Covenant in respect of those topics. It also invites the public to suggest (and comment on) any additional topics that they consider we ought to include.

4. We will carefully consider all the comments that we receive **by or before the close of 17 March 2003**. But we do not guarantee to address every one of them in the Report. And it is possible that, on occasion, our attempts to summarise a comment may oversimplify or misinterpret the contributor's intention. Should that happen, we apologise in advance. But we undertake to send every submission received to the Committee's Secretariat under separate cover. This will ensure that the Committee has access to the full, original texts. With that in view, contributors whose submissions are written in Chinese may wish to consider providing English translations.

5. The Covenant is reproduced at **Annex A**.

6. References to 'the initial report' are to the report on the Hong Kong SAR submitted by the Central People's Government in July 1999 and heard by the Committee in November of the same year.

7. The report will also respond - in the relevant sections - to the concerns and recommendations in the Committee's concluding observations on the previous report (reproduced at **Annex B**). In drafting it, we will adhere to the requirements prescribed by the Committee in the UN Manual on Human Rights Reporting: copies of the section relating to the ICCPR are available on request as are copies of the initial report under the Covenant (telephone: 2835 2106 or 2835 2165).

Part I: General Profile of the Hong Kong Special Administrative Region (HKSAR)

8. The 'profiles' follow a standard format, form and content being prescribed in the UN 'Manual on Human Rights Reporting'. The updated version will include data on the ethnic composition of the population by ethnicity, derived from an analysis of the 2001 Census, which included such data for the first time. It will also update the structure of Government, following the adoption, in mid-2002, of the accountability system.

Part II: Information in relation to each of the Articles in Part I of the Covenant

9. The initial report contained detailed information on the laws, policies, and practices that are in place to ensure Hong Kong's compliance with the Covenant. Many of those are of long standing and, by nature, tend to remain unchanged - or to change very little - over time. We do not propose repeating descriptions/explanations of such matters in this report and we will frequently state that "there have been no significant developments in regard to [the topic in question] and the situation remains essentially as explained in paragraphs [x to y] of the initial report." This approach, the purpose of which is to avoid repetition and excessive length, conforms to the guidance in the UN Manual on Human Rights Reporting (page 67, final paragraph).

10. Thus, the second report will be shorter than the initial one and will chiefly comprise -

- (a) information/explanations about significant developments since the hearing of the initial report. Our preliminary views as to the areas in which there may have been developments that qualify as 'significant' are indicated in the topic headings below. Respondents are welcome to propose additional topics that they consider ought to so qualify. We ask that, in proposing additional topics, they state why they consider the issue/development to be significant (and relevant to the

- application of the Covenant in Hong Kong), and to set out their views on the Government's performance in handling the issue;
- (b) updates of any developments that were ongoing at the time of the 1999 hearing and in respect of which we undertook to inform the Committee of future progress/outcomes; and
 - (c) responses to the concerns and recommendations in the Committee's concluding observations of 12 November 1999.

Article 1 - Progress and development of democracy

11. We will advise the Committee of any significant developments since June 1998. It will include the 2000 Legislative Council (LegCo) election, the new arrangement for the next LegCo election scheduled for 2004, the election of the Chief Executive in 2002 and the implementation of the accountability system for principal officials on 1 July 2002.

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

12. We will update the Committee on significant developments (if any) in relation to the following matters that were discussed in paragraphs 6 to 57 of the initial report -

- Human rights provisions in the Basic Law and the Hong Kong Bill of Rights Ordinance
- Hong Kong Bill of Rights (Amendment) Ordinance 1997: background to the repeal
- Human rights education
- Basic Law Promotion Steering Committee: public education on the Basic Law
- The Ombudsman
- The Administrative Appeals Boards
- Municipal Services Appeals Boards
- Follow-up on the Report of the Independent Commission Against Corruption Review Committee
- Complaints against the Independent Commission Against Corruption: the Independent Commission Against Corruption Complaints Committee
- Complaints against the Police
- Statistics
- Adaptation of Law (Interpretative Provisions) Ordinance

13. In paragraph 9 of its concluding observations, the Committee expressed concern that “there is no independent body established by law to

investigate and monitor human rights violations in HKSAR and the implementation of Covenant Rights.” We will address this concern in this section of the report.

