



## International Covenant on Civil and Political Rights

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### Human Rights Committee

107th session

#### Summary record of the 2954th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 12 March 2013, at 3 p.m.

*Chairperson:* Sir Nigel Rodley

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*The meeting was called to order at 3 p.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant**

*Third periodic report of Hong Kong, China (CCPR/C/CHN-HKG/3 and CCPR/C/CHN-HKG/Q/3)*

1. *At the invitation of the Chairperson, the delegation of Hong Kong, China took places at the Committee table.*

2. **Mr. Liu** Zhenmin (China) briefly described the unusual status of the Hong Kong Special Administrative Region and explained that, under the Basic Law, the provisions of the International Covenant on Civil and Political Rights had remained in force in Hong Kong following the establishment of the Special Administrative Region on 1 July 1997.

3. **Ms. Chang** King-yiu (Hong Kong) said that, among the notable achievements since the submission of the previous report, the adoption in 2008 of the Race Discrimination Ordinance guaranteeing protection for all persons against discrimination, harassment and vilification on the grounds of race should be highlighted. Also worth mentioning was the law adopted in December 2012 strengthening the mechanism for processing complaints of torture that provided, inter alia, for a reasonable time frame in which to file complaints, the communication of substantiated decisions to complainants and the opportunity for complainants to appeal against those decisions through an appeals board. Furthermore, the Government of the Hong Kong Special Administrative Region had considerably expanded access to legal aid services in recent years to ensure that no one was deprived of access to justice because of a lack of financial means.

4. Regarding constitutional development, on which the Committee had commented in the past, she said that, since the submission of the second periodic report in 2005, a timetable for the introduction of universal suffrage in the Hong Kong Special Administrative Region had been established and made public. The Chief Executive was due to be elected by universal suffrage in 2017, followed by all members of the Legislative Council. The reforms proposed by the Government of the Hong Kong Special Administrative Region on the elections to the Legislative Council and of the Chief Executive had been approved by a two-thirds majority of Legislative Council members and had received the consent of the Chief Executive, in accordance with the Constitution. The successful implementation of the 2012 constitutional reform programme had made the elections of both the Chief Executive and to the Legislative Council more democratic; close to 60 per cent of Council seats had been filled based on the choice of an electorate of 3 million voters. Concerning the elections to District Councils, a bill had been submitted to the Legislative Council at the beginning of 2013 with a view to abolishing all seats filled by appointment before the 2016 elections.

5. Turning to the question of equal opportunities for sexual minorities, on which the Committee had also previously made comments, she said that extensive public education and awareness-raising programmes promoted equal opportunities and built a culture of tolerance and mutual respect. Increased resources would be allocated to those programmes in order to put a stop to acts of discrimination against persons of a different sexual orientation.

6. **Mr. Lau** Kong-wah (Hong Kong) summarized the replies to the Committee's list of issues. Responding to paragraph 1 of the list of issues, he said that the current mandate of the chairperson of the Equal Opportunities Commission expired at the end of March and that the Government of the Hong Kong Special Administrative Region had already announced that it would nominate Mr. York Chow as head of the Commission for a three-year mandate. The new chairperson had been selected by a rigorous, open and objective recruitment process. Regarding the number of cases where the Independent Police

Complaints Council had allegedly refused to endorse the Complaints Against Police Office, he said that, between March 2009 and March 2012, the Council had considered approximately 15,000 investigation reports and, in general, had endorsed the Office's investigations. The Office had taken into consideration over 4,300 questions and suggestions put forward by the Council and revised its conclusions concerning 700 allegations; disciplinary measures had been taken against 800 police officers in 600 cases. Those figures proved the effectiveness of the two-tier system for processing complaints introduced in 2009. The enactment and implementation of the Independent Police Complaints Council Ordinance had made the Council a fully independent statutory body. Under the Ordinance, the Complaints Against Police Office was required to submit an investigation report for each complaint received to the Council for consideration, and to respond to questions and take into consideration the suggestions put by the Council. The Council could interview complainants, police officers and witnesses and, if it was not satisfied with the conclusions in an investigation report, could request that the Office should conduct a further investigation. Furthermore, the number of seats on the Independent Police Complaints Council had been increased by 30 per cent to ensure the participation of members from a broad spectrum of the community.

