

**A draft outline of the topics to be covered  
in the second report on the  
Hong Kong Special Administrative Region  
under the Convention on the Elimination of  
All Forms of Discrimination Against Women (CEDAW)**

**Introduction**

This outline sets out the broad subject headings and individual topics that we envisage covering in the Report. It serves as an invitation to all members of the public to submit their views on the implementation of the Convention 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.

We will carefully consider all the comments we receive, but it is possible that we may not be able to address every one of them in the Report. And it is possible that, on occasion, our attempts to summarize a comment may oversimplify or misinterpret the contributor's intention. Should that happen, we apologize in advance. But we undertake to send every submission received to the Committee for the Elimination of Discrimination Against Women under a 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 translation<sup>1</sup>.

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<sup>1</sup> Chinese is an official language of the UN and the Secretariat has its own translation facilities. However, they have a considerable workload that will be increased if the translation of submissions is left to them. We do not consider it necessary to translate English submissions into Chinese as most Committee Members read English.

## **Preface**

Major developments since the United Nations hearing of the initial report on Hong Kong submitted by the Government of People's Republic of China (February 1999).

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

Note: The profile should follow a standard format, form and content being prescribed in the UN "Manual on Human Rights Reporting". Part I will update the information in the corresponding part of the last report HKSARG submitted to the UN. A copy of that report submitted under the International Convention on the Elimination of All Forms of Racial Discrimination is reproduced at **Attachment A**.

## **Part II**

### ARTICLE 1 DEFINING DISCRIMINATION

*“For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”*

- **Definition of “Discrimination against Women” in the Sex Discrimination Ordinance**
  - Relevant Sections of Sex Discrimination Ordinance in Part II:
    - Section 5: Sex discrimination against women
    - Section 6: Sex discrimination against men
    - Section 7: Discrimination against married, etc. persons in employment field
    - Section 8: Discrimination against pregnant women in employment field
    - Section 9: Discrimination by way of victimisation
    - Section 10: Comparison of cases under sections 5(1), 7(1) and 8
- **Reservations entered in respect of this Article and the justification**
- **Concluding Recommendations made by the UN Committee on the Elimination of Discrimination against Women on the initial report under CEDAW**

ARTICLE 2  
OBLIGATIONS OF STATES PARTIES

*“States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:*

*a. To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle;*

*b. To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;*

*c. To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;*

*d. To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;*

*e. To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;*

*f. To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;*

*g. To repeal all national penal provisions which constitute discrimination against women.”*

- **Bill of Rights<sup>2</sup>**
- **Women's Commission<sup>3</sup>**
  - its establishment, membership and terms of reference
  - priority areas of work
  - advice given to the government on policy issues / consultation documents
- **The Equal Opportunities Commission**
  - functions
  - update on its recent work
- **The Sex Discrimination Ordinance**
  - brief introduction of the Sex Discrimination Ordinance
  - judicial decisions under Sex Discrimination Ordinance
- **Family Status Discrimination Ordinance**
  - brief introduction of the Ordinance
- **Changes in the Law**
  - update on further changes to women-related legislations<sup>4</sup> that were mentioned in the first report
  - recent legislative changes to take out gender-biased elements

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<sup>2</sup> re. para. 315 & 316 of the concluding comments of UN Committee on the Elimination of Discrimination against Women on the initial report under CEDAW

<sup>3</sup> re. para. 317 & 318 of the concluding comments of UN Committee on the Elimination of Discrimination against Women on the initial report under CEDAW

<sup>4</sup> Inland Revenue Ordinance, Marriage Ordinance, Matrimonial Causes Ordinance, Separation and Maintenance Orders Ordinance, Bankruptcy Ordinance and the Companies (Winding Up) Rules, and Merchant Shipping Ordinance, the Merchant Shipping (Seafarers) Ordinance as well as the Shipping and Port Control Ordinance

ARTICLE 3  
APPROPRIATE MEASURES

*“States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”*

- **Legal Basis for Elimination of Discrimination**
  - Joint Declaration
  - Hong Kong Bill of Rights Ordinance
  - International Covenant on Economic, Social and Cultural Rights
  - Sex Discrimination Ordinance
  
- **Co-ordination of Implementation of the Convention**
  - establishment of Women’s Commission as central mechanism
  
- **Gender Mainstreaming Initiatives**
  - recent work related to the introduction of gender mainstreaming, including development of gender mainstreaming Checklist, Gender Mainstreaming Pilot Test, gender sensitivity training programmes to civil servants offered by Women’s Commission
  
- **Studies, Research and Data Collection on Women**
  - Collection of sex-disaggregated statistics
  - Telephone survey commissioned by Women’s Commission on the extent of satisfaction of women in Hong Kong in respect of their current state of affairs
  - Mailed questionnaire survey commissioned by Women’s Commission on the extent and levels of positions taken up by women in private sector in Hong Kong
  - Thematic Household Survey on time use and factors hindering women’s social participation
  - Effectiveness survey of publicity and public education campaign by Women’s Commission

ARTICLE 4  
TEMPORARY SPECIAL MEASURES

*“1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.*

*2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.”*

- **Special Measures provided for under the Sex Discrimination Ordinance**
  - Part IV, Sex Discrimination Ordinance  
Section 48: Special measures
  
- **Maternity Protection**
  - Part VI of the Sex Discrimination Ordinance provides for exceptions on acts done for the purposes of protection of women.

ARTICLE 5  
STEREOTYPING AND PREJUDICES

*“States Parties should take all appropriate measures:*

*a. To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;*

*b. To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.”*

- **Working Women Population**

- proportion of women at the higher end of the occupation hierarchy
- horizontal and vertical segregation of jobs
- women’s choice of occupations
- women’s participation in occupations which used to have a relatively high proportion of male workers
- employment opportunities for married women
- mailed questionnaire survey commissioned by Women’s Commission on the extent and levels of positions taken up by women in the non-government sector in Hong Kong

- **Education**

- Women’s Commission
  - ♦ public education and publicity campaign carried out by the Women’s Commission



- Equal Opportunities Commission
  - ◆ update on the public education work of the Equal Opportunities Commission mentioned in the initial report<sup>5</sup>
  - ◆ update on recent public education efforts relating to elimination of gender stereotypes and prejudices since 1999
  
- Committee on the Promotion of Civic Education
  - ◆ update on the public education work of the Committee on the Promotion of Civic Education mentioned in the initial report<sup>6</sup>
  
- Others
  - ◆ update on the work relating to the promotion of Sex Discrimination Ordinance and CEDAW
  
- **Pornography and Sex Discriminatory Elements in the Media**
  - ◆ update on legislative and other administrative measures that prohibit / censor broadcast of pornography and sex discriminatory elements in the media mentioned in the first report<sup>7</sup>
  - ◆ new legislation / measures to tackle pornography and sex discriminatory elements in the media
  - ◆ Prevention of Child Pornography Bill

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<sup>5</sup> including distribution of Code of Practice on Employment, homepage for public access, production of TV and Radio Announcements of Public Interest and the launching of Poster Advertisements Campaigns, programme on funding projects which promote equal opportunities etc.

<sup>6</sup> television “Announcements of Public Interest”, roving exhibitions and outdoor stage shows, a human rights teaching kits for children, sponsorship for projects organized by voluntary agencies and community organizations etc.