14. In paragraph 11 of its concluding observations of November 1999, the Committee expressed concern that investigations of complaints against the police are still in the hands of the police themselves. We shall address this comment by updating the Committee of our progress in introducing an Independent Police Complaints Council Bill to make the IPCC a statutory body.

15. In paragraph 12 of its concluding observations, the Committee expressed concern that “the electoral system for the Legislative Council does not comply with article 2, paragraph 1, 25, 26 of the Covenant.” We will respond to this concern in the section of the report under Article 25.

The Government's response to the Committee's previous concluding observations

16. In paragraph 8 of its concluding observations of November 1999, the Committee expressed concern that “most of the recommendations formulated in the Committee’s concluding observations (published in A/51/40, paragraphs 66 to 72; A/52/40, paragraphs 84 and 85) have not yet been implemented.” We will revisit these concerns in this section of the report, even though some of them are now behind us. The specific concerns were -

- **introducing Chinese versions of official charge forms and charge sheets and of court documents (paragraph 20 of the concluding observations of November 1995):** to be addressed under Article 14;
- **incorporating non-police members in the Independent Police Complaints Council’s investigation (paragraph 21 of the concluding observations of November 1995):** to be addressed under Article 2
- **human rights commission (paragraph 22 of the concluding observations of November 1995):** to be addressed under Article 2;
- **amendment of the Sex Discrimination Ordinance (paragraph 23 of the concluding observations of November 1995):** to be addressed under Article 3;
- **electoral system to conform with articles 2(1), 25 and 26 of the Covenant (paragraph 25 of the concluding observations of November 1995):** to be addressed under Article 1;

- **to take necessary steps to ensure effective and continued application of the provisions of the Covenant (paragraph 7 of the concluding observations of November 1996):** to be addressed under Article 2; and
- **submission of reports after 1997 (paragraph 20 of the concluding observations of November 1996):** to be addressed under Article 40.

Review of the Equal Opportunities Commission (new topic)

17. We will inform the Committee of the current internal review on complaints handling procedures and its internal structure.

Article 3 - Equal rights of men and women

18. We shall inform the Committee of any significant developments since the last hearing in regard to the issues discussed in paragraphs 58 to 87 of the initial report. Issues that we will cover include -

- UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Sex Discrimination Ordinance
- Equal rights of women in politics
- Equal rights of women in education
- Inheritance of New Territories land
- Protection of pregnant employees
- Women and age discrimination

19. In paragraphs 16 of its concluding observations of November 1999, the Committee expressed concern that “the educational system in HKSAR discriminates against girls in selection for secondary schools, that considerable differences exist in the earning levels between men and women, that women are under-represented in public boards and public offices, and that there is discrimination against women in the Small Home Policy.” The Committee recommended that “the HKSAR should adopt positive measures to overcome discrimination against women and should ensure equal pay for work of equal value.” We shall respond to the Committee’s concerns and recommendations in this section of the report.

Other topics

20. These will include –

- The current review of the advisory and statutory boards.
- The Small House Policy

- The court ruling on the Secondary School Places Allocation System.
- The Women's Commission

Article 4 - Public emergencies

21. We will inform the Committee of any significant developments since the last hearing in regard to the issues discussed in paragraphs 88 to 92 of the initial report. These were -

- Emergency Regulations Ordinance
- National laws applicable to Hong Kong in emergency

Article 5 - Prohibition on destruction of any rights and freedoms recognised in the Covenant

22. We will tell the Committee that the position remains as reported in paragraph 93 of the initial report. That is, the HKSAR Government imposes no restrictions upon and makes no derogations from any fundamental human rights on the pretext that such rights are not recognised, or are only partly recognised by the Covenant. We shall advise the Committee that the position is unchanged, though we shall not repeat paragraph 93.

Article 6 - Right to life

23. In this section, we will update the Committee on the number of deaths in custody (of the Police, the Correctional Service Department and the Customs and Excise Department) and set out the conclusions drawn by the Coroner's court.

