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COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on
Economic, Social and Cultural Rights

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND (HONG KONG)

1. The Committee considered, at its fifteenth session, the third periodic report submitted by the United Kingdom of Great Britain and Northern Ireland on articles 1 to 15 of the Covenant as applied in Hong Kong (E/1994/104/Add.10). The Committee considered this report at its 39th, 41st, 42nd and 44th meetings held on 26, 27 and 28 November 1996. After having considered the report, the Committee adopted at its 55th meeting, held on 6 December 1996, the following concluding observations.

A. Introduction

2. The Committee notes with satisfaction that the report submitted by the State party was prepared in accordance with the Committee's guidelines. It welcomes the large and high-level delegation composed of representatives from the United Kingdom of Great Britain and Northern Ireland and from Hong Kong. The information submitted in the report and that provided by the delegation in reply to both written and oral questions enabled the Committee to obtain a broad view of the extent of the State party's compliance with its obligations under the International Covenant on Economic, Social and Cultural Rights. The Committee also expresses its appreciation for the written replies to its list of questions (E/C.12/Q/HON.1). The Committee notes with satisfaction that this information enabled it to engage in a constructive dialogue with the State party, particularly concerning the applicable law. However, it is

regretted that a number of the Committee's questions relating to reports of what actually happens in practice were not answered.

3. The Committee also welcomes the presence of a significant number of non-governmental organizations from Hong Kong. The information provided by these non-governmental organizations greatly assisted the Committee in its understanding of the human rights situation in Hong Kong.

B. Positive aspects

4. The Committee notes with satisfaction that both the Sino-British Joint Declaration and the Basic Law affirm that the Covenant will continue to apply to Hong Kong after the resumption of sovereignty over the territory by the People's Republic of China as at 1 July 1997.

5. The Committee notes that the Government of Hong Kong has established conditions for a high level of economic prosperity.

6. The Committee welcomes the fact that non-governmental organizations, members of the Legislative Council and other interested parties have had an opportunity to contribute their comments on topics included in the report. The Committee lauds efforts made by the Hong Kong government to promote public awareness of the Covenant, and to make available to the public at large a substantial number of copies of the report, in English and Chinese, both in printed form and on the Internet.

7. The Committee welcomes the enactment of the Sex Discrimination Ordinance and the Disability Discrimination Ordinance, in July and August 1995, respectively. It also notes with interest the establishment of the Equal Opportunity Commission in May 1996.

8. The Committee notes that the housing policy of the government of Hong Kong endeavours to elaborate a long-term programme for public housing construction and to encourage private-sector housing construction so as to make adequate and affordable housing available to all residents of Hong Kong.

C. Factors and difficulties impeding the implementation of the Covenant

9. The Committee notes that the uncertainties arising from the resumption of sovereignty over Hong Kong by the People's Republic of China have clearly caused some difficulties for the Hong Kong government in undertaking measures to its maximum capacity towards the protection and promotion of the economic, social and cultural rights of its constituents.

10. The Committee notes that constraints arising from limited habitable land in Hong Kong and from the significant influx of immigrants into its territory may result in difficulties in implementing certain articles of the Covenant. However, it is also noted that Hong Kong has considerable resources at its disposal to overcome most problems posed by these obstacles.

11. The Committee notes that while the government of Hong Kong has established conditions for a high level of economic prosperity, while the latest figures show a Gross Domestic Product per capita in Hong Kong of US\$ 23,500, the fourth highest in the world, and while the Hong Kong

government has accommodated reserves, as of March 1996, of US\$ 20 billion, Hong Kong has one of the most uneven distributions of income in the world: 20 per cent of the population hold 50 per cent of the national wealth, but 250,000 households, i.e. 11 per cent of the population, live in absolute poverty and 850,000 citizens live below the poverty line.

D. Principal subjects of concern

12. The Committee deeply regrets that the recommendations expressed in its concluding observations in 1994 have largely been ignored by the Hong Kong government.

13. The Committee is concerned that the modalities for the continued submission of reports by Hong Kong after the resumption of sovereignty by the People's Republic of China are still at the stage of negotiation and have not been resolved to date.

