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ANNEX I

Status of ratification of the major human rights instruments

Instrument	In force As of	Status of reporting and examination	Reservations, declarations
ICESCR (economic, social and cultural rights)	27-06-01	<p>The initial report submitted by China on articles 1 to 15 of the Covenant as applied in the Hong Kong Special Administrative Region was considered on 20, 27 April 2001 and 11 May 2001</p> <p>China's initial report (including the Hong Kong SAR and Macau SAR) was submitted on 27 June 2003 (due June 2002) and was considered at the 34th Session, on 27-29 April 2005 (Doc. E/C.12/1/Add.107 of 13 May).</p>	<p>Statement made upon signature and confirmed upon ratification:</p> <p>The signature that the Taiwan authorities affixed, by usurping the name of "China", to the [said Covenant] on 5 October 1967, is illegal and null and void.</p> <p>Statement made upon ratification:</p> <p>In accordance with the Decision made by the Standing Committee of the Ninth National People's Congress of the People's Republic of China at its Twentieth Session, the President of the People's Republic of China hereby ratifies <i>The International Covenant on Economic, Social and Cultural Rights</i>, which was signed by Mr. Qin Huasun on behalf of the People's Republic of China on 27 October 1997, and declares the following:</p> <p>The application of Article 8.1 (a) of the Covenant to the People's Republic of China shall be consistent with the relevant provisions of the <i>Constitution of the People's Republic of China</i>, <i>Trade Union Law of the People's Republic of China</i> and <i>Labor Law of the People's Republic of China</i>;</p> <p>In accordance with the official notes addressed to the Secretary-General of the United Nations by the Permanent Representative of the People's Republic of China to the United Nations on 20 June 1997 and 2 December 1999 respectively, the <i>International Covenant on Economic, Social and Cultural Rights</i> shall be applicable to the Hong Kong Special Administrative Region of the People's Republic of China and</p>

			the Macao Special Administrative Region of the People's Republic of China and shall, pursuant to the provisions of the <i>Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China</i> and the <i>Basic Law of the Macao Special Administrative Region of the People's Republic of China</i> , be implemented through the respective laws of the two special administrative regions.
ICCPR (civil and political rights)	Signed 05-10-99	The initial report on Hong Kong was examined on 1, 2, 4 November 1999. The initial report on Macau was due on 31 October 2001 The 2 nd periodic report on Hong Kong was due on 31 October 2003	
ICERD (racism and discrimination)	28-01-82	China's initial report was examined on 20 August 1983. The 2 nd report was examined on 14, 17 March 1986. The 3 rd and 4 th periodic reports were examined on 9 and 10 August 1980. The 5 th , 6 th and 7 th periodic reports were examined on 8 and 9 August 1996. The 8 th and 9 th periodic reports were examined on 31 July, 1, 8, and 9 August 2001. The 10 th and 11 th periodic reports were due on 28 January 2003.	Reservation: The People's Republic of China has reservations on the provisions of article 22 of the Convention and will not be bound by it. (<i>The reservation was circulated by the Secretary-General on 13 January 1982.</i>) Declaration: The signing and ratification of the said Convention by the Taiwan authorities in the name of China are illegal and null and void.
CAT (torture)	03-11-88	China's initial report was examined on 27 April 1990. The 2 nd periodic report was examined on 6 May 1996. The 3 rd report was examined on 4, 5, 9 May 2000. The 4 th report was due on 2 November 2001.	Reservations made upon signature and confirmed upon ratification: "(1) The Chinese Government does not recognize the competence of the Committee against Torture as provided for in article 20 of the Convention. "(2) The Chinese Government does not consider itself bound by paragraph 1 of article 30 of the Convention."
CEDAW (women)	03-09-81	The 2 nd periodic report was examined on 23	Declaration made upon signature and confirmed upon