7. As far as trafficking in persons was concerned, it should be noted that while the Hong Kong Special Administrative Region was not an origin, transit or destination country, it would nonetheless continue its direct cooperation with the relevant international bodies to exchange information and keep abreast of developments. Foreign domestic workers enjoyed the same protection in employment matters as national workers and, in addition, were protected by a standard contract obliging the employer to guarantee them a salary at least equivalent to the minimum wage, suitable accommodation and free medical care. All foreign domestic workers who considered that their contractual rights had been violated had numerous means available to seek redress. In terms of protection of privacy, only police officers who had received appropriate training could be deployed to film public demonstrations. The storage and destruction of recordings was regulated by clear and rigorous guidelines. Moreover, no public places had been fitted with closed-circuit television, even in the interests of maintaining order.

8. Finally, he emphasized that, under article 22 of the Basic Law, the entry into the Hong Kong Special Administrative Region of persons from other regions of China was subject to authorization. Between July 1997 and December 2012, over 760,000 persons from mainland China had settled in Hong Kong.

9. **Mr. Flinterman** recalled that the Committee had recommended, following its consideration of the previous periodic report (CCPR/C/HKG/CO/2), that the Hong Kong Special Administrative Region should consider the possibility of establishing an independent human rights institution in line with the Paris Principles. He deeply regretted the Government's conclusion that the existing human rights protection mechanism worked well and that there was no need to set up another institution. The fact of the matter was that an objective reading of the mandates of the Ombudsman and the Equal Opportunities Commission revealed that their powers were limited. The rejection of the Committee's recommendation seemed to result from its failure to fully understand the mandate of such an institution, as described in the Paris Principles. It was clear that the establishment of a national human rights institution in the Hong Kong Special Administrative Region could add value to the efforts undertaken by the Government to protect human rights and fundamental freedoms. Furthermore, the mandate of the Equal Opportunities Commission was limited to investigation and mediation activities, and it had no powers of enforcement; he therefore wished to know what action the Government of the Hong Kong Special Administrative Region intended to take to extend the mandate of the Commission and maintain the independence of all its members, including its chairperson.

10. From the report and the written replies the Government of the Hong Kong Special Administrative Region seemed determined to take all necessary measures to ensure that the Chief Executive and the members of the Legislative Council could be elected by universal suffrage. In that context, there were no longer grounds for maintaining the reservation to article 25 (b) of the Covenant and it would be interesting to know whether the State party intended to withdraw it. Finally, he invited the delegation to describe in detail how it understood the concept of universal and equal suffrage, and encouraged it to refer to the Committee's general comment No. 25 on article 25 of the Covenant.

11. **Mr. Iwasawa**, referring to the case law cited in the written replies to paragraph 2 of the list of issues, asked whether the laws that had been declared unconstitutional due to their incompatibility with the Bill of Rights Ordinance had been amended following those judgements. He noted that the Standing Committee of the National People's Congress of the People's Republic of China had rejected three articles of the Ordinance addressing the interpretation of the Bill of Rights on the grounds that they contradicted the Basic Law. That rejection, however, was tantamount to formulating reservations to the Covenant. He asked the delegation what the authorities of the Hong Kong Special Administrative Region could do to ensure that the three articles concerned were approved by the Standing Committee and whether the fact that the body was competent to interpret the Basic Law had repercussions on the primacy of law.

12. Regarding the ordinances on discrimination, he recalled the recommendations by the Committee on the Elimination of Racial Discrimination with regard to certain concerns, including indirect discrimination on the basis of language, the scope of the Race Discrimination Ordinance, the so-called "two-week rule" imposed on migrant domestic workers and the policy on Chinese teaching (CERD/C/CHN/CO/10-13, paras. 27–28 and 30–31). He noted with concern that the law on immigration did not afford foreigners employed as domestic workers the right to obtain a permanent residence permit, even if they had lived in the country continuously for seven years. He wished to know whether the Government had taken or planned to take measures to resolve the problem and take action on the recommendations of the Committee on the Elimination of Racial Discrimination. He also asked whether the provisions of the Race Discrimination Ordinance could not also be applied to immigrants from mainland China, given the debate under way in the Hong Kong Special Administrative Region as to whether those persons formed a separate ethnic group.

