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parties under article 40 of the Covenant**

Third periodic reports of States parties

Hong Kong, China*, **

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I. Introduction

1. The present report is the third report of the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR), in the light of the International Covenant on Civil and Political Rights (the Covenant). It updates the Human Rights Committee (the Committee) on developments since the submission of the second report of the HKSAR (the previous report) in January 2005. It also responds to the Committee's concluding observations of 21 April 2006 (previous concluding observations), after the Committee's hearing in respect of the previous report at its 2350th and 2351st meetings held from 20 to 21 March 2006.

2. Following the issue of the previous concluding observations by the Committee in April 2006, we have widely disseminated them among all levels of society, including the Legislative Council (LegCo), relevant Government *bureaux* and departments, the Judiciary, non-governmental organizations (NGOs) and other interested parties. They have also been made available to the public through the Government website.

3. We have undertaken to provide a detailed response to the concerns and recommendations of the Committee expressed in respect of the HKSAR in the present report. In preparing the report, we have, in accordance with past practice, set out in an outline the broad subject headings and individual topics that we envisaged to be covered in the report. The outline for consultation was widely issued to stakeholders, including the LegCo and members of the Human Rights Forum, Committee on the Promotion of Racial Harmony, Ethnic Minorities Forum and Children's Rights Forum (which comprise representatives of human rights organizations, ethnic minorities groups, children and youth groups, NGOs and other interested parties), and was available on the Internet. The public were invited to submit during the period from 3 June to 14 July 2010 their views on the Government's implementation of the Covenant in respect of the topics. The public were also invited to suggest additional topics that ought to be included in the present report.

4. The outline was discussed at a session of the Panel on Constitutional Affairs of the LegCo, and representatives of interested NGOs presented their views during the session. Discussions were also held with members of the Human Rights Forum, Committee on the Promotion of Racial Harmony, Ethnic Minorities Forum, and Children's Rights Forum to seek their views. We have carefully considered the views and comments received in drafting the present report. As with the past practice, issues raised by commentators, together with the respective responses of the HKSAR Government where applicable, have been incorporated in the relevant sections of the present report.

5. As the initial report of the HKSAR submitted in 1999 (the initial report) and the previous report have already contained detailed information on the laws, policies and practices that are in place to ensure Hong Kong's compliance with the Covenant and many of them remain unchanged, or have changed only slightly, we have not repeated descriptions or explanations of such in this report.

6. The present report will be made available to stakeholders, including the LegCo, members of the abovementioned forums and interested NGOs, and will be distributed to the public at the Public Enquiry Service Centres of the Home Affairs Department (HAD). It will also be accessible to members of the public through public libraries and Government website.

II. Information relating to articles 1–27 of the Covenant

Article 1

Progress and development of democracy

7. We have continued our effort in taking forward Hong Kong's constitutional development since the previous report and substantial progress has been made.

8. As stated in the previous report, the Constitutional Development Task Force published its Third Report in May 2004, setting out the areas which may be considered for amendment in respect of the methods for selecting the Chief Executive in 2007 and for forming the LegCo in 2008 and proceeded with a five-month public consultation.

9. In December 2004, the Constitutional Development Task Force published its Fourth Report, which set out and summarized the views and proposals collected from the community during the consultation on the Third Report and undertook a further consultation.

10. After several rounds of public consultation, the Task Force published in October 2005 its Fifth Report to put forth a package of proposals for amending the methods for selecting the Chief Executive in 2007 and for forming the LegCo in 2008.

11. The proposed package was aimed at enhancing the democratic elements of the two elections by including all District Council (DC) members (the majority of whom are elected members returned through one-person-one-vote by Hong Kong people) in the Election Committee for electing the Chief Executive (Election Committee), enabling DC members to elect among themselves a larger number of members to the LegCo, and increasing the number of district-based seats in the LegCo to be returned by geographical constituencies (GCs) through direct elections.

12. Although the proposed package received the support of some 60 per cent of the public and more than half of all LegCo Members, it did not receive the two-thirds majority support of all LegCo Members as required under Annexes I and II to the Basic Law of the HKSAR (Basic Law) when it was put to vote in December 2005.

13. Notwithstanding this, during the period between end-2005 and mid-2007, the Government of the HKSAR continued to make effort in promoting discussions on the issue of universal suffrage within the community through the Commission on Strategic Development, a high-level advisory body to the Government chaired by the Chief Executive and comprising personalities from various sectors of the community, such as professionals, academics, politicians and personalities from business, labour, community services and media sectors.

14. Shortly after it came into office in July 2007, the third term HKSAR Government published the Green Paper on Constitutional Development for conducting a three-month public consultation. The consultation covered models, roadmap and timetable for implementing universal suffrage.

15. In December 2007, the Chief Executive submitted a report to the Standing Committee of the National People's Congress of the People's Republic of China (NPCSC), reflecting faithfully the aspirations of the Hong Kong's community for universal suffrage, including that:

(a) In the opinion polls, more than half of the public supported the implementation of universal suffrage for the Chief Executive and the LegCo in 2012. The Chief Executive also made it clear to the NPCSC that these views should be taken seriously and given consideration;

(b) At the same time, about 60 per cent of the public accepted the implementation of universal suffrage for the Chief Executive in 2017, if this could not be attained in 2012.

16. Having considered the report submitted by the Chief Executive, the NPCSC adopted in late December 2007 the “Decision on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2012 and on Issues Relating to Universal Suffrage” (the NPCSC decision).

17. The NPCSC decision stipulates clearly that universal suffrage may be implemented for electing the Chief Executive in 2017 and after that, universal suffrage may be implemented for electing all the members of the LegCo. Moreover, appropriate amendments conforming to the principle of gradual and orderly progress may be made to the two electoral methods for 2012 in accordance with the relevant provisions of the Basic Law.

18. The NPCSC decision is a very important milestone which provides a clear direction to take forward Hong Kong’s constitutional arrangements towards universal suffrage. As reflected in opinion polls conducted by universities, the decision was well received by the community.

19. In attaining universal suffrage, the aim of the current term Government is to further democratize the electoral systems for 2012 under the framework set out by the NPCSC decision. This will pave the way for implementing universal suffrage for the Chief Executive and the LegCo.

20. In November 2009, the HKSAR Government launched a three-month public consultation on the “Consultation Document on the Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2012”, setting out the directions which may be considered regarding how the democratic elements of the two electoral methods for 2012 can be enhanced. The consultation period ended on 19 February 2010.

21. Having considered fully the views of the public, different sectors of the community and the LegCo expressed during the consultation period, the HKSAR Government put forth on 14 April 2010 a package of proposals for the methods for selecting the Chief Executive and for forming the LegCo in 2012.

22. Regarding the method for selecting the Chief Executive, we proposed that:

(a) The number of members of the Election Committee in 2012 be increased from 800 to 1200, and the number of members of the four sectors in the Election Committee be increased by the same proportion, i.e. the number of seats for each sector be increased by 100, so as to provide more room for members of the community to participate in the Chief Executive election;

(b) Three quarters of the 100 new seats (i.e. 75 seats) in the fourth sector of the Election Committee (i.e. the political sector) be allocated to elected DC members, in order to increase public participation in the Election Committee (together with the existing 42 seats, the DC subsector will have a total of 117 seats, which will be returned through election from among elected DC members); and

(c) The nomination threshold be maintained at the ratio of one-eighth of the total membership of the Election Committee, i.e. the number of subscribers required shall be not less than 150, so as to allow sufficient competition and ensure that candidates have sufficient support.

23. Regarding the method for forming the LegCo, we proposed that:

(a) The number of seats in the LegCo in 2012 be increased from 60 to 70, with a view to broadening the scope of political participation;

(b) The number of seats to be returned by GCs through direct elections and that by functional constituencies (FCs) be increased from 30 to 35 respectively; and

(c) All the five new FC seats and the existing DC FC seat be returned through election by elected DC members from among themselves, i.e. appointed DC members would not take part in the election.

24. Overall speaking, the aim of the proposed package was to further enhance the democratic elements of the two elections through increasing the participation of elected DC members, who had the public mandate.

25. The HKSAR Government announced on 21 June 2010 an adjusted package, proposing that the “one-person-two-votes” model should be adopted for forming the LegCo. Specifically, for the five new FC seats in 2012, the candidates would be nominated by elected DC members and elected by all registered electors who currently did not have a right to vote in the existing FCs, on a one-person-one-vote basis (the electorate base would be about 3.2 million, being the total 3.43 million registered electors less about 230,000 registered electors for the existing FCs).

26. The adjusted package can further enhance the democratic elements of the electoral method for the LegCo under the framework of the NPCSC decision. With the addition of five new GC seats and five new FC seats, close to 60 per cent of all seats in the LegCo will have an electorate base of over 3 million electors. Every registered voter would have two votes in the 2012 LegCo elections, one for GCs, and the other for FCs.

27. The motions put by the HKSAR Government concerning the draft amendments to the methods for the selection of the Chief Executive and for the formation of the LegCo in 2012 were passed by a two-thirds majority of all the Members of the LegCo on 24 and 25 June 2010 respectively. Subsequently, the draft amendments were given consent by the Chief Executive on 29 June 2010 and approved and recorded by the NPCSC respectively on 28 August 2010.

28. For the first time since the establishment of the HKSAR, the HKSAR has gone through the procedures stipulated in the “Interpretation by the NPCSC of article 7 of annex 1 and article III of annex II to the Basic Law of April 2004” and the annexes to the Basic Law to amend the electoral methods for the Chief Executive and the LegCo. This will give the Hong Kong community greater confidence in and a stronger base for forging consensus on the issue of universal suffrage in future and pave the way for implementing universal suffrage for the Chief Executive and the LegCo in 2017 and 2020 respectively. As reflected in an opinion poll conducted by a research organization in late June 2010, over half of the respondents considered that the passage of the 2012 constitutional reform package is conducive to rolling forward Hong Kong’s constitutional development towards universal suffrage.

29. In order to implement the 2012 constitutional reform package, the HKSAR Government introduced into the LegCo in December 2010 two Bills to prescribe the arrangements regarding the methods for selecting the Chief Executive and for forming the LegCo in 2012. In order to respond to the aspirations of the community, the HKSAR Government will also put forth local legislative proposals regarding the abolition of the DC appointment system for consideration by the public and the LegCo.

Universal suffrage for the Chief Executive and the LegCo

30. The HKSAR Government is fully committed to rolling forward Hong Kong's democracy, with a view to achieving the ultimate aim of universal suffrage as enshrined in the Basic Law.

31. The NPCSC decision of December 2007 has made clear the timetable for universal suffrage for the Chief Executive and the LegCo. The HKSAR Government has also made it clear that future universal suffrage models for the Chief Executive and the LegCo should comply with the Basic Law and the principles of universality and equality.

32. We note that the Committee and commentators have expressed concerns about issues relating to the implementation of universal suffrage for the Chief Executive and the LegCo. While we will respond to the Committee's recommendation in paragraph 18 of the previous concluding observations in paragraphs 25.2 and 25.3 in respect of article 25 below, we will address the points raised by commentators in the following paragraphs.

33. Some commentators called on the HKSAR Government to set out its understanding of the definition of universal suffrage. In the Green Paper on Constitutional Development published in July 2007, the HKSAR Government has made it clear that in discussing the options for implementing universal suffrage for electing the Chief Executive and for forming the LegCo, we must consider, in accordance with the relevant provisions and principles, whether the relevant options can comply with:

- (a) The basic policies of the State regarding Hong Kong;
- (b) The four principles on constitutional development, namely, meeting the interests of different sectors of society, facilitating the development of the capitalist economy, gradual and orderly progress, and being appropriate to the actual situation in Hong Kong; and
- (c) The principles of "universal" and "equal" suffrage.

34. We have also stated in the Green Paper on Constitutional Development that as far as an individual jurisdiction is concerned, while conforming to the general international understanding of universal suffrage, it can also develop its electoral system having regard to the particular needs and aspirations of its people, the uniqueness of its socio-economic situation, and its historical realities.

35. As mentioned in paragraph 1.25 above, the HKSAR Government has made it clear that future universal suffrage models for the Chief Executive and the LegCo should comply with the Basic Law and the principles of universality and equality. The Hong Kong community will have sufficient time to discuss and forge consensus on the universal suffrage models for the Chief Executive and the LegCo in the coming years.

36. Some commentators called on the HKSAR Government to provide a roadmap for implementing universal suffrage for the Chief Executive and the LegCo in 2017 and 2020 respectively. In accordance with the NPCSC decision, the Chief Executive shall make a report to the NPCSC at an appropriate time prior to the selection of Chief Executive and the election of all the members of the LegCo by universal suffrage as regards the issue of amending the two electoral methods in accordance with the relevant provisions of the Basic Law, including the principles of gradual and orderly progress and being appropriate to the actual situation in the HKSAR, and the NPCSC Interpretation of April 2004; a determination thereon shall be made by the NPCSC.

37. The current term Government has only been authorized by the NPCSC to determine the methods for selecting the Chief Executive and for forming the LegCo in 2012.

38. Some commentators requested the HKSAR Government to clarify its position on the abolition of the FCs when universal suffrage for the LegCo is implemented in 2020. In fact, different sectors of the community, as well as various political parties/groups of the LegCo still have extremely diverse views on the issue of how the FCs should be dealt with when universal suffrage for the LegCo is implemented. There are views that the FCs should be abolished. There are also views that the electorate base of the FCs should be broadened, for example, by adopting the “one-person-two-votes” model, i.e. registered electors can cast one vote in the GC election, and the other in the FC election.

39. Although the current-term HKSAR Government has only been authorized by the NPCSC to deal with the two electoral methods for 2012, we have consolidated and concluded the views relating to universal suffrage received during the public consultation on the electoral methods for selecting the Chief Executive and for forming the LegCo in 2012. We have also recommended the next-term Government to follow up actively and consider the relevant proposals seriously.

40. Some commentators expressed concerns that the size and the electorate base of the Election Committee are small and the nomination procedures for Chief Executive candidates when universal suffrage for the Chief Executive is implemented remain unclear.

41. It is stipulated in article 45 and annex I of the Basic Law that the Chief Executive shall be elected by a broadly representative Election Committee and be appointed by the Central People’s Government (CPG), and that the method for selecting the Chief Executive 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 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.

42. The NPCSC decision of 2007 has already made it clear that universal suffrage may be implemented for the Chief Executive in 2017 and that the Chief Executive should be elected through universal suffrage by all registered electors of Hong Kong (i.e. one-person-one-vote) after being nominated by the nominating committee in accordance with democratic procedures. With the passage of the 2012 constitutional reform package, the representativeness of the Election Committee in 2012 will be further enhanced through the increase in the number of members and the increased participation of elected DC members. The nominating committee in 2017 may be formed with reference to the current provision regarding the Election Committee in Annex I to the Basic Law.

43. As to how Chief Executive candidates should be nominated in accordance with democratic procedures when universal suffrage for the Chief Executive is implemented, the Chief Executive returned in 2012 will address this issue.

Implementation of “One Country, Two Systems” and the independence of the Judiciary

44. Some commentators expressed concerns about the implementation of “One Country, Two Systems” and the independence of the Judiciary in Hong Kong.

45. The HKSAR is established under the principle of “One Country, Two Systems”. As stipulated in article 2 of the Basic Law, the HKSAR enjoys executive, legislative and independent judicial power, including that of final adjudication.

46. Since the establishment of the HKSAR, the Central Authorities have been upholding Hong Kong’s high degree of autonomy, supporting the HKSAR Government to act according to the law, and respecting Hong Kong’s judicial independence in accordance with the principle of “One Country, Two Systems” and the Basic Law.

47. The independence of the Judiciary is enshrined in article 85 of the Basic Law, which states that the HKSAR courts shall exercise judicial power independently, free from any interference. As the rule of law is an important core value of Hong Kong, the consistent position of the HKSAR Government is that we should strive to preserve the independence of the Judiciary.

48. The executive authorities, the legislature and the judiciary of the HKSAR will continue to discharge their respective duties in accordance with the Basic Law, as elaborated under paragraphs 8 to 31 of the HKSAR Common Core Document.

Article 2

Ensuring to all individuals the rights recognized in the Covenant

Human rights institution

49. The Committee reiterated its recommendation for establishing an independent human rights institution, which was echoed by some of the local commentators. Some commentators also proposed to establish a similar commission with a clear mandate on children's rights. The issue of setting up an independent human rights institution has recently been considered by the Government in the context of the Review of Jurisdiction of the Office of The Ombudsman.

50. The Review was conducted by The Ombudsman and the Review Report was submitted to the Administration in two parts in 2006 and 2007 respectively. The issue of whether The Ombudsman should assume the role of a human rights commission to protect and promote human rights was examined in Part 2 of the Review Report. It pointed out that while The Ombudsman was not explicitly charged with human rights responsibilities, the essence of the Office's work was to ensure the protection of individual rights by public administration. Under the existing mechanism for protection of human rights in Hong Kong, various statutory bodies, including The Ombudsman, the Equal Opportunities Commission (EOC) and the Office of the Privacy Commissioner for Personal Data (PCPD), had a role to play as provided for under the respective ordinances. The question of whether one single institution should be set up to oversee all issues on human rights protection in Hong Kong was a policy issue to be examined by the Government.

51. Having considered the Review Report, the Government is of the view that in Hong Kong, human rights are fully protected by law. The legislative safeguards are enshrined in the Basic Law, the Hong Kong Bill of Rights Ordinance (HKBORO) (Cap. 383) and other relevant ordinances. They are buttressed by the rule of law and an independent judiciary. Hong Kong has an existing institutional framework of organizations which helps promote and safeguard different rights, including the EOC, the PCPD, The Ombudsman, and the legal aid services. The Government's performance in promoting and safeguarding human rights is open to scrutiny through regular reports to the United Nations and is constantly watched over by the LegCo, the media and various human rights NGOs. The Administration considers that the existing mechanism has worked well. There is no obvious need for establishing another human rights institution to duplicate the functions of or supersede the existing mechanism.

52. We, therefore, remain of the view that an additional independent monitoring mechanism is not necessary to give effect to the Covenant or its requirements.

The Equal Opportunities Commission

53. The functions and powers of the EOC remains largely the same as reported in paragraph 23 of part II of the initial report in relation to article 2, except that under the

newly enacted Race Discrimination Ordinance (RDO) (Cap. 602), the EOC is also entrusted with the functions and powers to work towards the elimination of racial discrimination and promote equality of opportunity and harmony between persons of different racial groups. It deals with individual complaints, provides legal assistance to aggrieved persons, and conducts formal investigations under the RDO. The Government has provided additional resources to the EOC for undertaking these tasks. The EOC issued a Code of Practice on Employment under the RDO which came into operation in July 2009. The Code gives practical guidance to prevent racial discrimination and harassment, and to promote racial equality and harmony in employment-related matters. A detailed account of the EOC's latest work is provided in paragraphs 54 and 92 to 101 of the HKSAR Common Core Document.

54. Some commentators raised concern on the composition of the Selection Board for the recruitment of the new EOC Chairperson in 2009. The Selection Board was tasked to consider the candidates fairly on the basis of specified requirements and recommend the most suitable candidate to the Chief Executive for appointment. Members of the Selection Board have extensive experience and knowledge respectively in the medical, education, social services and other fields. The Selection Board was chaired by a non-official member. It had considered carefully about 100 candidates drawn from the open recruitment exercise. After the appointment, the new EOC Chairperson has worked closely with Members of the EOC, who represent a fairly balanced mix of expertise and representatives of various sectors, including the interests of women, ethnic minorities and persons with disabilities, to enhance the elimination of discrimination and promotion of equality.

Review of the work of the Equal Opportunities Commission

55. As mentioned in paragraph 22 of part II of the previous report, the EOC completed a review in 2002 on its complaints handling procedures, organizational structure and other related matters. Since the previous report, the complaint handling division of the EOC has been re-organized to ensure better staff deployment and work efficiency in the light of the findings and recommendations made in the review. The EOC also accords high priority in raising operational effectiveness of its staff through continuous training. When the RDO came into full effect in July 2009, additional staff were recruited to cope with the increased workload. For continuous improvement, the complaint handling procedures are under constant review with the latest enhancement made in June 2010 to achieve higher efficiency and effectiveness.

56. The EOC has raised a proposal to set up an Equal Opportunities Tribunal to handle alleged cases of discrimination under the existing anti-discrimination ordinances. Some commentators supported this proposal. The EOC is initiating discussions with the community and stakeholders before further pursuing the proposal with the Government. The Government will continue to liaise with the EOC on the proposal and study the recommendations after the EOC's further deliberation with the community.

The Ombudsman

57. The role of The Ombudsman is essentially as explained in paragraphs 35 to 39 of part II of the initial report in relation to article 2 and updated in paragraphs 49 to 53 of the HKSAR Common Core Document. The Ombudsman's jurisdiction now covers 23 public bodies, rather than the 17 previously reported. The Ombudsman (Amendment) Ordinance of December 2001 added the EOC and the PCPD under the jurisdiction of The Ombudsman. Consequent to a review conducted by The Ombudsman, four more public bodies, namely, the Auxiliary Medical Service, the Civil Aid Service, the Consumer Council and the Estate Agents Authority have been brought under the jurisdiction of The Ombudsman from 2 July 2010.

58. In the year 2009–10, The Ombudsman received 13 789 enquiries and 4 803 complaints. A total of 126 complaints were investigated, of which The Ombudsman found 75 substantiated or partially substantiated, and The Ombudsman made 141 recommendations to redress grievances and improve public administration. The other complaints were concluded after preliminary inquiries, with remedial action and improvement measures suggested where due. The Ombudsman also completed seven direct investigations, making 62 recommendations in relation to them. The Government has accepted and acted on almost all The Ombudsman's recommendations. The practices to ensure transparency remain as explained in paragraph 39 of part II of the initial report.

Complaints against the Police

59. The Committee reiterated its view that investigation of complaints against the Police should be carried out by an independent body, the decisions of which are binding on relevant authorities. Similar views were expressed by some commentators. Under the two-tier police complaints system, the Complaints Against Police Office (CAPO) is responsible for handling and investigating complaints lodged by members of the public against members of the police force. CAPO operates independently from other Police formations to ensure its impartiality in handling complaints. The Independent Police Complaints Council (IPCC) is an independent civilian oversight body specifically appointed to monitor and review the CAPO's handling and investigation of complaints. Members of the IPCC appointed by the Chief Executive are drawn from a wide spectrum of the community.

60. The Independent Police Complaints Council Ordinance (Cap. 604) codifies the above police complaints system. The Ordinance came into force on 1 June 2009 and turned the IPCC into a statutory body. It clearly sets out the IPCC's role, functions and powers in the police complaints system, as well as the obligations of the Police to comply with the requirement made by the IPCC under the Ordinance. There are effective checks and balances to ensure that the complaints lodged with CAPO are handled thoroughly, fairly and impartially.