		<p>January 1992.</p> <p>The 3rd and 4th periodic reports were examined on 1 and 2 February 1999.</p> <p>The 5th and 6th combined reports (due respectively in September 1998 and September 2002) were submitted on 4 February 2004 and have not yet been scheduled for consideration.</p>	<p>ratification:</p> <p>The People's Republic of China does not consider itself bound by paragraph 1 of article 29 of the Convention.</p>
CRC (children)	01-04-92	<p>The Committee considered the initial report of China (CRC/C/11/Add.7) at its 298th to 300th meetings (CRC/C/SR.298-300), held on 28 and 29 May 1996.</p> <p>China's 2nd periodic report (due on 31 March 1999) was submitted 27 June 2003, along with the initial report of Hong Kong SAR and the initial report of Macau SAR. These reports are scheduled for consideration at the Committee's 40th Session (12 - 30 September 2005). A List of Issues was adopted by the Committee at its pre-sessional working group on 15 June (Doc. CRC/C/Q/CHN/2).</p>	<p>Reservation:</p> <p>[T]he People's Republic of China shall fulfill its obligations provided by article 6 of the Convention under the prerequisite that the Convention accords with the provisions of article 25 concerning family planning of the Constitution of the People's Republic of China and in conformity with the provisions of article 2 of the Law of Minor Children of the People's Republic of China.</p>
CRC-OP1 (child soldiers)	Signed 15-03-01		
CRC-OP2 (sale of children)	03-01-03	China's initial report was due on 3 January 2005.	<p>In its instrument of ratification, the Government of China informed the Secretary-General of the following:</p> <p>1. In accordance with the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and as suggested by the Government of the Hong Kong Special Administrative Region, the application of the Protocol to the Hong Kong Special Administrative Region of the People's Republic of China requires prior enactment of domestic legislation by the Hong Kong Special Administrative Region, and the Protocol shall not apply to the Hong Kong Special Administrative Region of the People's Republic of China until the Government of China notifies otherwise;</p>

			<p>2. In accordance with the Basic Law of the Macao Special Administrative Region of the People's Republic of China and as suggested by the Government of the Macao Special Administrative Region, the Protocol shall apply to the Macao Special Administrative Region of the People's Republic of China.</p>
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STATUS OF RATIFICATION AND SUBMISSION OF REPORTS UNDER MAIN INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

Due to the resumption of sovereignty over Hong Kong and Macau by the PRC, there are some inconsistencies with regard to treaty obligations between the mainland and the two Special Administrative Regions. Prior treaty obligations undertaken by one of the three entities were not necessarily extended to all of them when the mainland resumed sovereignty. The chart below clarifies where reporting obligations may be limited to one or two of the entities only. The texts of notifications issued by the Government of China informing the Secretary-General of the status of Hong Kong and Macau in relation to treaties deposited with the Secretary-General are available from the Secretariat upon request.

Core document:

HRI/CORE/1/Add.21/Rev.2

International Covenant on Economic, Social and Cultural Rights

Entry into force:	27/06/2001
Reservations and declarations:	Yes ¹
Objections:	No
Report: initial (China, HK & Macau)	E/1990/5/Add.59
Concluding observations:	E/C.12/1/Add.107
Report: initial (HK)	E/1990/5/Add.43
Summary Record:	E/C.12/2001/SR.9-11
Concluding observations:	E/C.12/1/Add.58

Note: Hong Kong's initial report, submitted in July 1999, was examined by CESCR in April 2001. Macau has also been examined by CESCR as part of the Portugal's second periodic report, in November 1996. China submitted its initial report, including parts on Hong Kong and Macau, in June 2003, which is being examined at the current 34th Session.

International Covenant on Civil and Political Rights

Entry into force:	
Reservations and declarations:	No
Objections:	
Article 41:	No
Optional Protocol:	No
Second Optional Protocol:	No
Report: initial	CCPR/C/HKSAR/99/1/Add.1
	CCPR/C/79/Add.117
Summary Record:	CCPR/C/SR.1803-5
Concluding Observations:	CCPR/C/79/Add.117

¹ The application of Article 8.1 (a) of the Covenant to the People's Republic of China shall be consistent with the relevant provisions of the *Constitution of the People's Republic of China, Trade Union Law of the People's Republic of China and Labor Law of the People's Republic of China*. 2 Reservation: The People's Republic of China has reservations on the provisions of article 22 of the Convention and will not be bound by it. 3 Declaration: The signing and ratification of the said Convention by the Taiwan authorities in the name of China are illegal and null and void.

Note: China has signed but not yet ratified ICCPR. On the transfer by the United Kingdom of Hong Kong to China on 1 July 1997, China assumed reporting obligations under the ICCPR for Hong Kong. Hong Kong's second periodic report was submitted in January 2005. On the transfer by Portugal of Macau to China at the end of December 1999, China assumed reporting obligations under the ICCPR for Macau; the next periodic report on Macau was due 31 October 2001.