<sup>7</sup> including Control of Obscene and Indecent Articles Ordinance, Film Censorship Ordinance, Codes of Practice issued by the Broadcasting Authority on Broadcasting, Codes of Practice on programme and advertising standards, Broadcasting Authority Ordinance and Television Ordinance

- **Protection of Women against Violence**
  - International Instruments
    - ◆ CEDAW
    - ◆ International Covenant on Civil and Political Rights (ICCPR)
    - ◆ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
  - Legislation protecting Women against Violence
    - ◆ current legislation protecting women against violence including Domestic Violence Ordinance<sup>8</sup> etc.
    - ◆ update on the changes in legislation protecting women against violence mentioned in the initial report<sup>9</sup>
    - ◆ proposed amendments to Crimes Ordinance which seeks to extend the application of certain sexual offence provisions to acts committed against children outside Hong Kong
    - ◆ other recent changes to legislation / measures relating to the protection of women against violence (e.g. criminalization of marital rape<sup>10</sup>, abolition of the corroboration rules in sexual offence cases, proposed legislation on stalking)
  - Preventive Measures on Domestic Violence
    - ◆ Family Services Centres / Integrated Family Service Centres
    - ◆ Family Life Education / Family Education / Parent Education
    - ◆ Family Support and Resource Centres
    - ◆ Family Support Networking Teams
    - ◆ Publicity Campaign
    - ◆ Operation Silver Lining
    - ◆ Family Help-line and Hotline Service

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<sup>8</sup> re. para. 323 of the concluding comments of UN Committee on the Elimination of Discrimination against Women on the initial report under CEDAW

<sup>9</sup> Crimes Ordinance, Offences Against the Person Ordinance, Domestic Violence Ordinance

<sup>10</sup> re. para. 323 and 324 of the concluding comments of UN Committee on the Elimination of Discrimination against Women on the initial report under CEDAW

- Services offered to Victims of Domestic Violence<sup>11</sup>
  - ◆ updated statistics on battered spouse
  - ◆ update on the services to victims of domestic violence and spouse battering mentioned in the initial report<sup>12</sup>
  - ◆ new service initiatives since 1999 (e.g. additional refuge(s), Family Crisis Support Centre, Family and Child Protective Services Unit, psychological services)
  
- Treatment and Counseling of Perpetrators of Domestic Violence
  - ◆ individual and group treatment for male perpetrators
  - ◆ men's hotline
  
- Services offered to Victims of Sexual Violence
  - ◆ information on sexual crime (e.g. rape)
  - ◆ Rape crises center – RainLily
  
- Cross-sector Collaboration
  - ◆ Working Group on Combating Violence (previously Working Group on Battered Spouses and Working Group on Sexual Violence)
  - ◆ Multi-disciplinary guidelines on handling battered spouse cases and sexual violence cases
  - ◆ referral mechanism
  - ◆ collaboration between Social Welfare Department and Housing Department

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<sup>11</sup> re. para. 324 & 327 of the concluding comments of UN Committee on the Elimination of Discrimination against Women on the initial report under CEDAW

<sup>12</sup> including medical service; casework and counseling by Family Services Centres run by Social Welfare Department and NGOs; hotline service; refuge and temporary shelters; child care services; family life education; housing assistance; financial assistance e.g. Comprehensive Social Security Assistance and Charitable Trust Funds; legal aid; interdisciplinary Working Group on Combating Violence (previously Working Group on Battered Spouses and Working Group on Sexual Violence)

- Information System
  - ◆ Central Information System on Battered Spouse Cases and Sexual Violence Cases
  
- Special Training of Professionals
  - ◆ Police
    - update on the changes in special training mentioned in the initial report<sup>13</sup>
    - new initiatives in special training of the Police e.g. gender sensitivity training programmes offered by Women's Commission, programmes on sex equality by EOC
  - ◆ Social Workers
  - ◆ Multi-disciplinary training
  
- Research
  - ◆ homicide and suicide
  - ◆ spouse battering and child abuse
  
- **Other Measures to eliminate stereotyping and prejudices**
  - update on other measures eliminating stereotyping and prejudices (e.g. amendments to the Marriage Ordinance, the introduction of Family Status Discrimination Ordinance, and measures on the educational front to eliminate gender stereotypes)

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<sup>13</sup> including training programme and guidelines on handling cases of domestic violence, involvement of NGOs in awareness training in tackling wife battering cases for various grades of Police Officers etc.

ARTICLE 6  
EXPLOITATION OF WOMEN

*“States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”*

- **Prostitution and Traffic in Women**
  - Crimes Ordinance
    - ◆ prevent the exploitation of persons for sexual purposes
    - ◆ protection offered to girl-child
  
  - Assistance Available and Protection Rendered to Sex Workers
    - ◆ counselling and welfare assistance provided by the Family Services Centres / Integrated Family Service Centres and NGOs
    - ◆ services and support rendered by Government and NGOs to ensure health and safety of sex workers<sup>14</sup>
    - ◆ regulations to protect women sex workers, if any<sup>15</sup>
  
  - Measures Against Trafficking of Women
    - ◆ actions taken by law enforcement agencies against trafficking of women to Hong Kong<sup>16</sup>
  
- **Application of Laws against Violence to Prostitutes**
  - Laws relating to violence against women apply equally to prostitutes as any other women in society.

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<sup>14</sup> re. para. 325 of the concluding comments of UN Committee on the Elimination of Discrimination against Women on the initial report under CEDAW

<sup>15</sup> re. para. 326 of the concluding comments of UN Committee on the Elimination of Discrimination against Women on the initial report under CEDAW

<sup>16</sup> re. para. 326 of the concluding comments of UN Committee on the Elimination of Discrimination against Women on the initial report under CEDAW

ARTICLE 7  
EQUALITY IN POLITICAL AND PUBLIC LIFE  
AT THE NATIONAL LEVEL

*“States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:*

- a. To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;*
- b. To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;*
- c. To participate in non-governmental organizations and associations concerned with the public and political life of the country.”*

- **Bill of Rights**
- **Women in the Legislative Council and District Organisations**
  - right to vote and to stand for election<sup>17</sup>
  - updated statistics on registered electors and voters in different elections
  - updated statistics on candidates in the elections to the Legislative Council and district organizations
- **Women in Executive Council**
  - gender composition of Executive Council

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<sup>17</sup> re. para. 319 & 320 of the concluding comments of UN Committee on the Elimination of Discrimination against Women on the initial report under CEDAW

- **Women in Rural Elections**<sup>18</sup>
  - to be covered under Article 14 “Rural Women”
  
- **Women in Advisory and Statutory Bodies (ASBs)**<sup>19</sup>
  - brief introduction on the network of government advisory boards and committees
  - appointment criteria of members in government ASBs
  - new measures to increase women representation in government ASBs since 1999 (e.g. increasing the number of female candidates in the Central Personality Index, review progress on female participation in ASBs)
  
- **Women in Public Offices**
  - Government’s policy on recruitment and promotion
  - Statistics on women in public offices and Directorate Grade<sup>20</sup>

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<sup>18</sup> re. para. 320 of the concluding comments of UN Committee on the Elimination of Discrimination against Women on the initial report under CEDAW

<sup>19</sup> re. para. 321 & 322 of the concluding comments of UN Committee on the Elimination of Discrimination against Women on the initial report under CEDAW

<sup>20</sup> re. para. 321 & 322 of the concluding comments of UN Committee on the Elimination of Discrimination against Women on the initial report under CEDAW

ARTICLE 8  
EQUALITY IN POLITICAL AND PUBLIC LIFE AT THE  
INTERNATIONAL LEVEL

*“States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.”*

- **Officers representing Government at International Level**



ARTICLE 9  
EQUALITY IN NATIONALITY LAWS

*“1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.*

*2. States Parties shall grant women equal rights with men with respect to the nationality of their children.”*

- **Acquisition and Transmission of Nationality**
  - Nationality Law of PRC
  
- **Basic Law**
  
- **Immigration Ordinance**
  - right of abode

ARTICLE 10  
EQUALITY IN EDUCATION

*“States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:*

*a. The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;*

*b. Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;*

*c. The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging co-education and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;*

*d. The same opportunities to benefit from scholarships and other study grants;*

*e. The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;*

*f. The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;*

*g. The same opportunities to participate actively in sports and physical education;*

*h. Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.”*

- **The Sex Discrimination Ordinance**
  - Part IV, Sex Discrimination Ordinance  
Section 25: Discrimination by responsible bodies for educational establishments
  