Article 7 - No torture or inhuman treatment and no experimentation without consent

24. In paragraph 14 of its concluding observations of November 1999, the Committee expressed concern that "persons facing a risk of imposition of the death penalty or of torture, or inhuman, cruel or degrading treatment as a consequence of their deportation from HKSAR may not enjoy effective protection." The Committee recommended that "In order to secure compliance with articles 6 and 7 in deportation cases, the HKSAR should ensure that their deportation procedures provide effective protection against the risk of imposition of the death penalty or of torture or inhuman, cruel or degrading treatment." We shall respond to the Committee's concerns and recommendations in this section of the report.

25. In this section of the report, we will update the Committee on any significant developments in relation to the following matters that were discussed in paragraphs 105 – 138 of the initial report-

- Legal protection
- Instances of the alleged use of torture
- Alleged use of torture by Police officers
- Extradition and the Fugitive Offenders (Torture) Order
- Training of disciplined forces in relation to the provisions of the CAT and the Crimes (Torture) Ordinance
- Protection for patients detained under mental health legislation
- Protection of persons with mental illness or disability against treatment without consent

Article 8 - Slavery or servitude: forced or compulsory labour

26. We will inform the Committee that the position remains as explained in paragraph 139 of the initial report. That is, the Hong Kong Bill of Rights Ordinance prohibits slavery and slave trade in all forms and also the holding of any person in servitude.

27. We will also advise the Committee of any significant developments since the last hearing in regard to the issues discussed in paragraphs 140 to 149. Issues that we will cover will include –

- The two-week rule for foreign workers
- The review on the policy on foreign domestic helpers.

Article 9 - Liberty and security of person

28. We will advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 152 to 175 of the initial report. Topics will include -

- The Law Reform Commission Report on Arrest 1992: progress of implementation of recommendations
- Challenges of lawfulness of detention
- Position of the remaining Vietnamese refugees, Vietnamese migrants and Ex-China Vietnamese
- Restrictions on mental patients: reform of the Mental Health Ordinance and Regulations: establishment of the Guardianship Board.

Article 10 - Rights of persons deprived of their liberty

29. In this section of the report, we will advise the Committee of any significant developments since June 1998 regard to the issues discussed in paragraphs 178 to 216 of the initial report. Topics will include-

- Regulation and management of all penal establishments
- Prison Rules – order and discipline in prisons
- Rehabilitation of offenders
- The Long –Term Prison Sentences Review Board
- The Release Under Supervision Board
- The Post-Release Supervision Board
- Complaints against the Correctional Services Department
- Young offenders detained at “The Chief Executive’s Discretion”
- Separation of young offenders from adults in penal institutions
- Prisoners belonging to ethnic minorities
- Prison overcrowding

Article 11 - No imprisonment for non-fulfillment of contract

30. We will tell the Committee that the position remains as explained in paragraph 217 to 221 of the initial report.

Article 12 - Liberty of movement

31. In this section of the report we will advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 222 to 245. Topics will include –

- Legal protections
- Hong Kong travel documents
 - the introduction of the new HKSAR passport and to provide updated information on visa-free treatment granted to HKSAR passport holders
- The Right of Abode issue
- Lawful entry into Hong Kong
 - the introduction of “i-Permit Scheme” and developments in the performance pledge
- Assistance for Hong Kong residents in distress outside Hong Kong

Article 13 - Restrictions on expulsion from Hong Kong

32. In this section of the report we will advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 247 to 256. We shall also advise the Committee of updated statistics. Topics will include –

- Powers of removal and deportation under the Immigration Ordinance
- Deportation
- Removal
- Immigration Tribunal

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

33. In paragraph 10 of its concluding observations of November 1999, the Committee expressed concern that “the implications for the independence of the judiciary of the request by the Chief Executive of HKSAR for a reinterpretation of article 24 (2)(3) of the Basic Law by the Standing Committee of the National People's Congress (NPC) (under article 158 of the Basic Law) following upon the decision of the Court of Final Appeal (CFA) in the Ng Ka Ling and Chan Kam Nga cases, which placed a particular interpretation on article 24 (2)(3).” In the same paragraph, the Committee noted that “the statement of the HKSAR that it would not seek another such interpretation except in highly exceptional circumstances. Nevertheless, the Committee remains concerned that a request by the executive branch of government for an interpretation under article 158 (1) of the Basic Law could be used in circumstances that undermine the right to a fair trial under article 14.” We shall address the Committee’s concern in this section of the report.