61. In gist, CAPO submits a detailed investigation report on each reportable complaint to IPCC and is required to address queries and suggestions from the IPCC on the report. Where the IPCC members have doubts about the investigation of a particular complaint, they may invite the complainants, complainees and any other person who is or may be able to provide information or other assistance to interviews. If the IPCC is not satisfied with the result of a CAPO investigation, it may ask CAPO to clarify any doubts or reinvestigate the complaint. It may also bring the case to the personal attention of the Chief Executive. The IPCC also monitors CAPO's investigations into reportable complaints through the IPCC Observers Scheme, under which IPCC members and a wide pool of observers undertake, on a scheduled or surprise basis, observations of the interviews and collection of evidence conducted by the Police during investigation of complaints to ensure that these processes are conducted in a fair and impartial manner.

62. The above shows that the statutory framework provided for under the IPCC Ordinance has enhanced the transparency of the police complaints system and reinforced the independent monitoring role of the IPCC.

Human rights education

63. The updated framework for the promotion of human rights is set out in paragraphs 61 to 86 of the HKSAR Common Core Document. Detailed information on human rights education in schools and outside school, and among the general public, public officials, professionals, judges and judicial officers is set out in paragraphs 13.87 to 13.100 of the HKSAR's third report under International Covenant on Economic, Social and Cultural Rights, in relation to article 13 of that Covenant. HKSAR's third report under the Covenant

on Economic, Social and Cultural Rights forms part of the second periodic report of the People's Republic of China under this Covenant. In response to commentators' comments, we set out specific information on human rights education in schools and civic and national education in the ensuing paragraphs. Additional information on human rights education for staff of the disciplined forces is also set out below.

Human rights education in schools

64. Education in schools is an important aspect in the promotion of human rights. From the curriculum perspective, human rights education is integral to the school curriculum. At the various Key Stages, students are provided with ample opportunities to develop concepts and values in relation to human rights. Students' concepts and understanding of human rights are strengthened progressively from a basic understanding of the rights and responsibilities to more complex concepts of human rights through the school curriculum. In the existing school curriculum, important concepts and values on human rights, such as the right to life, freedom, respect for all peoples, non-discrimination and equality are discussed and developed through the teaching and learning activities of General Studies and various Key Learning Areas at different Key Stages. With the introduction of Liberal Studies as a core subject in the New Senior Secondary Curriculum (NSS Curriculum), students are given ample opportunities to discuss important concepts of human rights such as democracy, the rule of law, equality before the law, and the independence of judiciary. Concepts related to human rights education such as Rights and Responsibilities of Citizens, Upholding the Core Values of Our Society, and Social System and Citizenship will be further promoted through a new subject Life and Society to be implemented in September 2012 at the junior secondary level. Students may also get acquainted with the above concepts and values through the school programmes, such as the class teacher periods, assemblies, talks, as well as other learning experiences, including discussion forums, debates, social services and visits.

65. In addition to the promotion of students' learning of the concepts and values related to human rights education through the school curriculum and school programmes, the Education Bureau (EDB) has spared no efforts to enhance teachers' capacity and competency in teaching human rights education. Among others, the EDB has been organizing a series of professional development programmes for teachers on themes related to human rights education. These themes include "non-discrimination", "freedom", "human rights and the Basic Law", "intellectual property", "freedom of press and the media", "equality and social harmony", and "rights and responsibilities".

66. In support of the promotion of human rights education in schools, the EDB has also produced diversified teaching and learning materials in the form of videos, resources packages, worksheets and websites for reference and use by teachers.

Civic and national education

67. The Committee on the Promotion of Civic Education (CPCE) is an advisory body under the Home Affairs Bureau set up in 1986 to promote civic education outside schools in liaison with relevant Government departments. The CPCE continues to promote public understanding of human rights as and when suitable opportunities arise, and provide sponsorship to community organizations to promote education on human rights.

68. Some commentators requested the Government to conduct a survey on human rights. Our view is that there are established channels to monitor the human rights situation in Hong Kong, including the EOC, the PCPD, The Ombudsman, and various complain channels of Government departments. We should continue to make use of these channels. Moreover, it would be more effective to deploy the resources available to implement measures or activities which would promote the rights of individuals.

69. Regarding national education, it is an established education policy of Hong Kong to develop students' national identity, which is stated as one of the curriculum goals in the curriculum documents. The promotion of national identity is implemented in school curricula, including General Studies and Chinese Language at primary level; Chinese Language, Chinese History, Civic Education and Geography at junior secondary level. In the NSS curriculum implemented in the 2009/10 school year, Liberal Studies as a core subject is the main vehicle for promoting national identity in students. The EDB will invite the Curriculum Development Council to review the curriculum framework for moral and civic education at primary and secondary levels, and to develop an independent subject on "moral and national education". This new initiative is expected to be implemented in the 2013/14 school year to further enhance the elements of national education. The EDB also enhances students' understanding of their motherland and Chinese culture through organizing Mainland exchange programmes for teachers and students regularly, inviting scholars and experts from the Mainland to give talks on issues of contemporary China, subsidizing schools in organizing interflow activities as well as organising student learning activities on Thirty Years of China's Reform & Opening Up, the 60th Anniversary of the Founding of the People's Republic of China, and the World Expo 2010. Opportunities for students to participate in Mainland learning and exchange activities will be increased and more exchange activities will be organized together with voluntary groups. In line with the spirit of the current curriculum reform, schools are encouraged to adopt multiple perspectives and equip students with critical thinking skills in analysing issues on contemporary China.

Operational staff of disciplined forces

70. As mentioned in paragraphs 70 and 71 of the HKSAR Common Core Document, training of disciplined services invariably includes reference to human rights. The Immigration Department, the Customs and Exercise Department (C&ED) and the Correctional Services Department (CSD) have incorporated lectures on the HKBORO and gender-related training into their regular in-service and training programmes for new recruits. Human rights and equality principles are part of the foundation training for the new recruits and probationary inspectors of the Police. The continued training programmes for in-service Police officers also cover these topics.

71. A research unit under the Operations Department of the Independent Commission Against Corruption (ICAC) monitors developments in relation to the HKBORO and their implications for the Commission's operations. The Training and Development Group of the Commission provides officers with training on the Basic Law, HKBORO, the Interception of Communications and Surveillance Ordinance (Cap. 589) and the ICAC (Treatment of Detained Persons) Order (Cap. 204A). Officers also receive training on the Code on Access to Information, the Personal Data (Privacy) Ordinance (PDPO) (Cap. 486), the Rules and Directions for the Questioning of Suspects and the Taking of Statements issued by the Secretary for Security as well as the Victims of Crime Charter published by the Secretary for Justice. Furthermore, new recruits also receive lectures on the RDO.

Article 3

Equal rights of men and women

Equal pay for work of equal value

72. Further to the previous report, the EOC published a consolidated report of two studies on the subject, namely "Feasibility Study on Equal Pay for Work of Equal Value (1997–1998)" and "Consultancy Study on Equal Pay for Work of Equal Value in the Public Sector (2004)" in November 2006. The EOC had considered the way forward and adopted a

strategy to promote and implement the principle of equal pay for work of equal value by means of public education. In this connection, the EOC developed and issued practical guidelines to promote the concept of equal pay for work of equal value as well as equal pay for equal work in 2009. These publications include an easy read guide, a main guide for employers and three supplementary booklets. Training sessions for human resources practitioners have also been conducted since the latter half of 2009. Effort to promote the guidelines to employers will continue.

Advisory and statutory bodies

73. As at 31 March 2010, there were 5 679 Government appointed non-official members serving on some 430 advisory and statutory bodies (ASBs). In 2004, the Administration set a gender benchmark of 25 per cent as an initial working target for appointment by the Government to ASBs. The women's participation rate in ASBs reached the target in overall terms in December 2005. As at end-March 2010, 28.1 per cent of the appointed non-official members were women. The gender benchmark target was raised from 25 per cent to 30 per cent with effect from June 2010. The Administration will closely monitor the situation and continue its efforts in promoting women's participation in ASBs. Further discussion on advisory boards and committees is at paragraphs 25.31 to 25.34 below, in relation to article 25.

Women in public office

74. As explained in paragraph 54 of part II of the previous report, the number of women in the civil service directorate increased steadily from 1992 to 2002. That trend has continued. The number of female directorate officers in the civil service has increased from 270 (21.3 per cent) in 1999, to 316 (26.3 per cent) in 2004, and to 396 (32.3 per cent) in 2009. In June 2010, the number of female directorate officers was 410 (32.9 per cent). The percentage of female staff in the civil service stood at 34.7 per cent in June 2010. As at 2010, among the 20 Principal Officials,¹ the Secretary for the Civil Service, the Secretary for Development, the Secretary for Transport and Housing and the Secretary for Commerce and Economic Development are women.

75. Directorate officers and officers who are serving outside the Region at our Economic and Trade Offices often represent the HKSAR at the international level. As at 2010, there are 14 such Offices; female officers head seven of them. Women have actively represented the HKSAR Government in the work of international organizations and have contributed substantially to international fora organized by such institutions as Asia-Pacific Economic Co-operation, the World Trade Organization, and the World Health Organization. Many female officers have been members of the HKSAR Government teams that attend the hearings of reports under the United Nations human rights treaties.

¹ The 20 Principal Officials of the HKSAR include the Chief Secretary for Administration, Financial Secretary, Secretary for Justice, Secretary for Education, Secretary for Constitutional and Mainland Affairs, Secretary for Security, Secretary for Food and Health, Secretary for the Civil Service, Secretary for Home Affairs, Secretary for Labour and Welfare, Secretary for Financial Services and the Treasury, Secretary for Development, Secretary for the Environment, Secretary for Transport and Housing, Secretary for Commerce and Economic Development, Commissioner of Police, Commissioner of the Independent Commission Against Corruption, Director of Audit, Director of Immigration, and Commissioner of Customs and Excise.

Convention on the Elimination of All Forms of Discrimination against Women

76. We were simultaneously preparing the third report of the HKSAR under the United Nations Convention on the Elimination of All Forms of Discrimination against Women, which would form part of the combined seventh and eighth reports of the People's Republic of China under the Convention, at the time of finalizing this report. Our work to fulfil our obligations under the Convention and to advance the status of women in Hong Kong would be explained in detail in our third report under this Convention.

Women's Commission

77. The Women's Commission (WoC), established in January 2001, continues to advise the Government on issues relating to the development and advancement of women in Hong Kong. Its mission is to enable women in Hong Kong to fully realize their due status, rights and opportunities in all aspects of life. Its programme of work is described in summary form in paragraphs 3.2 to 3.5 of HKSAR's third report under the Covenant on Economic, Social and Cultural Rights in relation to article 3 of that Covenant. It would also be discussed in detail in the section in relation to article 2 of our third CEDAW report.

78. In 2007, the Family Council was set up to advise the Government on the formulation of policies and strategies for supporting and strengthening the family. Some commentators were concerned that with the establishment of the Family Council, the role of WoC would be weakened. It should be emphasized that the Family Council provides a high-level platform for cross-bureau and cross-sectoral discussion of major issues from the family perspective. On the other hand, WoC is a central mechanism responsible for promoting the well-being and interests of women. In view of the close relationship between family and women matters, the Chairperson of WoC is appointed as an ex-officio member of the Family Council. This enables WoC to offer views to the Family Council from women's perspective, and facilitates communication and co-operation between WoC and the Council.

The Small House Policy

79. The position would be explained in the section in respect of article 14 of the HKSAR's third report under the Convention on the Elimination of All Forms of Discrimination against Women.

Article 4

Public emergencies

80. The position is as explained in paragraphs 88 to 92 of part II of the initial report.

Article 5

Prohibition of the destruction of any rights and freedoms recognized in the Covenant

81. The position is as explained in paragraph 93 of part II of the initial report. Article 5 of the Covenant is reproduced with adaptations in sections 2(4) and (5) of the HKBORO.

Article 6

The right to life

Deaths in Police custody

82. During the last five years between 1 July 2005 and 30 June 2010, 15 persons died in the official custody of the Police, representing a 17 per cent decrease compared to the five year period covered under the previous report. The Coroner has examined ten cases so far and the other five cases are pending the Coroner's inquest. For the ten cases examined, none of them was found to be caused by unlawful killing. One of the deceased was found to have committed suicide; five to have died by natural causes, three by accident, the remaining one was concluded by the Coroner as an open verdict case.

83. The Police attach great importance to carrying out their duty of care to detained persons. Various measures have been introduced, including conducting frequent but irregularly timed cell checks, installing closed-circuit television (CCTV) inside the cell complex to monitor sudden incident, and providing enhanced training to police officers in handling of detained persons including those with serious illness or mental disorder.

Deaths in custody of the Correctional Services Department

84. Between 1 July 2005 and 30 June 2010, 101 persons died in the custody of the CSD, representing a 4 per cent decrease compared to the five year period covered under the previous report. To date, the Coroner has examined 80 cases, and the other 21 cases are pending the Coroner's inquest. For the 80 cases examined, no misconduct was found on the part of the CSD. Eight of the deceased were found to have committed suicide, 66 to have died by natural causes, three to have died accidentally and three were concluded by the Coroner as open verdict cases.

85. The CSD is committed to providing a secure, safe, humane, decent and healthy environment for people in custody. Various measures have been put in place, including regular monitoring of inmates with a view to identifying those who need special attention, installation of CCTV systems, modifications of cells and building structure, and provision of relevant training to CSD's staff regularly.

Deaths in custody of the Customs and Excise Department

86. During the five years between 1 July 2005 and 30 June 2010, there was no death of person under the custody of the C&ED. The C&ED has laid down a set of internal guidelines strictly governing customs officers in handling detainees under their custody. Due regard is particularly given to the safety and proper treatment of arrested and detained persons while conducting investigations. Structured training is organized regularly to officers with a view to enhancing their awareness of the rights of arrested and detained persons.

Deaths in custody of the Immigration Department

87. During the five years between 1 July 2005 and 30 June 2010, there was no death of person under the custody of the Immigration Department.

Deaths in custody of the Independent Commission Against Corruption

88. There was no death of person in the custody of the ICAC during the above period.

Child fatality

89. Some commentators expressed concerns on the right to life of children, arising from cases of child suicide and parents committing suicide with their children. Our position is at paragraph 24.19 in respect of article 24 below.

90. There are further suggestions from some commentators that review of child fatality cases should be conducted regularly and independently. The pilot project on Child Fatality Review, which was launched in February 2008 and conducted by a Review Panel set up under the Social Welfare Department (SWD), aims to identify patterns and trends for formulation of prevention strategies and promoting multi-disciplinary and inter-agency cooperation in the prevention of child death. The Review Panel comprises medical doctors, clinical psychologists, academics, social workers and parents. Chaired by a non-official, the Review Panel conducts review independently. The Review Panel is conducting an evaluation of the pilot project and will submit its recommendations on the way forward of the pilot project to the SWD in due course.

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

91. The constitutional and legal protection against torture or inhuman treatment remain as mentioned in paragraphs 105 to 107 of part II of the initial report. The general position is also essentially the same as explained in article 7 of the previous report. The updates are provided below.

Instances of the alleged use of torture

92. Further to paragraph 76 of part II of the previous report, during the period of 1 July 2003 to 30 June 2010, there were no reports of torture as defined in the Crimes (Torture) Ordinance (Cap. 427) involving the Immigration Department, the CSD, the C&ED, the Hong Kong Police Force or the ICAC. There was also no charge brought under the Crimes (Torture) Ordinance for Court of First Instance cases, District Court cases or Magistrates' Court cases that have been sent to the Department of Justice for legal advice or prosecution. Nor was there any charge instituted in the Magistrates' Court under the above ordinance during the period from 1 January 2006 to 30 September 2010.

Training of disciplined forces and ICAC

93. The position remains as mentioned under paragraphs 116 to 123 of part II of the initial report.

Immigration Department

94. All immigration officers are trained in the proper handling of suspects in custody. Induction courses and on-going trainings are provided to raise officers' awareness of the provisions of the Crimes (Torture) Ordinance and they are required to adhere to relevant subsidiary legislation, such as the Immigration (Treatment of Detainees) Order, and pertinent Immigration Service Standing Orders.

ICAC

95. In addition, we would like to supplement in respect of the ICAC that the ICAC provides training and issues orders to all investigating officers to ensure compliance with the Covenant and statutory requirements concerning the treatment of victims, witnesses and

suspects. Officers are trained to treat all suspects and witnesses in accordance with the Basic Law and the HKBORO to ensure compliance with the Covenant.

96. To this end, the ICAC provides training to officers on voluntariness of admissions and confessions to ensure that there is no oppression, violence or threats. The HKBORO is taught as an individual subject and particular attention is paid to article 3 (no torture or inhuman treatment) and article 6 (rights of persons deprived of their liberty). The ICAC continues to be bound by the ICAC (Treatment of Detained Persons) Order that imposes statutory duties on the ICAC in respect of the rights, treatment and well-being of all persons arrested and detained by the ICAC; and the Victims of Crime Charter which sets out the rights and duties of victims of crime in Hong Kong.

97. The ICAC has also promulgated Commission Standing Orders that deal with the treatment of witnesses, victims and suspects as well as on the use of force and firearms.

Persons facing deportation

98. In paragraph 10 of its concluding observations on the previous report, the Committee expressed concern about the protection of individuals against deportation to locations where they might be subjected to grave human rights violations, such as those contrary to articles 6 and 7 of the Covenant. The Committee recommended that the HKSAR should establish an appropriate mechanism to assess the risk faced by these individuals.

99. The application of the Covenant in the HKSAR is subject to a reservation in relation to immigration. Nevertheless, the persons concerned still have ample opportunities to make representations against deportation, before and after a deportation order is made.

100. Before a deportation order is made, the person concerned will be invited to make representations, which will be duly considered by the authority. If the grounds against deportation are considered insufficient and a deportation order is made, the following avenues of appeal are available:

(a) Lodging statutory objection against the decision with the Chief Secretary for Administration for consideration by the Chief Executive in Council. Where justified, deportation orders may be suspended or rescinded;

(b) Lodging petition with the Chief Executive under article 48 of the Basic Law for the suspension or rescission of their deportation orders; and

(c) Applying to the Court for judicial review.

101. The HKSAR Government is fully committed to fulfilling our obligation under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Some commentators suggested that the Convention relating to the Status of Refugees should be extended to the HKSAR, and the Government should take over the screening of applications for refugee status from the United Nations High Commissioner for Refugees. As claimants who are dissatisfied with the decision of the Higher Commissioner cannot seek judicial redress through courts of the HKSAR, some commentators also criticized the screening procedures of the Higher Commissioner as unfair. In view of Hong Kong's vulnerability to immigration abuse, we maintain a firm position not to seek the extension of the Convention relating to the Status of Refugees to Hong Kong, and not to take up the screening of refugee status applications.

Article 8

No slavery or servitude; no forced or compulsory labour

General

102. The position remains as set out in paragraph 86 of part II the previous report. Articles 4(1) and (2) of the Hong Kong Bill of Rights prohibit slavery and the slave trade in all their forms and also the holding of any person in servitude. Forced or compulsory labour is prohibited by article 4(3) of the Hong Kong Bill of Rights. There is no slavery, servitude, forced or compulsory labour in Hong Kong.

Protection of foreign domestic helpers

103. Some commentators continued to express concerns on the protection of the basic rights of foreign domestic helpers (FDHs) in Hong Kong. They are concerned with the monitoring of the employment agencies of FDHs, and relevant regulations concerning FDHs, such as the “two-week rule”, the “live-in” requirement of FDHs, exclusion of FDHs from the mandatory provident fund legislation and the minimum wage legislation, and the statutory preclusion of their continuous periods of stay in HKSAR from being counted as ordinary residence (which forms part of the requirement for them to acquire permanent residence status).

104. The Government attaches great importance to protecting the rights of all migrant workers (including FDHs). In Hong Kong, migrant workers enjoy the same rights and protection as local workers under the labour legislation. It grants equal statutory rights and benefits to migrant workers regardless of their race or country of origin. In addition, the Government has long provided to migrant workers, especially FDHs, additional rights and benefits which are not usually enjoyed by local workers. The details of the measures and our position on some of the issues raised by commentators (including the “two-week rule”, the minimum wage legislation and the mandatory provident fund legislation) have been explained in paragraphs 142 to 144 of part II of the initial report, and paragraphs 7.17 to 7.36 and 9.32 of the third HKSAR report under the Covenant on Economic, Social and Cultural Rights.

105. The “live-in” requirement forms the cornerstone of Hong Kong’s policy of importing FDHs. It has been the HKSAR Government’s established policy that, as in many other jurisdictions in the world, priority in employment should be given to local workforce, and importation of workers should only be allowed where there is confirmed manpower shortage in a particular trade that cannot be filled by the local workers. Against this principle, FDHs have been imported since the early-1970s to meet the shortfall of local live-in domestic workers. This live-in requirement has been made known to FDHs before their admission into Hong Kong, and specified in the Standard Employment Contract which is signed by both the employer and the FDH concerned beforehand.

106. FDHs are admitted to Hong Kong for specific employment on a fix-term and are required to leave at the end of their contracts. They are not admitted to Hong Kong for settlement purpose. Given the large number of FDHs involved and Hong Kong being a densely populated city, excluding any period during which a person remains in Hong Kong while being employed as a FDH from the definition of “ordinary residence” is appropriate and consistent with the actual situation in Hong Kong.

107. The Labour Department will continue to rigorously enforce the labour laws to protect the labour rights of all workers (including migrant workers such as FDHs). It is committed to combating malpractices (including overcharging) of local employment agencies. It does not tolerate any abuse, and spares no effort in clamping down on offenders, by investigating promptly into any complaints lodged by FDHs, or by FDH

groups and NGOs, and taking out prosecution where there is sufficient evidence. In 2009 and 2010 (up to end-June), the Labour Department secured 178 convicted summonses against employers of FDHs for wage offence. Among the convicted employers, two were sentenced to 80 and 160 hours' of community service respectively while another two were sentenced to three-month imprisonment. During the same period, the department conducted 1 421 inspections to local employment agencies placing FDHs, and revoked or refused licenses of three such agencies for overcharging. One person has been convicted for operating an employment agency without a licence.

Minimum allowable wage and Employees Retraining Levy on employers

108. We would take the opportunity to update paragraphs 87 to 93 of part II of the previous report – there were four adjustments to FDH's minimum allowable wage since the time of preparation of the previous report, all upward, to the prevailing amount of \$3, 580, effective since 10 July 2008. At the same time, to help mitigate the impact of rising inflation and alleviate the financial burden on the employers of all imported labour, including those of FDHs, the HKSAR Government has suspended the collection of the Employees Retraining Levy for a period of five years with effect from 1 August 2008.