- **Participation of Girls in School Education**
  - Nine-Year Universal Basic Education
    - ♦ update on the introduction and statistics mentioned in the initial report<sup>21</sup>
    - ♦ recent work, if any, relevant to gender considerations (e.g. Secondary School Places Allocation System)
  
- **School Curriculum**
  - updates on work relating to promotion of gender equality and sex education (including family planning)
  
- **The Further and Higher Education Sectors**
  - updates on the admission criteria and statistics on the first degree graduates of UGC-funded programmes mentioned in the initial report (including segregation in the educational specialization of women and men)<sup>22</sup>
  - statistics on post-graduates of UGC-funded programmes
  - gender and women studies in tertiary institutions<sup>23</sup>

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<sup>21</sup> including compulsory attendance at schools, statistics on drop-out rate of male and female students and nature of schools (co-educational / single-sex schools)

<sup>22</sup> re. para. 329 & 330 of the concluding comments of UN Committee on the Elimination of Discrimination against Women on the initial report under CEDAW

<sup>23</sup> re. para. 330 of the concluding comments of UN Committee on the Elimination of Discrimination against Women on the initial report under CEDAW

- **Participation of Women in Sub-degree Level Education**
  - Associate Degree
  
- **Continuing Education for Women**
  - continuing education opportunities for women<sup>24</sup>
  - IT capacity building initiatives for women
  - Project Yi Jin
  - other related new initiatives<sup>25</sup>
  
- **Vocational Training**
  - update on the work / information relating to vocational training as mentioned in the first report<sup>26</sup>
  - new initiatives on vocational training for women since 1999
  
- **Special Schools for Girls with Disabilities**
  
- **Elimination of Gender Stereotyping**
  - Teacher Education
    - ◆ update of work carried out by Hong Kong Institute of Education<sup>27</sup>
  - Research on Stereotyping
    - ◆ researches conducted by Equal Opportunities Commission

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<sup>24</sup> adult education courses on primary and secondary education, subvention to NGOs for informal education courses, OUHK, part-time vocational education and industrial training courses and Continuing Education Fund

<sup>25</sup> such as compilation of good empowerment practices for women and compilation of directory on services for women by Women's Commission

<sup>26</sup> admission criteria, the application of Sex Discrimination Ordinance, coverage of the vocational training courses, statistics on students taking up vocational training courses

<sup>27</sup> including seminars and workshops

- **Scholarships and Study Grants/Loans**
  - update on the financial assistance to students available, and scholarships or loans offered by women's groups / offered to female students exclusively, as mentioned in the initial report
  
- **Women in the Teaching Profession<sup>28</sup>**
  - statistics on the teaching profession, especially in the tertiary institutions

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<sup>28</sup> re. para. 329 & 330 of the concluding comments of UN Committee on the Elimination of Discrimination against Women on the initial report under CEDAW

ARTICLE 11  
EQUALITY IN EMPLOYMENT AND LABOUR RIGHTS

*“1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:*

- a. The rights to work as an inalienable right of all human beings;*
- b. The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;*
- c. The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;*
- d. The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;*
- e. The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;*
- f. The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.*

*2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:*

- a. To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;*
- b. To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;*

c. *To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;*

d. *To provide special protection to women during pregnancy in types of work proved to be harmful to them.*

3. *Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.”*

- **Reservations entered in respect of this Article and the justification**
- **Legislation against Discrimination in Employment Field**
  - Equal Employment Rights and Opportunities
    - ♦ right to participate in the labour force and in the job of their choice
    - ♦ Legislation – Sex Discrimination Ordinance (Part III – Discrimination in Employment Field)  
Section 11: Discrimination against applicants and employees
  - Qualifying Bodies and Vocational Training
    - ♦ Legislation – Sex Discrimination Ordinance (Part III – Discrimination in Employment Field)  
Section 17: Qualifying bodies  
Section 18: Persons concerned with provision of vocational training
  - Discrimination based on Marital Status and Pregnancy
    - ♦ update on information mentioned in the first report, including prohibition of discrimination on the grounds of marital status and pregnancy in employment and Employment Ordinance
  - Sexual Harassment
    - ♦ Sex Discrimination Ordinance

- Maternity Leave and Maternity Leave Pay
- Other Legislative Protection
  - ◆ Women and Young Persons (Industry) Regulations
  - ◆ Factories and Industrial Undertakings Regulations
  - ◆ Construction Sites (Safety) Regulations
  - ◆ Dutiable Commodities (Liquor) Regulations
- **Administrative Measures to Address Sex Discrimination**
  - update on changes to Code of Practice on Employment, if any, since 1999
- **Administrative Measures to Address Discrimination based on Age**
  - update on the publicity programmes and services relating to the elimination of age discrimination at workplace mentioned in the first report (e.g. conciliation services to handle complaints relating to age discrimination by the Labour Department)
  - update on the statistics relating to discrimination based on age (e.g. the number of complaints cases received by the Labour Department, number of workers of different ages by gender, placement rate of job-seekers by age)
  - new initiatives on eliminating discrimination based on age since 1999
- **Women and Poverty**<sup>29</sup>
  - wage discrepancies between men and women
- **Equal Pay for Work of Equal Value**<sup>30</sup>
  - initiatives by the Equal Opportunities Commission in promoting the implementation of equal pay for work of equal value

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<sup>29</sup> re. para. 331 of the concluding comments of UN Committee on the Elimination of Discrimination against Women on the initial report under CEDAW

<sup>30</sup> re. para. 332 of the concluding comments of UN Committee on the Elimination of Discrimination against Women on the initial report under CEDAW



- **Women's Participation and Standing in the Economy**
  - update on the statistics relating to the above as provided in the initial report<sup>31</sup>
- **Employment Services Provided to Women**
  - update on employment services provided to women mentioned in the initial report<sup>32</sup>
- **Task Force on Employment**
  - job creation for women
- **Youth Pre-employment Training Programme**
- **Youth Work Experience and Training Scheme**
- **Retraining Programmes<sup>33</sup>**
  - update on the Employees Retraining Scheme as mentioned in the first report
  - new retraining programme initiatives specific to women since 1999
- **Child-care Facilities**
  - update on the child-care facilities provided as mentioned in the first report<sup>34</sup>

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<sup>31</sup> which included labour force participation rate, education level of workforce by sex, unemployment rate by sex, distribution of female employees in various occupations, statistics on monthly employment earnings by sex and women in public offices

<sup>32</sup> including free employment services for all job-seekers through the job centers, Job Matching Programme, employment services to job-seekers with disabilities, measures to eliminate discriminatory practices on recruitment

<sup>33</sup> re. para. 331 of the concluding comments of UN Committee on the Elimination of Discrimination against Women on the initial report under CEDAW

<sup>34</sup> including crèche, nurseries, special child care centers for disabled children, Fee Assistance Scheme, Child Care Services Ordinance and the Child Care Centres

- recent development / work / new initiatives relating to child-care facilities (e.g. harmonization of kindergartens and child care services, pilot test on mutual help childcare services under a membership model suggested by Women's Commission)
- **Working Conditions**
  - Maternity Protection
    - ♦ publicity and education programme on the rights and benefits of maternity protection
  - Occupational Safety and Health Ordinance and subsidiary regulations
  - Factories and Industrial Undertakings Ordinance and subsidiary regulations
- **Protection of Migrant Workers and Foreign Domestic Helpers<sup>35</sup>**
  - protection under the labour legislation
  - special measures to protect their employment rights and benefits
  - channels to file employment claims and related promotion and publicity efforts
  - measures to assist workers exposed to abuse and custodial violence

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<sup>35</sup> re. para. 327 & 328 of the concluding comments of UN Committee on the Elimination of Discrimination against Women on the initial report under CEDAW

ARTICLE 12  
EQUALITY IN ACCESS TO HEALTH FACILITIES

*“1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of healthcare in order to ensure, on a basis of equality of men and women, access to healthcare services, including those related to family planning.*

*2. Notwithstanding the provisions of paragraph 1 of the article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”*