14. The Committee expresses its disappointment that the principal subjects of concern listed in its concluding observations in 1994 remain unresolved. The Committee reiterates its serious concern on the following issues:

(a) The provisions of the International Covenant on Economic, Social and Cultural Rights continue to be excluded from the domestic law of Hong Kong, which already contains the provisions of the International Covenant on Civil and Political Rights;

(b) The level of awareness among the judiciary of international human rights law in general and of the International Covenant on Economic, Social and Cultural Rights in particular remains low.

(c) The Hong Kong government continues to object to the establishment of a human rights commission;

(d) The number of split families continues to grow at an alarming rate;

(e) The treatment of Vietnamese refugees in Hong Kong, particularly those who refuse repatriation to Viet Nam, is repressive and discriminatory;

(f) The "two-week rule" imposed upon foreign domestic helpers upon expiration of their contract continues to hinder their enjoyment of economic, social and cultural rights;

(g) The phenomenon of subhuman cage homes remains a blight;

(h) The level of social security payments available to the elderly does not allow them to enjoy their rights under the Covenant.

15. The Committee is concerned that the Sex Discrimination Ordinance does not protect those individuals whose right to work is violated by inappropriate account being taken of their private sex lives. The Committee further considers it a serious matter that women above the age of 30 suffer discrimination in employment.

16. The Committee regrets the "step-by-step" approach according to which legislation for the protection of vulnerable minorities is adopted primarily on the basis of public opinion surveys, that is, based on majority views.

17. The Committee is concerned that the principle of equal pay for work of equal value as elaborated in the non-binding Code of Practice of the Sex Discrimination Ordinance has not been reflected in Hong Kong labour law, thus giving rise to discrimination against women.

18. The Committee expresses its concern over the unfavourable status of Hong Kong residents who possess British Overseas residence, but who are not entitled to citizenship of any British territory after 1997 although they are allowed to reside in Hong Kong under Chinese law even if they are not Chinese citizens.

19. The Committee is concerned that in the field of employment, the Sex Discrimination Ordinance provides relatively insufficient remedies owing to the absence of provisions of reinstatement and full recovery compensation, while both of these remedies are foreseen in the Disability Discrimination Ordinance.

20. The Committee expresses its concern about the extent of unemployment or underemployment as a result of rapid economic restructuring. In this connection, the Committee is particularly concerned about the significant numbers of women who are thereby forced out of the labour force and must sometimes resort to precarious activities.

21. The Committee is concerned that Hong Kong labour legislation does not provide protection against unfair dismissal, nor does it provide for a limitation on hours of work, for a paid weekly rest period and compulsory overtime pay. This situation is a major hindrance to the enjoyment of just and favourable conditions of work.

22. The Committee expresses its concern that trade union rights are unduly restricted in Hong Kong. In particular, the Committee is of the view that restrictions applied to affiliation with international trade union organizations, the prohibition on the formation of confederations of trade unions from different industries, as well as the legal right of employers to dismiss persons involved in strike activities, are incompatible with the Covenant.

23. The Committee expresses its deep concern that there is no comprehensive mandatory old-age social security scheme in Hong Kong and that approximately 60 per cent of the population is not protected by any public or private pension plan.

24. The Committee expresses its concern that large numbers of individuals and families who are eligible for comprehensive social security assistance (CSSA) do not apply for it, either because they are not aware of CSSA, because they fear the cultural stigma attached to the concept of welfare assistance, or because they are discouraged from applying by certain practices of the

authorities which are not in conformity with Hong Kong law, such as the requirement of children's consent before parents may receive CSSA benefits.

25. The Committee is concerned that CSSA recipients are not granted reimbursement for expenses for traditional medicine, given the fact that Hong Kong residents frequently use traditional medicine and that Hong Kong courts grant such reimbursements in civil liability actions.

26. The Committee reiterates its deep concern over the growing numbers of split families in Hong Kong. The Committee is of the view that the Hong Kong government has an obligation to ensure that the criteria applied in deciding on those eligible for legal migration into Hong Kong are consistent with the provisions of the Covenant.

27. The Committee expresses its concern at the absence of a holistic policy for the protection of children from all forms of abuse.