34. We shall also address the Committee’s recommendation of providing Chinese versions of official charge forms and charge sheets and of court documents in this section of the report.

35. In this section of the report we will also advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 257 to 296. Topics will include –

- Court of Final Appeal
- ‘Acts of State’
- Legal aid
- Areas of public concern

Article 15 - No retrospective criminal offences or penalties

36. We will inform the Committee of the case of *Ng Ka Ling & Others v Director of Immigration* .

Article 16 - Right to recognition as person before law

37. We will tell the Committee that position remains as explained in paragraph 301 of the initial report.

Article 17 - Protection of privacy, family, home, correspondence, honour and reputation

38. In paragraph 13 of its concluding observations of November 1999, the Committee expressed concern that “the Interception of Communications Ordinance, which was passed in June 1997 in order to restrict the power of the authorities to intercept communications, has not yet been brought into effect. Section 33 of the Telecommunication Ordinance and Section 13 of the Post Office Ordinance still continue to be in force, thus allowing the authorities to violate the right to privacy under article 17 of the Covenant.” We shall respond to the Committee’s concerns in this section of the report.

39. We will advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 305 to 320 of the initial report. Topics will include -

- Personal data privacy
- Law Reform Commission’s report studies on privacy

Law Reform Commission’s report on stalking (new topic)

40. We will inform the Committee on the present position on Law Reform Commission’s report on stalking.

Article 18 - Freedom of thought, conscience and religion

41. We will advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 323 to 325 of the initial report. Topics will include -

- Religious discrimination

Article 19 - Freedom of opinion and expression

42. In paragraphs 18 of its concluding observations of November 1999, the Committee expressed concern that “the offences of treason and sedition under the Crimes Ordinance are defined in overly broad terms, thus endangering freedom of expression guaranteed under article 19 of the Covenant.” The Committee recommended that “All laws enacted under article 23 of the Basic Law must be in conformity with the Covenant.”

43. We shall address this and other concerns with respect to the proposed legislation under Article 23 of the Basic Law.

44. We will advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 326 to 372 of the initial report. Topics will include -

- Press freedom and self-censorship
- Code on Access to information
- Regulation and licensing of the broadcast media
 - Restrictions on cross-ownership of the media
- Radio Television Hong Kong (RTHK)
- Film classification system
- Appeals against the decisions of the Film Censorship Authority and the censors
- Regulation of obscene and indecent articles
- Content regulation on the Internet
- Hong Kong Arts Development Council
- Crimes Ordinance
- The Official Secrets Ordinance
- Freedom of information: the Prison Rules and the 'horse-racing case'
- National Flag and National Emblem Ordinance, Regional Flag and Regional Emblem Ordinance

Proposed legislation on Child pornography

45. We will inform the Committee on details of the proposed legislation on prevention of child pornography.

The United Nations (Anti-Terrorism Measures) Ordinance

46. We will inform the Committee on details of the United Nations (Anti-Terrorism) Ordinance.

Article 20 - Prohibition on propaganda for war

47. We will inform the Committee about the repeal of section 33 of the Television Ordinance.

48. We will inform the Committee that the position reported in paragraph 373 of the initial report remains unchanged.

Article 21 - Right of peaceful assembly

49. In paragraphs 19 of its concluding observations of November 1999, the Committee commented that “With regard to freedom of assembly, the Committee is aware that there are very frequent public demonstrations in HKSAR and takes note of the delegation's statement that permission to hold demonstrations is never denied. Nevertheless, the Committee is concerned that the Public Order Ordinance could be applied to restrict unduly enjoyment of the rights guaranteed in article 21 of the Covenant.” The Committee recommended that “The HKSAR should review this Ordinance and bring its terms into compliance with article 21 of the Covenant.” We shall respond to the Committee’s concerns and recommendations in this section of the report.