- **The Sex Discrimination Ordinance**
  - ◆ Legislation – Sex Discrimination (Section 28)  
Section 28: Discrimination in provision of goods, facilities or services
  
- **Government Strategy and Targets**
  
- **Access to Care**
  - Provision of Service by the Hospital Authority
    - ◆ update on services provided by Hospital Authority mentioned in the initial report
  
  - Provision of Service by the Department of Health
    - ◆ update on the services provided by the Department of Health (including antenatal, postnatal and women health service)
    - ◆ update on the relevant statistics
    - ◆ recent new services provided (e.g. breast-feeding, psychological health related to child birth, child care and parenting programme, health care services for the girl-child, cervical screening)
  
  - Disabled Women

- **Health Education**
  - update on the work of Central Health Education Unit of the Department of Health since 1999
  - update on the recent work of Family Planning Association of Hong Kong since 1999
  - update on the recent work of Health Care and Promotion Fund since 1999
  
- **Family Planning**
  - Education
    - ◆ Update on the education work on family planning mentioned in the initial report<sup>36</sup>
    - ◆ New initiatives since 1999
  
  - Family Planning Facilities
    - ◆ Updates on the available family planning facilities (e.g. Maternal and Child Health Centres and Family Planning New family planning facilities / services since 1999)
  
  - Abortion
    - ◆ The Offences Against the Person Ordinance
  
- **HIV Prevention and Care**
  
- **Women Smoking**

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<sup>36</sup> sex education as part of various school subjects, training courses for teachers on sex education and teaching packages and Educational Television programmes

ARTICLE 13  
WOMEN IN ECONOMIC, SOCIAL AND CULTURAL LIFE

*“States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:*

- a) The right to family benefits;*
- b) The right to bank loans, mortgages and other forms of financial credit;*
- c) The right to participate in recreational activities, sports and all aspects of cultural life.”*

- **Family Benefits: Social Security**

- Overall Objective of Social Security
- Comprehensive Social Security Assistance (CSSA) Scheme
  - ◆ Coverage of CSSA Scheme
  - ◆ statistics relating to CSSA Scheme
  - ◆ Support for Self-reliance
    - Ending Exclusion Project
    - Active Employment Assistance Programme
    - Community Work Programme
- Eligibility for the CSSA Scheme
- Assistance Payable under the CSSA Scheme (covers rates, special grants and other relevant information)
- Social Security Allowance (SSA) Scheme
- Old Age Allowance (OAA)
- Disability Allowance (DA)
- Government Expenditure on Social Security

- **Family Benefits: Tax Allowance**
  - Updates on the tax allowance available relating to family as mentioned in the initial report<sup>37</sup>
- **Community Investment and Inclusion Fund**
- **New Arrival Women**
  - services rendered to new arrival women
- **Single Parents**
- **Loans, Mortgages and Credit**
  - Sex Discrimination Ordinance
- **Recreation, Sport and Cultural Life**
  - Arts
    - ◆ update on the information mentioned in the initial report (e.g. Hong Kong Arts Development Council, government expenditure on art activities and female artists)
  - Sports
    - ◆ update on the information mentioned in the initial report (e.g. provision of recreation and sports programmes and Hong Kong Sports Development Board)
    - ◆ government expenditure on recreation and sports programmes
    - ◆ new initiatives to encourage women's participation in sports activities

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<sup>37</sup> child allowance; allowance for supporting dependent brothers, sisters, parents or grandparents; disabled dependent allowance; and single parent allowance

ARTICLE 14  
RURAL WOMEN

*“1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including working in the non-monetised sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.*

*2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:*

*a. To participate in the elaboration and implementation of development planning at all levels;*

*b. To have access to adequate health care facilities, including information, counselling and services in family planning;*

*c. To benefit directly from social security programmes;*

*d. To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;*

*e. To organise self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;*

*f. To participate in all community activities;*

*g. To have access to agriculture credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reforms as well as in land resettlement schemes;*

*h. To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”*

- In the view of the small area of the HKSAR, it is not practicable to distinguish women in the rural areas from those who live in urban areas. All parts of the HKSAR are served with electricity, water and sanitation services. Goods, services and facilities for women are provided for women in all parts of the territory.
- **Definition of “Indigenous Population” in Hong Kong**
- **Succession of Land Properties in the New Territories and Review of Land Policy<sup>38</sup>**
  - Chinese customary law of succession
  - New Territories Land (Exemption) Ordinance
  - Small house policy
- **Rural Elections**
  - election of village representatives
  - Rural Committee
  - Heung Yee Kuk
  - relationship between rural representative system and Legislative Council and district organizations

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<sup>38</sup> re. para. 333 of the concluding comments of UN Committee on the Elimination of Discrimination against Women on the initial report under CEDAW



ARTICLE 15  
EQUALITY IN LEGAL AND CIVIL MATTERS

- “1. *States Parties shall accord to women equality with men before the law.*
2. *States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.*
3. *States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.*
4. *States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.”*

- **Reservations entered in respect of this Article and the justifications**
- **Women’s Legal Status**
  - Bill of Rights
  - Women’s rights to make contracts in their own name and rights to administer property (Sex Discrimination Ordinance Section 29-30)
  - Treatment of Women in Court
    - ◆ equality before the law
    - ◆ proposed amendment to Evidence (Miscellaneous Provisions) Bill on competence and compellability of spouses in criminal proceedings
    - ◆ access to legal aid
    - ◆ others including Married Persons Status Ordinance, Jury Ordinance and Common Juror’s List

- **Appointment to the Judiciary**<sup>39</sup>
- **Civil Rights**
  - Hong Kong Bill of Rights and Basic Law
  - Women's legal rights to liberty of movement and freedom to choose her residence
- **Study conducted by Law Reform Commission**
  - progress on the study on the domicile of married women

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<sup>39</sup> re. para. 321 of the concluding comments of UN Committee on the Elimination of Discrimination against Women on the initial report under CEDAW

ARTICLE 16  
EQUALITY IN FAMILY LAW

*“1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:*

*a. The same right to enter into marriage;*

*b. The same right freely to choose a spouse and to enter into marriage only with their free and full consent;*

*c. The same rights and responsibilities during marriage and its dissolution;*

*d. The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children, in all cases the interests of the children shall be paramount;*

*e. The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;*

*f. The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;*

*g. The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;*

*h. The same rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.*

*2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a*

*minimum age for marriage and to make the registration of marriages in an official registry compulsory.”*

- **Hong Kong Bill of Rights and Basic Law**
- **Rights in respect of Marriage**
  - Marriage Ordinance
    - ◆ monogamous marriage
    - ◆ marriageable age
  - Matrimonial Causes Ordinance
  - Legislation regarding Maintenance and Property Rights
- **Recovery of Maintenance**
  - Maintenance Orders
    - ◆ improved procedures of the Attachment of Income Order Scheme
  - Recovery of Maintenance from Overseas
  - Guardianship of Minors Ordinance
- **Legislation regarding Guardianship, Wardship and Adoption of Children**
  - Adoption Ordinance
  - The Guardianship of Minors Ordinance
  - Child Abduction and Custody Ordinance

**Part I**

**General Profile**

**of the Hong Kong**

**Special Administrative**

**Region**

## LAND AND PEOPLE

*Background statistical information, using the most up-to-date figures available, is as follows -*

### (a) Population by sex

<u>Sex</u>	<u>Mid 1987</u> (million)	<u>Mid 1992</u> (million)	<u>Mid 1999</u> (million)
Male	2.9	2.9	3.4
Female	2.7	2.9	3.4
Total	5.6	5.8	6.8

### (b) Population by age group and sex

<u>Age</u>	<u>Sex</u>	<u>Percentage of total population</u>		
		<u>Mid 1987</u>	<u>Mid 1992</u>	<u>Mid 1999</u>
Under 15	Male	11.7	10.6	8.8
	Female	10.8	9.9	8.2
15-64	Male	36.3	36.2	36.6
	Female	33.2	34.2	35.8
65 and over	Male	3.4	4.0	4.9
	Female	4.5	5.0	5.8
All age groups	Male	51.4	50.8	50.3
	Female	48.6	49.2	49.7