Protection against trafficking of women and children

109. Some commentators raised concerns over sex trafficking of women and children in Hong Kong. They are especially concerned about child sex tourism and child prostitution, and considered that there are inadequate protections against trafficking in Hong Kong. Some called for the extension of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime to Hong Kong.

110. Hong Kong is neither a destination nor a transit point for human trafficking. Over the years, cases of human trafficking for the purpose of sex exploitation reported are rare. Our experience shows that people came voluntarily due to the comparative economic prosperity of Hong Kong in the region, rather than being trafficked into Hong Kong by force, fraud, or coercion. The number of human trafficking cases reported in 2005 to 2008 is three, three, four and one respectively, none of which involved children. Notwithstanding the rare occurrence of human trafficking crimes in Hong Kong, the Government attaches great importance to combating human trafficking and maintains close co-operation with overseas enforcement agencies in tackling the problem. The relevant legal protection and law enforcement efforts are elaborated under paragraphs 10.65 to 10.68 and 10.84 to 10.89 of the third HKSAR report under the Covenant on Economic, Social and Cultural Rights.

111. Given Hong Kong's relatively liberal visa regime, we are mindful of the adverse implications to our effective immigration controls and possible abuses by overstayers and illegal migrants if the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, in particular the provision to permit victims of trafficking in persons to remain in the territory, is to apply to Hong Kong. After a thorough study on the implications of extending the application of the Protocol to Hong Kong, we have no plan to apply the Protocol to Hong Kong at this stage. Notwithstanding this, our law enforcement departments will continue to take proactive enforcement actions in combating human trafficking and protecting victims.

Article 9

Liberty and security of persons

112. The position on legal protection of liberty and security of persons in HKSAR remains as mentioned in paragraphs 150 and 151 of part II of the initial report, i.e. under article 28 of the Basic Law, and article 5 of the Hong Kong Bill of Rights which corresponds to article 9 of the Covenant.

Law Reform Commission report on arrest

113. In paragraph 94 of part II of the previous report, we explained that the Administration had implemented almost all of the recommendations of the Law Reform Commission (LRC) in relation to the powers of stop, search, arrest and detention that were capable of being effected through administrative means. Since then, we have examined the remaining LRC recommendations that may require legislative amendments to implement, and have started the drafting process for the legislative amendments to take forward the recommendations as appropriate.

Immigration detention in respect of foreign illegal migrants

114. For officers exercising detention powers conferred by the law in respect of illegal immigrants, overstayers and other persons pending removal/deportation, the HKSAR Government has in place a detention policy to guide decisions to detain or grant release on recognizance. We attach great importance to ensuring that detention must be justified with sufficient reasons and for a period which is reasonable in all circumstances. Each case is to be considered on its own facts and merits. Reasonable alternatives will be considered before detention is authorised. Detention will be kept under regular review especially when there is a material change of circumstances.

115. The detention policy was revised in October 2008 with the objective of enhancing transparency. Under the revised policy, detainees are informed of the specific grounds for their detention. The policy is also made known to members of the public.

Vietnamese refugees and ex-China Vietnamese migrants

116. Under the “Widened Local Resettlement Scheme” introduced in February 2000, remaining Vietnamese refugees and migrants who were unlikely to be accepted for overseas resettlement or for return to Vietnam at the time, as well as remaining ex-China Vietnamese migrants at the time, are allowed to apply for settlement in Hong Kong. By 30 May 2010, all eligible persons who had made applications were granted stay in Hong Kong under the scheme.

Article 10

Right of persons deprived of their liberty

The rights of prisoners

117. The position regarding the protection of the rights of prisoners in law is essentially as explained in paragraph 177 of part II of the initial report.

Rights of petition and complaint

118. The complaint mechanism remains as explained in paragraphs 109 to 111 of part II of the previous report. Prisoners have the right to petition the Chief Executive or see visiting Justices of the Peace about any matter regarding prison treatment. They can also

complain to senior officers or the Complaints Investigation Unit of the CSD, The Ombudsman, or Members of the LegCo.

Complaints to the Ombudsman

119. The position is essentially as explained in paragraphs 204 and 205 of part II of the initial report.

120. Between 1 July 2003 and 30 June 2010, The Ombudsman received a total of 1 141 complaints against the CSD.

<i>Year</i>	<i>Number of complaints</i>
2003 (from 1 July)	102
2004	224
2005	210
2006	178
2007	128
2008	97
2009	159
2010 (as at 30 June)	43
Total	1 141

Amongst these complaints, only one was found as substantiated and three were found partially substantiated by The Ombudsman after full and independent investigations as at 30 June 2010.

121. Some commentators were concerned that prisoners are subject to unfair treatment when they complain against abuse by CSD officers in this regard. The Ombudsman pays special attention to matters concerning human rights in handling complaints from prisoners, including:

- (a) Prisoners' lack of access to treatment and medication;
- (b) Victimization by prison staff;
- (c) Denial of right to outside contact;
- (d) Threats to personal safety; and
- (e) Encroachment on the right to observe religious rites or participate in religious activities.

122. Some commentators expressed concerns that prisoners were denied CCTV recordings to substantiate their complaints of abuse by prison officers. The CCTV System is installed in various locations in correctional facilities to monitor prisoners' activities and maintain good order and discipline of institutions. Data Protection Principle 2(2) of the PDPO provides that "personal data shall not be kept longer than is necessary for the fulfilment of the purpose (including any directly or indirectly related purpose) for which the data are or are to be used". In pursuance of the above data protection principle, the records of the CCTV System in correctional facilities will only be retained for 14 days if no untoward incident or special occurrence has been reported. Unauthorized person will not have access to the records at any time. However, in the event of an untoward incident or special occurrence, the record will be retrieved from the system and retained as evidence.

Handling of disciplinary complaints

123. Some commentators were concerned with the prison discipline system, in that the procedure of prison superintendents hearing and determining disciplinary complaints against an inmate of the prison he administers, which often includes determining matters of credibility of his subordinate prison officers, was considered unfair.

124. The CSD is committed to ensuring the fairness of the prison discipline system. Indeed, the fairness issue had been duly considered in a recent judicial review case by a prisoner against the Commissioner of Correctional Services, in which the Commissioner's decisions in disciplinary proceedings against the prisoner was challenged. In that case, the Court of Appeal ruled that there is no reasonable apprehension of bias on the part of the Superintendent in each and every case he tries by the mere fact that he is also the Superintendent of the institution involved.

Search procedures

125. Some commentators raised concerns on the policy of prison authorities to strip search and conduct anal examination of every prisoner or detained person at the occasion of reception from outside. In accordance with Rules 9 and 10 of Prison Rules (Cap. 234A), CSD officers are authorized to conduct searches on prisoners upon the latter's admission into CSD's institutions and at such times subsequently as considered necessary by the officer-in-charge. As an established practice, all prisoners have to be thoroughly searched upon their admission, and at such time when they could possibly come into possession of contraband that ensued from their contact with outsiders. This is to ensure the safe custody of prisoners and to maintain prison order and discipline.

126. The principles of proportionality and necessity are enshrined in Rule 9(2) of the Prison Rules which stipulates that the searching of a prisoner shall be conducted with due regard to decency and self-respect, and in as seemly a manner as is consistent with the necessity of discovering any concealed articles. The CSD has internal guidelines to assist officers in carrying out searches in an appropriate and consistent manner. The CSD conducts supervisory assessments or inspections regularly to ensure that operational practices are aligned with the statutory provisions and internal guidelines.

Voting rights

127. The Administration introduced the Voting by Imprisoned Persons Bill into the LegCo in May 2009 to remove the disqualification of imprisoned persons and persons convicted of certain election-related or bribery offences from being registered as electors and from voting in the LegCo, District Council, Chief Executive, Election Committee Subsector and Village Representative elections. The bill was passed by the LegCo on 24 June 2009.

128. The Electoral Affairs Commission subsequently made amendment regulations to provide for the detailed practical arrangements for imprisoned persons to register as electors and for registered electors imprisoned, remanded or detained to vote. With the relevant provisions and the amendment regulations coming into operation on 30 October 2009, the LegCo By-election held on 16 May 2010 was the first election in which polling arrangements were provided for registered electors who were serving prison sentences.

Regulation and management of penal establishments

129. Currently, there are 29 correctional facilities in Hong Kong. The objectives of imprisonment remain as stated in paragraph 179 of part II of the initial report, i.e., to provide safe and humane custody of offenders and to rehabilitate them. The Prison Rules which regulate order and discipline in prisons also remain essentially the same.

Prison population

130. In paragraph 116 of part II of the previous report, we informed the Committee that in 2002, Hong Kong's penal institutions held an average of 11 per cent more prisoners than their certified capacity. The situation improved steadily over the past few years. As at 30 June 2010, the overall occupancy of all penal institutions was about 6 per cent below their certified capacity. Furthermore, a new penal facility providing 1 400 penal places for female prisoners commenced operation in July 2010. We will continue to closely monitor the occupancy situation and take necessary action as appropriate.

Ethnic minority prisoners

131. The CSD is committed to providing fair and equal treatment to all prisoners, irrespective of their race, religion and nationality. As at 30 June 2010, there were 1 423 persons of "other nationality" (a statistical classification) in Hong Kong prisons. The position is essentially as explained in paragraph 120 of part II of the previous report, except that Hong Kong now has arrangements with ten countries,² whereby we would automatically inform their consulates if their nationals are taken into custody.³ For protection of personal privacy, we do so for other nationals only on the latter's request.

132. The CSD has put in place measures to facilitate the communication with the ethnic minority groups in prisons. Interpretation services are provided to prisoners when required, especially during admission and adjudication. A Prisoner's Information Booklet, which contains information on various important matters such as court appeal/review, legal aid, conduct and discipline in prisons, channels of making complaints, is issued to every prisoner upon admission. This Booklet is available in more than 20 languages catering to the needs of most ethnic minority groups in prisons.

133. Furthermore, the CSD has collaborated with NGOs in Hong Kong to provide interpretation services to prisoners when required.

Rehabilitation of offenders

134. Apart from the provision of a safe and humane environment for the detention of inmates, the CSD is committed to facilitating offenders' return to community after they have served their sentences through the provision of suitable rehabilitative services. The aim of the rehabilitative services is to facilitate their reintegration into society. The CSD offers vocational training to inmates to help improve their vocational skills and enhance their chance of securing gainful employment after release. Different psychological and counselling services are also in place to address specific offending behaviour, for example, drug addiction, so as to reduce the incidence of recidivism.

Vocational training for adult offenders

135. The CSD will continue to provide both full-time and part-time vocational training courses for adult prisoners. Adult prisoners with remaining sentences between 6 and 24 months are eligible to join these vocational training courses on a voluntary basis.

136. All adult prisoners are required by Rule 38 of the Prison Rules to engage in useful work of not more than 10 hours a day unless they are excused on medical ground. The main purposes of this requirement are to help prisoners establish a good working habit and maintain prison stability. The CSD organizes market-oriented vocational training courses

² Australia, Canada, India, Italy, the UK, the USA, Vietnam, Russia, New Zealand and Japan.

³ Unless a prisoner expressly objects to our doing so.

for the prisoners in order to enhance the prisoners' employability and assist them to reintegrate into society after discharge. The course participants will be accredited with recognized qualifications through taking part in trade tests and open examinations.

Risks and Needs Assessment and Management Protocol for Offenders

137. In order to deliver rehabilitative programmes to offenders in a more targeted and effective approach, the CSD has been implementing the Risks and Needs Assessment and Management Protocol for Offenders since October 2006.

138. The Protocol provides a scientific and evidence-based approach in identifying the custodial and re-offending risks of individual prisoners. This in turn allows the CSD to provide rehabilitative programmes that better match the prisoners' needs and more effectively reduce their likelihood of re-offending. The rehabilitative need domains covered by the Protocol include: employment; family/marital; drug abuse; community functioning; associates; personal/emotional and criminal attitudes.

139. At present, the Protocol is applied to all young offenders, inmates of Drug Addiction Treatment Centres and adult prisoners sentenced to 12 months or above. As at 30 September 2010, over 14 000 offenders have benefited from the relevant assessment, and more than 16 000 group sessions of rehabilitative programmes have been organized as a result.

Rehabilitation of juvenile offenders

140. The position is as explained in paragraphs 103 to 108 of part II of the previous report. Regarding service development, the SWD has since July 2007 co-located its six correctional/residential homes into one purpose-built correctional home with modernized facilities to provide a safe and secure environment for the residents.

Young offenders detained at Executive discretion

141. The background is as explained in paragraphs 112 to 115 of part II of the previous report. In a judgement of September 2002, the Court of First Instance declared that certain provisions that governed the determination of minimum terms by the Chief Executive under the Criminal Procedure Ordinance (Cap. 221) were inconsistent with article 80 of the Basic Law.⁴ To remedy the court ruling, we amended the relevant sections of the Ordinance in July 2004 and gave judges of the Court of First Instance the power to determine the minimum terms of the 12 young offenders serving indeterminate sentences at the time (i.e. those detained at Executive discretion). Subsequent to the amendment, all 12 young offenders received determinate sentences from the Court of First Instance. All of them have since served their determinate sentences with the last offender discharged in December 2008.

Assistance for Hong Kong residents detained in the Mainland of China

142. In paragraph 11 of its concluding observations on the previous report, the Committee expressed concerns at reports that HKSAR residents detained on the Mainland of China encountered difficulties in having contact with their families in the HKSAR.

143. Under the principle of "One Country, Two Systems", the HKSAR Government will not interfere with the law enforcement and judicial process in the Mainland. On the other

⁴ Article 80 of the Basic Law provides that "the courts of the Hong Kong Special Administrative Region at all levels shall be the judiciary of the Region, exercising the judicial power of the Region".

hand, the HKSAR Government will assist Hong Kong residents detained in the Mainland or their families.

144. A reciprocal notification mechanism, under which both the Mainland authorities and the HKSAR Government will notify the other party of criminal prosecution of, or the imposition of criminal compulsory measures on suspected offenders, and unnatural deaths of residents of the other party, was introduced in 2001. The mechanism aims to facilitate prompt notifications to family members of the subject involved. Since the introduction of the mechanism, the Mainland authorities had made more than 7 000 notifications to the HKSAR Government by 30 June 2010. Upon notification from Mainland authorities, the HKSAR Government will inform the families of the detainees concerned, who can seek assistance from the Immigration Department of the HKSAR. The assistance may include:

- (a) Provision of information on ways to seek the service of Mainland lawyers;
- (b) Conveying assistance seekers' requests to visit the detainees or other requests to the Mainland authorities through the relevant Office(s) of the HKSAR Government in the Mainland; and
- (c) Referral of individual enquiry services to relevant authorities for follow-up action.

145. In general, the notification mechanism has been operating smoothly since its implementation in 2001, achieving the objective of prompt notification to family members. Based on the experience in handling cases, the Government of HKSAR and the Mainland authorities exchange views from time to time to further optimize the operation of the mechanism.

Article 11

No imprisonment for non-fulfilment of contract

146. The position remains the same as explained in paragraphs 217 to 221 of part II of the initial report.

Article 12

Liberty of movement

Legal protection

147. The legal protection remains as mentioned in paragraphs 222 to 225 of part II of the initial report. Hong Kong residents' freedom of movement within the HKSAR and the right to enter or leave the HKSAR continues to be protected at the constitutional level under article 31 of the Basic Law.

Travel documents for permanent residents and non-permanent residents

148. As explained in paragraph 123 of the previous report, article 154 of the Basic Law authorizes the HKSAR Government to issue HKSAR passports to all Chinese citizens who hold Hong Kong permanent identity cards (persons who hold such cards have the right of abode in Hong Kong), and the Immigration Department is the sole authority for the issue of HKSAR passports.

149. Further to paragraph 124 of part II of the previous report, the average time for a passport application to be processed had been shortened to 10 working days, while urgent applications can be further "fast-tracked". As at 30 June 2010, the Immigration Department had issued about 5.8 million HKSAR passports. The passport continues to be well regarded

internationally: as at 30 June 2010, 140 countries/territories had granted visa-free access or visa-on-arrival to its holders.

150. Article 154 of the Basic Law also empowers the HKSAR Government to issue travel documents “to all other persons lawfully residing in the Region”. Non-permanent residents who do not have any other travel document may apply for the HKSAR’s Document of Identity for Visa Purposes. The document is issued by the Director of Immigration under the Immigration Regulations (Cap. 115A). They are valid for seven years and normally have an endorsement stating that “the holder of this document may return to Hong Kong during its validity without a visa”.

151. Some commentators were concerned with the cases of denial of entry of some Hong Kong residents by other jurisdictions, and the policy and measures of the HKSAR Government in dealing with these cases. The HKSAR Government attaches importance to the legal right enjoyed by Hong Kong residents outside Hong Kong and will provide practicable assistance to them when necessary. At the same time, we respect the immigration control imposed by other places in accordance with their laws and policies. We will not seek to interfere with the decisions made on individual cases by other immigration authorities.

Lawful entry into Hong Kong

152. The position was essentially as explained in paragraph 140 of part II of the previous report. Under the “One Country, Two Systems” principle enshrined under the Basic Law, the HKSAR enjoys a high degree of autonomy and the exercise of immigration controls on entry into Hong Kong by persons from foreign states and regions falls within the HKSAR’s autonomy.

153. Hong Kong continues to adopt a liberal visa policy where nationals from about 170 countries and territories can visit Hong Kong visa-free for periods from 7 to 180 days. The Immigration Department handles applications from visitors who need visa to visit Hong Kong.

154. In response to questions about the refusal of entry of persons into Hong Kong “due to their religious or political background”, we should point out that the Immigration Department, like other immigration authorities around the world, has the responsibility to uphold effective immigration controls and is empowered by law to discharge such responsibility. In processing an application for entry, immigration officers take into account the law, the prevailing policy and other relevant circumstances and factors pertaining to each application. Each entry application is determined on its individual merits.

155. There is a statutory appeal channel for any person who is dissatisfied with the decision of an immigration officer. Such person may also seek a judicial review on the decision.

Assistance for Hong Kong residents in distress outside Hong Kong

156. Hong Kong residents of Chinese nationality who are in distress overseas may seek assistance from the Chinese Diplomatic and Consular Missions. Hong Kong residents and their families, regardless of their nationalities, may also call the 24-hour hotline of the Immigration Department, which will coordinate with the Missions or other relevant parties to provide practical assistance to the Hong Kong residents. The assistance to be provided include notifying the families concerned of the incident, issuing urgent travel documents for those who have lost them, and providing information on lawyers, translators or doctors to assist in legal proceedings or seeking emergency medical treatment.

157. Hong Kong residents in distress in the Mainland of China can obtain similar assistance from the Immigration Department directly or through the Offices of the HKSAR Government in the Mainland.

Residence requirements under social security schemes

158. Since 1 January 2004, applicants aged 18 or above for Comprehensive Social Security Assistance (CSSA) and Social Security Allowance (SSA) must have been Hong Kong residents for at least seven years and have resided in Hong Kong continuously for at least one year immediately before the date of application (the “one-year continuous residence requirement”). Applicants who have been absent from Hong Kong for not more than 56 days during that one-year period are considered to have satisfied the one-year continuous residence requirement. The above residence requirements provide a rational basis on which public resources are allocated, help sustain a non-contributory social security system with an increasing demand, and strike a balance between the interests of various sectors of the community.

159. A Hong Kong resident applied earlier for judicial review of the constitutionality of the one-year continuous residence requirement for CSSA. The application succeeded. According to the learned Judge, the requirement imposes a sanction on CSSA applicants staying outside Hong Kong for a total period exceeding 56 days in the year immediately before their application for CSSA, thus impeding upon their constitutional right to travel; and the Government fails to provide sufficient justifications to show that the restriction meets the “proportionality” test in the legal sense. As a result of the court judgment, some commentators were concerned that residence requirements under the CSSA and SSA Schemes may restrict freedom to travel and to enter into or leave Hong Kong. Since the judgment involves legal issues of general importance, the Director of Social Welfare has already lodged an appeal against the judgment. Meanwhile, the SWD has ceased to apply the one-year continuous residence requirement in processing CSSA applications.

Article 13

Restrictions on expulsion from Hong Kong

Legal position

160. The legal position, including the powers of deportation and removal under the Immigration Ordinance (Cap. 115), remains as explained in paragraphs 246 to 248 of part II of the initial report.

Deportation

161. A breakdown of the deportation orders issued since the preparation of the previous report by year and up to end October 2010 is set out below. In all of these cases, deportation was made after the immigrants concerned had been found guilty of offences punishable with imprisonment for not less than two years. No deportation order was made on the ground that the deportation was deemed to be conducive to the public good.

<i>Year</i>	<i>Number of deportation orders issued</i>	<i>Number of petitions/objections against deportation orders and requests for rescission or suspension of deportation orders</i>	<i>Number of deportation orders rescinded or suspended</i>
Jul–Dec 2003	305	35	8
2004	551	49	17
2005	593	51	26
2006	564	64	24
2007	599	30	8
2008	620	28	9
2009	533	33	23
Jan–Oct 2010	419	27	14

Removal

162. The table below provides a breakdown of the removal orders issued since the preparation of the previous report by year and up to end October 2010.

<i>Year</i>	<i>Number of removal orders issued</i>	<i>Number of statutory appeals received against removal orders</i>
Jul–Dec 2003	579	80
2004	931	50
2005	923	85
2006	939	296
2007	775	401
2008	720	171
2009	859	383
Jan–Oct 2010	1 019	520

Immigration Tribunal

163. The position remains largely as explained in paragraphs 255 and 256 of part II of the initial report. In the period since the preparation of the previous report up to end October 2010, there was no appeal against removal order that was considered meritorious by the Immigration Tribunal.

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

Civil Justice Reform

164. As set out in paragraphs 159 and 160 of part II of the previous report, the reform of the civil justice system to improve its effectiveness began with the establishment of the Working Party on Civil Justice Reform in 2000. The Working Party was tasked by the Chief Justice to review the rules and procedures of the High Court in civil proceedings and to recommend changes thereto, with a view to ensuring and improving access to justice at reasonable cost and speed. In 2004, the Working Party submitted its recommendations to the Chief Justice in its Final Report, which the Chief Justice accepted.

165. The Civil Justice Reform was implemented in April 2009. The main areas of reform include:

- (a) Giving greater case management powers to the courts;
- (b) Streamlining and improving civil procedures; and
- (c) Facilitating early settlement by parties (including encouraging the parties to engage in mediation), cutting out unnecessary steps and discouraging (and if necessary, penalizing) unnecessary applications.

166. The implementation of the Civil Justice Reform has gone smoothly. While some of the innovations introduced by the Civil Justice Reform (for example, some of the case management and settlement provisions) have had an immediate impact, others will require some time before their effects can be properly evaluated. A Committee chaired by the Chief Judge of the High Court has been set up to monitor the effect of the Civil Justice Reform. Where necessary, it will make recommendations to ensure the effective operation of the reformed Civil Justice system.