50. We will advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 375 - 384 of the initial report. Topics will include -

- Prosecution cases in relation to public meetings and processions
- Legislation Council motion debate on the Public Order Ordinance

Article 22 - Freedom of association

51. In paragraphs 20 of its concluding observations of November 1999, the Committee commented that “With regard to freedom of association, the Committee is concerned that the Societies Ordinance may be applied in a way to restrict unduly the enjoyment of Article 22 rights.” The Committee recommended that “The HKSAR should review this Ordinance so as to ensure full protection of the right to freedom of association, including trade union rights, under article 22 of the Covenant.”

52. We will advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 386 - 404 of the initial report. Topics will include -

- Statutory protection against anti-union discrimination
- Regulation of trade union activities
- Ban on members of the Police Force joining trade unions
- Organisations for the promotion of human rights

Article 23 - The family - a vital component of society

53. We will advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 408-425 of the initial report. Topics will include -

- Family welfare services
- Family affected by family disputes
- Post-divorce protection of spouse and children - the Marriage and Children (Miscellaneous Amendments) Ordinance and the improvements to the Attachment of Income Order Scheme
- Amendments to the Matrimonial Causes Ordinance in 1995
- New arrivals from Mainland China

Split families (new topic)

54. We will inform the Committee of developments in regard to the situation of split families arising from the rulings of the Right of Abode issue.

Interest on Arrears of Maintenance Bill (new topic)

55. We will inform the Committee of developments in regard to the Interest on Arrears of Maintenance Bill.

Article 24 - Rights of children

56. In paragraphs 17 of its concluding observations of November 1999, the Committee expressed concern that “that the age of criminal responsibility is seven years and takes note of the statement by the Delegation that the Law Reform Commission is currently conducting a review of this matter.” The Committee recommended that “The age of criminal responsibility should be raised so as to ensure the rights of children under article 24.” We shall respond to the Committee’s concerns and recommendations in this section of the report.

57. We will advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 427 - 449 of the initial report. Topics will include -

- Right to acquire a nationality (Article 24.3)
- Convention on the Rights of the Child
- Day care services
- Residential child care services
- Child abuse
- The Child Care Services Ordinance
- Child abuse as crime: the legal framework
- Protection of children born out of wedlock
- Youth welfare
- Review of the Adoption Ordinance
- Children and armed conflict

The Child Ambassador Scheme (new topic)

58. We will inform the Committee of the work of the Child Ambassadors in promoting Children's rights.

Article 25 - Right to participate in public life

59. In paragraph 12 of its concluding observations of November 1999, the Committee expressed concern about "the impending abolition of the Municipal Councils that would further diminish the opportunity of HKSAR residents to take part in the conduct of public affairs, that is guaranteed under article 25." The Committee recommended that "The HKSAR should reconsider this step. It should take all necessary measures to maintain and strengthen democratic representation of HKSAR residents in public affairs." We shall respond to the Committee's concerns and recommendations in this section of the report.

60. We will advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 451 – 480 of the initial report. Topics will include -

- Election of the Chief Executive
- Executive Council
- Legislative Council
- The 2000 Legislative Council election
- Electoral Affairs Commission
- District Councils
- The abolition of the municipal councils
- Review of district organisations
- Government advisory boards and committees
- Access to public service

The Accountability system (new topic)

61. We will inform the Committee of the introduction of the accountability system for principal officials which was implemented on 1 July 2002.

Rural election (new topic)

62. We will inform the Committee of the Village Representative Election Bill and the proposed arrangements for rural elections.

Article 26 - Right to equal protection before the law

63. In paragraph 15 of its concluding observations of November 1999, the Committee expressed concern that “no legislative remedies are available to individuals in respect of discrimination on the grounds of race or sexual orientation.” The Committee recommended that “Necessary legislation should be enacted in order to ensure full compliance with article 26 of the Covenant”. We shall respond to the Committee’s concern and recommendation in this section of the report.

64. We will advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 481 - 512 of the initial report. Topics will include -

- Measures against discrimination
- Discrimination on the ground of family status
- Eliminating age discrimination in employment
- Prosecution Policy of the Department of Justice

Consultation on the need for legislation against racial discrimination (new topic)

65. We will inform the Committee of the outcome of the consultation on the need for legislation against racial discrimination.