(c) Educational attainment (for population aged 15 and above)

<u>Educational attainment</u>	<u>Percentage</u>					
	<u>1986</u>		<u>1991</u>		<u>1996</u>	
	Male	Female	Male	Female	Male	Female
No schooling/ kindergarten	7.0	21.6	7.1	18.5	5.1	13.8
Primary	30.8	27.7	26.1	24.3	22.7	22.6
Secondary and above	62.2	50.7	66.8	57.2	72.2	63.6
	100.0	100.0	100.0	100.0	100.0	100.0

(d) Literacy rate (1984) : 88.4% (1996) : 90.5%

(e) Percentage of population (excluding mutes) aged five and over by usual language/dialect

<u>Usual language/dialect</u>	<u>Percentage</u>	
	<u>1991</u>	<u>1996</u>
Cantonese	88.7	88.7
Putonghua	1.1	1.1
Other Chinese dialects	7.0	5.8
English	2.2	3.1
Others	1.0	1.3
	<u>100.0</u>	<u>100.0</u>

*Note: The HKSAR Government will collect data on the ethnic composition of the Hong Kong population in the 2001 Population census, which will be conducted in March 2001. We hope to include that information in our next report under the Convention. Meanwhile, we have commissioned a sample survey of the ethnic minorities with a view to obtaining a broad indication of*

*their numbers, composition and demographic characteristics. At the time that we finalised this report, that survey had yet to be concluded. But we will make its findings available to the Committee at the earliest opportunity.*

(f) Crude birth and death rates

	<u>1987</u>	<u>1992</u>	<u>1998</u>
Crude birth rate (per 1,000 population)	12.6	12.3	7.9
Crude death rate (per 1,000 population)	4.8	5.3	4.9

(g) *Life expectancy at birth (Number of years)*

<u>Sex</u>	<u>1987</u>	<u>1992</u>	<u>1998</u>
Male	74.2	74.8	77.2
Female	79.7	80.7	82.6

(h) *Infant mortality rate (per 1,000 live births)*

<u>1987</u>	<u>1992</u>	<u>1998</u>
7.4	4.8	3.2

(i) Maternal mortality rate (Number of deaths per 100,000 total births)

<u>1987</u>	<u>1992</u>	<u>1998</u>
4.3	5.5	1.9



(j)	Fertility rate			
		<u>1987</u>	<u>1992</u>	<u>1998</u>
	General fertility rate (per 1,000 women aged 15-49) excluding foreign domestic helpers	47.9	46.3	29.1
(k)	Percentage of household heads by sex			
	<u>Sex</u>	<u>1986</u>	<u>1991</u>	<u>1996</u>
	Male	73.0	74.3	72.8
	Female	27.0	25.7	27.2
(l)	Unemployment rate			
	(averages of the estimates obtained from the quarterly General Household Surveys of the year)			
		<u>1987</u>	<u>1992</u>	<u>1998</u>
		1.7	2.0	4.7

(m) Rate of inflation

(i) Composite Consumer Price Index (CPI)

<u>Year</u>	<u>Annual rate of increase in CPI(%)</u>
1990	10.2
1991	11.6
1992	9.6
1993	8.8
1994	8.8
1995	9.1
1996	6.3
1997	5.8
1998	2.8

Note : The Composite CPI is compiled on the basis of the expenditure patterns of about 90% of Hong Kong households with an average monthly expenditure of HK\$4,000 - HK\$59,999 in the base period of October 1994 - September 1995. This approximately corresponds to a monthly expenditure range of HK\$4,700 - HK\$71,400 at 1998 prices.

(ii) *Implicit price deflators of Gross Domestic Product (GDP)*

Deflator Year	(1990 = 100)	Annual Rate of change (%)
1990	100.0	7.5
1991	109.2	9.2
1992	119.8	9.7
1993	130.0	8.5
1994	139.0	6.9
1995	142.5	2.5
1996	150.9	5.9
1997 <sup>#</sup>	159.8	5.9
1998 <sup>#</sup>	161.2	0.9

(n) Gross Domestic Product for 1990 - 1998

Year	At current market prices (US\$ Mn)	At constant (90) market prices (US\$ Mn)
1990	74,791	74,791
1991	86,027	78,756
1992	100,676	84,013
1993	116,011	89,222
1994	130,808	94,139
1995	139,238	97,703
1996	154,110	102,114
1997 <sup>#</sup>	171,105	107,084
1998 <sup>#</sup>	163,645	101,543

(o) Per capita income

*(Per capita GDP for 1990-1998)*

Year	At current Market prices (US\$)	At constant (1990) Market prices (US\$)
1990	13,111	13,111
1991	14,956	13,692
1992	17,357	14,484
1993	19,660	15,120
1994	21,674	15,598
1995	22,618	15,871
1996	24,419	16,180
1997 <sup>#</sup>	26,315	16,469
1998 <sup>#</sup>	24,472	15,185

(p) External debt : The HKSAR Government does not incur external debts.

<sup>#</sup>GDP figures refer to estimates released in December 1999.

## **GENERAL POLITICAL STRUCTURE**

### **Constitutional document**

2. In accordance with the provisions of Article 31 and sub-paragraph 13 of Article 62 of the Constitution of the People's Republic of China (PRC), as well as the relevant decisions of the National People's Congress (NPC) adopted at the Third Session of the Seventh NPC on 4 April 1990, the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR) was established on 1 July 1997. The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China was also put into effect on 1 July 1997. Under the principle of "One Country, Two Systems", the socialist system and policies are not practised in the HKSAR and Hong Kong's previous capitalist system and way of life will remain unchanged for 50 years. A copy of the Basic Law is at Annex 1.

3. To fully realise the principle of "One Country, Two Systems", the Basic Law sets out the broad framework of the relationship between the Central Authorities and the HKSAR (Chapter II); the fundamental rights and duties of Hong Kong residents (Chapter III); the political structure (Chapter IV); economic, financial and social systems of the HKSAR (Chapters V and VI); its conduct of external affairs (Chapter VII); and the interpretation and amendment of the Basic Law (Chapter VIII).

4. Among other matters, the Basic Law provides that -

- (a) the HKSAR shall exercise a high degree of autonomy except in defence and foreign affairs and enjoy

executive, legislative and independent judicial power, including that of final adjudication. The power of final adjudication of the HKSAR shall be vested in the Court of Final Appeal established in the Region;

- (b) the executive authorities and legislature of the HKSAR shall be composed of permanent residents of Hong Kong;
- (c) the laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravenes the Basic Law, and subject to any amendment by the legislature of the HKSAR;
- (d) national laws shall not be applied in the HKSAR except for those listed in Annex III to the Basic Law and that the laws listed therein shall be applied locally by way of promulgation or legislation by the Region. The Standing Committee of the National People's Congress may add to or delete from the list of laws in Annex III after consulting the Committee for the Basic Law of the HKSAR and the HKSAR government;
- (e) the HKSAR is authorised to conduct relevant external affairs on its own. The HKSAR may on its own, using the name "Hong Kong, China", maintain and develop

relations and conclude and implement agreements with foreign states and regions and relevant international organisations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields;

- (f) the HKSAR remains a free port, a separate customs territory and an international financial centre. There shall be free flow of capital. HKSAR issues and manages its own currency;
- (g) the HKSAR formulates its own policies on the development of education, science, culture, sports, labour and social services, and Hong Kong residents have the freedom of religious belief;
- (h) Hong Kong residents enjoy a wide range of freedoms and rights and this will be further dealt with under the section of “General Legal Framework Within Which Human Rights Are Protected”; and
- (i) the provisions of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.