167. Some commentators were concerned whether there are suitable and affordable venues in Hong Kong to conduct mediation, especially by mediators conducting community mediation on pro bono basis. In this regard, we note that major mediation services providers in Hong Kong, namely, the Law Society of Hong Kong, the Hong Kong International Arbitration Centre, and the Hong Kong Mediation Centre, offer mediation venues for hire subject to payment of charges. Some practising mediators would use premises of their offices as mediation venues for cases of which they are the appointed mediators.

168. The Public Education and Publicity Sub-Group, established under the Working Group on Mediation chaired by the Secretary for Justice, has initiated a Pilot Project on Community Mediation Venues with the objectives to:

- (a) Identify suitable venues for mediation available at very low or no costs;
- (b) Promote such venues to mediators;
- (c) Coordinate the usage of such venues; and
- (d) Collect statistics on such usage.

169. The provision of community facility for mediation is one of the recommendations in the report of the Working Group on Mediation published in February 2010 for public consultation for three months. The recommendation provides that there should be at least one community centre on the Hong Kong Island, one in Kowloon, and one in the New Territories to be made available as community venues for mediation, pending the outcome of the Pilot Project. Facilities in two community halls (one on the Hong Kong Island and another in Kowloon) have been identified by the Public Education and Publicity Sub-Group to be suitable venues for mediation for the purposes of the Pilot Project.

170. Under the Pilot Project, mediators who conduct pro bono mediation are able to use the facilities for mediation during specified period free of charge, and mediators who charge fees will pay the normal costs of using these community facilities as mediation venue. The Pilot Project has been promoted through the Hong Kong Bar Association, the Law Society of Hong Kong, the Hong Kong Mediation Council, the Hong Kong Mediation Centre, and the Mediation Coordinator's Office of the Judiciary.

171. The Department of Justice will continue to lead and support initiatives, in collaboration with other Government departments, to promote and facilitate the wider use of mediation in Hong Kong. The Department of Justice will monitor the progress of the Pilot Project and follow up on the recommendation of the Working Group on Mediation as

regards the availability of community venues for mediation, taking into account the submissions received during the public consultation.

Right of access to the legal system

172. Our policy remains that no one with reasonable grounds for taking legal action in a Hong Kong court is prevented from doing so because of a lack of means. Paragraphs 45 to 48 of the HKSAR Common Core Document provide an overview of the legal aid services in the HKSAR, and paragraph 32(f) of that document provides statistics on legal aid applications in recent years. As mentioned in paragraph 165 of part II of the previous report, the Administration regularly reviews the criteria for assessing the financial eligibility of legal aid applicants. On 30 September 2010, the Administration announced the final recommendations pursuant to the review, including raising the financial eligibility limits for legal aid applicants.

173. We explained the role of the Legal Aid Services Council (LASC), which was established in 1996 under the Legal Aid Services Council Ordinance (Cap. 489), in paragraphs 292 to 294 of part II of the initial report. Some commentators continued to raise concern that the LASC is only a supervisory body without independent statutory power. Their view remained that there should be an independent legal aid authority. Some commentators also suggested that any lack of independence, whether actual or perceived, would be removed with the establishment of independent legal aid authority.

174. As explained in paragraphs 175 to 180 of part II of the previous report, having regard to the safeguards already in place to ensure the independent administration of the legal aid service and other relevant considerations, we do not consider that a convincing case for an independent legal aid authority has been established. The Legal Aid Department (LAD) continues to meet our policy objective of ensuring that our target clients receive the assistance they need. The granting of legal aid to numerous cases against the Government illustrates that the administration of legal aid in Hong Kong is independent.

175. Our view is by and large supported by the findings of a recent review on the issue of independence of legal aid conducted by the LASC in 2009. In this review, the LASC, while acknowledging that the institutional arrangement of the LAD being a Government department may create a perception of lack of independence because of perceived risk of pressure from Government on LAD's decisions in granting legal aid and it will be ideal for a separate entity to administer legal aid independent of the Government to deal with the perception problem, recognizes that there are already sufficient safeguards in statute and practice to ensure the independent administration of the legal aid service. The LASC is not convinced that legal aid independence has been compromised under the existing arrangement and it is not aware of any cases where legal aid was refused because of pressure from the Government or influence from a third party. Having regard to all relevant factors and considerations, the LASC does not see a pressing need to disestablish the LAD and substitute it with an independent legal aid authority.

176. Some commentators were concerned that prosecution authorities have the authority to determine the venue of trial for offences, which may raise an issue of equality of arms. We consider that the fact that the prosecution authorities have the authority to determine the venue of trial does not prejudice the defendant's right to a fair trial by a competent, independent and impartial tribunal established by law and the minimum guarantees protected by article 14, paragraphs 2 and 3 of the Covenant.

Legal representation for children

177. Some commentators raised concerns on the right of legal representation of children before the court, and, in particular, whether children and families are well-informed of the

rights. When a child and other parties concerned are present before the court, the Judge may ask for and ascertain the views of the child. The Official Solicitor Ordinance (Cap. 416) allows judges to appoint the Official Solicitor to represent the child. The Adoption Ordinance (Cap. 290) authorizes the appointment of the Director of Social Welfare as guardian *ad litem* to act on behalf of children in adoption proceedings, and under certain circumstances, section 12 of the Adoption Ordinance provides that some persons other than the Director of Social Welfare can be appointed to act as guardian *ad litem*. The duty of the guardian *ad litem* is to investigate as fully as possible all circumstances relevant to a proposed adoption with a view to safeguarding the interests of the child before the court. The Official Solicitor Ordinance provides for separate representation by the Official Solicitor, where necessary.

178. To enhance the representation of children in court, we put in place the Legal Representation Scheme in October 2003 for children/juveniles who are deprived of liberty and detained in a gazetted place of refuge under Section 34E of the Protection of Children and Juvenile Ordinance (Cap. 213). The Scheme was extended in June 2005 to cover children/juveniles taken to the juvenile court directly by the Police for the application for care or protection orders without any period of detention in a gazetted place of refuge before the court hearing, and the children/juveniles who are likely to be detained in a gazetted place of refuge on the recommendation of a social worker of the SWD. In March 2007, the Scheme was further extended to cover all such cases even without parental/guardian consent. The police officers/social workers initiating applications for care or protection orders or staff of the gazetted places of refuge will inform children/juveniles concerned and their parents/guardians of their rights to legal representation and have to make appropriate referrals to the Duty Lawyer Service Court Liaison Offices.

Article 15

No retrospective criminal offences or penalties

179. Article 15, paragraph 1 of the International Covenant on Civil and Political Rights is identical to article 12(1) of the Hong Kong Bill of Rights. As reported in paragraph 184 of part II of the previous report, the Court of Final Appeal decided in 1999 in *Ng Ka Ling & Others v Director of Immigration* that article 15, paragraph 1 of the Covenant as applied to Hong Kong remained in force by virtue of article 39 of the Hong Kong Basic Law.⁵ There is no significant update in relation to article 15.

Article 16

Right to recognition as person before law

180. The position is as reported in paragraph 185 of part II of the previous report. That is, the right to recognition as a person before the law is guaranteed in article 13 of the Hong Kong Bill of Rights which gives domestic effect to article 16 of the Covenant.

⁵ In *Ng Ka Ling & Others v Director of Immigration* [1999] 1 HKLRD 577.

Article 17

Protection of privacy, family, home, correspondence, honour and reputation

Interception of Communications and Surveillance Ordinance

181. In paragraph 12 of its previous concluding observations, the Committee raised concern on the lack of a clear statutory regime to regulate interception and covert surveillance conducted by law enforcement agencies (LEAs). To this end, the Interception of Communications and Surveillance Ordinance, which was enacted in August 2006, specifies by law detailed provisions on the purposes for which, and the circumstances and authority under which, LEAs may lawfully intercept communications and conduct covert surveillance involving the use of devices. The Ordinance provides stringent safeguards at all stages of the regime – from the application for the authorization, execution of the authorization, to the subsequent oversight. The Ordinance is in conformity with article 30 of the Basic Law, and seeks to protect the right to privacy under article 17 of the Covenant.

182. According to the Interception of Communications and Surveillance Ordinance, LEAs would conduct interception of communications or covert surveillance only if it is necessary for the purpose of prevention or detection of serious crime or protection of public security. LEAs must obtain authorization before carrying out such covert operations. For interception of communications and the more intrusive type of covert surveillance, the authorizing authority is one of the panel judges, who must be judges of the Court of First Instance. Less intrusive covert surveillance would be authorized by designated senior officers of LEAs. The authorizing authority must be satisfied that the tests of proportionality and necessity are met before issuing the authorization. All intercept and surveillance products are required to be destroyed as soon as their retention is not necessary for the relevant purpose of the prescribed authorizations.

183. An independent commissioner, the Commissioner on Interception of Communications and Surveillance, is appointed by the Chief Executive to oversee LEAs' compliance with the relevant requirements of the Ordinance. According to the Interception of Communications and Surveillance Ordinance, the Commissioner should, in his annual report to the Chief Executive, include an assessment on the overall compliance with the relevant requirements. In addition, if any person suspects that covert operations were conducted by LEAs on him, he may apply to the Commissioner for an examination under the Ordinance.

184. The Commissioner indicated in his annual reports to the Chief Executive that he was generally satisfied with the compliance of the LEAs with the requirements under the Ordinance. The operation of the regime under the Ordinance has been smooth since it came into effect in August 2006.

185. The Commissioner has made some recommendations to enhance the operation of the Interception of Communications and Surveillance Ordinance regime in discharging his oversight function. For those recommendations which do not require legislative amendments, the Government has implemented them as far as practicable and amended the Code of Practice issued under section 63 of the Ordinance where appropriate. Regarding the remaining recommendations, the Government will study them in detail in the comprehensive review of the Ordinance.

Protection of privacy

Personal data privacy

186. The position is essentially as explained in paragraphs 305 to 307 of part II of the initial report. As at 30 June 2010, the Privacy Commissioner for Personal Data is supported by a staff of 58. Between April 2004 to March 2010, the PCPD received 5 672 complaints and 89 352 inquiries relating to operational matters and compliance with the provisions of the PDPO. In the same period, the PCPD issued 493 warnings and 145 enforcement notices and referred 32 suspected offences to the Police for investigation and consideration of prosecution.

187. Since the PDPO came into force in December 1996, the PCPD has issued three codes of practice,⁶ one guideline and seven guidance notes that provide practical guidance for compliance with the PDPO. It has continued to promote public awareness of and compliance with the Ordinance.

188. The Government, with the support of the PCPD, conducted a comprehensive review of the PDPO in 2009 to see whether its existing provisions still afford adequate protection for personal data in the wake of the developments over the last decade or so. The Government conducted a public consultation from August to November 2009 to gauge public views on the proposals to amend the PDPO. The Government published on 18 October 2010 the Report on Public Consultation on Review of the PDPO and launched further public discussion on the legislative proposals to strengthen personal data privacy protection under the PDPO.

189. Some commentators raised concern on the composition of the selection board for the recruitment of the new Privacy Commissioner in 2009. The Government attaches great importance to the work of the Privacy Commissioner. The selection board comprised members with extensive experience and knowledge respectively in community services, public administration, corporate governance and management and other fields, and was chaired by a non-official member. The selection board considered all candidates carefully in accordance with objective criteria and made a recommendation to the Chief Executive on the suitable candidate.

190. Some commentators expressed concern on instances concerning the leakage of personal data following the development of information technology, and asked for more resources be made available to the PDPO for it to better discharge its duties. The Government attaches great importance in providing sufficient resources to the PCPD to meet its operational needs. It had increased the allocation to the PCPD from \$36.2 million in 2007–08 to \$48.6 million in 2010–11, which is more than a one-third increase. In 2010–11, an additional provision of \$4.57 million was provided to the PCPD to create five posts to step up its enforcement and promotion work.

191. Some commentators enquired about actions taken by the Government to follow up the collection of data (video or photographs) by Google Maps Street View. After thorough investigations, the Privacy Commissioner decided on 30 July 2010 not to carry out a formal investigation on the incident. The main basis of the decision was that the Privacy Commissioner was reasonably satisfied that: (a) the data do not contain any meaningful details that can directly identify any one individual; (b) Google had no intention to compile personal information through the Street View car operation in Hong Kong; and (c) Google

⁶ The codes of practice are, namely, Code of Practice on Human Resource Management, Code of Practice on the Identity Card Number and other Personal Identifiers, and the revised Code of Practice on Consumer Credit Data.

had not accessed or used any of the Wi-Fi payload data captured in Hong Kong through the operation. Google has also given a written undertaking to the Privacy Commissioner on appropriate remedial measures, including to completely delete the payload data at the direction of the Privacy Commissioner and provide the Privacy Commissioner with an independent third party's verification of the deletion. It has also undertaken that future Street View car operations carried out in Hong Kong shall comply with the requirements of the PDPO.

CCTV and video recording

192. Various Government departments have installed CCTV cameras in public places, such as strategic locations in the transport infrastructure, public rental housing estates, entrances to public facilities and lift cabins, for traffic monitoring, facility management and other lawful purposes. District Councils of Wan Chai and Yau Tsim Mong have also installed CCTV camera to deter the acts of throwing objects from height. The Police does not install any CCTV system in public places on a permanent basis for the purpose of maintaining law and order. To ensure the propriety of the operation of CCTV and the use of information collected therefrom, the PCPD issued a Guidance Note on CCTV Surveillances Practices in July 2010 for Government departments and the public to follow. Individual departments have issued internal guidelines to ensure that relevant recording strictly complies with the PDPO.

Privacy at schools

193. Some commentators expressed concerns about the impact of CCTV monitoring system in schools on the privacy of students and teachers. There were also concerns about the school drug-testing scheme on the privacy of students. We understand from the schools that CCTV monitoring systems are installed mainly for security purposes. They are often installed at public areas like entrances and exits of the schools. In many cases, staff and students are informed of the installation of the systems. The Trial Scheme on School Drug Testing in Tai Po District was launched in December 2009. The Scheme was guided by four principles, one of which is "keeping personal information strictly confidential". To protect the privacy of students participating in the Scheme, designated officers have been assigned to observe the operation of the Student Drug Testing Team and provide advice to participating schools on the data privacy requirements relating to drug testing as set out in a protocol. The Scheme implemented in the 2009–10 school year has been completed smoothly in June 2010. The procedures set out in the protocol have been strictly adhered to and personal information of the students has been safeguarded according to the data privacy requirements as set out in the Protocol. Participating students and parents are positive and cooperative towards the Scheme.

Law Reform Commission reports on privacy

194. Some commentators enquired about the Government's position on whether there should be a statutory tort of invasion of privacy. At present, a data subject who suffers damage by reason of a contravention of a requirement under the PDPO by a data user in relation to his personal data is entitled to compensation from the data user for that damage under section 66 of the PDPO.

195. The LRC published a series of reports on various aspects of privacy. One of the reports was on civil liability for invasion of privacy, which recommended the creation of specific torts of invasion of privacy by statute to enable an individual to seek civil remedies for unwarranted invasion of privacy. Many recommendations in the LRC reports are controversial. We need to strike a good balance between the protection of privacy and upholding press freedom. We shall handle the LRC report on stalking first as there are

relatively fewer controversies on regulating stalking behaviours. The report proposed the introduction of anti-stalking legislation to render the pursuit of a course of conduct causing another person alarm or distress a criminal offence and a civil wrong. We are studying this report in depth for formulating the way forward, and making preparations for undertaking public consultation on the subject.

Article 18

Freedom of thought, conscience and religion

196. The legal and constitutional positions are as explained in paragraphs 321 and 322 of part II of the initial report. The freedom of religious belief continues to be one of the fundamental rights enjoyed by Hong Kong residents. Religious organizations have the freedom to conduct any religious activities provided that they are allowed under the laws of Hong Kong. The HKSAR Government is fully committed to upholding religious freedom in Hong Kong in accordance with the Basic Law and the relevant legislation.

197. The various religions in Hong Kong embrace, among others, are Buddhism, Taoism, Confucianism, Catholicism, Christianity, Islam, Hinduism, Sikhism and Judaism. All of these religions have a considerable number of adherents. Apart from offering religious instructions, many major religious bodies have established schools and provided health, welfare and other social services and facilities.

198. A number of schools are operated by religious organizations. Some commentators were concerned whether the freedoms of thought and religion of teachers and students are affected by the present arrangements of school system, curricula and activities.

199. Besides the guarantee on freedom of religious belief under article 32 of the Basic Law, Article 137 states that “schools run by religious organizations may continue to provide religious education, including courses in religion”. Article 141 states that the Government of the HKSAR “shall not restrict the freedom of religious belief, interfere in the internal affairs of religious organizations or restrict religious activities which do not contravene the laws of the Region”.

200. The Government of the HKSAR adheres strictly to the provisions of the Basic Law to protect religious freedom. Information on religious education provided by schools with or without religious background is widely accessible to the public, for example, through the Schools Profile published by the EDB, to inform parents before they select schools for their children. Parents can therefore make informed choices of sending their children to schools without religious education or with education of a particular religion. Students may also withdraw from religious education in school with the consent of their parents. Conversely, parents may request schools to provide opportunity for their children to observe religious rituals or to form religious base groups as appropriate.

201. In terms of teacher appointment, general guidelines on personnel matters have been given to schools in the School Administration Guide. Schools are required to refer to the relevant legislation in drawing up their personnel management policies and procedures, which includes, among others, the legislation on equal opportunities. The Guide also sets out the principles of fairness and transparency in recruitment and selection of staff. More specifically, vacancy information in the advertisement should be gender-neutral and discrimination-free. In this respect, schools, irrespective of their religious background, should observe the fairness principle in personnel matters and hence avoid individual teachers being discriminated on the basis of religious belief.

202. The present curricula would not infringe the right to freedom of thought and of religious belief of teachers and students. As a matter of fact, the religious background of the

school/school sponsoring body is in the school profile. Students (and their parents) and teachers wishing to join the school have adequate access to such information to make their own decision. The EDB's policy is in line with article 137 in the Basic Law: "Educational institutions of all kinds may retain their autonomy and enjoy academic freedom. They may continue to recruit staff and use teaching materials from outside the HKSAR. Schools run by religious organizations may continue to provide religious education, including courses in religion."

Article 19

Freedom of opinion and expression

203. The constitutional and other legal protections are as explained in paragraphs 326 and 327 of part II of the initial report.

Press freedom

204. The position is essentially as explained in paragraphs 328 and 329 of part II of the initial report and paragraph 198 of part II of the previous report. The HKSAR Government is firmly committed to protecting the freedom of speech and of the press, and maintaining an environment in which a free and active press can operate under minimum regulation.

The offences of treason and sedition

205. In paragraph 14 of its previous concluding observations, the Committee expressed concerns that the current definition of offences of treason and sedition in the Crimes Ordinance (Cap. 200) is too broad, and suggested the HKSAR to amend the relevant legislation. We consider that the offences of treason and sedition should preferably be dealt with in the context of the legislative exercise for article 23 of the Basic Law. We will take into account the Committee's views when the legislative exercise for article 23 of the Basic Law is launched in future.⁷

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

206. In paragraphs 13 and 17 of its previous concluding observations, the Committee raised concerns on the reports of intimidation and harassment against journalists and media personnel, and allegations of threats and acts of vandalism against some legislators during the run up to the Legislative Council election in 2004. To this end, the HKSAR Government is fully committed to protecting the safety of all members of the public, regardless of whether he or she is a person of particular categories or is an ordinary member of the public. On receiving a report of criminal intimidation or violence, the Police will conduct a thorough investigation into the case in order to bring the attacker to justice. The majority of the criminal incidents against individual legislators involved vandalism of their publicity banners or causing nuisance to their offices. The Police attach importance to these incidents and adopt a proactive approach in their investigations. Depending on the evidence available and subject to legal advice, the Police will arrest and lay charges against the persons concerned.

207. For the protection of the safety and well-being of victims of crime, should there be indications or suggestions that there is a threat of injury to a victim, his family and/or his

⁷ The Chief Executive has announced in his 2010-11 Policy Address that the legislative exercise for Article 23 of the Basic Law would not be carried out in his current term, i.e. until end of June 2012.

properties, the Police will assess the threat and take appropriate actions commensurate with the assessed threat level. These actions include, for example, enhancing patrol at the residence and/or work place of the victim, and providing safety advice to the victims.

Freedom of expression

208. Some commentators expressed concerns over alleged Government interference of the freedom of expression and professional autonomy of social workers working under organizations subvented by the Government, arising from an incident involving the resignation of a social worker in a subvented organization. They requested the Government to explain the mechanisms to protect against and penalize interferences, and ensure that adverse actions would not be taken against the social workers or organizations after their criticism of the Government. As explained in paragraph 326 of part II of the initial report, the freedom of speech is protected under the Basic Law. The HKSAR Government respects its relationship with the subvented organizations and does not interfere with or influence the freedom of expression of those who work for these organizations.

209. Some commentators were concerned about the refusal of the Chinese University of Hong Kong to permanently place a statue in its campus, out of the reason to maintain politically neutrality. They requested Government to explain measures to protect the freedom of expression and academic research in universities. They were also concerned about the political neutrality and protection against self-censorship of textbook publishers.

210. Academic freedom is an important social value which is treasured, and institutional autonomy is a cornerstone for the success of higher education in Hong Kong. Institutions can properly fulfil their responsibilities on the premise of institutional autonomy. Institutional autonomy comprises multiple meanings, the essential point being that institutions are legally entitled to freedom of action in managing their affairs within the restraints of the laws of Hong Kong.

211. The HKSAR Government strives to uphold the institutional autonomy of tertiary institutions, and considers that the present governance structure of institutions can effectively protect the principle of institutional autonomy,⁸ enabling institutions to carry out their duties of promoting the creation and dissemination of knowledge.

212. On commentators' concerns over the political neutrality of textbook publishers, the EDB respects academic and publication freedom and does not interfere with the editorial autonomy of textbooks. Nevertheless, there are mechanisms to ensure the alignment of the contents of textbooks with the rationale of the curriculum. For each set of textbook, two external independent reviewers who are experienced teachers majoring in the discipline or related experts and scholars will be invited to review the submitted draft, and their review are based on their subject knowledge and pedagogical consideration. Regarding the teaching and learning of controversial issues, the EDB encourages students to enquire and explore the truth, and will not specify any particular perspective for political indoctrination. The EDB will not conduct political examination on textbooks; rather, the review mechanism focuses on whether textbook contents are supported by historical facts with sufficient justifications. There is no need for textbook publishers to conduct any self-censorship.