13. According to an NGO, the Equal Opportunities Commission was not competent to consider complaints of violations of the Basic Law and the Bill of Rights Ordinance, and the victims of such violations were therefore unable to seek redress before that body. He invited the delegation to comment on that information and explain why the Government had not yet amended the Sex Discrimination Ordinance or the Disability Discrimination Ordinance, despite the recommendation to take measures to that end made by the Equal Opportunities Commission at the end of 2000. He noted that the State party did not have a law prohibiting discrimination on the grounds of sexual orientation, even though, according to a study carried out by the Equal Opportunities Commission, 60 per cent of those surveyed considered that a law was necessary.

14. According to information available to the Committee, discrimination on the grounds of language was widespread and persons who did not speak Chinese often encountered serious difficulties. Although foreigners were able to benefit in theory from the free services of a lawyer and interpreter, legal aid lawyers were allegedly reluctant to defend clients of foreign origin and tried to persuade them to plead guilty. Moreover, interpreters were reported to make translation errors and discourage suspects from making detailed statements. Employment opportunities were purportedly limited for persons who did not speak Chinese and the majority of job interviews took place in Chinese only. Furthermore, during the 2011 census, the Government had allegedly not made use of interpretation

services for the languages of South and South-East Asia. The delegation was invited to comment on those allegations.

15. **Mr. Neuman** asked how the poor representation of women on legislative bodies in the State party could be explained and what measures could be taken to increase women's participation in public life. He also wished to know whether the Government was satisfied with the present rate of women's representation, which was 30 per cent, and whether it was worthwhile setting more ambitious objectives in that regard.

16. The Committee had received information pointing to the lack of effectiveness of the Independent Police Complaints Council. Its recommendations were not binding and the Complaints Against Police Office did not open an investigation unless the complaint was filed by the victim in person, and pressure was put on victims to dissuade them from filing complaints. The delegation was invited to comment on that information. According to the written reply to paragraph 10 of the list of issues, between November 2005 and November 2012, no complaints of torture or ill-treatment had been received by the police or the Immigration Department. However, the Committee had been informed of incidents during which the police were alleged, among other things, to have performed unwarranted body searches and used pepper spray. He therefore asked whether the absence of complaints might indicate that more effective complaint mechanisms should be introduced in the State party.

17. The written reply to paragraph 11 of the list of issues stated that of the persons who had invoked a risk of torture if they were returned to their country, only one — a Sri Lankan — had been allowed to remain in Hong Kong. He asked how many persons who had claimed that they were in danger of being subjected to torture had been returned to Sri Lanka since 2009. Given the unique situation of Hong Kong Special Administrative Region, which was party to the Covenant although it was part of a State that was not, it would be interesting to know what approach was taken to cases where individuals invoked the risk of torture or ill-treatment to contest the grounds for a decision to return them to mainland China.

18. **Ms. Waterval** said she understood from the replies to paragraph 7 of the list of issues that the number of cases of domestic violence and violence against women recorded by the State party was lower than the figures published in a study made available to the Committee. It would be interesting to know whether women from ethnic minorities, women with disabilities, women sex workers, women migrant workers and persons who had suffered violence due to their sexual orientation had been included in the official statistics. She asked whether the police and social workers were adequately trained to detect cases of domestic abuse and violence against women and to handle complaints of violence, and whether there were awareness-raising programmes on domestic abuse for women and girls.

19. She asked how many psychiatric institutions there were in the State party and whether the 890 persons placed in psychiatric care without their consent by hospital and prison service administrations all suffered from psychological problems. She also wished to know the total number of patients placed in psychiatric institutions and how community support services for persons with mental health problems differed from residential care services. Finally, she wished to know whether medical and social services and outpatient treatment programmes were monitored and whether the State party was aware that the forced hospitalization of patients could constitute a violation of article 7 of the Covenant.