## **System of Government**

### **General structure**

5. The Chief Executive of the HKSAR is the head of the Region. An Executive Council assists him in policy-making. The Legislative Council of the HKSAR is the legislature of the Region – it enacts, amends or repeals laws, approves taxation and public expenditure, and raises questions on the work of the government. The method for the formation of the Legislative Council is stipulated in the Basic Law and the "Decision on the Method for the Formation of the First Government and the First Legislative Council of the HKSAR" adopted at the Third Session of the Seventh NPC on 4 April 1990. District organisations – established in accordance with Articles 97 and 98 of the Basic Law – are consulted on district administration and other affairs, though they are not organs of political power. There is an independent judiciary.

### **Chief Executive**

6. The Basic Law provides that the Chief Executive of the HKSAR shall be selected by election or through consultations held locally and be appointed by the Central People's Government. The method for selecting the Chief Executive is to be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress.

7. The first Chief Executive was selected in accordance with the NPC's "Decision on the Method for the Formation of the First Government and the First Legislative Council of the HKSAR". A Selection Committee was formed to recommend a candidate to the Central People's Government for appointment. The Selection



Committee comprised 400 members from various sectors of the community. In future, the Chief Executive will be elected by an Election Committee composing of 800 members.

8. Annex I of the Basic Law further provides that amendments to the method for selecting the Chief Executive for the terms subsequent to the year 2007 may be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive. Any such amendments are to be reported to the Standing Committee of the NPC for approval. Article 45 of the Basic Law provides that the ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

### **Executive Council**

9. Members of the Executive Council of the HKSAR are appointed by the Chief Executive from among the principal officials of the executive authorities, members of the Legislative Council and public figures. Their appointment or removal shall be decided by the Chief Executive. The total number of these appointed members is not prescribed. At present, there are 13 appointed members.

10. The Council normally meets once a week. The Chief Executive presides over its meetings. Article 56 of the Basic Law requires him to consult the Executive Council before making important policy decisions or introducing bills to the Legislative Council. Members tender their advice on an individual basis, but the Council's conclusions are presented as collective decisions.

## **Legislative Council**

11. Article 68 of the Basic Law provides that the HKSAR Legislative Council shall be constituted by election. The method for its formation shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The composition of the Legislative Council during its first three terms is prescribed as follows in Annex II to the Basic Law –

<u>Membership</u>	<u>First term</u> 1998-2000 (two years)	<u>Second term</u> 2000-2004 (four years)	<u>Third term</u> 2004-2008 (four years)
(a) elected by geographical constituencies through direct elections	20	24	30
(b) elected by functional constituencies	30	30	30
(c) elected by an election committee	10	6	-
Total	60	60	60

12. The present (first term) Legislative Council assumed office on 1 July 1998. It replaced the Provisional Legislative Council that had been formed to take over the role of the former Legislative Council of Hong Kong (established under British rule). The latter ceased to exist on 1 July 1997, when the People's Republic of China resumed the exercise of sovereignty over Hong Kong and the previous constitutional instruments lapsed.

13. Annex II of the Basic Law provides that amendments to the method for forming the Legislative Council after 2007 may be made with the endorsement of a two-thirds majority of all the members of the Council and the consent of the Chief Executive. Any such amendments are to be reported to the Standing Committee of the NPC for the record. According to Article 68 of the Basic Law, the ultimate aim is the election of all the members of the Legislative Council by universal suffrage.

14. According to Article 73 of the Basic Law, the powers and functions of the Legislative Council include enactment, amendment or repeal of laws in accordance with the provisions of the Basic Law and legal procedures; examining and approving budgets introduced by the government; approving taxation and public expenditure; receiving and debating the policy addresses of the Chief Executive; raising questions on the work of the government; debating any issue concerning public interests; endorsing the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court; and receiving and handling complaints from Hong Kong residents. The Council is also empowered to impeach the Chief Executive under certain prescribed circumstances.

### **District Councils**

15. The 18 District Councils came into being on 1 January 2000 by virtue of the District Councils Ordinance. The Councils advise the HKSAR Government on district affairs and promote recreational and cultural activities, and environmental improvements within their respective districts. District Councils comprise both elected members

and appointed members. Additionally, in the case of District Councils in rural areas, the local Rural Committee Chairmen serve as ex-officio members. The HKSAR is divided into 390 constituencies, each returning one elected member. There are 102 appointed members and 27 ex-officio members.

16. The Councils have a wider role than the Provisional District Boards which they replaced. The latter were established on 1 July 1997 by the HKSAR Government in order to take up the advisory role of the former District Boards which were dissolved when the People's Republic of China resumed the exercise of sovereignty over Hong Kong.

#### **Abolition of the Municipal Councils**

17. In Part II of the 13<sup>th</sup> Report (paragraphs 12 and 13) we explained the role and function of the then existing Regional and Urban Council, known collectively as the Municipal Councils. Like the former Legislative Council and District Boards, those bodies were dissolved on 30 June 1997 and replaced – when China resumed the exercise of sovereignty over Hong Kong on 1 July 1997 – by Provisional Councils. And, following public consultations in mid-1998, the decision was taken to reorganise the structure for delivering municipal services in order to improve co-ordination and efficiency. Analysis of the response indicated general support for a new structure for the delivery of services whereby the Government would resume direct responsibility for food safety and environmental hygiene. There was also support for a reform of the administrative framework for the delivery of arts and culture, sports and recreation services.

18. In December 1999, the Legislative Council passed the Provision of Municipal Services (Reorganization) Bill. This provides the legal basis for the reorganisation of the municipal services. The Provisional Municipal Councils were dissolved after the terms of office of the incumbent members expired on 31 December 1999. The Government set up new dedicated agencies to be responsible for food safety, environmental hygiene and leisure and cultural services with effect from January 2000.

### **The structure of the Administration**

19. The Chief Executive is the head of the HKSAR Government. If the Chief Executive is not able to discharge his duties for a short period, such duties will temporarily be assumed by the Chief Secretary for Administration, Financial Secretary or Secretary for Justice in that order of precedence.

20. The Administration of the HKSAR Government comprises a Department of Administration, a Department of Finance, a Department of Justice, and various bureaux, divisions and commissions. There are currently 14 policy bureaux and two resource bureaux concerned respectively with finance and the civil service. The bureaux, each headed by a Secretary, collectively form the Government Secretariat.

21. With certain exceptions, the heads of government departments are responsible to the bureau Secretaries for the direction of their departments and the efficient implementation of approved government policy. The exceptions are the Independent Commission Against

Corruption and the Commission of Audit, each of which functions independently and is accountable to the Chief Executive.

### **The judicial system of the HKSAR**

22. The legal system is firmly based on the rule of law and a Judiciary which is independent of the executive authorities and the legislature.

23. Article 19 of the Basic Law provides that the HKSAR shall be vested with independent judicial power, including that of final adjudication. The courts of the HKSAR shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by the legal system and principles previously in force in Hong Kong shall be maintained.

24. The courts of justice comprise the Court of Final Appeal, the High Court (which consists of the Court of Appeal and the Court of First Instance), the District Court, the Magistracy, the Lands Tribunal, the Labour Tribunal, the Small Claims Tribunal, the Obscene Articles Tribunal and the Coroner's Court. The courts hear and determine all criminal trials and civil disputes, whether between individuals or between individuals and Government of the Region.

25. Article 82 of the Basic Law provides that the power of final adjudication of the HKSAR shall be vested in the Court of Final Appeal of the Region, which may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal. Article 83 further provides that the structure, powers and functions of the courts of the

HKSAR at all levels are prescribed by law.

26. All judges and judicial officers must have qualified as legal practitioners in Hong Kong or in a common law jurisdiction and have substantial professional experience. Article 88 of the Basic Law provides that “Judges of the courts of the HKSAR shall be appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors.”