⁸ All University Grants Committee-funded institutions, the Chinese University of Hong Kong included, are independent statutory bodies regulated by their respective ordinances. In the light of their different historical backgrounds, philosophies, religious faiths and missions, respective ordinances of the various institutions spell out the powers and governance structure of the institutions in respect of their aims and functions. In general, an institution would have a council as its supreme governing body, and a senate as its supreme academic body.

213. As China has a long history with numerous historical events, it is impossible to list out all the historical incidents in the curriculum document. This will not, however, hinder students' enquiry into important historical events. In the current junior secondary and NSS Chinese History Curricula, there is plenty of room for teachers to discuss with their students the development of Chinese history.

Regulation and licensing of the broadcast media

214. Digital broadcasting of free television channels in Hong Kong commenced at the end of 2007. In addition to four analogue channels, there are now 12 digital free-to-air channels, including simulcast of the four analogue channels in digital format.

215. To enhance transparency and certainty of the sound broadcasting licensing regime, the Government introduced the Telecommunications (Amendment) Bill 2009 into LegCo in October 2009 to prescribe a set of licensing criteria for the grant of sound broadcasting licences. The Bill was passed by LegCo on 20 January 2010 and took effect on 29 January 2010.

216. Some commentators requested the opening up of airwaves to accommodate more radio operators. The Government does not set a ceiling in respect of the total number of sound broadcasting licensees to be issued. All applications received would be considered on a fair and transparent basis according to the licensing criteria under the Telecommunications Ordinance (Cap. 106), including whether suitable frequency is available for the proposed service. Broadcasting without a licence might interfere with the services provided by existing licensees and is an offence under the law. The authorities would take appropriate enforcement action against unlicensed broadcasting.

217. The Government promulgated the Framework for Development of Digital Audio Broadcasting Services in Hong Kong in February 2010 and invited interested parties to submit applications for the provision of Digital Audio Broadcasting services. In November of the same year, the licensing authority granted approval in principle to three applications from broadcasting companies. The licences are being prepared. Subject to formal grant of the licences, the public will be able to enjoy sound broadcasting services with better sound quality and more programme choices.

218. The Broadcasting Authority is also processing three applications for domestic free television programme service licences. The new licences, if granted, will enhance competition in the television industry and benefit the viewing public.

219. Some commentators raised concerns over self-censorship by the two existing domestic free television programme service licensees. Under the current regulatory regime, the Broadcasting Authority has published a set of codes of practice for programming and advertising but does not pre-censor any broadcast material. Broadcasters enjoy editorial independence in their operations and programming as long as they comply with the laws and codes of practice. Some commentators also raised concerns that the regulation of political advertising on the television and radio affects freedom of expression. The regulation of political advertising is to avoid the more affluent organizations or individuals from having undue advantage in promoting their political positions through television and radio. There are various other channels for expression of views.

Radio Television Hong Kong

220. In September 2009, the Government decided that the Radio Television Hong Kong (RTHK) should take up the role as a public service broadcaster and remain as a Government department, with additional safeguards to enhance its corporate governance and appropriate resources to enhance its operations and expand the scope of services including provision of digital terrestrial television and digital audio broadcasting services

and facilitating community participation in broadcasting. A Community Broadcasting Involvement Fund will be set up to facilitate community groups and ethnic minorities, etc. to broadcast their programmes with RTHK's assistance.

221. Some commentators raised concerns over whether RTHK could maintain its editorial independence after taking up the role of a public service broadcaster. The Government attaches great importance to safeguarding the editorial independence of RTHK. In August 2010, the HKSAR Government promulgated the new RTHK Charter covering an array of key aspects, including the mission and public purposes of RTHK, the relationships between RTHK and the Government, the newly-established Board of Advisors, and the Broadcasting Authority, and guarantees regarding the editorial independence of RTHK.

222. The Board of Advisors for RTHK is to provide advice to RTHK with a view to improving its service delivery, governance and accountability. As an advisory board, it will not have executive power and will not be involved in the day-to-day operation or staffing matters of RTHK. The ultimate editorial responsibility of RTHK rests with the Director of Broadcasting (Head of RTHK).

223. The above decision constitutes a well-balanced set of proposals to address the concerns of various stakeholders. It gives new impetus for RTHK to build on its well-established foundation and reputation for providing a more comprehensive and quality broadcasting service to the community.

Film classification system

224. The position is essentially as explained in paragraphs 347 and 348 of part II of the initial report.

Appeals against the decision of the Film Censorship Authority and the censors

225. The position is essentially as explained in paragraph 349 of part II of the initial report. However, references to the Secretary for Information Technology and Broadcasting should be replaced by the Secretary for Commerce and Economic Development as a result of reorganization of the Government Secretariat in 2007.

Regulation of obscene and indecent articles

226. The position is essentially as explained in paragraphs 350 to 354 of part II of the initial report. However, reference to the Television Ordinance (Cap. 52) in paragraph 350 therein should be replaced by the Broadcasting Ordinance (Cap. 562).

Access to Government information

227. The Code on Access to Information continues to provide an effective framework to provide access for members of the public to a wide range of information held by the Government. Since the introduction of the Code in March 1995 and up to the end of September 2010, Government *bureaux* and departments received a total of 29 281 requests for information under the Code. Of these, 1 637 requests were subsequently withdrawn by the requestors, 1 188 requests covered cases in which the *bureaux*/departments concerned did not hold the requested information and 59 requests were still being processed by *bureaux* and departments. Among the 26 937 requests which covered information held by *bureaux* and departments and which the *bureaux* and departments had responded to, 26 296 requests (98 per cent) were met, either in full (25 678 requests) or in part (618 requests). 641 requests (2 per cent) were refused.

228. Under the Code, if a person who had requested a bureau/department to provide information considers that the bureau/department has failed to comply with any provision of the Code, he/she may ask the bureau/department to review the decision. The review mechanism is further underpinned by a complaint channel through The Ombudsman who is independent of the Administration. An applicant who considers that a bureau/department has failed to properly apply any provision of the Code may lodge a complaint with The Ombudsman.

229. Between March 1995 and September 2010, The Ombudsman received 159 such complaints and completed 149 cases. Of these 149 completed cases, 11 were substantiated and 11 partially substantiated, seven unsubstantiated, 90 concluded and settled after preliminary inquiries by The Ombudsman, 29 not pursued by The Ombudsman while one complaint fell outside The Ombudsman's jurisdiction.

230. Some commentators requested Government to explain the present arrangement for managing Government records, and called for an archive law to ensure that public historical records that contain information on Government policies and matters of public significance are retained and made available. The Government has put in place administrative arrangements to facilitate the identification, transfer, preservation and management of and public access to Government records and materials with archival value. Access to archival records kept by the Government Records Service is managed through the Public Records (Access) Rule 1996. In general, public access will be allowed to archival records containing open information and those containing classified information which have been closed for 30 years. The Government keeps the current administrative arrangements under review and will continue to improve on them where appropriate.

United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)

231. In paragraphs 207 to 209 of part II of the previous report, we explained that United Nations (Anti-Terrorism Measures) Ordinance (the UNATMO) provided a clear definition of "terrorist acts" which protected the right of advocacy, protest, dissent and industrial action. Furthermore, we also explained that safeguards for items subject to legal privilege, journalistic materials and the privilege against self-incrimination were also included in the Ordinance. These safeguards are part and parcel of UNATMO and will become applicable alongside the full commencement of UNATMO.

232. Since the previous report, the HKSAR Government has taken steps to bring the UNATMO fully into operation. We aim to achieve this by early 2011. Some commentators expressed concerns that the Code of Practice for Requiring Persons to Furnish Information or Produce Material under section 12A of the UNATMO gives wide powers to law enforcement agencies, and requested the Government to explain whether the Code includes sensitivity to issues such as language, and awareness of people with special needs (e.g. persons with a disability). A person subject to an order under Section 12A of the UNATMO is not under arrest or detention. The Code of Practice, in fact, sets out clearly the responsibilities of and privileges enjoyed by a person subject to a Section 12A order. Specifically, paragraph 2 of the Code provides that Braille copy and translated copies of the Code will be provided to interviewees who are visually impaired or do not understand Chinese and English. Paragraphs 7 to 16 of the Code of Practice put in place detailed procedures for the protection of the rights of interviewees, including the right to make telephone calls, the right to legal advice, the right to be interviewed in the mother tongue of the interviewee, the right to make complaints, the right to be interviewed in reasonable comfort and privacy, and to do so in a reasonable period.

233. Some commentators were also concerned with the protection of rights under the Code, such as the right to legal advice and legal aid, not to be held incommunicado, and rights of foreign nationals. Paragraph 9 of the Code provides that the interviewee, if he or

she wishes, is allowed to have a barrister and/or a solicitor to be present during the interview and to consult privately with the barrister and/or solicitor. The interviewee may also consult his or her barrister and/or solicitor over the telephone in the presence, but out of the hearing, of an authorized officer. For other telephone calls, they will be made under supervision. The interviewee may make at least one telephone call for a reasonable time. If the interviewee can provide reasonable justifications, he or she may make further telephone calls. The time taken for the private consultation and telephone call is not counted as part of the interview period. An interviewee who is a foreign national may communicate with the consulate or mission of the foreign government concerned. Regarding the situation where the interview does not share a common language with the officers of the LEAs, paragraph 10 of the Code requires the interview to be conducted in the mother tongue of the interviewee and the provision of interpretation and translation to such interviewees. Further, paragraphs 11 to 14 of the Code also set out clearly the procedures for handling interviewees who are under the age of 16, suffering from mental disability/incapacity, with hearing or speech impairment, or who are visually handicapped.

234. Paragraphs 17 to 22 of the Code require that an accurate record of the interview should be made and that the interviewee should receive a copy of the record as soon as reasonably practicable. Where an interview is video or audio recorded, the interviewee is similarly entitled to receive a copy of the recording as soon as reasonably practicable.

235. An interview for the purpose of an order under section 12A(1) of the UNATMO does not involve any court proceedings and thus legal aid is not applicable. However, the interviewee may apply to the Court of First Instance under section 12A(13) of the UNATMO for the revocation or variation of the order. As legal aid is applicable to proceedings in the Court of First Instance, legal aid will be granted if the interviewee passes the means and the merits tests. A person subject to a section 12A order may also seek free preliminary legal advice from volunteer lawyers under the Free Legal Advice Scheme operated by Duty Lawyer Service to understand his or her rights and obligations under the relevant legislation. The Scheme is provided at the Legal Advice Centres located in nine district offices to all members of the public without means testing. Persons who are subject to a section 12A order will normally be informed of the interview details in advance. They may seek legal advice under the Scheme prior to the interview.

Management of libraries and museums

236. Some commentators requested whether the criteria in selecting and purchasing books with different political orientations comply with the UNESCO Public Library Manifesto. The Hong Kong Public Libraries have been following the principles laid down in the UNESCO Public Library Manifesto in acquiring library materials for the provision of a balanced and diversified library collection to meet the needs of people of different ages and sectors for information, research, self-learning and leisure reading.

237. Some commentators were also concerned about the decision not to pursue an earlier proposal on the setting up of a statutory Museum Board to take over the management of the public museums. The Government has carefully examined all relevant factors and considered that the services of public museums could be further improved under the existing mode of governance. Overseas experience shows that different modes of governance have their own advantages and disadvantages. The historical and cultural context of a country or city has a bearing on the governance structure of its museums. It would therefore not be appropriate to advocate one single mode of governance that is universally applicable to and suitable for all museums. Different modes of governance could co-exist to suit the specific circumstances of the museums and local environment. Moreover, the public museums are a fertile training ground for curatorial experts and professional staff by providing them with hand-on training in museum work. The decision

of maintaining the current mode of governance would provide a more stable environment for nurturing museum professionals who will be in great demand in the near future.

238. To enhance the management and operation of public museums so as to better cater for the needs of society, and to increase professional and community involvement in the promotion of the public museums, the Government has set up three Museum Advisory Panels (namely the Art Museum Advisory Panel, the History Museum Advisory Panel and the Science Museum Advisory Panel) in October 2010. They advise the Leisure and Cultural Services Department (which manages public museums) on the strategies for development, promotion and management of the respective streams of public museums. The Panels comprise individuals of different background with a great wealth of professional expertise and experiences relevant to the work of the museums in the respective streams. They include professionals, academics, museum experts, artists, collectors, art promoters, entrepreneurs, marketing and public relations experts, and community leaders. They help formulate strategies to pursue the missions of public museums and enhance their ability to fulfil them, sharpen the identity and focus of museums, and enhance their educational role. The Panels also inject new ideas into the work and operation of the museums and help formulate dynamic and creative plans to attract young visitors and widen the audience base.

Article 20

Prohibition of propaganda for war

239. The general situation is as explained in paragraph 373 of part II of the initial report.

240. The RDO, which aims at protecting the rights of individuals against racial discrimination, harassment and vilification on the ground of race, was enacted in 2008 and came into full operation in July 2009. The Ordinance makes it unlawful, among others, to incite, by an activity in public, hatred towards, serious contempt for, or severe ridicule of, another person or members of a class of persons (the victims) on the ground of the race of the person or members of the class of persons. Furthermore, such activity would be a criminal offence when the incitement of such hatred, serious contempt or severe ridicule was done intentionally, and the activity in public consists of threatening physical harm, or inciting others to threaten physical harm towards the victims, or towards any premises or property of the victims or which the victims have access. Appropriate safeguards have been included to protect legitimate activities, e.g. in the exercise of the freedoms of expression, of the press, and academic research. The Ordinance will be explained later in the present report in respect of article 26.

Article 21

Right of peaceful assembly

241. As explained in paragraph 375 of part II of the initial report, the freedoms of assembly, of procession and of demonstration are guaranteed by article 27 of the Basic Law. The provisions of the Public Order Ordinance (Cap. 245) in respect of the right to assembly were specifically framed with a view to conforming to article 21 of the Covenant.

The operation of the Public Order Ordinance

242. The HKSAR Government respects and takes it upon itself to protect the rights of the public to peaceful assemblies and processions and to express their views. As Hong Kong is a crowded place, large-scale public assemblies and processions will affect other people or road users, and may have impacts on public safety and order. In this connection, while

facilitating expression of views by participants of processions, it is also the HKSAR Government's responsibility to maintain public order, and at the same time strike a balance by ensuring the rights of other people to use the public place or road as well as their safety. Participants of public meetings or processions, in exercising their freedom of expression, should, under the premise of observing the Hong Kong law and without affecting public order, proceed in a peaceful and orderly manner.

243. Under the Public Order Ordinance, any public meeting or procession the attendance of which exceeds the limit prescribed in the Ordinance should give notice to the Commissioner of Police and only be conducted if the Commissioner of Police has not prohibited or objected to it. The Commissioner of Police (or delegated officers) will carefully examine each case. He may impose condition(s) on a notified public meeting or procession as reasonably necessary to ensure public order and public safety. Generally speaking, upon receipt of a notification about a public meeting or procession, the Police will establish early contact and maintain an active and close communication with the event organizer to provide advice and assistance. The Court of Final Appeal has pointed out in a judgment that Hong Kong's legal requirement for notification is widespread in jurisdictions around the world. It has also affirmed that the statutory requirement for notification is constitutional, and is required to enable the Police to fulfil their duty of taking reasonable and appropriate measures to enable lawful assemblies and demonstrations to take place peacefully.

244. If the Commissioner of Police prohibits/objects to or imposes conditions on a notified public meeting or procession under the Public Order Ordinance and the organizer disagrees, the organizer may lodge an appeal to the independent Appeal Board on Public Meetings and Processions. The Appeal Board is chaired by a retired judge and consists of three other members selected in rotation from a panel of 15 independent members appointed by the Chief Executive. It may confirm, reverse or vary the prohibition, objection or condition imposed by the Commissioner of Police.

245. Between 1 July 1997 and 31 December 2009, there were over 30 000 public meetings and processions in Hong Kong.

246. It is evident that since the establishment of the HKSAR, the public continues to enjoy a high degree of freedom of assembly. The majority of these activities were conducted in a peaceful and orderly manner and in accordance with the law.

The confiscation of exhibits under public entertainment laws

247. Some commentators raised concerns, arising from an incident involving the use of legislation regulating places of public entertainment to remove exhibits in public display, that Government had been applying the law to infringe on the freedom of expression, and requested the Government to ensure that law enforcement agencies remain politically neutral and that such laws could not be used to interfere with the freedoms of assembly and expression. It should be noted that the Places of Public Entertainment Ordinance (Cap. 172) was enacted to ensure public safety with regard to building, hygiene, fire and ventilation aspects, as well as law and order within the premises. All places of public entertainment shall comply with the requirements set by the Food and Environmental Hygiene Department (FEHD) and other relevant departments. The HKSAR Government has no intention to suppress any activity, as far as they are in compliance with the existing legislation.

Stalls for fund raising/collecting signatures during processions

248. Some commentators expressed concerns about the licensing procedures and criteria for approving NGOs to set up stalls during processions for various purposes such as

collection of signatures, distribution of information, fund raising and recruitment of volunteers, and whether these would be used to impede the various freedoms associated with the processions. Hong Kong residents' freedom of procession is protected by article 27 of the Basic Law. Charitable/non-charitable organizations wishing to set up stalls to raise funds during processions have to comply with the requirements under section 4(17) of the Summary Offences Ordinance (Cap. 228) by making applications to the relevant Government departments.

249. Charitable/non-charitable organizations wishing to conduct fund-raising activities in public places in the form of selling of goods are required to apply for temporary hawkker licences, the validity period of which is not more than one month, from the FEHD. All applications must be submitted at least 12 working days before the fund-raising activities. In handling the applications, the FEHD will consult relevant departments. Apart from checking whether the locations under applications have already been allocated to other organizations, the factors which are taken into account mainly involve public safety and order, such as whether a stall would obstruct public passageways. All applications are processed based on the same criteria. From January to September 2010, the FEHD issued a total of 479 temporary hawkker licences, some of which have been issued in respect of stalls set up during processions. During the same period, the FEHD refused only some 10 applications concerning the setting up of stalls during processions, with the major reasons being that the applications were not submitted to the FEHD at least 12 working days before the funding-raising activities, the locations under application had already been allocated to other organizations, and pedestrian flow control or road closure measures would be implemented by the Police at the locations concerned.

Public meetings outside Central Government Offices

250. Some commentators were concerned about the policies and measures to facilitate public assembly and meeting outside Central Government Offices of the HKSAR. They were also concerned about whether there will be design and management measures in the new Central Government Offices and the LegCo Building under construction to facilitate protesters in expressing their views to Government officials or LegCo Members. The Administration recognizes the public's right to freedom of peaceful assembly and expression of opinions and the need to facilitate members of the public to carry out public activities. As such, it has never been the intention of the Administration to incorporate into the design of the Tamar Development Project (to house the new Central Government Offices and the LegCo Building) which will restrict the public's right to peaceful assembly. To safeguard the public's right to freedom of peaceful assembly and expression, it is our intention to identify suitable places at the new Central Government Offices to facilitate members of the public to carry out public activities which will neither compromise public order and safety nor the effective operation of the Government Secretariat.

Article 22 Freedom of association

Societies Ordinance

251. As explained in the previous report, there has been a healthy growth in the number of societies in Hong Kong. The number of societies which have either been registered or been exempted from registration since the establishment of the HKSAR reached over 23 000 by 31 May 2010. It remains the case that the Police have not rejected any application for the formation of a society since the establishment of the HKSAR.

Regulation of trade union activities

252. The position remains as explained in paragraphs 120 to 126 of part II of the initial report of the HKSAR under the Covenant on Economic, Social and Cultural Rights in relation to article 8 of that Covenant.

Number and membership of trade unions

253. As at 31 December 2009, the number and declared membership of employees' unions in Hong Kong were:

<i>Economic sector</i>	<i>2009</i>	
	<i>No. of unions</i>	<i>Declared membership</i>
Agriculture, forestry and fishing	1	7
Manufacturing	81	59 697
Electricity and gas supply	4	2 034
Construction	37	29 689
Import/export, wholesale and retail trades	34	64 425
Transportation, storage, postal and courier services	105	121 570
Accommodation and food service activities	25	23 740
Information and communications	16	7 044
Financial and insurance activities	4	8 184
Real estate activities	10	7 125
Professional, scientific and technical activities	5	479
Administrative and support service activities	31	39 366
Public administration	190	190 312
Education	63	104 784
Human health and social work activities	93	55 753
Arts, entertainment and recreation	30	6 437
Other service activities	25	6 327
Work activities within domestic households	14	3 546
Total	768	730 519
Union participation rate in terms of salaried employees and wage earners		22.48%

Organizations for the promotion of human rights

254. The position continues to remain as explained in paragraphs 401 to 404 of part II of the initial report. The list at annex 1 updates annex 7 of the previous report.

Article 23

The family – a vital component of society

255. The general position remains as explained in paragraph 234 of part II of the previous report.

Family welfare services

Integrated Family Service Centre

256. At the time when the previous report was prepared in 2003, the first point of call for families which need help and advice was Family Services Centre. In 2004–05, the SWD restructured the family services in Hong Kong and adopted the Integrated Family Service Centre (IFSC) service mode. It has re-engineered the then family welfare service resources (including Family Services Centres and other family service units) to form an extensive network of 61 IFSCs over the territory. IFSCs provide a continuum of preventive, supportive and remedial family services for children or families in need in a holistic manner.

257. In October 2008, the SWD commissioned the University of Hong Kong to conduct a review on the implementation of the IFSC service mode. The review report was released in May 2010. The consultant team concluded that the IFSC service mode had received general support from stakeholders as the delivery mode for family services and that it should continue to be adopted for the publicly-funded family services in Hong Kong.

258. Some commentators were concerned about the workload of IFSCs and that their efficiency may be affected. Since the adoption of the IFSC service mode in 2004–05, the Government has been closely monitoring the manpower situation of the IFSCs and, where necessary, has strengthened their manpower and supervision through provision of additional resources. The total number of frontline social workers and centre-in-charges/supervisors of the IFSCs has increased from 896 and 62 in 2004–05 to 1 017 and 91 in 2009–10 respectively, representing a 16 per cent increase. The consultant team for the review has made a total of 26 recommendations in the review report to enhance the implementation of the IFSC service mode. The Government will take forward all the recommendations in collaboration with administrators, supervisors and frontline staff of the IFSCs and other relevant parties.

Family and Child Protective Services Units

259. To meet the specific needs of families with the problems of child abuse and spouse battering and children affected by custody/guardianship disputes, the Family and Child Protective Services Units (FCPSUs) of the SWD have been providing specialised services with the objectives of restoring the normal functions of the families and safeguarding the interests of the children concerned. In view of increasing service demand, additional resources have been allocated to strengthen the manpower of the FCPSUs in recent years. The number of FCPSUs has increased from five as reported in the previous report to 11 in 2009–10.