Convention on the Elimination of All Forms of Racial Discrimination

Entry into force:	28/01/1982
Reservations:	Yes ²
Declarations:	Yes ³
Article 14:	No
Objections:	No
Report: eight and ninth periodic	
Summary Record:	CERD/C/SR.1468
Concluding observations:	A/56/18,paras.231-255

Note: China has been reporting regularly to CERD, and its tenth periodic report was due in January 2003.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Entry into force:	03/11/1988
Optional Protocol:	No
Reservations and declarations:	Yes ⁴
Objections:	No
Articles 21 and 22:	No
Report: third periodic	CAT/C/39/Add.2
Summary Record:	CAT/C/SR.416, CAT/C/SR.419, CAT/C/SR.423/Add.1
Concluding Observations:	A/55/44,paras.106-145.

⁴ Reservations: "(1) The Chinese Government does not recognize the competence of the Committee against Torture as provided for in article 20 of the Convention. The Chinese Government does not consider itself bound by paragraph 1 of article 30 of the Convention. 5 Declaration: The People's Republic of China does not consider itself bound by paragraph 1 of article 29 of the Convention⁴ Declaration: 6 1) The Government of the People's Republic of China, on behalf of the Hong Kong Special Administrative Region, interprets the Convention as applicable only following a live birth. 2) The Government of the People's Republic of China reserves, for the Hong Kong Special Administrative Region, the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the Hong Kong Special Administrative Region of those who do not have the right under the laws of the Hong Kong Special Administrative Region to enter and remain in the Hong Kong Special Administrative Region, and to the acquisition and possession of residentship as it may deem necessary from time to time. 3) The Government of the People's Republic of China interprets, on behalf of the Hong Kong Special Administrative Region, the references in the Convention to "parents" to mean only those persons who, under the laws of the Hong Kong Special Administrative Region, are treated as parents. This includes cases where the laws regard a child as having only one parent, for example where a child has been adopted by one person only and in certain cases where a child is conceived other than as a result of sexual intercourse by the woman who gives birth to it and she is treated as the only parent. 4) The Government of the People's Republic of China reserves, for the Hong Kong Special Administrative Region, the right not to apply article 32 (2) (b) of the Convention in so far as it might require regulation of the hours of employment of young persons who have attained the age of fifteen years in respect of work in non-industrial establishments. 5) The Government of the People's Republic of China, on behalf of the Hong Kong Special Administrative Region, seeks to apply the Convention to the fullest extent to children seeking asylum in the Hong Kong Special Administrative Region except in so far as conditions and resources make full implementation impracticable. In particular, in relation to article 22 of the Convention the Government of the People's Republic of China reserves the right to continue to apply legislation in the Hong Kong Special Administrative Region governing the detention of children seeking refugee status, the determination of their status and their entry into, stay in and departure from the Hong Kong Special Administrative Region. 6) Where at any time there is a lack of suitable detention facilities, or where the mixing of adults and children is deemed to be mutually beneficial, the Government of the People's Republic of China reserves, for the Hong Kong Special Administrative Region, the right not to apply article 37 (c) of the Convention in so far as those provisions require children who are detained to be accommodated separately from adults.

Note: China has been reporting regularly to CAT and its fourth periodic report was due in November 2001.

Convention on the Elimination of All Forms of Discrimination against Women

Entry into force:	03/09/1981
Optional Protocol to CEDAW:	No
Reservations and Declarations:	Yes ⁵
Objections:	No
Report: third and fourth periodic	CEDAW/C/CHN/3-4
Summary Record:	CEDAW/C/SR.436-437.
Concluding Observations:	A/54/38/Rev.1 paras.236-277

Note: China has been reporting to CEDAW regularly and the combined fifth and sixth periodic reports were submitted in February 2004.

Convention on the Rights of the Child

Entry into force:	02/03/1992
Reservations and declarations:	Yes ⁶
Objections:	No
Optional Protocol (sale of children)	Yes (03/12/2002)
Optional Protocol (armed conflicts):	No
Report: initial	CRC/C/11/Add.7
Summary Record:	CRC/C/SR.298-300
Concluding Observations:	CRC/C/15/Add.56

Note: Mainland China's initial report was considered by CRC in 1996 and Hong Kong's initial report was considered as part of the UK in 1996.

Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Ratification:	No
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ANNEX II

The Commission on Human Rights and its mechanisms

China has never been the subject of a country-specific resolution in the CHR. A standing invitation to all the Special Procedures has not been issued.

The Special Rapporteur on freedom of opinion and expression requested to undertake a visit to the country on 17 June 1999. On 5 July 1999, the Government replied that the request was under careful consideration. On 26 September 2001, a reminder was sent to the Government.

The CEDAW Committee recommended in February 1999 that the Special Rapporteur on violence against women be invited to visit China.

The Special Rapporteur on the Right to Education received an invitation to visit the country on 10 March 2003 and visited from 10-19 September 2003.⁷

The Special Rapporteur on Religious Freedom received an invitation to visit China dated 13 January 2003 (but which was not received in the Office of the High Commissioner for Human Rights until 10 November 2003).