27. Judges have security of tenure. Article 89 of the Basic Law provides that “A judge of a court of the HKSAR may only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive on the recommendation of a tribunal appointed by the Chief Justice of the Court of Final Appeal and consisting of not fewer than three local judges. The Chief Justice of the Court of Final Appeal of the HKSAR may be investigated only for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by the Chief Executive and consisting of not fewer than five local judges and may be removed by the Chief Executive on the recommendation of the tribunal and in accordance with the procedures prescribed in this Law.”

## **GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED**

### **Rule of Law**

28. The fundamental basis for the protection of human rights is the rule of law maintained by an independent judiciary (see paragraphs 22 to 27 above). The principles that inform the rule of law are -

- (a) **the supremacy of the law:** No individual is punishable or can lawfully be made to suffer personally or financially except for a breach of law established before the independent courts. Where, under the law, an official or an authority has a discretion to make a decision, that discretion must be exercised legally, fairly and reasonably. Where it does not do so, the decision must be capable of successful challenge before the courts. The Basic Law guarantees the right of Hong Kong residents to institute legal proceedings in the courts against the acts of the executive authorities and their personnel; and
- (b) **equality before the law:** Article 25 of the Basic Law provides that all Hong Kong residents shall be equal before the law. Article 22 provides that all offices set up in the HKSAR by departments of the Central



People's Government, or by provinces, autonomous regions, or municipalities directly under the Central Government and personnel of these offices shall abide by the laws of the Region. Article 14 provides that members of the garrison shall, in addition to abiding by national laws of the PRC, abide by the laws of the HKSAR. Article 35 also provides that Hong Kong residents shall have the right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel. No government authority or official, and no individual, is above the law. All persons, regardless of race, rank, politics, religion or sex, are equal before the law and subject to the same law. Individuals and the HKSAR Government have the same access to the courts to enforce legal rights or defend an action.

29. Some commentators have argued that the principle of equality before the law was compromised by a recent amendment to the Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of the HKSAR). The amendment in question was an adaptation of the reference to the "Crown" by the "State" in section 66 of the Ordinance. Before 1 July 1997, section 66 used to provide that no ordinance was binding on the Crown unless it expressly stated, or necessarily implied, that the Crown was bound. After 1 July 1997, the reference to the "Crown" in section 66 had to be amended. The amendment to section

66 of Chapter 1 was simply made in order to preserve the substance of the law before 1 July 1997 and reflect the change of sovereignty.

### **Human rights guarantees in the Basic Law**

30. Article 4 of the Basic Law provides that the HKSAR shall safeguard the rights and freedoms of residents of the HKSAR and of other persons in the Region in accordance with law. The Basic Law guarantees a wide range of freedoms and rights, including -

- (a) equality before the law;
- (b) freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike;
- (c) freedom of the person; freedom from torture; freedom from arbitrary or unlawful arrest, detention or imprisonment; freedom from arbitrary or unlawful search of the body; and right against arbitrary or unlawful deprivation of life;
- (d) freedom from arbitrary or unlawful search of, or intrusion into, one's home or other premises;
- (e) freedom and privacy of communication;

- (f) freedom of movement within the HKSAR and freedom of emigration to other countries and regions and freedom to travel and to enter or leave the Region;
- (g) freedom of conscience; freedom of religious belief and freedom to preach and to conduct and participate in religious activities in public;
- (h) freedom of choice of occupation;
- (i) freedom to engage in academic research, literary and artistic creation, and other cultural activities;
- (j) right to confidential legal advice, access to the courts, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies; right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel;
- (k) right to social welfare in accordance with law; and
- (l) freedom of marriage and right to raise a family freely.

Persons in Hong Kong other than Hong Kong residents shall, in accordance with law, enjoy the rights and freedoms of Hong Kong residents prescribed by Chapter III of the Basic Law. In addition, permanent residents of the HKSAR enjoy the rights to vote and to stand for election in accordance with law.

## **Effect of other human rights instruments in HKSAR law**

31. According to Article 39 of the Basic Law -

“The provisions of the ICCPR, the ICESCR and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.

The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.”

32. In general, and as is usual in common law systems, treaties that apply to Hong Kong (including human rights treaties) do not themselves have the force of law in the domestic legal system of Hong Kong. They cannot be directly invoked before the courts as the source of individual rights. However, the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with these international obligations. The usual method of giving effect in local law to treaty obligations (when these require some change in existing laws or practice) is to enact specific new legislation<sup>40</sup>. Where this results in the creation or definition of specific legal rights and where these rights are denied or interfered with (or there is the threat of such action), a remedy will be available in the courts through the ordinary procedures of civil litigation; or the law may provide criminal sanctions.

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<sup>40</sup> An example is the Crimes (Torture) Ordinance (Chapter 427 of the Laws of the HKSAR) which was enacted to give effect in Hong Kong to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

## **Bill of Rights Ordinance**

33. The Hong Kong Bill of Rights Ordinance (BORO) (Chapter 383 of the Laws of the HKSAR) was enacted in June 1991 specifically to give effect in local law to the provisions of the ICCPR as applied to Hong Kong. It achieves this by setting out a detailed Bill of Rights, the terms of which are almost identical to those of the ICCPR.

## **Adoption of laws: effect on the BORO**

34. Article 160 of the Basic Law provides that the laws previously in force in Hong Kong shall be adopted as laws of the Region except for those which the Standing Committee of the NPC declares to be in contravention of the Basic Law. In February 1997, the Standing Committee considered that three sections of the BORO (relating to the interpretation and application of the Ordinance<sup>41</sup>) had an overriding effect over other laws, including the Basic Law. As such, they

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<sup>41</sup> The three sections were -

- (a) section 2(3): “In interpreting and applying this Ordinance, regard shall be had to the fact that the purpose of this Ordinance is to provide for the incorporation into the law of Hong Kong of provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong, and for ancillary and connected matters.”
- (b) section 3: “Effect on pre-existing legislation -
  - (1) All pre-existing legislation that admits of a construction consistent with this Ordinance shall be given such a construction.
  - (2) All pre-existing legislation that does not admit of a construction consistent with this Ordinance is, to the extent of the inconsistency, repealed.”
- (c) section 4: “Interpretation of subsequent legislation - All legislation enacted on or after the commencement date shall, to the extent that it admits of such a construction, be construed so as to be consistent with the International Covenant on Civil and Political Rights as applied to Hong Kong.”

contravened the Basic Law and could not be adopted.

35. The non-adoption of these sections has no effect on the protection of human rights in the HKSAR in view of the constitutional guarantee in Article 39 of the Basic Law. The substantive protections in Part II of the Ordinance (almost identical to the provisions of the ICCPR) are unchanged. So too are the remedies provided under section 6 for contravention of the Ordinance and the binding effect on the Government and all public authorities under section 7. The full text of the BORO as it now stands is at Annex 2.

### **Legal aid**

36. Legal aid, advice and assistance is provided by two organisations: the Legal Aid Department (which is part of the Government) and the Duty Lawyer Service. The latter is jointly managed and operated by the Bar Association and the Law Society, though it is wholly funded by the Government.

### **Legal Aid Department**

37. The Legal Aid Department provides legal representation to eligible persons in both civil and criminal cases heard in the District Court, the Court of First Instances, the Court of Appeal and the Court of Final Appeal. Applicants must satisfy the Director of Legal Aid of their financial eligibility (the means test) and of the justification for legal action (the merits test). In criminal cases, the Director has discretion to waive the upper limits of the means test if he considers it in the interest of justice to do so. He also has that discretion in meritorious applications where a breach of the Hong Kong Bill of Rights Ordinance or the

International Covenant on Civil and Political Rights as applied to Hong Kong is in issue. The grant of legal aid is mandatory in appeals against conviction for murder. This is to ensure that all relevant matters are placed before the court by the appellant's legal representative. The grant of Legal aid is not subject to a residence requirement.