Article 27 - Rights of minorities

66. We will advise the Committee of any significant developments since June 1998 in regard to the issues discussed in paragraphs 514 - 522 of the initial report. Topics will include –

- Legal protection
- Representation in elected bodies
- Opportunities of ethnic minorities to learn their mother tongue
- The language of Government

The Government's race strategy (new topic)

67. We will inform the Committee of the work and progress of the following -

- The Race Relations Unit
- Promotion of racial harmony
- Integration of ethnic minorities

Article 40 - Submission of report

68. In paragraphs 21 of its concluding observations of November 1999, the Committee requested the HKSAR to submit its next report by 31 October 2003.

69. In November 1999, we distributed copies of the concluding observations to the Legislative Council, NGOs, the Judiciary, and all Government bureaux. We also uploaded them onto the Internet. The present outline and consultation exercise is the initial stage of the drafting process that will lead to the submission of our second report.

**Home Affairs Bureau
February 2003**

Annex A

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966

ENTRY INTO FORCE: 23 March 1976, in accordance with article 49

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with

the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15,

16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a

competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a

punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

- (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
 - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
 - (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
 - (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
 - (iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees

to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- (c) To be tried without undue delay;
- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- (g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to

law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference

with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this

article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed

forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter

referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication

of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of

the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

- (a) Twelve members shall constitute a quorum;
- (b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the

present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

- (a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;
- (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
- (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;
- (d) The Committee shall hold closed meetings when examining communications under this article;
- (e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the

basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

- (f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
- (g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;
- (h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:
 - (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
 - (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the

Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

- (a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;
- (b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;
- (c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;
- (d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the

various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations

of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 48;
- (b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

* * * * *

Application of the Covenant to Hong Kong

In 1976, the Government of the United Kingdom ratified the International Covenant on Civil and Political Rights with certain reservations and declarations, and extended the Covenant to 10 British dependent territories including Hong Kong. The reservations and declarations applicable to Hong Kong are as follows.

On signing the Covenant the Government of the United Kingdom made the following declaration:

“First, the Government of the United Kingdom declare their understanding that, by virtue of Article 103 of the Charter of the United Nations, in the event of any conflict between their obligations under Article 1 of the Covenant and their obligations under the Charter (in particular, under Articles 1, 2 and 73 thereof) their obligations under the Charter shall prevail.”

On depositing their instrument of ratification of the Covenant the Government of the United Kingdom made the following reservations and declarations:

“Firstly the Government of the United Kingdom maintain their declaration in respect of Article 1 made at the time of signature of the Covenant.”

“The Government of the United Kingdom reserve the right to apply to members of and persons serving with the armed forces of the Crown and to persons lawfully detained in penal establishments of whatever character such laws and procedures as they may from time to time deem to be necessary for the preservation of service and custodial discipline and their acceptance of the provisions of the Covenant is subject to such restrictions as may for these purposes from time to time be authorized by law.”

“Where at any time there is a lack of suitable prison facilities or where the mixing of adults and juveniles is deemed to be mutually beneficial, the Government of the United Kingdom reserve the right not to apply Article 10.2(b) and 10.3 so far as those provisions require juveniles who are detained to be accommodated separately from adults, ...”

“The Government of the United Kingdom reserve the right to interpret the provisions of Article 12.1 relating to the territory of a State as applying separately to each of the territories comprising the United Kingdom and its dependencies.”

“The Government of the United Kingdom reserve the right to continue to apply such immigration legislation governing entry into,

stay in and departure from the United Kingdom as they may deem necessary from time to time and, accordingly, their acceptance of Article 12.4 and of the other provisions of the Covenant is subject to the provisions of any such legislation as regards persons not at the time having the right under the law of the United Kingdom to enter and remain in the United Kingdom. The United Kingdom also reserves a similar right in regard to each of its dependent territories.”

“The Government of the United Kingdom reserve the right not to apply Article 13 in Hong Kong in so far as it confers a right of review of a decision to deport and alien and a right to be represented for this purpose before the competent authority.”

“The Government of the United Kingdom interpret Article 20 consistently with the rights conferred by Articles 19 and 21 of the Covenant and having legislated in matters of practical concern in the interests of public order (ordre public) reserve the right not to introduce any further legislation. The United Kingdom also reserve a similar right in regard to each of its dependent territories.”