The Special Rapporteur on Torture received a renewed invitation to visit China dated 13 January 2003. He plans to visit China in November 2005.

Mr. Joinet in his capacity as Chairperson of the Working Group on Arbitrary Detention received an invitation to visit China dated 13 January 2003. A subsequent invitation was sent to the new Chairperson of the Working Group, Ms. Leila Zerrougui, dated 16 February 2004, pursuant to which the Working Group visited from 18 to 30 September 2004.

So far three special procedures of the CHR have undertaken missions to China (one twice, the WGAD). These are set out below.

Mandate	Date of mission	Report
Special Rapporteur on freedom of religion and belief	19 to 30 November 1994	E/CN.4/1995/91
Working Group on Arbitrary Detention	18 to 30 September 2004 Preparatory visit from 14 to 21 July 1996 Main visit from 6 to 16 October 1997	E/CN.4/2005/6/Add.4 E/CN.4/1997/4 E/CN.4/1998/44/Add.2
Special Rapporteur on the right to education	10-19 September 2003	E/CN.4/2004/45/Add.1

A number of special procedures of the CHR have dealt with China in their reports, including the below.

Special Procedures of the Commission on Human Rights	Date	Document
Special Rapporteur on the right to education	2004	E/CN.4/2004/45/Add.1

⁷ Her report is contained in E/CN.4/2004/45/Add.1, and the Chinese government's comments thereon are contained in a Note Verbale in E/CN.4/2004/g/16.

		Government reply: E/CN.4/2004/g/16.
Special Rapporteur on violence against women	2003	E/CN.4/2003/75/Add.1
Special Rapporteur on racism and racial discrimination	2002	E/CN.4/2002/24
Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination	2003	E/CN.4/2003/5
Working Group on Enforced or Involuntary Disappearances	2003	E/CN.4/2003/70

ANNEX III

Concluding observations of the Committee on the Elimination of Racial Discrimination: China 09/08/2001.

A/56/18, paras. 231-255. (Concluding Observations/Comments)

Convention Abbreviation: CERD
COMMITTEE ON THE ELIMINATION
OF DISCRIMINATION
Fifty-ninth session
30 July – 17 August 2001

China

231. The Committee considered the eighth and ninth periodic reports of China (CERD/C/357/Add.4, Parts I, II and III), which were due on 28 January 1997 and 28 January 1999, respectively, submitted as one document, at its 1468th and 1469th meetings (CERD/C/SR.1468 and 1469), on 31 July and 1 August 2001. The eighth and ninth periodic reports of China consist of three separate parts. Part I covers the whole of China, with the exception of the Hong Kong and Macau Special Administrative Regions, which are covered by Part II and Part III respectively. At its 1480th and 1481st meetings (CERD/C/SR.1480 and 1481), on 8 and 9 August 2001, it adopted the following concluding observations.

A. Introduction

232. The Committee welcomes the opportunity to continue its dialogue with the State party, including with representatives from the Hong Kong and Macau Special Administrative Regions. The Committee was encouraged by the attendance of a large delegation representing important governmental departments as well as the Hong Kong and Macau Special Administrative Regions.

233. The Committee welcomes the detailed and comprehensive report submitted by the State party, the contents of which correspond with the Committee's guidelines for the preparation of reports. The additional oral information provided by the delegation in response to the wide range of questions asked by Committee members is also appreciated.

234. In view of the dialogue held, the Committee wishes to emphasize that irrespective of the relationship between the central authorities and the special administrative regions, and the principle "One Country, Two Systems", the People's Republic of China, as the State party to the Convention, has the responsibility to ensure its implementation on its entire territory.

235. The Committee acknowledges the difficulties inherent in policy-making and administration, including the standardization of essential services, of a territory as vast as China with more than 1.2 billion inhabitants, including 55 minority nationalities.

B. Positive aspects

236. The Committee welcomes the efforts made by the State party to promote economic and social development in economically backward regions inhabited largely by minority populations, including Inner Mongolia, Guangxi, Tibet, Xinjiang, Guizhou, Yunnan and Qinhai. The Committee notes in particular the investments in infrastructure development and the creation of poverty alleviation projects financing the construction of primary schools in western China.

237. The Committee notes with interest the existence and functions of the State Ethnic Affairs Commission created under the State Council as the department in charge of ethnic affairs as well as the fact that the Commission should be headed by a person belonging to an ethnic minority.