#### The Duty Lawyer Service

38. This Service complements the legal aid services provided by the Legal Aid Department. It operates three schemes that respectively provide legal representation (the Duty Lawyer Scheme), legal advice (the Legal Advice Scheme) and legal information (the Tel Law Scheme). The Duty Lawyer Scheme offers legal representation to virtually all defendants (juvenile and adult) charged in the Magistracies who cannot afford private representation. Applicants are subject to a simple means test and a merits test, based on the "interest of justice" principle in accordance with Article 14 of the ICCPR and Article 11 of the BORO. The Legal Advice Scheme and the Tel Law Scheme respectively provide members of the public with free legal advice through individual appointments and taped information on the legal aspects of everyday problems.

39. The Legal Aid Services Council, an independent statutory body, was established in 1996. Its role is to oversee the provision of legal aid services by the Legal Aid Department and advise the Chief Executive on legal aid policy.

### **Office of the Ombudsman**

40. The Ombudsman - formerly known as the Commissioner for Administrative Complaints (COMAC) - is an independent authority, established under the Ombudsman Ordinance (previously known as the COMAC Ordinance). The Ombudsman investigates and reports on grievances arising from maladministration. “Maladministration” includes such things as inefficient, bad or improper administrative decisions, acts, recommendations or omissions. Members of the public can complain directly to The Ombudsman. He can also initiate investigations on his own volition and may publish investigation reports of public interest. Additionally, The Ombudsman is empowered to investigate complaints of non-compliance with the administrative Code on Access to Information.

41. To enable him to carry out his functions effectively, The Ombudsman is able to appoint his own staff to carry out his duties. Subject to the Ombudsman Ordinance, he may obtain any information and documents from such persons as he thinks fit; he may summon any person to provide information relating to his investigations and may enter any premises of the organizations under his jurisdiction to conduct investigations. He also has sufficient means with which to ensure that his recommendations are heard and acted upon.

42. After investigation of a complaint, The Ombudsman is empowered to report his opinion and reasons, together with a statement of any remedy and recommendation that is considered necessary, to the head



of the organisation affected. If The Ombudsman believes that there has been a serious irregularity or injustice done, he may make a report to the Chief Executive of the HKSAR. Such a report is bound by law to be laid before the Legislative Council.

43. With two exceptions, The Ombudsman has jurisdiction over all Government departments of the HKSAR and major statutory bodies. The exceptions are the Police and the Independent Commission Against Corruption (ICAC). Complaints against these departments are handled by discrete, dedicated bodies (see paragraphs 46 and 47 below).

#### **Equal Opportunities Commission**

44. The EOC was established under the Sex Discrimination Ordinance (SDO) in May 1996 and started full operation in September that year. The Commission is responsible for conducting formal investigations, handling complaints, encouraging conciliation between parties in dispute, providing assistance to aggrieved persons in accordance with the SDO, the Disability Discrimination Ordinance (DDO) and the Family Status Discrimination Ordinance (FSDO). It undertakes research programmes and public education to promote equal opportunities in the community. The Commission is also empowered to issue codes of practice to provide practical guidelines to facilitate public compliance with the laws on equal opportunities. Accordingly, it issued Codes of Practice on Employment in relation to the SDO and the DDO in December 1996. It issued a similar code in relation to the FSDO in March 1998.

## **Privacy Commissioner for Personal Data**

45. The Personal Data (Privacy) Ordinance (“PDPO”) provides for statutory control of the collection, holding and use of personal data in both the public and private sectors. Its provisions are based on internationally accepted data protection principles. It applies to personal data to which access is reasonably practicable whether they are in computerised, manual, (for example, paper file) or audio-visual form. To promote and enforce compliance with its provisions, the Ordinance provides for an independent statutory authority – the Privacy Commissioner for Personal Data – with appropriate powers of investigation and enforcement. His responsibilities also include promoting awareness and understanding of the Ordinance, publishing codes of practice on how to comply with the Ordinance, and examining proposed legislation that may affect the privacy of individuals in relation to personal data. The first Privacy Commissioner was appointed on 1 August 1996. He is supported by an office of 33 staff.

## **Complaints and investigations**

### **The Police**

46. The Complaints Against Police Office (CAPO) investigates all complaints about the conduct and behaviour of members of the police force. The CAPO’s investigations are monitored and reviewed by the Independent Police Complaints Council. This is an independent civilian body comprising non-official members appointed by the Chief Executive from a wide spectrum of the community and include Members of the

Legislative Council and the Ombudsman or her representative.

### **The ICAC**

47. The Independent Commission Against Corruption Complaints Committee - established in 1977- monitors and reviews the handling by the ICAC of complaints against the ICAC. Again, this is an independent committee appointed by the Chief Executive. The Committee comprises mainly of members of the Executive and Legislative Councils and a representative of The Ombudsman. Persons with complaints against the ICAC or its officers have direct access to the Committee as well as the ICAC itself. The investigation of such complaints is handled by a special unit of the ICAC Operations Department. When the unit has completed its investigation of a complaint, its conclusions and recommendations are submitted to the Committee for consideration.

### **Other disciplined services**

48. Other disciplined services departments maintain clear guidelines and procedures for handling complaints. For example, the Correctional Services Department (CSD), which runs HKSAR's prisons, has a Complaints Investigation Unit to manage its internal grievance redress system for staff and prisoners. CSD staff and prisoners may also direct their complaints to The Ombudsman. The existing complaint channels are considered effective in view of the number and the nature of complaints handled.

49. The Immigration Department applies complaints procedures set out in the Immigration Service Standing Orders made by the Director of

Immigration under the authority of the Immigration Service Ordinance. Complaints about abuse of authority or maltreatment by service members can be made to the Director of Immigration and are investigated promptly in accordance with the procedures in the Standing Orders. To ensure that all complaints are properly handled, a Complaints Review Working Party examines the results of investigations, conduct reviews and recommends follow-up action. Persons who consider that they have been improperly treated or that their cases have been mismanaged also have access to The Ombudsman. If there is evidence that a member of the Immigration Service has committed a criminal offence, the Immigration Service will immediately report the matter to the police for further investigation. Disciplinary procedures against Immigration Service staff are also governed by the Immigration Service Ordinance and the Immigration Service Standing Orders. Under section 8 of the Immigration Service Ordinance, unlawful or unnecessary exercise of authority resulting in loss or injury to any person is a disciplinary offence.

## **INFORMATION AND PUBLICITY**

### **Promotion of public awareness of the human rights treaties**

50. The Home Affairs Bureau of the HKSAR Government is responsible for promoting public awareness of the rights and obligations stipulated in the human rights treaties applicable to the Region. Following the enactment of the BORO in 1991, the Committee on the Promotion of Civic Education (CPCE) under the Home Affairs Bureau established a Human Rights Education Sub-Committee to promote public understanding of the BORO and respect for human rights as set out in the various treaties. Over the past six years, human rights has been one of the major emphases of the CPCE's work. Recently, the CPCE has increased its efforts to promote a public understanding of the Basic Law which provides the constitutional guarantees for human rights protection in the Region. A Basic Law Promotion Steering Committee - chaired by the Chief Secretary for Administration - was established in January 1998 to guide promotional strategy.

### **Government publications**

51. The PRC Government is responsible for preparing reports in respect of the HKSAR under various human rights treaties (but see paragraph 52 below in relation to the ICCPR and the ICESCR). Draft reports are prepared by the Home Affairs Bureau of the HKSAR Government. The Bureau consults the Legislative Council and non-governmental organisations on the state of the implementation of these treaties in the Region. It addresses their views in the reports which it tables before the Legislative Council - and publishes in bound,

bilingual format - after the PRC Government has submitted them to the United Nations. Copies are deposited in public libraries and posted on the Internet for public inspection.

**Reports of the HKSAR in the light of the ICCPR and the ICESCR**

52. In November 1997, the PRC Government announced that, in line with the Joint Declaration and the Basic Law, and considering that China was not yet a signatory to the two Covenants, it would make reference to the provisions of the two Covenants and transmit reports on the HKSAR to the United Nations. Thus the Government of the HKSAR is responsible for preparing the reports on the Region in relation to the two Covenants for transmission to the United Nations.