28. The Committee is deeply concerned that the standard of living of elderly singletons in the lowest 20 per cent income group who are not receiving CSSA is lower than that of the CSSA recipients. The Committee notes that many of these singletons live in substandard accommodation.

29. The Committee regrets that the Hong Kong government has not given any clear indication of a time-frame within which it expects to eradicate the deplorable phenomenon of cage homes. The Committee is particularly concerned over the inadequate conditions of the housing offered by the Hong Kong government to new immigrants from China, resulting in many of them living in deplorable conditions.

30. The Committee expresses its concern over the inadequate care and protection of the mentally ill and disabled in Hong Kong. In particular, the Committee notes with concern the apparent lack of initiative on the part of the Hong Kong government to undertake public education to combat discrimination against those with mental disabilities.

31. The Committee takes note with concern that, while the Hong Kong government has adopted an educational policy in relation to children of immigrant families from China, it has not undertaken sufficient efforts to ensure school placements for these children and to protect them from discrimination.

E. Suggestions and recommendations

32. In the light of the terms of the Sino-British Joint Declaration and of the recent practice of United Nations human rights treaty bodies, the Committee is of the firm view that, following the resumption of sovereignty over Hong Kong by the People's Republic of China, the People's Republic of China is under an obligation not only to ensure the enjoyment in the Hong Kong Special Administrative Region of the rights guaranteed by the Covenant but also to submit reports pursuant to article 16 of the Covenant. The Committee therefore considers that it is competent to examine the implementation of the Covenant after 1 July 1997 on the basis of reports or such other material as

will be before the Committee, and reiterates its willingness to receive reports in respect of the Hong Kong Special Administrative Region from the People's Republic of China or, if the authorities so decide, directly from the Hong Kong Special Administrative Region. The Committee encourages all parties concerned to work out as soon as possible the modalities of submitting such reports and to inform the Committee of these modalities. The Committee is convinced, however, that the best way to resolve this issue would be for the People's Republic of China itself to become a party to the International Covenant on Economic, Social and Cultural Rights.

33. The Committee urges the Hong Kong government to consider with the utmost care the Committee's suggestions and recommendations embodied in its concluding observations of 1994, as well as those that follow, and to undertake whatever relevant concrete measures may be necessary.

34. The Committee strongly urges the Hong Kong government to take every possible measure to develop a fair and open one-way permit approval mechanism in order to facilitate rapid family reunification.

35. The Committee recommends that the Government should undertake more effective measures for the retraining of those who have lost employment or are underemployed as a result of economic restructuring.

36. The Committee urges the amendment of the Sex Discrimination Ordinance to include provisions on reinstatement in employment as well as the removal of the current maximum amount for recovery compensation.

37. The Committee recommends that the Government lift repressive provisions and limitations in relation to trade union federations including the prohibition on establishing international affiliation.

38. The Committee recommends a review of government policy in relation to unfair dismissal, minimum wages, paid weekly rest time, maximum hours of work and overtime pay rates, with a view to bringing such policy into line with the government's obligations as set forth in the Covenant.

39. The Committee strongly recommends that the Hong Kong government should reconsider the adoption of a universal, comprehensive retirement protection scheme which seeks to ensure that disadvantaged groups are accorded full access to social security.

40. The Committee reiterates in the strongest possible terms its recommendation that the Hong Kong government should undertake, as a matter of high priority, the total eradication of cage homes.

41. The Committee urges the Hong Kong government to review the seven-year residence rule applied before providing housing to immigrant families from China, with a view to ensuring their right to adequate housing.

42. The Committee requests that, within 45 days, it receive a comprehensive response to its inquiry regarding three Vietnamese refugees who were denied medical and dental treatment, mainly for refusing to return voluntarily to Viet Nam.

43. The Committee strongly recommends that the Hong Kong government review the situation concerning persons with mental illness and disability and to ensure that their rights under the Covenant are fully protected.

44. The Committee recommends that measures to integrate children of immigrant families from China into the general education system be implemented with maximum possible attention from government authorities.

45. The Committee recommends that these concluding observations be made widely available in English and Chinese within Hong Kong and that copies be provided by the government to all members of the judiciary and to the relevant echelons of the public service.