238. The Committee notes that as a result of its previously expressed concerns and recommendations, the recently conducted 2001 Population Census in the Hong Kong Special Administrative Region included questions which would help to determinate the ethnic and racial composition of the region and allow for the identification of minority groups and an analysis of their political, economic and social situation.

239. The Committee welcomes the extensive consultation with civil society in the preparation of, in particular, the part of the State party's report pertaining to the Hong Kong Special Administrative Region and the indication by the delegation that projects are already under way in that region to address some of the problems identified by non-governmental organizations during those consultations, such as the provision of language training for immigrants, mainly of Nepalese, Pakistani and Bangladeshi origin.

240. The Committee notes article 25 of the Basic Law of the Special Administrative Region of Macau, giving a constitutional right to all Macau residents to be free from discrimination, irrespective of, inter alia, their nationality, descent, race, sex, language or religion.

C. Concerns and recommendations

241. With regard to the interpretation of the definition of racial discrimination, the Committee notes that according to article 4 of the Constitution "all nationalities in the People's Republic of China are equal. The State protects the lawful rights and interests of the minority nationalities ...". In view of this provision, the Committee seeks clarification with regard to existing guarantees against discrimination on all grounds referred to in article 1 of the Convention, i.e. race, colour, descent, or national or ethnic origin, and recommends that the State party review its legislation to ensure the adoption of a definition of discrimination in accordance with the Convention.

242. With regard to the implementation of articles 2 and 4 of the Convention, the Committee notes the prohibition of the "incitement of national enmity or discrimination" by any organization or individual provided by articles 149 and 250 of the 1997 Criminal Law of the People's Republic of China. However, the Committee recalls that the stipulated requisites of serious or flagrant circumstances or consequences are not in accordance with the Convention.

Regarding the prohibition of racial discrimination in general, the Committee recommends that the State party consider giving full effect to the provisions of the Convention in its domestic legal order and ensure the penalization of racial discrimination, as well as access to effective protection and remedies through the competent national tribunals or other State institutions against all acts of racial discrimination.

243. The Committee notes that economic development in minority regions does not, ipso facto, entail the equal enjoyment of economic, social and cultural rights in accordance with article 5 (e) of the Convention. The State party is requested to provide further information on the enjoyment of economic, social and cultural rights by all nationalities of China and regarding steps taken to ensure that the minority population benefits from the general economic growth. In this context, the State party is requested to take all appropriate measures to ensure that the local and regional cultures and traditions are also promoted and the rights of the populations fully respected.

244. While noting the State party's information in this regard, some members of the Committee remain concerned with regard to the actual enjoyment of the right to freedom of religion by people belonging to

national minorities in the State party, particularly in the Muslim part of Xinjiang and in Tibet. The Committee recalls that a distinctive religion is integral to the identity of several minorities and urges the State party to review legislation and practices that may restrict the right of persons belonging to minorities to freedom of religion.

245. While recognizing efforts made, which have resulted in an increased number of schools and a decrease of illiteracy in minority regions, the Committee is concerned about continuous reports of discrimination with regard to the right to education in minority regions, with particular emphasis on Tibet, and recommends that the State party urgently ensure that children in all minority areas have the right to develop knowledge about their own language and culture as well as the Chinese, and that they are guaranteed equal opportunities, particularly with regard to access to higher education.

246. While noting the State party's efforts to facilitate integration and naturalization of Indo-Chinese refugees in mainland China, the Committee is concerned that different standards of treatment are applied to Indo-Chinese asylum-seekers, on the one hand, and asylum-seekers of other national origins on the other, notably with regard to the right to work and education. Particular concern is expressed regarding the treatment of asylum-seekers from the People's Democratic Republic of Korea, who are reportedly systematically refused asylum and returned, even in cases when they have been considered to be refugees by UNHCR. The Committee recommends that the State party take the necessary measures to ensure that all refugees and asylum-seekers receive equal treatment. To this end, the Committee recommends that the State party consider pursuing the adoption of formal legislative or administrative provisions in order to implement objective criteria for the determination of refugee status.

247. With reference to article 2, paragraph 1 (d), of the Convention, the Committee takes note of ongoing consultations, but reiterates its concern about the continued absence in the Hong Kong Special Administrative Region of legal provisions protecting persons from racial discrimination to which they may be subjected by private persons, groups or organizations. The Committee does not accept the argument put forward for not initiating such legislation, i.e. that such legislation would not be supported by the society as a whole. It is recommended that the Government of the State party and the local authorities of the Hong Kong Special Administrative Region review the existing unsatisfactory situation thoroughly and that appropriate legislation be adopted to provide appropriate legal remedies and prohibit discrimination based on race, colour, descent, or national or ethnic origin, as has been done with regard to discrimination on the grounds of gender and disability.