20. **Ms. Chanet** said that according to the written replies, between July 2005 and June 2010, 101 deaths in detention had been recorded: 73 were due to natural causes, while the 28 other deaths had not all been explained. She therefore wished to know why there had been so many deaths from natural causes and what the causes of the other deaths were.

21. Under the Crimes (Torture) Ordinance, an act of violence was considered to be torture provided that it was intentional. When the police used force in a dangerous situation the measures they took were intentional, but they did not constitute acts of torture as long as the means used were proportional to the level of danger. The State party appeared to have confused the intentional and proportional nature of an act; the delegation should comment on the matter. Moreover, since the detention on remand statistics in the annex to the report were available in Chinese only, it would be useful if the delegation could provide those figures orally and disaggregated by type of offence, sex, membership of a minority group and length of detention.

22. **Mr. Fathalla** enquired about the composition of the Selection Board of the Equal Opportunities Commission and how the Board made its decisions.

23. **Mr. Shany** asked whether the system of functional constituencies conformed to the provisions of article 25 of the Covenant and sought reassurance that the mechanism to be introduced would take into account not only the right to vote, but also the right to be elected and the contents of paragraph 17 of the Committee's general comment No. 25.

24. Regarding the compatibility of the Crimes (Torture) Ordinance with article 7 of the Covenant, the Ordinance provided, in article 3, paragraph 4, for an exception to its very broad scope, the aim of which — according to the State party — was to cover cases in which the use of force was essential. Yet in international law, the prohibition against torture was absolute; it was therefore important to know the reasons why the State party refused to restrict the scope of that exception. Finally, since she knew that the Committee against Torture had recommended that the Hong Kong Special Administrative Region should establish guidelines to limit the practice of strip searches in places of detention (CAT/C/HKG/CO/4), she invited the delegation to comment on allegations by NGOs that the practice was widespread in the region.

25. **Mr. Rodríguez-Rescia** expressed surprise at reading in the State party's report that there were literally no cases of trafficking in Hong Kong, which was not a destination or transit region. According to information received by the Committee, however, 12 persons had been victims of trafficking in 2012 and, according to alternative reports; inquiries were allegedly under way into six complaints of trafficking. The argument put forward in paragraph 111 of the report to justify the refusal to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime was not convincing. As a matter of fact, victims of trafficking were not migrants in an irregular situation because, unlike the latter, they were in the country against their will. Protecting the lives and integrity of those persons until their repatriation should be the priority for the authorities. She asked the delegation whether the State party might review its position on the matter.

26. **The Chairperson** suggested that the meeting should be suspended briefly to allow the delegation to prepare their responses to the Committee members' questions.

*The meeting was suspended at 4.45 p.m. and resumed at 5.10 p.m.*

27. **Ms. Chang King-yiu** (Hong Kong) explained that the universal electoral system adopted for the election of the Chief Executive and the Legislative Council would have to uphold the State policy for Hong Kong and the four principles of constitutional development enshrined in the Basic Law: respecting the interests of society as a whole, facilitating the development of the capitalist economy, gradual and orderly progress and maintaining the situation on the ground in Hong Kong, as well as the principles of universal and equal suffrage. In accordance with the decision of the Standing Committee of the National People's Congress on the matter, even though the next elections for the Legislative Council were planned for 2016, it was necessary to wait until the electoral system had been established for the election of the Chief Executive in 2017 before it could

be applied to the following Legislative Council election in 2020. That timetable, set out in 2007, gave the Hong Kong Special Administrative Region the time to introduce an appropriate mechanism. With regard to the functional constituencies, their future in the context of constitutional development had not yet been decided. There again, consensus would be necessary, and the matter could not be considered prior to the election of the Chief Executive in 2017.

28. **Mr. Poon** Ying-kwong (Hong Kong) explained that the Committee's general comment No. 25 on article 25 of the Covenant would be taken into account when devising the new electoral system. However, as far as the reservation to article 25 (b) was concerned, the Government confirmed that the reservation was justified by the principle of "gradual and orderly progress" established by the Basic Law and by the particular conditions for the Covenant's application before and after the transfer of sovereignty in 1997. If withdrawal of the reservation was to be envisaged, it could only take place after the introduction of universal suffrage.

