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HUMAN RIGHTS COMMITTEE

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

PEOPLE'S REPUBLIC OF CHINA HONG KONG SPECIAL ADMINISTRATIVE REGION*

Addendum

**Comments by the Government of People's Republic of China Hong Kong Special
Administrative Region on the concluding observations of the Human Rights Committee**

[21 August 2007]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services. Annexes can be consulted with the Secretariat.

Introduction

1. Following consideration of the second periodic report of the Hong Kong Special Administrative Region (HKSAR), the Human Rights Committee adopted, on 30 March 2006, the concluding observations which are reproduced at **Annex A** of this report. Paragraph 21 thereof specifically requested the HKSAR to “submit within one year information on the follow-up given to the Committee’s recommendations in paragraphs 9, 13, 15, 18.”

2. The relevant recommendations were –

THAT the HKSAR should –

- (a) ensure that the investigation of complaints against the police is carried out by an independent body, the decisions of which are binding on relevant authorities (*paragraph 9*);
- (b) take vigorous measures to prevent and prosecute harassment of media personnel, and ensure that the media can operate independently and free from government intervention (*paragraph 13*);
- (c) ensure that its policies and practices regarding the right of abode fully take into consideration its obligations regarding the right of families and children to protection enshrined in articles 23 and 24 of the Covenant (*paragraph 15*);

AND THAT

- (d) all necessary measures should be taken whereby the Legislative Council is elected by universal and equal suffrage. It should be ensured that all interpretations of the Basic Law, including on electoral and public affairs issues, are in compliance with the Covenant (*paragraph 18*).

3. In accordance with the Human Rights Committee’s request, this report sets out, under respective headings, the HKSAR’s follow-up and response to the recommendations.

Investigation of complaints against the Police

4. At present, the Complaints Against Police Office (CAPO), which is responsible for investigating into complaints against the Police, already operates independently of all operational and support formations of the Police Force. Moreover, its handling of complaints is closely monitored by the Independent Police Complaints Council (IPCC), which comprises non-official members from a wide spectrum of the community. There are effective checks and balances to ensure that complaints are handled thoroughly, fairly and impartially. The IPCC examines all investigation reports submitted by CAPO and may invite the complainants, complainees and witnesses to interviews as necessary. It may also ask CAPO to submit for its reference documents or information relevant to a complaint. CAPO will address any queries that the Council may raise about a case and will re-investigate the case if the Council so requests.

5. We are taking steps to convert the IPCC into a statutory body, and are preparing the necessary legislative proposals. This should further enhance the transparency and credibility of the police complaints system.

Prevention and prosecution against intimidation and harassment of legislators and media personnel

6. Hong Kong is one of the safest cities in the world. The HKSAR Government accords utmost importance to protecting the safety and property of the community, as well as safeguarding the freedom of speech and of the press enjoyed by the public and guaranteed under the Basic Law. Government does not tolerate any criminal acts, irrespective of whether they are committed against persons of particular categories or ordinary members of the public.

7. The number of criminal incidents against Legislative Council Members and public affairs commentators is very small. The majority of such cases are also of a relatively minor nature (such as vandalism of publicity banners or causing nuisance to the complainants). This notwithstanding, the Police attach much importance to these incidents and, given their sensitivity, adopts a proactive approach in their investigation. They conduct careful and thorough investigation into all such cases of complaints and reports, including taking statements from relevant parties, locating witnesses, gathering evidence at scenes of crime, establishing the culprits' profiles, and analysing their modus operandi. Where sufficient evidence is established, the Police will take appropriate action to arrest and to prosecute the offenders. All investigations and proceedings are undertaken in conformity with the rule of law and justice.

8. As requested by members of the Human Rights Committee at the hearing on 20-21 March 2006, the details of the cases of violence and criminal intimidation involving legislators and media commentators from 2002 to 2006 (up to September) is attached at **Annex B** of this report. Where difficulties are encountered in investigations, these commonly relate to the lack of direct links between the culprits and the victims, and the often limited availability of information from the witnesses and victims.

9. At the risk of repetition, we reiterate the HKSAR Government's full commitment to protecting the safety of the public. In particular, we do not tolerate the use of violence or the threat of violence, regardless of whether the victims are ordinary members of the public or well known public figures. Where a witness or a victim is subject to a real and prolonged threat of physical injury, we would offer him protection. The Police will also investigate into such cases and take follow-up actions, including prosecutions, as may be necessary and appropriate.

Right of abode

10. The criteria for eligibility for the right of abode in Hong Kong are prescribed in Article 24 of the Basic Law (BL24) and the Immigration Ordinance (Cap 115). Those prescriptions and laws are consistent with the relevant international human rights treaties applicable to Hong Kong.

11. In January 2002, the Court of Final Appeal handed down judgment on the right of abode cases. Mainland residents who have no legal right to stay in Hong Kong must return to the Mainland. The Director of Immigration may exercise his discretion on a case-by-case basis to allow individual Mainland residents to stay if there are exceptional humanitarian or compassionate considerations.

12. We fully understand the wishes for family reunion. However, it has to be equally recognised that such wishes are not an absolute right. Governments worldwide require people who wish to join their families to submit, prior to entering the jurisdictions in question, formal applications for processing in accordance with local laws and policies.

13. Eligible Mainland residents who wish to settle in Hong Kong must apply under the One-way Permit Scheme for exit permits from the Mainland authorities in accordance with the relevant national laws and administrative regulations. To ensure orderly entry at a rate that our socio-economic infrastructure can practicably absorb, the Scheme is subject to a daily quota of 150, or 54,750 a year. Applications are assessed by Mainland authorities in accordance with a

points-based system. From July 1997 to February 2007, over 500,000 Mainland residents have settled in Hong Kong under the Scheme. Mainland residents may also apply for Two-way Permits from the relevant Mainland authorities to visit their family members in Hong Kong. In 2006, 1,740,120 Two-way permit holders entered Hong Kong on exit endorsement for visiting relatives.

Universal suffrage for election to the Legislative Council

14. For proper perspective, it should be pointed out that, when the Covenant was applied to Hong Kong in 1976, a reservation was made not to apply article 25(b) in so far as it might require the establishment of an elected Executive or Legislative Council in Hong Kong. This reservation continues to apply.

15. Notwithstanding this reservation, the Basic Law promulgated by the National People's Congress in 1990 clearly states that universal suffrage is the ultimate aim of Hong Kong's constitutional development. Thus, the final goal of Hong Kong's evolution towards democracy originates from the Basic Law, and not the Covenant. Both the Central Authorities and the Government are fully committed to achieving the ultimate aim of universal suffrage in accordance with the Basic Law and the relevant Interpretation and Decision of the Standing Committee of the National People's Congress (NPCSC) of April 2004.

16. Regarding NPCSC's interpretation of the Basic Law, the HKSAR Government's consistent position is that, the power of interpretation of the Basic Law, which is enshrined in the Constitution and the Basic Law, is vested in NPCSC. Such power is in general and unqualified terms. This principle is fully acknowledged and respected in Hong Kong and by the courts of the HKSAR. The exercise of that power by the NPCSC, therefore, has not, and could not have, in any way affected the independence of the Judiciary, the rule of law, or Hong Kong's high degree of autonomy.

ANNEXES:

A) Concluding Observations of the Human Rights Committee Hong Kong Special Administrative Region (HKSAR), CCPR/C/HKG/CO/2.

B) Reported cases of violence and criminal intimidation involving well known personalities from 2002 to 2006 (up to September 2006).