“The Government of the United Kingdom reserve the right to enact such nationality legislation as they may deem necessary from time to time to reserve the acquisition and possession of citizenship under such legislation to those having sufficient connection with the United Kingdom or any of its dependent territories and accordingly their acceptance of Article 24.3 and of the other provisions of the Covenant is subject to the provisions of any such legislation.”

“The Government of the United Kingdom reserve the right not to apply sub-paragraph (b) of Article 25 in so far as it may require the establishment of an elected Executive or Legislative Council in Hong Kong ...”.

Declaration under Article 41
dated 17 May 1976

“The Government of the United Kingdom declares under Article 41 of this Covenant that it recognizes the competence of the Human Rights Committee to receive and consider communications submitted by another State Party, provided that such other State Party has, not less than twelve months prior to the submission by it of a communication relating to the United Kingdom, made a declaration under Article 41 recognizing the competence of the Committee to receive and consider communications relating to itself.”

**International covenant
on civil and
political rights**

Distr.
GENERAL

CCPR/C/79/Add.117
15 November 1999

Original: ENGLISH

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Hong Kong Special Administrative Region

1. The Committee considered the fifth periodic report of the Hong Kong Special Administrative Region (CCPR/C/HKSAR/99/1 and supplementary information CCPR/C/HKSAR/99/1/Add.1) at its 1803rd to 1805th meetings (CCPR/C/SR.1803-SR.1805), held on 1 and 2 November 1999. This report is the first submitted by the People's Republic of China after the return of HKSAR to Chinese sovereignty on 1 July 1997. The Committee adopted, at its 1810th meeting (sixty-seventh session) held on 4 November 1999, the following concluding observations.

A. Introduction

2. The Committee expresses appreciation to the delegation from HKSAR for the information it provided and for its willingness to submit further information in writing. It further welcomes the recognition given by the delegation to the contribution made by NGOs to the consideration of the HKSAR report.

3. The Committee thanks the People's Republic of China for its willingness to participate in the reporting procedure under article 40 of the Covenant by submitting the report prepared by the HKSAR authorities and by introducing the HKSAR delegation to the Committee. The Committee affirms its earlier pronouncements on the continuity of the reporting obligations in relation to Hong Kong.

B. Positive aspects

4. The Committee notes that article 39 of the Basic Law provides that the provisions of the Covenant as applied to HKSAR shall remain in force and shall be implemented through the laws of HKSAR. The Committee welcomes the fact that the primacy of the Covenant is ensured in domestic legislation by a combination of articles 39 and 11 of the Basic Law.

5. The Committee welcomes the efforts undertaken by the HKSAR to give publicity to its report and its commitment to give wide dissemination to the Committee's concluding observations.

6. The Committee welcomes the efforts undertaken by HKSAR to educate civil society about human rights. In particular, the Committee welcomes the great number of training courses, workshops and seminars conducted in HKSAR for all sectors of the population, including the civil service, the judiciary, the police and the educational establishments.

7. The Committee welcomes the steps taken by HKSAR to promote gender equality through educational campaigns and appropriate legislation.

C. Principal subjects of concern and recommendations

8. The Committee is concerned that most of the recommendations formulated in the Committee's concluding observations (published in A/51/40, paras. 66-72; A/52/40, paras. 84-85) have not yet been implemented.

9. The Committee remains concerned that there is no independent body established by law to investigate and monitor human rights violations in HKSAR and the implementation of Covenant rights.

10. The Committee is seriously concerned at the implications for the independence of the judiciary of the request by the Chief Executive of HKSAR for a reinterpretation of article 24 (2)(3) of the Basic Law by the Standing Committee of the National People's Congress (NPC) (under article 158 of the Basic Law) following upon the decision of the Court of Final Appeal (CFA) in the Ng Ka Ling and Chan Kam Nga cases, which placed a particular interpretation on article 24 (2)(3). The Committee has noted the statement of the HKSAR that it would not seek another such interpretation except in highly exceptional circumstances. Nevertheless, the Committee remains concerned that a request by the executive branch of government for an interpretation under article 158 (1) of the Basic Law could be used in circumstances that undermine the right to a fair trial under article 14.