248. The Committee reiterates its concern regarding the situation of foreign domestic workers in the Hong Kong Special Administrative Region, mainly from the Philippines, Indonesia and Thailand, and the existence of certain rules and practices, such as the so-called "two-weeks rule", which may be discriminatory in effect.

249. The Committee requests the State party to provide in subsequent reports, inter alia, detailed information on judicial cases relating specifically to violations of the Convention, including in the Hong Kong and Macau Special Administrative Regions, with special reference to the granting by courts of adequate reparation for such violations.

250. The Committee recommends that the next State party report contain socio-economic data, disaggregated by national and ethnic group, and information on measures taken to prevent gender-related racial discrimination, including in the area of trafficking and reproductive health. The Committee also wishes to receive statistics, disaggregated by nationality and region, relating to detention, imprisonment, alleged, investigated and prosecuted cases of torture, death sentences and executions.

251. The State party is also invited to provide in its next report further information on the powers of the State Ethnic Affairs Commission and the impact of activities undertaken by it.

252. It is noted that the State party has not made the optional declaration provided for in article 14 of the Convention, and the Committee recommends that the possibility of such a declaration be considered.

253. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention.

254. The Committee recommends that the State party's reports continue to be made readily available to the public from the time they are submitted and that the Committee's observations on them be similarly publicized.

255. The Committee recommends that the State party submit its tenth periodic report jointly with its eleventh periodic report, due on 28 January 2003, and that it address all points raised in the present observations.

ANNEX IV

Concluding Observations of the Committee on the Elimination of Discrimination Against Women : China. 03/02/99

A/54/38,paras.251-336. (Concluding Observations/Comments)

Convention Abbreviation: CEDAW

Committee on the Elimination of Discrimination against Women

Twentieth session

19 January-5 February 1999

China

251. The Committee considered the combined third and fourth periodic reports of China (CEDAW/C/CHN/3-4 and Corr.1 and Add.1 and 2) at its 419th to 421st meetings, on 1 and 2 February 1999 (see CEDAW/C/SR.419-421). Addendum 2 to the third and fourth periodic reports covered the implementation of the Convention by the Government of the Hong Kong Special Administrative Region, over which the Government of China resumed the exercise of sovereignty on 1 July 1997.

Introduction by the State party

252. The representative of China, in his introduction, noted that the Government of China had always attached great importance to the implementation of the Convention. The present report, covering the years 1989 to 1995, had been drafted under the leadership of the National Committee on Women and Children under the State Council, a body composed of 23 ministries and commissions of the Government, and five non-governmental organizations.

253. The representative highlighted the gradual improvement in the situation of women in political participation, education, health care and employment during the reporting period. At the same time, he noted that the equal rights of women had not been fully realized. The elimination of discrimination against women was being pursued through the development of the national economy and the strengthening of the legal system.

254. The Law of the People's Republic of China on the Protection of the Rights and Interests of Women (the Women's Law), adopted in 1992, constituted the first basic law to protect women's rights and interests in a comprehensive and systematic manner. It defined four principles and set out the rights of women in the political, cultural, educational, labour and economic sphere, as well as in marriage and the family and with regard to the person.

255. The Programme for the Development of Chinese Women, formulated in 1995 in the light of the Beijing Platform for Action, constituted the first comprehensive programme on the overall plan of action for women's development. The Programme was aimed at encouraging government entities at various levels to take concrete steps for women's political participation, employment, education and health care, thus further implementing in practice the concept of gender equality as stipulated in the law. Among the main measures taken to ensure implementation of the Women's Law were the establishment of specialized agencies, the formulation of implementation measures by the various levels of administration in the light of local conditions, nationwide legal awareness campaigns, and review and monitoring of implementation.

256. The representative noted that the report also discussed the steps taken by the Government of China to implement the Beijing Declaration and Platform for Action. Additional information had been submitted to

the Committee concerning measures taken from 1996 to mid-1998, including the revision of laws, improved action against criminal activities targeted at women and children, and re-employment measures for workers laid off in the economic restructuring. Follow-up action taken by relevant government institutions to implement the Beijing Declaration and Platform for Action were also covered. Activities of non-governmental organizations in protecting women's rights and interests were also included in the report.