260. Measures to combat child abuse and domestic violence and our response to the Committee's previous concluding observations on the issue are elaborated in this report in respect of article 24.

Review of laws relating to child guardianship and custody by the Law Reform Commission

261. The Government has completed its review of the two reports published by the LRC on guardianship of children and international parental child abduction as mentioned in paragraph 238 of part II of the previous report. It accepts in principle all the recommendations of the two reports. With the endorsement of the LegCo Panel on Welfare Services, the Government is now in the process of preparing the necessary legislative amendments to implement the recommendations.

262. The LRC issued another report on child custody and access in March 2005. Among other things, the report recommends the adoption of the “joint parental responsibility” model which aims at enabling both parents to maintain an active involvement in the lives of their children after divorce. Since implementation of this model will fundamentally change the concept of “custody” underpinning the existing family law of Hong Kong and some stakeholders have expressed concerns and worries, the Government will take a cautious approach on the matter and continue to consult relevant stakeholders before deciding on whether and how to adopt the recommendations of the report. Meanwhile, the Government has taken into account the relevant recommendations of LRC in considering related policy issues, such as in the legislative exercise to amend the Domestic Violence Ordinance in 2008.

Responsibility of parenting

263. Some commentators expressed that the responsibility of parenting in Hong Kong was still largely shouldered by the mother and suggested that more resources, education and publicity measures be deployed to ensure parents were more aware of shared responsibility, and legislation should also be considered.

264. Family life education programmes organized by various services units under the SWD, including Family Life Education Units, IFSCs and Integrated Service Centres, cover, among other things, the promotion of the awareness of shared parental responsibility. These service units also work closely with schools in organizing specific programmes for parents with a view to enhancing their understanding of the needs of their children. Moreover, Parenting Programme is available in all Maternal and Child Health Centres under the Department of Health. It aims to equip parents/caregivers with the necessary knowledge and skills to bring up healthy and well-adjusted children through enhancing parenting skills and efficacy, promoting parent-child relationship and reducing child behaviour problems. Parents and parents-to-be will receive anticipatory guidance covering both physical child care and psychological aspects of parenting. Supportive service will be offered to parents in need, including those encountering difficulties in parenting, with perinatal mental health problem or specific psychosocial needs.

Split families

Split families between HKSAR and the Mainland of China

265. Some commentators expressed concerns on the issue of “reunion of split families” between the HKSAR and the Mainland of China. Some commentators were also concerned with the unequal treatment that spouses of Hong Kong residents in the Mainland need to make applications when they come to Hong Kong, while spouses from overseas countries are not required to do so. Our position, including the legislative provisions for the entitlement of right of abode and the Certificate of Entitlement (CoE) Scheme, was set out in paragraphs 126 and 127 of part II of the previous report.

266. The Basic Law stipulates that “for entry into the Hong Kong Special Administrative Region, people from other parts of China must apply for approval” (paragraph 4 of article 22). Mainland residents who wish to settle in Hong Kong for reasons including family reunion must apply through a Permit scheme administered by the Mainland authorities. Indeed, the Permit scheme is predominantly a family reunion programme which ensures that the eligible candidates will come to Hong Kong for settlement in an orderly manner within the constraint of the social and economic infrastructure in Hong Kong.

267. The Mainland authorities have since May 1997 applied the “Points System” which has been refined from time to time to assess and determine the eligibility of applicants and the order in which they may settle in Hong Kong according to objective criteria. Except for

CoE holders, the main considerations in examining and approving the Permit applications include the separation time and the age of the applicants and their Hong Kong relatives. Mainland residents claiming right of abode under paragraph 2(c) of Schedule 1 to the Immigration Ordinance can apply for a CoE from the Public Security Offices in the Mainland where their household registration is kept.

268. In recent years, the Permit scheme has been refined, including relaxation of the age limit for applications by accompanying children of spouses from below 14 to below 18, and removal of the restriction that only one accompanying child was allowed in 2003. In January 2009, the waiting time for the Permit for spouses and their accompanying children was further shortened to four years, considerably shorter than the waiting time of seven years a few years ago.

269. From the establishment of the HKSAR (1 July 1997) to 31 December 2009, the CoE Scheme has facilitated the admission of more than 180 000 Mainland residents for settlement in Hong Kong. From 1 July 1997 to 31 December 2009, over 620 000 Mainland residents (including CoE holders) have settled in Hong Kong under the Permit Scheme.

270. Apart from entering Hong Kong for settlement on the strength of the Permit, Mainland residents may visit Hong Kong for sightseeing, conducting businesses and visiting relatives. Eligible Mainland residents can also apply for multiple journey exit endorsement for visiting relatives in Hong Kong, which enables them to stay in Hong Kong for 90 days on each entry. Over 1.8 million visitor-arrivals per annum on strength of the endorsement for visiting relatives were recorded in recent years.

271. Some commentators were concerned about the high level of fee charged by public hospitals for wives of local residents in the Mainland who were admitted to local hospitals for delivery. It is the Government's policy to ensure that Hong Kong resident women are given proper and adequate obstetric services. To tackle the problem of rapid increase in the demand for obstetric services in Hong Kong by non-local women (i.e. those being non-Hong Kong residents, including Mainland women) in recent years, which has caused tremendous pressure on the capacity of obstetric service in public hospitals and affected such services to Hong Kong residents, the Hospital Authority has implemented since 1 February 2007 revised arrangements for obstetric service for non-eligible persons. The revised arrangements seek to limit the number of non-eligible persons coming to Hong Kong to give births to a level that can be supported by our public healthcare system, and to deter their dangerous behaviour of seeking emergency hospital admissions through Accident & Emergency Departments shortly before labour. The revised obstetric service arrangements for non-eligible persons apply to all non-local women including those whose husbands are Hong Kong residents.

Split families from other countries

272. Some commentators expressed concerns that some South Asian families remain split because dependents' applications for residency in Hong Kong are rejected on the ground that the sponsors were unable to provide suitable accommodation and financial support to the dependents. Under the existing immigration policy, eligible Hong Kong residents may sponsor their dependants to take up residence in Hong Kong. Such applications may be favourable considered provided that normal immigration requirements and specific eligibility criteria are met, including that there is reasonable proof of a genuine relationship between the applicant and the sponsor; there is no known record to the detriment of the applicant; and the sponsor is able to support the applicant's living at a standard well above the subsistence level and provide the applicant with suitable accommodation in Hong Kong. The current requirements and criteria already strike an appropriate balance between facilitating the entry of eligible dependants and upholding immigration control. Nevertheless, the HKSAR Government can assure that each application is determined on its

individual merits and will continue to review its immigration policies from time to time to ensure that they meet the needs of society.

Families on asylum or torture claims

273. Some commentators were concerned about the questions of subsistence and education of families on asylum or torture claims. Children with no right to remain in HKSAR are subject to removal, so the question of their schooling in HKSAR does not normally arise. Where removal is unlikely in the short term, requests to allow them to attend school are considered on a case-by-case basis, having regard to the obligation on the rights and interests of the child and other relevant factors. In appropriate cases, the Director of Immigration may give an indication of no objection, whereafter arrangements for schooling may be made by the education authorities in accordance with established rules.

274. In arranging such placements, the EDB will consider the education needs of the children. For example, new arrival children may attend Initiation Programmes, which aim to improve their Chinese and English, assist them in adjusting to the local community and foster personal development. Student financial assistance to cover education-related expenses may be provided on a case-by-case basis. Apart from the assistance provided by the Administration, there are other resources in the community in support of the development of child asylum-seekers/torture claimants.

275. On humanitarian grounds, the Administration, in collaboration with NGOs and on a case-by-case basis, offers in-kind assistance to torture claimants and asylum seekers who have difficulty meeting their basic needs while their claims are being processed. The assistance offered includes temporary accommodation, food, clothing, other basic necessities, appropriate transport allowances, counselling and medical service.

Amendments to the Matrimonial Causes Rules

276. The Matrimonial Causes (Amendment) Rules of December 2001 simplify the procedures for handling undefended petitions or joint applications for divorce or judicial separation. Further, to facilitate the enforcement of maintenance orders and the timely collection of maintenance payment, the Administration is working on ways to streamline the court procedures in relation to judgement summons to combat the problem of maintenance payers evading service of the judgement summons.

New arrivals from the Mainland of China

277. Between 1 July 1998 and 31 December 2009, nearly 570 000 people from the Mainland of China settled in Hong Kong. In paragraphs 417 to 425 of part II of the initial report, and paragraphs 243 to 245 of part II of the previous report, we explained the position of new arrivals from the Mainland of China and the initiatives then being taken to ease the process of their settlement. Those initiatives have continued and, where necessary, been improved and updated:

(a) Identifying needs and organizing community activities: The HAD continues to conduct quarterly surveys on the profile and service needs of new arrivals from the Mainland in collaboration with the Immigration Department. Survey results are distributed to relevant Government departments and NGOs for reference;

Since 2007, the HAD has allocated resources to those districts with a higher concentration of new arrivals and the disadvantaged in the community, to facilitate district organizations to organize activities (such as workshops, interest classes, visits, camps and other activities) to assist those newly arrived in Hong Kong to integrate into the local community as soon as possible.

(b) Education: the position remains as explained in paragraph 243(b) of part II of the previous report;

(c) Housing: At present, about half of the new arrivals from the Mainland live in public rental housing (PRH). New arrivals may apply, on the ground of family reunion, for inclusion into PRH tenancy if they are either the spouse/children aged under 18/dependent family members of the tenants; or the spouse and children of one of the tenant's married children. An adult child of elderly tenants, together with his family members, can be included in the tenancy. New arrivals who want to apply for PRH flats under the waiting list by themselves can register on the waiting list, subject to the requirements such as income and asset limits being met. With a minimum of half of the family members having lived in Hong Kong for seven years, the new arrival would be offered PRH flats when their turns for PRH mature. A person under the age of 18 will be deemed to have fulfilled the seven-year residence rule if he/she has established permanent resident status by birth. For those new arrivals not meeting the aforesaid requirements but having difficulties in meeting their imminent housing needs, they may apply to the SWD for special recommendations to housing on compassionate grounds;

To assist the newly-arrived residents in the PRH to better adapt to the new living environment, the Housing Department has extended the Housing Advisory and Service Team service for another two years to cover 22 PRH estates in Tuen Mun, Yuen Long, Tin Shui Wai and Tung Chung districts starting from April 2010. The expanded service will continue to reach out to the new PRH tenants from the Mainland more proactively to help them better settle in the new environment in Hong Kong.

(d) Welfare: We explained in paragraph 10.37 of the third report of the HKSAR under the Covenant on Economic, Social and Cultural Rights, in relation to article 10 of that Covenant, that welfare services such as child care, community support and financial assistance are made available to new arrivals;

Following the SWD's implementation of the IFSC service mode in 2004–05, new arrivals can now have access to a continuum of comprehensive family services in one stop at the 61 IFSCs and two Integrated Service Centres over the territory. Family services are now available to them in a much more convenient, accessible and holistic way than before. Social workers at IFSCs and Integrated Service Centres have the relevant experience and skills in supporting new arrivals. They will thoroughly assess and take care of the needs of new arrival families and provide them with appropriate services. From time to time, programmes and activities targeting newly-arrived families are organized at these centres to help them adapt to the new environment. Topics covered in these programmes include effective communication among family members and conflict, emotion and stress management, etc. Districts with a higher concentration of new arrivals were given additional resources in 2008–09 to organize more focused and targeted programmes for new arrivals.

Meanwhile, with continuous funding and additional resources from the SWD, the International Social Service Hong Kong Branch (ISS), a local NGO, continues to provide services to new arrival families and individuals. Services provided include intake enquiries, counselling, emergency assistance, volunteer training, various groups and activities and referral. Moreover, the ISS also reaches out to new arrivals and connects those having difficulties to mainstream or community services. The SWD has also linked up its Departmental Hotline with the New Arrival Hotline operated by ISS since July 2009. The New Arrival Hotline provides support in the form of information giving, guidance, regular concern calls, etc. to those who have arrived in Hong Kong for less than six months with a view to facilitating their integration into the community. Linking up the two hotlines will enable new arrivals calling the SWD Hotline to have their calls transferred to the New Arrival Hotline for tailor-made and targeted advice and services. In July 2010, the SWD

has given additional funding to the ISS to operate a service team at the Lo Wu Control Point (one of the immigration control points between HKSAR and the Mainland). Services provided include provision of information about social services in Hong Kong and referrals to appropriate service units for follow up.

(e) NGOs operate complimentary projects, funded from sources such as the Hong Kong Jockey Club Charities Trust and Community Chest. These initiatives include education, employment programmes and volunteer services.

278. Various Government departments have been providing a range of services to help new arrivals adapt to their new environment as soon as possible and help ethnic minorities integrate into our society. The Permanent Secretary for Home Affairs will lead a dedicated team to step up and co-ordinate efforts in this regard. The team will monitor closely the service needs of new arrivals during the adaptation period and the difficulties faced by ethnic minorities in daily life, so as to ensure that the support services can meet their needs. Moreover, the team will enhance collaboration with NGOs and district organizations to facilitate the early integration of new arrivals and ethnic minorities into the local community.

Right of marriage of transgender persons

279. Some commentators were concerned that transgender persons' right to form families has been violated by the refusal of the Government to recognize marriage based on the post-operation sex. Under Hong Kong law, marriage is the voluntary union for life of one man and one woman. A recent court judgment in a judicial review upholds the interpretation of "man" and "woman" in this context as the individual's biological sex at birth. As the judgment is subject to possible appeal, it is not appropriate for the Administration to comment on the case further at this juncture, but the Administration will continue to listen to the views of the community on relevant issues.

Article 24

Rights of children

Convention on the Rights of the Child

280. The second report of the HKSAR, which formed part of China's third and fourth reports under the Convention on the Rights of the Child has been submitted to the United Nations. The HKSAR Government will produce a child-friendly version of the HKSAR report on the Convention which is more easily understood by children and young people, in order to promote the awareness of the Convention among them.

Promotion of the rights of the child

281. Further to the initiatives mentioned in paragraphs 264 to 266 of part II of the previous report, we have continued our efforts to promote the Convention on the Rights of the Child and respect of children's rights in schools and the community at large through different means. We have also taken initiatives to enhance cooperation with NGOs to promote children's rights.

282. In respect of the Children's Council mentioned in paragraphs 265 and 266 of part II of the previous report, the Government has provided funding for the Children's Council project to be held annually. Furthermore, in 2006, Child Councillors who had participated in the Children's Council formed "Kids' Dream", the first children-led NGO in Hong Kong. It has been actively involved in the promotion of children's rights and provision of insightful contribution to the Government.

283. The Government also established the Children's Rights Education Funding Scheme in 2006 to provide financial support for community organizations to carry out education projects to raise public awareness and understanding of children's rights. Details of the Funding Scheme are elaborated in part II of the second report of the HKSAR under the Convention on the Rights of the Child in relation to articles 42 and 44.

284. In 2009, to commemorate the 20th anniversary of the adoption of the Convention on the Rights of the Child, the Government undertook a series of programmes to promote the Convention and understanding of children's rights, including the publication of a comic booklet on the Convention, launching of media promotion, allocating additional resources to fund community projects to promote the Convention, as well as sponsoring the production of educational kits for teachers, parents and students to enhance their understanding of children's rights.

285. Some commentators proposed to establish a commission with a clear mandate on children's rights. Some others commented that there was no comprehensive child policy or mechanism to implement the Convention on the Rights of the Child in the HKSAR. It should be noted that in the HKSAR, all decision-making, including legislative proposals and policies would, as a matter of course, take into account the best interests of children. Regarding coordination on matters concerning children which span across a number of policy areas, it is a standing practice that the lead bureau of a subject matter would consult other concerned *bureaux* and departments as and when necessary. As regards the collection of views, for formulating policies and measures including those affecting children, the relevant Government bureau or department will make use of established channels to carry out consultation with stakeholders, including children and children's organizations.

286. The issue of setting up a new human rights institution has recently been considered by the Government as detailed in paragraphs 2.1 to 2.4 of this report, in respect of article 2.

Services for the child

Day childcare services

287. The Government continues to fund NGOs which provide various kinds of child care services to support parents who cannot take care of their children temporarily because of work or other reasons.

288. Further to paragraph 251 of part II of the previous report, apart from providing regular and institutional services at the traditional child care centres and kindergarten-cum-child care centres, the SWD has introduced various new services with more flexible service hours and mode of operation in recent years to better meet service demands. For instance, the SWD has launched a pilot Neighbourhood Support Child Care Project since October 2008 to provide needy parents with flexible child care services, and at the same time, foster mutual help and care in the community. Under the Project, carers in the neighbourhood are hired and trained to take care of children at centres run by the service operators or at the carers' homes.

289. At the time when the previous report was prepared, child care centres and kindergartens were registered under different ordinances and regulated by different departments, although their service targets and the services they provided might be similar. Child care centres were registered under the Child Care Services Ordinance (Cap. 243) and regulated by the SWD, whereas kindergartens were registered under the Education Ordinance (Cap. 279) and regulated by the then Education and Manpower Bureau. In 2005, amendments were made to the Child Care Services Ordinance to harmonies the pre-primary services governed by the two Ordinances.

290. The harmonization re-delineates the services and target users of child care centres and kindergartens. Independent child care centres have been redefined as day care services for children under the age of three and are registered under the Child Care Services Ordinance and supervised by the SWD. Kindergartens, on the other hand, are registered under the Education Ordinance and administered by the EDB. For institutions which provide pre-primary services to both children aged below three and aged from three to six (i.e. kindergarten-cum-child care centres), a Joint Office for Pre-primary Services staffed by the EDB and the SWD was set up under the EDB in 2005 to provide one-stop services and supervision to them.

Residential childcare services

291. The underlying principle of residential child care services, as mentioned in the previous report, is that a family setting is preferred to an institutional one. This is particularly important in the case of younger children. As at 30 June 2010, there were a total of 1 865 non-institutional residential care placements, compared with 1 535 as at 30 June 2003 as reported in the previous report.

Poverty among children

292. Some commentators suggested that the Government should consider re-establishing the Commission on Poverty (CoP) in collaboration with NGOs, academics and stakeholders and drawing up a poverty line to tackle poverty among children. With the conclusion of the work of the CoP, the Government set up the Task Force on Poverty (TFP) in 2007, headed by the Secretary for Labour and Welfare, to monitor the progress in implementing recommendations of the CoP, co-ordinate efforts across the Government in tackling poverty-related issues. The TFP has duly followed up the recommendations of the CoP and many of which have already been implemented. The TFP will continue to coordinate the Government's efforts and explore possible new initiatives and measures to assist the disadvantaged groups and people in need where necessary.

293. The CoP had deliberated fully the issue of how to measure poverty in Hong Kong. It was of the view that in an affluent city like Hong Kong, poverty could not be understood simply by the concept of absolute poverty or the lack of ability to afford minimum subsistence, nor could we rely upon a single poverty line to measure income poverty. We must take into consideration the actual situation and needs of the disadvantaged groups, including their access to essential services and opportunities such as housing, healthcare, education and employment. The Government agrees with the CoP, and has all along been adopting a set of 24 multi-dimensional poverty indicators that the CoP recommended for monitoring the overall poverty situation in Hong Kong.

294. To reduce intergenerational poverty, the Government set up the \$300 million Child Development Fund (CDF) in April 2008 to try out an asset-based model which encourages the longer-term personal development of children from a disadvantaged background. Since December 2008 and up to October 2010, two batches of CDF projects have been rolled out, benefiting altogether 2 270 children. We estimate that 13 600 children will eventually benefit from the CDF.

Child abuse and domestic violence

295. In paragraph 16 of its previous concluding observations, the Committee suggested that the HKSAR Government should allocate adequate resources for the protection and provision of assistance to the victims of domestic violence. The Government has launched various initiatives in combating child abuse and domestic violence, as well as strengthening support for the victims and families in need. Our work in this aspect has been set out in paragraphs 10.46 to 10.57 in relation to article 10 of HKSAR's third report under the

Covenant on Economic, Social and Cultural Rights. It would be explained in the relevant section in relation to article 5 of HKSAR's third report under the Convention on the Elimination of All Forms of Discrimination against Women.

296. In addition to providing support and specialized services for victims of domestic violence, we also provide support to needy families through the provision of childcare services, family crisis intervention and counselling services, etc. To this end, we have allocated considerable resources to the SWD to provide a coordinated package of preventive, supportive and specialized services for individuals involved in domestic violence as well as families in need. The SWD's expenditure in this area has increased from \$1.3 billion in the 2004–05 financial year to \$1.6 billion in the 2008–09 financial year. The budget for the 2009–10 financial year was further increased to about \$1.8 billion. Additional manpower has also been allocated to the SWD to enhance the department's capability in handling domestic violence cases.

297. Some commentators expressed concerns over cases involving parents committing suicide with their children, or neglecting children by leaving them unattended. They asked the Government to strengthen public education on the right to life of children and provide support to parents with mental health problems.

298. The SWD has stepped up its efforts and services to instil in parents the importance of children's safety and to assist families in need. These efforts include public education and publicity, family life education and family counselling services, enhanced child care services, and financial support for low-income families in need of child care services. The SWD also includes in its publicity plan the production of a new Announcement in the Public Interest in 2010–11 reminding parents to respect children's right to life, as well as promoting the right attitude of parents towards life.

299. We strive to provide suitable support services for parents with disabilities, including those with mental health problems. All along, the Hospital Authority has been promoting the importance of mental health through its provision of psychiatric services. The Department of Health has also included mental health in its public health education programme. The measures taken by the HKSAR Government in this respect was elaborated under article 23 of the initial report of the HKSAR under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

Training for Police officers in handling domestic violence cases

300. The Committee recommended in paragraph 16 of its last concluding observations that the HKSAR should ensure that police officers receive proper training to deal with cases of domestic violence.

301. The Police officers handle all reports related to domestic violence and child abuse professionally. The Child Protection Policy Unit of the Police has introduced various training programmes to enhance the capabilities of frontline officers in handling domestic violence and child abuse cases. These programmes cover domestic violence dynamics, psychology of parties involved, questioning techniques, risk assessment, conflict management and service interface with welfare units, etc. In particular, officers of Child Abuse Investigation Unit in Police regions have received specialized training on child abuse investigation under a joint training programme co-organized by the Police and the SWD. Refresher training is also organized on a regular basis to enhance officers' skills in case investigation and assisting victims of such cases.

302. The Police adopted a new assessment tool, namely the Emergency Referral Questionnaire, in November 2006 to assist frontline officers in identifying and assessing the risk factors of the family involved in domestic violence incidents. An action checklist has

also been introduced to assist frontline officers in conducting initial investigation at the scene of a domestic violence case.

303. To enhance Police officers' effectiveness in handling family related incidents, e-learning packages in the name of "Family Harmony Project", covering domestic violence, child abuse, juvenile crime and elder abuse, have been provided to police officers since November 2009.