11. The Committee takes the view that the Independent Police Complaints Council has not the power to ensure proper and effective investigation of complaints against the police. The Committee remains concerned that investigations of police misconduct are still in the hands of the police themselves, which undermines the credibility of these investigations.

The HKSAR should reconsider its approach on this issue and should provide

for independent investigation of complaints against the police.

12. The Committee reiterates its concern, expressed in paragraph 19 of its concluding observations, adopted at the end of the consideration of the fourth periodic report, that the electoral system for the Legislative Council does not comply with articles 2, paragraphs 1, 25 and 26 of the Covenant. The Committee is concerned about the impending abolition of the Municipal Councils that would further diminish the opportunity of HKSAR residents to take part in the conduct of public affairs, that is guaranteed under article 25.

The HKSAR should reconsider this step. It should take all necessary measures to maintain and strengthen democratic representation of HKSAR residents in public affairs.

13. The Committee is concerned that the Interception of Communications Ordinance, which was passed in June 1997 in order to restrict the power of the authorities to intercept communications, has not yet been brought into effect. Section 33 of the Telecommunication Ordinance and Section 13 of the Post Office Ordinance still continue to be in force, thus allowing the authorities to violate the right to privacy under article 17 of the Covenant.

The HKSAR must ensure that its law and practice protect the rights guaranteed under article 17.

14. In the light of the fact that the Covenant is applied in HKSAR subject to a reservation that seriously affects the application of article 13 in relation to decision-making procedures in deportation cases, the Committee remains concerned that persons facing a risk of imposition of the death penalty or of torture, or inhuman, cruel or degrading treatment as a consequence of their deportation from HKSAR may not enjoy effective protection.

In order to secure compliance with articles 6 and 7 in deportation cases, the HKSAR should ensure that their deportation procedures provide effective protection against the risk of imposition of the death penalty or of torture or inhuman, cruel or degrading treatment.

15. The Committee remains concerned that no legislative remedies are available to individuals in respect of discrimination on the grounds of race or sexual orientation.

Necessary legislation should be enacted in order to ensure full compliance with article 26 of the Covenant.

16. The Committee is concerned that the educational system in HKSAR discriminates against girls in selection for secondary schools, that considerable differences exist in the earning levels between men and women, that women are under-represented in public boards and public offices, and that there is discrimination against women in the Small Home Policy.

The HKSAR should adopt positive measures to overcome discrimination against women and should ensure equal pay for work of equal value.

17. The Committee is concerned that the age of criminal responsibility is seven years and takes note of the statement by the Delegation that the Law Reform Commission is currently conducting a review of this matter.

The age of criminal responsibility should be raised so as to ensure the rights of children under article 24.

18. The Committee is concerned that the offences of treason and sedition under the Crimes Ordinance are defined in overly broad terms, thus endangering freedom of expression guaranteed under article 19 of the Covenant.

All laws enacted under article 23 of the Basic Law must be in conformity with the Covenant.

19. With regard to freedom of assembly, the Committee is aware that there are very frequent public demonstrations in HKSAR and takes note of the delegation's statement that permission to hold demonstrations is never denied. Nevertheless, the Committee is concerned that the Public Order Ordinance could be applied to restrict unduly enjoyment of the rights guaranteed in article 21 of the Covenant.

The HKSAR should review this Ordinance and bring its terms into compliance with article 21 of the Covenant.

20. With regard to freedom of association, the Committee is concerned that the Societies Ordinance may be applied in a way to restrict unduly the enjoyment of Article 22 rights.

The HKSAR should review this Ordinance so as to ensure full protection of the right to freedom of association, including trade union rights, under article 22 of the Covenant.

D. Date of examination of the sixth periodic report;
dissemination of information

21. The Committee sets the date for the submission of the next periodic report as 31 October 2003. That report should be prepared in accordance with the Committee's new Guidelines (CCPR/C/66/GUI/Rev.1) and should give particular attention to the issues raised by the Committee in these Concluding Observations. The Committee urges that the text of these Concluding Observations be made available to the public as well as to the legislative and administrative authorities. It requests that the next periodic report be widely disseminated among the public, including civil society and non-governmental organizations operating in HKSAR.