257. In conclusion, the representative noted that despite the tremendous amount of work done to promote women's full participation in development, quite a number of women in rural areas lived in poverty, more than 100 million women were still illiterate, and in the transition from a planned economy to a market economy and the reform process, large numbers of women workers had been laid off and were experiencing difficulties finding new employment. The participation of women in political life was still low, incidents of violations of women's rights continued to occur and certain social evils persisted. He emphasized, however, that his Government was determined to continue its efforts, and welcomed the support of the international community in that regard.

258. The representative of the Hong Kong Special Administrative Region, in introducing the initial report of the Hong Kong Special Administrative Region (CEDAW/C/CHN/3-4/Add. 2), noted that the Government of China had resumed the exercise of sovereignty over Hong Kong, with effect from 1 July 1997, under the principle of "one country, two systems". The Convention had been extended to Hong Kong on 14 October 1996 and had remained in force since the reunification on 1 July 1997.

259. The representative noted that the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, the constitutional document of the Region, included a list of fundamental rights and freedoms of residents and other persons in the Region, applicable to women and men. The Basic Law also provided for the continuing application of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and the Hong Kong Bill of Rights Ordinance.

260. The representative explained that in the period between 1996 and 1998, a legislative review had been undertaken leading to the enactment of a number of amendments and ordinances to eliminate discriminatory or unfair treatment of women. The rights of women were also protected by legislation that included the Sex Discrimination Ordinance (1995) and the Family Status Ordinance (1997). The Equal Opportunities Commission, an independent statutory organization established in 1996, was responsible for the elimination of discrimination and the promotion of equality between women and men, for enforcing the anti-discrimination ordinances and for handling complaints.

261. The Government's Policy Groups, chaired by the Chief Secretary for Administration and attended by senior representatives of the policy bureaux, ensured coordination among the various bureaux on all matters concerning women.

262. The improvement of the position and status of women in Hong Kong was apparent in different areas. In 1997, women accounted for 39 per cent of the total working population and made up 33 per cent of the civil service. Women also occupied two out of the three highest ranking government posts. Almost a third of the members of the Executive Council were women. Women made up between 21 and 36 per cent of the legal, accounting and medical professions.

263. The Government of the Hong Kong Special Administrative Region was committed to providing equal access to and opportunities in education, which included nine years of free and universal basic education. More than half the university graduates in 1997 were women.

264. Women's health remained a government priority, and a range of health-care services was available to women, including with regard to reproductive health. Hong Kong's infant mortality rate was among the lowest in the world, and women's life expectancy was 82.2 years.

265. The representative noted that China had entered seven reservations and declarations in respect of the application of the Convention to Hong Kong. These would be kept under review.

266. In conclusion, the representative welcomed the Committee's views and suggestions in support of the full implementation of the Convention.

Concluding comments by the Committee: China

Introduction

267. The Committee expresses its appreciation to the Government of China for submitting its combined third and fourth periodic reports. However, the Committee notes that the report insufficiently follows the Committee's guidelines for the preparation of periodic reports. In particular, the report does not incorporate sufficient statistical data disaggregated by sex, comparing the current situation to that at the time of the previous report.

268. The Committee commends the Government for its oral presentation of the report, and for the detailed oral and written replies, including statistical information, to the questions posed by the Committee.

269. The Committee commends the Government for having sent a high-level and large delegation that included specialists from different departments of the central Government, as well as the Hong Kong Special Administrative Region, headed by the Permanent Representative of China to the United Nations.

270. The Committee notes that Chinese women constitute more than one fifth of the world's women.

Positive aspects

271. The Committee acknowledges with appreciation the comprehensive efforts undertaken by the Government of China to implement the Convention since the consideration of its second periodic report in 1992. These efforts are indicative of the political will of the Government to eliminate discrimination and to advance equality between women and men. The Committee reaffirms that the Convention recognizes that women's rights include civil, political, economic, social and cultural rights and that they are an inalienable, integral and indivisible part of universal human rights.

272. The Committee commends the Government for further strengthening the legislative framework to ensure equality between women and men. It notes in particular the 1992 Law on the Protection of the Rights and Interests of Women (the Women's Law), the 1995 Mother and Child Health Law, the 1996 and 1997 amendments to the criminal law with regard to trafficking in women, the 1996 Law on the Protection of the Rights and Interests of the Elderly concerning social security provisions for the elderly, and the recent revision of the law on adoption.

273. The Committee commends the Government for the elaboration of programmes to ensure implementation of those laws, and especially the Programme for the Development of Chinese Women (1995–2000). It notes the achievements of the Government in ensuring social and economic rights for hundreds of millions of people. It also notes that economic reforms in recent years have brought about strong and steady economic growth. The Committee commends the efforts of the Government to combine

economic restructuring with concern for the social well-being of China's citizens. It commends, in particular, the Government's efforts to alleviate poverty, to address the unemployment of women, to modify gender stereotypes, including in the mass media, to initiate legal awareness campaigns and to reduce illiteracy of women in rural areas. The Committee also commends the work of the All China Women's Federation in implementing government policy for gender equality.