Supportive and specialized services offered to victims of domestic violence

304. Since November 2006, the Police have adopted a "one family one team" principle by ensuring that the same investigation unit would follow up cases that involve the same family. To strengthen the support of and assistance to victims of domestic violence during the investigation and judicial processes, and to enhance communication and cooperation among the Police, the SWD and other NGOs, the Police have implemented the Victim Management Workflow so as to enable the Police to adopt a consistent and coordinated approach in victims handling and to take proactive measures that are commensurate with the level of risk and gravity of individual cases.

Corporal punishment

305. Some commentators raised concern regarding corporal punishment within a family, and called for legislation against corporal punishment of children in Hong Kong.

306. At present, there are provisions under the Child Care Services Regulations (Cap. 243A) and the Education Regulations (Cap. 279A) which prohibit corporal punishment of children in a childcare centre and mutual help childcare centre as well as corporal punishment of pupil by a teacher.

307. In relation to child abuse, the provisions under the Offences Against the Person Ordinance (Cap. 212) may apply. For example, a person who is convicted of an assault occasioning actual bodily harm (section 39) or a common assault (section 40) would be liable to a maximum penalty of imprisonment for three years and one year respectively. Furthermore, pursuant to section 27(1) of the Ordinance, it is unlawful for a person aged over 16, including a parent, who has the custody, charge or care of a child or young person under the age of 16, to wilfully assault or ill-treat the child or young person, or causes such child or young person to be assaulted, or ill-treated in a manner likely to cause such child or young person unnecessary suffering or injury to his health. If convicted, the person shall be liable to a maximum penalty of 10 years' imprisonment.

308. As to whether corporal punishment in the family that may not constitute criminal offences under the existing laws should be prohibited by law, we note that laws in other jurisdictions are developing, and the issue is still a controversial one even in Western society. We do not consider that legislation at this stage would be the most effective means of dealing with the issue in Hong Kong.

Review and amendment of the Adoption Ordinance

309. Upon completion of the review as mentioned in paragraph 259 of part II of the previous report, the Government introduced legislative amendments to the Adoption Ordinance into the LegCo in June 2003 which gave effect to the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption in Hong Kong and improved local adoption arrangements. The amendments were passed by LegCo in July 2004 and commenced operation in January 2006.

Representation of children in care or protection cases

310. As mentioned in paragraph 262 of part II of the previous report, we have commissioned the Duty Lawyer Service to operate the Legal Representation Scheme for Children or Juveniles involved in care or protection proceedings since October 2003. The Scheme provides free legal representation service for children and juveniles involved in care or protection proceedings. The Scheme was extended in June 2005 to cover children and juveniles taken to the juvenile court directly by the Police for the application for care or protection orders without any period of detention in a gazetted place of refuge before the court hearing, and children and juveniles likely to be detained in a gazetted place of refuge on the recommendation of a social worker of the SWD. In March 2007, the Scheme was further extended to cover all such cases even without parental/guardian consent.

Proposals on “sexual offences records check”

311. Some commentators noted that the LRC has published a report in February 2010 recommending the setting up of an administrative scheme to enable employers of persons undertaking work relating to children and mentally incapacitated persons (MIPs) to check the criminal conviction records for sexual offences of employees. The LRC considers that information about the background history of job applicants is important to employers seeking to fill position of trust. Where the work involves working with children or MIPs, information as to a job applicant’s sexual conviction record is relevant in assessing the applicant’s suitability. It is reasonable, responsible and necessary for the Government to introduce a system whereby the employers or parents may ascertain that a person who assumes any post related to work with children has any previous convictions for sexual offences.

312. The LRC in its report also recommends introducing a number of measures to the administrative mechanism to address privacy and rehabilitation concerns of previous sex offenders. The public consultation on the proposed mechanism conducted by the LRC shows that the majority of respondents are in support of the mechanism for sexual offences records checks.

313. Given that a comprehensive legislative scheme would take considerable time to be deliberated and the immediate need for a system to reduce the risk of children and MIPs being sexually abused, the LRC requests the Government to implement the proposed administrative mechanism without delay. The LRC would further consider whether a comprehensive legislative scheme should be introduced.

314. The Government is considering the LRC’s recommendations. We aim to introduce the proposed checks mechanism as soon as practicable so as to enhance the protection of children and MIPs.

Article 25 Right to participate in public life

Constitutional development

315. In paragraph 18 of its previous concluding observations, referring to the reservation made by the United Kingdom according to which article 25(b) of the Covenant does not require the establishment of an elected legislature in Hong Kong, the Committee stated its view that once an elected LegCo is established, its election must conform to article 25 of the Covenant. The Committee recommended that “All necessary measures should be taken whereby the LegCo 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.”

316. We note the Committee’s recommendations. However, we respectfully maintain the position, as explained in the previous reports that, when the Covenant was applied to Hong Kong in 1976, a reservation was made not to apply article 25(b) insofar as it might require the establishment of an elected Executive Council or LegCo in Hong Kong. In accordance with the notification given by the CPG to the United Nations Secretary-General in June 1997 and article 39 of the Basic Law, this reservation continues to apply to the HKSAR.

317. The above view was supported by the decision made by the Court of First Instance of the High Court of the HKSAR in *Chan Yu Nam v Secretary for Justice* (HCAL32/2009 and HCAL55/2009).⁹ In rejecting applicants’ argument that the provisions in relation to corporate voting under the Legislative Council Ordinance (Cap. 542) were inconsistent with article 21(b) of the Hong Kong Bill of Rights (which mirrors article 25(b) of the Covenant), Andrew Cheung J was of the view that, as far as domestic law is concerned, article 25(b) of the Covenant assumes constitutional significance only by virtue of article 39 of the Basic Law. In his view, article 39 of the Basic Law “provides for the continued application of the International Covenant on Civil and Political rights to Hong Kong after 1997 as it applied to Hong Kong at the time the Basic Law was enacted”. There had been elections for FC in Hong Kong comprising, among other things, corporate voting which was not regarded by the British Government or the then Hong Kong Government to be inconsistent with the provisions of the Covenant and quite plainly it was considered that the reservation of British Government relating to article 25(b) of the Covenant had the effect of permitting elections for FCs in general and corporate voting in particular to be practised in Hong Kong.

318. In his judgment, Andrew Cheung J also considered Keith J’s obiter dictum in *Lee Miu Ling v Attorney General* (1995) 5 HKPLR 181 that section 13 of the HKBORO (which mirrors the reservation in relation to article 25(b) of the Covenant) was, to the extent that it related to LegCo, a dead letter, after the Letters Patent were amended to provide for a wholly elected LegCo in 1995. Andrew Cheung J was of the view that Keith J was addressing the position in Hong Kong in 1995 when the Letters Patent had been amended to provide for a wholly elected legislature and his view did not affect the position back in 1990 when the Basic Law was promulgated and the application of the Covenant to Hong Kong was still subject to the British reservation and thus there was no question of the reservation having become spent at that time even under Keith J’s reasoning.

319. Moreover, in the Court of Appeal judgment on *Ubamaka Edward Wilson v Secretary for Security and Director of Immigration* (CACV138/2009), Hon Stock VP made it clear that the phrase in article 39 of the Basic Law “the provisions of the International Covenant on Civil and Political Rights ... as applied to Hong Kong” means “the ICCPR as applied to Hong Kong by the Government of the United Kingdom in 1976, and as intended to remain in force in relation to Hong Kong after 1 July 1997 by reason of the PRC’s Communication of 20 June 1997 to the Secretary General of the United Nations”. He explained that “whatever view might be taken by the Human Rights Committee or by commentators on the validity or desirability of a reservation thus applied, the phrase ‘as applied to Hong Kong’ which we see in article 39 is a phrase that falls to be determined in the context of a domestically binding constitution and is to be interpreted in accordance

⁹ The appeals lodged by the two applicants were dismissed by the Court of Appeal of the High Court (the Court of Appeal) on 7 December 2010. Both applicants have filed applications for leave to appeal to the Court of Final Appeal. Hearing date of the applications for leave to appeal before the Court of Appeal has yet to be fixed.

with the meaning intended by that constitution”. “In referring to the International Covenant on Civil and Political rights ‘as applied to Hong Kong’, the Basic Law ... contemplated it as a reference to the application, with reservations, in 1976 of the International Covenant on Civil and Political rights by the Government of the United Kingdom to Hong Kong ... and it contemplated the continued application of that Covenant to Hong Kong beyond 1 July 1997, upon proper authorization by the Government of the PRC, with those reservations.”

320. In the same judgment, Hon Fok J also stated that “[counsel for the applicant] ran a fallback argument to the effect that the phrase ‘as applied to Hong Kong’ should be read as meaning ‘as lawfully applied to Hong Kong’ since, he submitted, in applying the Covenant to Hong Kong, the UK cannot have intended its reservations to apply regardless of their legality as a matter of international law”. This argument is, in the Judge’s opinion, “wholly fallacious since it would mean that a party acceding to the Covenant on civil and Political Rights with a reservation was binding itself to whatever interpretation of legality the Human Rights Committee might thereafter, or from time to time, pronounce. That simply cannot be right. A party making a reservation does so on the basis that the reservation is lawful and that, but for the reservation, it would not have acceded to the treaty at all.”

321. Both the CPG and the HKSAR Government are fully committed to attaining universal suffrage for the Chief Executive and LegCo in 2017 and 2020 respectively in accordance with the Basic Law and the relevant Interpretation and Decision of the NPCSC. Details of the work done to achieve the ultimate aim of universal suffrage are set out in the relevant paragraphs in respect of article 1.

322. Regarding the issue of interpretation of the Basic Law by the NPCSC, the consistent position of the HKSAR Government is that, the power of interpretation of the Basic Law, which is enshrined in the Constitution of the PRC and the Basic Law, is vested in the 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.

323. Our efforts to roll forward Hong Kong’s democratic development and responses to concerns raised by commentators in this respect are set out early in this report, in respect of article 1. The elections held in Hong Kong since the submission of the previous report are elaborated in the following paragraphs.

Election of the Chief Executive

324. The Basic Law provides that the Chief Executive shall be elected by a broadly representative Election Committee¹⁰ in accordance with the Basic Law and appointed by the CPG.

325. Since the submission of the previous report, two Chief Executive elections were held in 2005 and 2007 respectively. The elections were conducted and supervised by the Electoral Affairs Commission, a statutory and independent body, so as to ensure that the elections were held in a fair, open and honest manner in accordance with the law.

¹⁰ The Election Committee is currently composed of 800 members from four sectors (which are in turn composed of 38 subsectors), comprising:

- (a) 664 members of 35 subsectors who are returned through elections;
- (b) 96 ex-officio members (i.e. Hong Kong deputies to the National People’s Congress and Members of the LegCo) under the National People’s Congress subsector and the LegCo subsector; and
- (c) 40 members under the religious subsector who are nominated by six designated bodies.

326. The 2005 Chief Executive Election was held to fill the vacancy in the office of the Chief Executive, arising from the resignation of the incumbent.¹¹ Since only one candidate, Mr Donald Tsang Yam-kuen, was validly nominated at the close of the nomination period for the election, he was declared elected on 16 June 2005. On 21 June 2005, in accordance with the provisions of the Basic Law and the outcome of the election by the Election Committee, the State Council of the PRC appointed Mr Tsang as the Chief Executive. His term of office commenced on the same date and expired on 30 June 2007.

327. The 2007 Chief Executive Election was held to elect the third-term Chief Executive. A new-term Election Committee was constituted in February 2007 for the election. Two candidates were validly nominated at the close of the nomination period for the election. The election by the Election Committee was held on 25 March 2007. Mr Donald Tsang Yam-kuen, who obtained more than half of the total number of valid votes cast, was declared as returned at the election. On 2 April 2007, in accordance with the provisions of the Basic Law and the outcome of the election by the Election Committee, the State Council of the PRC appointed Mr Tsang as the third-term Chief Executive, with his term of office commencing on 1 July 2007.

328. Concerns expressed by some commentators on the electoral system and constitutional development in respect of the election of the Chief Executive were addressed earlier in this report, in respect of article 1.

Legislative Council elections

The 2008 Legislative Council elections

329. The fourth term LegCo comprises 60 members returned by elections on 7 September 2008. The elections were conducted under the supervision of the Electoral Affairs Commission and in accordance with the relevant provisions of the Basic Law, the relevant domestic statutes,¹² and their subsidiary legislation. The powers and functions of the LegCo are explained in paragraph 20 of the HKSAR Common Core Document.

330. Members of the HKSAR's fourth term LegCo were returned as follows:

(a) Geographical constituencies: 30 members were returned by direct elections based on universal suffrage, through the list voting system, which is a form of proportional representation system. All permanent residents of the HKSAR who had reached the age of 18 or above were eligible to be registered and to vote. Some 3.37 million people — 72.3 per cent of those eligible to do so — registered as electors. Over 1.52 million registered electors voted, representing a turnout of 45.2 per cent;

(b) Functional constituencies: returned 30 members. As explained in paragraphs 459(b) and 461 of part II of the initial report, these constituencies represent economic, social, and professional sectors that are substantial and important to Hong Kong.

The 2010 Legislative Council By-election

331. Some commentators expressed concerns on Government's handling of the 2010 LegCo By-election in May 2010, arising from the resignation of five incumbent LegCo Members in January 2010. They were concerned that senior officials, by expressing the

¹¹ On 10 March 2005, Mr Tung Chee-hwa tendered to the CPG his resignation from the office of the Chief Executive. The resignation was approved by the CPG on 12 March 2005 and the office of the Chief Executive became vacant on the same date.

¹² Namely the Legislative Council Ordinance (Cap. 542), the Electoral Affairs Commission Ordinance (Cap. 541), and the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554).

views that they would not vote at the By-election, would prejudice the impartial and independent role of the Government in conducting the election, as well as the right to vote by discouraging civil servants and the public from voting in the by-election. Some also expressed concerns on whether the scale of publicity for the by-election had been reduced.

332. While the Chief Executive and members of his political team decided not to vote in the By-election in view of its unique nature, the Chief Executive stressed that these were purely personal decisions on his part and the part of the political team and that civil servants would not and should not be affected by their decisions. The HKSAR Government duly respected decisions of individual civil servant as to whether or not they would vote.

333. The publicity work for the 2010 LegCo By-election involved a budget of \$3 million. By comparison, for the 2007 LegCo Hong Kong Island GC By-election, an amount of about \$770,000 was incurred for the publicity work. Given that the publicity materials for the 2010 LegCo By-election could apply to all the five GCs and did not require separate arrangements for individual GC, the budget of \$3 million for the publicity work of the By-election involving five GCs is considered proportionate to that for the 2007 LegCo By-election.

334. In addition, various publicity measures were carried out to inform electors of the arrangements for the By-election. Announcements in the Public Interest were made in television and radio. Posters, railing banners and giant wall banners were mounted. Relevant information on the By-election, including boundary maps, relevant legislation, candidates' personal particulars and election platforms was also put up on the Electoral Affairs Commission and Registration and Election Office websites to facilitate public access. Advertisements were also placed on local newspapers to publicise the relevant information and arrangements about the By-election.

335. Of the 516 ordinary polling stations for the By-election, 443 (i.e. over 85 per cent) were accessible to electors with disabilities. This is an improvement over the 2008 LegCo Election, in which 434 (i.e. 82 per cent) polling stations were accessible to disabled persons.

The 2007 District Council election

336. The third DC election was held on 18 November 2007, with a total turnout rate of 38.8 per cent. The 18 DCs came into being on 1 January 2000 by virtue of the District Councils Ordinance (Cap. 547). The HKSAR is divided into 405 constituencies, each returning one elected member. There are a maximum of 102 appointed members, and 27 ex-officio members. The work and functions of the DCs are explained in paragraph 24 of the HKSAR Common Core Document. The fourth District Council election will be held in late 2011. The fourth term will begin on 1 January 2012.

337. There are views in the community calling for abolition of appointed seats in the DCs. The HKSAR Government considers that the appointed members of the District Councils have made tremendous contribution to local issues and District Councils with their professional knowledge and experience over the years. We appreciate the contributions that appointed members have made to district administration. However, in response to requests made by the community, the Administration will put forth proposals concerning the abolition of the DC appointment system for consultation with the LegCo and the public.

Role and functions of District Councils

338. In 2006, the Government conducted a comprehensive review of the role and functions of the DCs. All measures to enhance the role and functions of the DCs have been

fully implemented in 18 districts since the third term of DCs which commenced in January 2008.

339. Starting from January 2008, all DCs have participated in managing certain district facilities, including community halls, public libraries, leisure grounds, sports venues, public swimming pools and beaches. In addition, starting from the financial year 2008–09, the Government has increased the annual resources for DCs to carry out community involvement activities to \$300 million. A dedicated capital works block vote with an annual allocation of \$300 million has also been set up for the DCs to implement district minor works projects.

340. To foster regular dialogue between senior Government officials and the District Councils, 22 heads of Government departments who have direct interface with the public started attending DC meetings one at a time since January 2007. Heads of Government departments also gave briefings to DC members on territory-wide planning and development issues.

341. In addition, the first and second Summits on District Administration were successfully held in May 2008 and June/July 2010 respectively. The Summits provided a platform for the senior echelon of the Government to exchange views with the DC members and district personalities on issues of concern to the people.

Rural elections

342. In paragraph 295 of part II of the previous report, we explained that there were three levels of election in the villages of the New Territories, namely the election of village representatives, Rural Committees and Heung Yee Kuk. The Heung Yee Kuk is an advisory and consultative body established by law for the New Territories.

343. A system of village representation has developed in the New Territories over the decades. The arrangements for electing village representatives have also evolved over time. The Government recognized the need to reform village representative elections to ensure that they are conducted in an open, fair and honest manner. As explained in paragraph 297 of part II of the previous report, following the ruling of the Court of Final Appeal in December 2000 concerning the village representative elections, the Village Representative Election Ordinance (Cap. 576) was enacted in February 2003, which ensures that the electoral arrangements of the Village Representative elections are consistent with the HKBORO and the Sex Discrimination Ordinance (Cap. 480).

344. In accordance with the Village Representative Election Ordinance, Village Representatives are members of their respective Rural Committees, of which the Chairmen and Vice-Chairmen are elected on a one-person-one-vote basis. This forms the second level of the rural electoral system. The Chairmen and Vice-Chairmen of the Rural Committees are ex-officio counsellors of the Heung Yee Kuk. The Chairman and Vice-Chairmen of the Heung Yee Kuk are also returned on a one-person-one-vote basis from the councillors of the Heung Yee Kuk. This is the third level of the rural electoral system. Women and men enjoy equal rights at all three levels.

345. Some commentators considered that the election of Rural Committee should be governed and regulated under statutory law to ensure fairness and transparency. There were also views about the specific case of Kaifong Representative Elections held for formation of the Rural Committees of Peng Chau and Cheung Chau, two outlying islands in Hong Kong. The concern mainly evolved around the lack of statutory underpinning for the conduct of these two elections and as such, it would be unfair for winners of the two elections to enjoy the same rights as members of other Rural Committees who are returned by statutory elections, i.e. through the Village Representative Elections. On this, we would like to point out that, under the Village Representative Election Ordinance, the electoral

arrangements and the conduct of an election to elect an office holder of a Rural Committee shall be consistent with article 21(a) and (b) of the Hong Kong Bill of Rights set out in part II of the HKBORO. After each rural election, the Government will review the relevant arrangements. After completion of the 2011 Village Representative Election, we will, as in the past, conduct a comprehensive review on the arrangements of that Election. The review for the 2011 Rural Committee Election will be conducted before mid-2011. In this context, we will study the feasibility of regulating the Kaifong Representative Elections of Peng Chau Rural Committee and Cheung Chau Rural Committee under the law.

The 2007 Rural Election

346. Since the enactment of the Village Representative Election Ordinance in February 2003, two village representative elections were held in 2003 and 2007 respectively. The number of registered voters increased from about 158 000 in 2003 to about 170 000 in 2007. The number of candidates for the election in 2007 was 1 630. Among those candidates, 996 were returned without contest, while the remaining 631 competed for a total of 324 Village Representative seats. The total number of Village Representatives elected in 2007 was 1 320.

347. In the 2007 election, about half of the registered voters (47 per cent) were female. The number of female candidates rose from 29 in 2003 to 35 in 2007, representing an increase of 21 per cent. The number of female village representatives elected increased from 17 in 2003 to 28 in 2007, representing an increase of 65 per cent.

348. The next Village Representative election will be held in early 2011. The number of registered voters has increased by 7.1 per cent from 170 000 in 2007 to about 182 000 in the 2011 election. The percentage of female voters among all registered voters increased from 47 per cent to 47.3 per cent during the same period, representing an 8 per cent increase in real number (from 80 000 to 86 000).

349. Whether a person participates in rural elections as a candidate is entirely a matter of his or her own choice. The Government will continue its efforts to encourage eligible persons of both genders to register as voters and participate in the election as candidates. We will also continue to step up publicity to encourage a wider participation of women in the Village Representative elections to be held in 2011. We will also closely monitor the rate of female participation in candidate nomination and voter turn-out, as well as the number of female Village Representatives elected.

Government advisory and statutory bodies

350. As reported in paragraph 292 of part II of the previous report, the network of Government ASBs remains a distinctive feature of Hong Kong's system of Government. The Government relies on them to provide advice on its policies, to resolve disputes between the Government and aggrieved parties, and to deliver public services.

351. In paragraph 293 of part II of the previous report, we mentioned that a review of ASBs was being conducted. Since early 2004, we have submitted 15 reports on the review to the Panel on Home Affairs of the LegCo. The reports mainly cover the following major issues:

(a) We have re-affirmed the principle of appointment by merit. As a matter of principle, the Government makes appointments to ASBs on the basis of the merit of individuals concerned, taking into account a candidate's ability, expertise, experience, integrity and commitment to public service and with due regard to the statutory provisions of statutory bodies, functions and nature of business of the ASBs concerned;

(b) We have established guidelines and principles for appointments to ASBs such as the Six-year Rule (i.e. not appointing a non-official member to serve on the same ASB in any one capacity for more than six years), the Six-board Rule (i.e. not appointing a person to serve as a non-official member on more than six ASBs at any one time) in order to attract more suitable talents;

(c) We set the 25 per cent gender benchmark target for appointment of non-official members to ASBs for gender balance purpose in 2004. The latest development on the gender benchmark has been covered in paragraph 3.2 above in relation to article 3; and

(d) We have also conducted reviews on other issues including the classification of ASBs, appointment system as well as operation of ASBs.

352. Having regard to the outcome in the review, the appointment authorities are reminded on a regular basis of the main principles and general guidelines for Government appointments of non-official members to ASBs.