29. In accordance with article 158 of the Basic Law, the power to interpret its text was vested in the Standing Committee of the National People's Congress, although it could authorize the courts of Hong Kong to interpret the text themselves when adjudicating a case. The primacy of the law was therefore not compromised. The Government was nonetheless aware of the concern that could be caused by the exercise of such power; in 15 years it had only referred four requests for interpretation to the Standing Committee. Only one of them had been referred since the consideration of the previous periodic report – a request relating to a decision of the Court of Final Appeal, which was required to carry out such a consultation prior to handing down a judgement that would be binding on the central authorities. Since the case had involved the law on State immunity and therefore touched on external relations, it had been legitimate to refer it to the Standing Committee.

30. **Ms. Chang** King-yiu (Hong Kong) said that the establishment of a special institution responsible for human rights was not considered to be necessary because the protection of those rights was ensured both in legislation and by a large number of public bodies (the Equal Opportunities Commission, the Ombudsman, etc.) that each focused on specific issues.

31. **Mr. Woo** Tak-ying (Hong Kong) said that, since the recent announcement of an order by the Court of Final Appeal, the authorities were no longer expelling foreigners who could demonstrate that they were at risk of being subjected to torture in the country to which they would be returned. The risk must nonetheless be reasonably high. In any case, the immigration services had been paying due attention to persons who had made known the risk of torture in the event of their return.

32. **Ms. Chang** King-yiu (Hong Kong) said that efforts were being pursued to encourage women to participate in public life. Women currently represented 33 per cent of staff in advisory and public bodies. In the civil service, women accounted for 35 per cent of all staff and 47 per cent among permanent secretaries – the most senior post. They were also well represented among undergraduates.

33. **Mr. Hodson** (Hong Kong) explained that no distinction was made between assault and battery by a police officer or a private individual; all such acts resulted in investigations and, if appropriate, legal proceedings. The use of force by police officers was regulated by specific guidelines and must be preceded as far as possible by a warning. Regarding the use of pepper spray, it must be authorized by an officer who was at least a superintendent.

34. **Ms. Chang** King-yiu (Hong Kong) explained that the Race Discrimination Ordinance was based on the universally recognized definition of race — that of the International Convention on the Elimination of All Forms of Racial Discrimination — which included ethnic origin. The Ordinance was therefore not applicable to persons

arriving from mainland China who were of the same ethnic origin as the population of Hong Kong, which was the case for the majority of them, despite differences in language and lifestyle. As to the exceptions provided for in matters of nationality and immigration, they were in conformity with article 3, paragraph 1, of the aforementioned Convention. The allegations that lawyers, for convenience, were encouraging members of ethnic minorities to plead guilty was groundless. Such a practice would be completely unethical. Furthermore, all necessary measures had been taken to ensure that ethnic minorities had participated in the 2011 census: staff training, information campaigns, NGO mobilization, etc. A free interpretation service was provided through legal aid and information leaflets were available in 10 minority languages online and through a large number of public services, including hospitals.

35. The so-called “two-week” rule obliged foreign domestic workers to return to their country for at least two weeks before starting another contract. It also allowed persons whose contracts had been terminated early to remain in Hong Kong for two weeks. The rule, which was not applied in some exceptional circumstances (death of the employer, ill-treatment by the employer, etc.), was essential for controlling immigration and preventing migrants from staying in the country illegally at the end of a contract. The procedures for recruiting the chairperson of the Equal Opportunities Commission were described in the periodic report.

36. **Mr. Flinterman** asked whether the reasons for the reservation to article 25 (b) formulated by the United Kingdom were still relevant, particularly given the subsequent establishment of the Legislative Council. A more detailed explanation for maintaining the reservation would be appreciated.

37. **The Chairperson** thanked the delegation and invited it to respond to the remaining questions on the list of issues at the following meeting.

*The meeting rose at 6 p.m.*