353. The review of the role and functions of ASBs is an on-going process. Government *bureaux* and departments would from time to time review ASBs under their respective purview, having regard to the relevant guidelines on ASBs as mentioned above. Women's participation in ASBs has been explained at paragraph 3.2 of this report in relation to article 3.

Article 26

Right to equal protection before the law

Legislation against racial discrimination

354. As foreshadowed in paragraph 305 of part II of the previous report, the HKSAR had conducted a public consultation exercise on the proposal to introduce legislation prohibiting racial discrimination, which ended in February 2005. After gauging the views of the public, the Government had introduced the Race Discrimination Bill and the Bill was passed by the LegCo in July 2008 after detailed scrutiny.

355. The RDO, which came into full operation in July 2009, aims at protecting the rights of individuals against discrimination, harassment and vilification on the ground of race. Under the RDO, race in relation to a person means the race, colour, descent, national or ethnic origin of the person.

356. The RDO renders unlawful both direct and indirect racial discrimination in prescribed areas of activity, including education, employment and the provision of goods, services, facilities and premises. It enshrines the internationally accepted principle of proportionality in determining whether there is indirect discrimination. It also makes racial harassment (i.e. engaging in unwelcome conduct in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated by that conduct) unlawful in the specified fields. In addition, the RDO prohibits other unlawful acts relating to racial discrimination, including discriminatory practices and advertisements, aiding, instructing or procuring others to discriminate, as well as vilification.

357. While the RDO does not impose an obligation for affirmative actions, special measures designed to meet the special needs of persons of a particular racial group are specifically permitted under the law.

358. Some commentators expressed concerns that the RDO does not offer protection to some groups such as new arrivals from the Mainland of China and urged the Government to extend the statutory protection to this particular group. Others were concerned that the

RDO did not include nationality and immigration status among the prohibited grounds of discrimination. For clarity and certainty in law, the RDO provides that acts done on the ground of nationality and a number of immigration status (e.g. the length of residence in Hong Kong) do not constitute acts done on the ground of “race”. This does not narrow the definition of “race” in the RDO. As a matter of fact, the RDO applies equally to all persons in Hong Kong, and safeguards their rights against discrimination on the ground of race, irrespective of their nationality or immigration status.

359. It is also worth noting that the difference between new arrivals from the Mainland and the majority of other permanent residents in Hong Kong is not one based on “race”. The vast majority of new arrivals from the Mainland are of the same ethnic origin as that of most permanent residents in Hong Kong. The differences among some in accent, dialect or certain personal habits do not distinguish them as a separate racial group. This notwithstanding, the relevant Government *bureaux* and departments have been providing various support measures to facilitate new arrivals from the Mainland to settle in Hong Kong and integrate into the community.

360. Some commentators expressed concerns that the definition of “indirect discrimination” is too narrow. The RDO defines indirect discrimination in the same manner as the three anti-discrimination ordinances previously enacted on sex, disability and family status respectively. The proportionality test in the definition is in line with the general principle under international human rights jurisprudence. The definition covers various requirements or conditions. Whether a particular requirement or condition would give rise to indirect discrimination would depend on the factual circumstances of the case.

361. Some commentators raised concerns over the coverage of government functions and powers under the RDO, we would like to emphasize that the Government is prohibited from practising racially discriminatory acts in the exercise of its functions under the Basic Law and the HKBORO. While the RDO does not contain a specific clause to cover all the functions and powers of the Government, it binds the Government in all the areas specified in the Ordinance, such as employment, education and provision of services. In addition, there is an extensive framework of organizations which deal with complaints against Government departments. Any racially discriminatory act of the Government is also subject to the court’s supervisory jurisdiction. In addition, we have drawn up a set of Administrative Guidelines on Promotion of Racial Equality to provide guidance to concerned Government *bureaux*, departments and public authorities to promote racial equality and ensure equal access by ethnic minorities to public services in key areas. Details of the Guidelines are set out in paragraph 27.2 to 27.4 below in relation to article 27.

362. Some commentators expressed concerns on the exemptions included in the RDO. As the key consideration of the RDO is to afford effective safeguards for the rights of individual against racial discrimination, while at the same time maintaining proper respect and protection for the legitimate rights and freedoms of others, the RDO contains exception provisions which serve to clearly delineate the scope of control and regulation. Most of these exception provisions mirror those in the other existing anti-discrimination ordinances. Local circumstances as well as international practice and experience of other common law jurisdictions with similar legislation are also taken into account. The exception provisions are critically examined to ensure that they are reasonable and necessary, and are consistent with the principles widely adopted by international human rights authorities.

Discrimination on the ground of age and sexual orientation

363. With regard to discrimination on the ground of sexual orientation, some commentators enquired on the plan and timetable of the HKSAR Government to legislate against discrimination on grounds of sexual orientation. Our considered view is the same as that in the previous report, i.e. at this stage, self-regulation and education, rather than

legislation, are the most appropriate means of addressing discrimination in this area. We will continue to address discriminatory attitudes and promote equal opportunities on ground of sexual orientation through public education and administrative means, with a view to fostering in the community a culture of mutual understanding, tolerance and mutual respect. Detailed measures were elaborated in paragraphs 2.15 to 2.19 of the third report of the HKSAR under the Covenant on Economic, Social and Cultural Rights, in relation to article 2 of that Covenant.

364. Some commentators noted that homosexual couples were not afforded “dependency” immigration status, in cases where such status would ordinarily be granted to materially identical heterosexual couples, even where they were lawfully married in another jurisdiction. The existing immigration policy on admission of spouses as a dependant is based on monogamy and the concept of a married couple consisting of one male and one female. Nevertheless, the Director of Immigration may consider, on a case by case basis, allowing people to remain in Hong Kong as visitors to join their same-sex partners provided that their relationship is not in doubt and other immigration requirements are met.

365. The position regarding elimination of age discrimination in employment is as explained in paragraph 2.22 of the HKSAR’s third report under the Covenant on Economic, Social and Cultural Rights, in relation to article 2 of that Covenant.

Disability discrimination

366. The general framework of the legal protection for persons with disabilities is explained in the relevant sections of the HKSAR Common Core Document. It was also elaborated under article 5 of the initial report of the HKSAR under the UNCRPD. Under article 5 of the UNCRPD, States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

367. Some commentators expressed concern on the discrimination faced by persons with mental health problems or persons recovering from mental illness, and reiterated the request to establish a mental health council. The Disability Discrimination Ordinance (Cap. 487) provides the legal means to ensure equal opportunities for persons with disabilities (including persons with mental health problem) and to facilitate their integration into the community to the fullest extent possible.

368. At present, the Food and Health Bureau assumes the responsibility in coordinating policies and programmes on mental health. It works closely with the Labour and Welfare Bureau and coordinates various government departments and agencies including the Hospital Authority, the Department of Health and the SWD in the implementation of relevant measures. We seek to provide medical and rehabilitation services to patients with mental health problems through a multi-disciplinary and cross-sectoral team approach. The mental health services are kept under review on a continuous basis by the Working Group on Mental Health Services. The Working Group is chaired by the Secretary for Food and Health and its members comprise academics, relevant professionals and service providers. The Government takes into account their views in making adjustment to existing services and formulating new service initiatives. The existing system has worked well to provide coordinated and comprehensive services to mental patients.

369. Furthermore, the HKSAR Government strives to enhance public awareness on mental health, promote public acceptance of persons with mental illness and encourage social inclusion of persons recovering from mental illness with a view to eliminating stigmatization and assisting them to re-integrate into society. The measures taken by the HKSAR Government in this respect were elaborated under article 8 of the initial report of the HKSAR under the UNCRPD.

Discrimination against rehabilitated persons

370. Some commentators suggested legislating against discrimination against rehabilitated persons and offenders, and asked the Government to put in place measures to combat such discrimination. There is currently legislation in Hong Kong that provides protection to rehabilitated individuals of minor offences. Pursuant to the Rehabilitation of Offenders Ordinance (Cap. 297), anyone who has been convicted in Hong Kong of an offence in respect of which he was not sentenced to imprisonment exceeding three months or to a fine exceeding \$10,000, and provided that he has not been convicted in Hong Kong on any earlier day of an offence and that a period of three years has elapsed without him being convicted again in Hong Kong of an offence, that person is generally not obliged to disclose his previous conviction, and his failure to disclose it shall not be a lawful or proper ground for dismissing or excluding him from any office, profession, occupation or employment or for prejudicing him in any way in that office, profession, occupation or employment. We consider that the protection provided by the Rehabilitation of Offenders Ordinance appropriate and we do not see the need to introduce new legislation to prohibit discrimination against rehabilitated persons at this time.

371. As mentioned in paragraphs 10.19 to 10.25 in relation to article 10 of this report, CSD is committed to facilitating the reintegration of rehabilitated persons to the community through the provision of suitable rehabilitative services. The effectiveness of offender rehabilitation not only hinges on the quality of the custodial regime and rehabilitative programmes, but also the motivation and responsiveness of offenders towards rehabilitation, as well as community acceptance of rehabilitated persons. In this connection, CSD has been organizing different education and publicity campaigns to appeal for public acceptance of and community support for rehabilitated persons, for example, symposiums on employment for rehabilitated persons and visits to correctional institutions. These activities promote better understanding of CSD's rehabilitation services and encourage prospective employers to offer job opportunities to rehabilitated persons to facilitate their return to society. We will continue our efforts in organizing different education and publicity campaigns to promote acceptance of rehabilitated persons and offenders in the community.

Article 27

Right of ethnic minorities

Administrative guidelines and support services for ethnic minorities

372. In respect of ethnic minorities, the HKSAR Government is committed to facilitating their integration into the community, while preserving their cultural characteristics.

Administrative Guidelines on Promotion of Racial Equality

373. Further to the legislation against race discrimination as described in paragraphs 26.1 to 26.9 above in relation to article 26, the HKSAR Government issued in 2010 Administrative Guidelines to provide general guidance to relevant Government *bureaux* and departments and public authorities (hereafter referred to as "relevant authorities") to promote racial equality and ensure equal access by ethnic minorities to public services in key areas concerned, and to take this into account in their formulation, implementation and review of relevant policies and measures. In accordance with the Guidelines, relevant authorities have drawn up checklists of measures that would assist in the promotion of racial equality, ensuring equal access to key public services and enhancing the transparency of their work. The checklists cover various areas of services – social welfare, education,

employment, vocational training, medical and health, communications and technology and public enquiry and declaration services.

374. Some commentators were of the opinion that the Guidelines did not cover all Government *bureaux*/departments and that compliance with the Guidelines was not mandatory. They were also concerned with the resources provided to relevant authorities for implementing the Guidelines. As explained in paragraphs 39 to 44 of the HKSAR Common Core Document in relation to the legal framework for the protection of human rights, the HKBORO already prohibits the Government and public authorities from engaging in practices that would entail any form of discrimination, including discrimination on the ground of race. The Administrative Guidelines cover the key public services which are particularly relevant to meeting the special needs of ethnic minorities. The Government will keep their implementation under review.

375. As with other administrative guidelines issued by the Government, relevant authorities have an obligation to comply. Any non-compliance with the Guidelines could be addressed through the established compliant mechanisms. On resource deployment, the relevant authorities had deployed internal resources to implement the Guidelines and will, where necessary, seek additional resources within the Government through established mechanisms.

Support services for ethnic minorities

376. We believe that public education and support services are important for better integration of ethnic minorities into the community. Over the years, the Government has launched various initiatives to promote racial harmony and to assist integration of ethnic minorities. Some of these were mentioned in paragraph 315 of part II of the previous report and paragraphs 105 to 108 of the HKSAR Common Core Document. The latest position is set out in the following paragraphs.

377. The Race Relations Unit as mentioned in paragraph 315(c) of part II of the previous report continues to provide a range of support services, either by implementing its own programmes or through sponsoring the work of NGOs. These include radio programmes in the languages of the ethnic minorities both for their entertainment and to keep them up-to-date with local news and important Government announcements, community support teams to provide services to ethnic minority groups through members of their own community, and the Mobile Information Service initiative, which provides ethnic minority new arrivals with information on relevant public services and channels to seek assistance.

378. Furthermore, starting from 2009, the Government has provided funding for four NGOs to establish and operate four support service centres for ethnic minorities in Hong Kong. They provide Chinese and English language classes, orientation programmes, counselling and referral services, interest classes, and other support services to ethnic minorities. One of the four centres also provides telephone and on-site interpretation services to facilitate ethnic minorities' access to public services.

379. The Committee on the Promotion of Racial Harmony, as mentioned in paragraph 315(b) of part II of the previous report, continues to advise the Government on promotion of racial harmony, including provision of support services to ethnic minorities. The Ethnic Minorities Forum, set up in July 2003, also provides a channel of communication between the Government and the ethnic minority communities and organizations dedicated to serving them. It helps to identify the concerns and needs of ethnic minority communities and discuss possible ways of addressing them.

380. In addition, a dedicated team led by the Permanent Secretary for Home Affairs will step up and co-ordinate efforts in this regard to monitor the service needs of ethnic minorities as well as new arrivals in Hong Kong and ensure that the support services can

meet their needs. Details of this dedicated team are explained in paragraph 23.24 of this report, in respect of article 23.

Access to public sector employment

381. The position remains essentially as mentioned in paragraphs 317 to 319 of part II of the previous report. Appointments to the civil service are based on open and fair competition, and entry requirements for civil service posts are set based on the qualities or attributes as may be required for particular jobs. All the candidates in an open recruitment exercise to fill vacancies in a particular grade are assessed consistently on the basis of merit and having regard to the stipulated entry requirements, including language proficiency, set with regard to the job requirements of the grade concerned. The race of a candidate is not a relevant consideration in the assessment process. It is also a long-standing policy that promotion of civil servants is based on merit and on prescribed assessment criteria such as acquisition of specific professional qualification, past work performance and potential. The race of a serving civil servant is not a relevant consideration in the assessment for promotion.

382. Some commentators expressed concerns over the difficulties faced by ethnic minorities in joining the civil service due to the Chinese language proficiency requirements. Constitutionally and legally, both Chinese and English are official languages of Hong Kong. As explained in paragraph 319 of part II of the previous report, our long-term policy objective is to develop and maintain a civil service that can operate efficiently and effectively in the official languages. Achieving that objective will entail public servants becoming generally biliterate in Chinese and English and, eventually, trilingual in Cantonese, Putonghua, and English. Nevertheless, where the job does not require proficiency in both languages to the same degree, Government departments may set different requirements for the two languages. Furthermore, individual departments may seek exemption for candidates with special expertise required for a particular job but who do not meet the stipulated language proficiency requirements.

383. It is also worth mentioning that since August 2007, all Government *bureaux* and departments have accepted Chinese Language results in the United Kingdom International General Certificate of Secondary Education (IGCSE)/General Certificate of Secondary Education (GCSE)/General Certificate of Education (GCE) 'O' Level, which are qualifications popular amongst students learning Chinese as a second language, in addition to results in the Hong Kong Certificate of Education Examination, for appointment to civil service posts. We have informed the ethnic minority communities and organizations dedicated to serve them of the acceptance arrangement, which has also been publicized in the website of the Civil Service Bureau.

Education for non-Chinese speaking students

384. Some commentators were concerned with the education opportunities for non-Chinese speaking (NCS) students. They suggested the provision of an alternative curriculum and examination on Chinese as a second language for NCS students and that more support be given to them. The Government's policy is to facilitate the early integration of NCS students into the local education system and various educational support measures have been put in place as elaborated in paragraphs 13.40 to 13.56 of the third report of HKSAR under the International Covenant on Economic, Social and Cultural Rights.

385. Our strategy of curriculum development in every subject including the Chinese Language is to provide a common and flexible curriculum framework for schools to make appropriate adaptation of the curriculum strategies and materials in accordance with the aspirations and ability of students. We have provided schools with a supplementary guide

to the Chinese Language curriculum targeted at NCS students. This Supplementary Guide covers multiple curriculum modes¹³ and practical teaching experiences widely accepted on sound pedagogical grounds. Currently, schools are making adaptations to the curriculum to pitch for the appropriate learning level, leading to multiple exits for NCS students. In this sense, schools are already working on the basis of an alternative Chinese Language curriculum within the broader framework.

386. Offering an alternative Chinese Language curriculum with pre-set simpler contents and lower standards for NCS students will only limit the range of their learning opportunities and can hardly meet their diversified needs. A separate alternative Chinese Language curriculum per se is against the interests of NCS students. It is fairer to them to have a common and flexible curriculum framework, guaranteeing broad and balanced learning experiences, containing a whole range of achievement levels to stretch their potential to the full.

387. Besides, we have already launched a study on the Chinese proficiency of NCS students so as to provide schools with a basis to assess these students. The assessment tools are expected to be completed at the end of 2010. Regarding the qualifications of the Chinese Language, students who are able to attain Chinese Language proficiency comparable to their local counterparts may take the Chinese Language paper for the local examination. To facilitate those NCS students who may prefer to have an alternative Chinese qualification, we have, through the Hong Kong Examinations and Assessment Authority, administered the GCSE (Chinese) Examination in Hong Kong. This alternative Chinese qualification will be considered for appointment to civil service posts and for further studies. The development of assessment tools and recognition of the GCSE (Chinese) Examination as an alternative Chinese qualification mentioned above have, to a certain extent, served the purposes of the proposed “alternative” examination.

¹³ The curriculum modes include “immersion in Chinese Language lessons”, “bridging/transition”, “specific learning purposes” and “integration”. To support implementation of the Supplementary Guide in schools, EDB has also developed a series of curriculum resource materials for NCS students such as lexical lists for learning Chinese with English explanations, courseware on Chinese characters, learning software on traditional Chinese virtues, and a set of learning materials covering both primary and secondary levels in the form of textbook.

Annex

Non-governmental organizations with an active interest in human rights issues

1. Against Child Abuse
2. Alliance of Civic Education
3. Amnesty International Hong Kong Section
4. Association for the Advancement of Feminism
5. Association of Indonesian Migrant Workers in Hong Kong
6. Association of Sri Lankans in Hong Kong
7. Bangladesh Cultural Centre Hong Kong
8. Berita Indonesia Ltd.
9. Centre for Citizenship Education, Hong Kong Institute of Education
10. Children's Rights Association
11. Chinese YMCA of Hong Kong
12. Christian Action
13. Civic Party
14. Civic-Exchange
15. Civil Human Rights Front
16. Civil Rights for Sexual Diversities
17. Coalition for Migrants' Rights
18. Community Business Limited
19. Democratic Alliance for Betterment and Progress of Hong Kong
20. End Child Sexual Abuse Foundation
21. Equal Opportunities Commission
22. Evangel Children's Home
23. Family Reunion Association
24. Far East Overseas Nepalese Association
25. Harmony House
26. Heep Hong Society
27. HKSKH Lady Macle hose Centre
28. Hong Kong Against Racial Discrimination
29. Hong Kong Arts Development Council
30. Hong Kong Association for Democracy & People's Livelihood
31. Hong Kong Bar Association

32. Hong Kong Catholic Commission for Labour Affairs
33. Hong Kong Children & Youth Services
34. Hong Kong Christian Institute
35. Hong Kong Christian Service
36. Hong Kong Committee for UNICEF
37. Hong Kong Committee on Children Rights
38. Hong Kong Confederation of Trade Unions
39. Hong Kong Council of Early Childhood Education and Services
40. Hong Kong Council of Social Services
41. Hong Kong Employers of Domestic Helpers Association
42. Hong Kong Employment Development Service Ltd.
43. Hong Kong Federation of Journalists
44. Hong Kong Federation of Trade Unions
45. Hong Kong Federation of Women
46. Hong Kong Federation of Women's Centres
47. Hong Kong Human Rights Commission
48. Hong Kong Human Rights Monitor
49. Hong Kong Informal Education Research Centre
50. Hong Kong Institute of Housing
51. Hong Kong Integrated Nepalese Society
52. Hong Kong Journalists Association
53. Hong Kong Medical Association
54. Hong Kong Minority Communities Association
55. Hong Kong Nepalese Federation
56. Hong Kong News Executive Association
57. Hong Kong People's Council on Housing Policy
58. Hong Kong Playground Association
59. Hong Kong Policy Research Institute
60. Hong Kong Secondary Student Union
61. Hong Kong Sex Culture Society
62. Hong Kong Society for the Protection of Children
63. Hong Kong Student Aid Society
64. Hong Kong Unison Ltd.
65. Hong Kong Women Christian Council
66. Hong Kong Women Development Association
67. Hong Kong Women Professionals and Entrepreneurs Association

68. Hong Kong Workers Union
69. Hong Kong Young Legal Professionals Association Limited
70. Hong Kong Young Women's Christian Association
71. Horizons
72. Human Rights Council of Hong Kong
73. Human Welfare Services
74. Indian Businessmen's Association
75. Indian Resources Group
76. Indonesian Migrant Workers Union
77. International Human Rights Forum
78. International Islamic Society
79. International Social Service Hong Kong Branch
80. Justice and Peace Commission of the Hong Kong Catholic Diocese
81. Kids' Dream
82. Kirat Yakthung Chumlung Hong Kong
83. Magar Association Hong Kong
84. Movement Against Discrimination
85. Non-Resident Nepali Association
86. Office of Emily Lau, Legislative Councilor
87. Office of The Ombudsman, Hong Kong
88. Office of the Privacy Commissioner for Personal Data
89. Oxfam Hong Kong
90. Pakistan Islamic Welfare Union of Hong Kong
91. Philippine Association of Hong Kong
92. Playright Children's Play Association
93. Po Leung Kuk
94. Punjab Youth Club (Hong Kong)
95. Rainbow Action
96. Society for Community Organization
97. Society of Boys' Centres
98. Southern Democratic Alliance
99. Thai Regional Alliance in Hong Kong
100. The Balance of Human Rights Watch
101. The Bethune House Migrant Women's Refuge
102. The Board of Directors Friends of Hope Education Fund
103. The Boys' and Girls' Club Association of Hong Kong

104. The Child Development Centre at Matilda
 105. The Democratic Party
 106. The Incorporated Trustees of the Islamic Community Fund of Hong Kong
 107. The India Association Hong Kong
 108. The Law Society of Hong Kong
 109. The Liberal Party
 110. The Mission for Migrant Workers (Hong Kong) Society
 111. The Pakistan Association of Hong Kong Ltd.
 112. The Society for the Relief of Disabled Children
 113. The Society for Truth and Light
 114. Tongzhi Community Joint Meeting
 115. Tung Wah Group of Hospitals
 116. United Christian Nethersole Community Health Service
 117. United Filipinos in Hong Kong
 118. United Muslim Association of Hong Kong
 119. Women's Commission
 120. Yang Memorial Methodist Social Service
 121. YMCA of Hong Kong Cheung Sha Wan Centre
 122. Young Indian Friends Club
 123. Youth Christian Institute
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