274. The Committee welcomes the overall increase of facilities and personnel for maternal health care, the greater access to family planning services and to primary health care. It commends the Government for its collaboration with UNFPA to initiate a pilot family planning programme, based on voluntary participation, information and freedom of choice. The Committee welcomes in particular the Government's strong and unequivocal objection to the use of coercive measures in implementation of its population policy.

275. The Committee commends the Government for hosting, in September 1995, the Fourth World Conference on Women and for its subsequent efforts to implement the Beijing Declaration and Platform for Action. The Committee emphasizes that the Convention constitutes the legal basis and framework for the implementation of the Platform for Action.

Factors and difficulties affecting the implementation of the Convention

276. The Committee notes that the great size and diversity of China pose special challenges to the realization of equality between women and men.

277. The Committee notes that the persistence of prejudice and stereotypical attitudes concerning the role of women and men in the family and in society, based on views of male superiority and the subordination of women, constitutes a serious impediment to the full implementation of the Convention.

278. The Committee considers that the gap between the situation of women in urban areas and those in rural and remote areas constitutes a major obstacle to the full implementation of the Convention.

279. The Committee notes with concern the adverse impact of economic restructuring on women in the transition from a planned economy to a market economy, and in particular the gender-specific consequences for women's employment and re-employment.

Principal areas of concern and recommendations

280. The Committee is concerned that the Government's approach to the implementation of the Convention has an apparent focus on the protection of women rather than on their empowerment. Thus, the central machinery responsible for government policy is the National Working Committee on Women and Children, perpetuating the identification of women with children. Similarly, in the area of women's health, there is a focus on mother-child health, limited to women's reproductive function. Likewise, labour laws and regulations overemphasize the protection of women.

281. The Committee recommends that the Government re-examine its approach to realizing gender equality, with an emphasis on the human rights framework of the Convention and the empowerment of women. The Government should encourage a country-wide social dialogue that advocates equality between women and men, and a comprehensive public campaign aimed at changing traditional attitudes.

282. The Committee recommends that the Government examine and enhance the structure, authority and resources of the national machinery for the advancement of women.

283. Although the Convention is an integral part of Chinese law, the Committee is concerned that the Women's Law does not contain a definition of discrimination against women. It is also concerned that the Women's Law does not provide for effective remedies in cases of violation of the law. It is unclear whether the Convention can be, or ever has been, invoked in a court of law, and what the outcome of such cases might have been.

284. The Committee recommends that the Government adopt legislation that expressly prohibits gender discrimination, including unintentional and indirect discrimination, in accordance with the definition in article 1 of the Convention. It also recommends that the Government improve the availability of means of redress, including legal remedies, under the Women's Law. The Government should provide legal aid to women who suffer discrimination in its various forms, to assist them in the realization of their rights. It should also widely publicize all these measures so that adequate enforcement of the law can be ensured. The Committee recommends further that the Government adopt measures and allocate resources at both the central and provincial levels to monitor implementation of the various laws on gender equality.

285. The Committee is concerned about the diverse forms of violence against women in China, including custodial violence, sexual abuse, domestic violence, sexual violence and sexual harassment in the workplace. The Committee is also concerned that economic conditions may contribute to an increase in violence against women.

286. The Committee recommends that the Government examine and revise its laws and policies on violence against women in the light of the Committee's general recommendation 19. This should include adoption of a special law on domestic violence and provision of services for survivors, such as shelters and hotlines. The handling of domestic violence cases should be systematically included in the training of law enforcement officials and health-care personnel. The Committee urges the Government to regulate sexual harassment and to provide legal remedies for women victims of sexual harassment in the workplace. The Committee requests the Government to provide information in its next report on procedures for ensuring the rights of women in custody to protection from sexual abuse and for sanctioning prison officers responsible for such abuse.

287. The Committee recommends that the Government consider the possibility of extending an invitation to the Special Rapporteur on Violence against Women, including its causes and consequences, to visit China and all its provinces.

288. The Committee is concerned that prostitution, which is often a result of poverty and economic deprivation, is illegal in China.

289. The Committee recommends decriminalization of prostitution. Given the HIV/AIDS pandemic, the Committee also recommends that due attention be paid to health services for women in prostitution. The Government is also urged to take measures for the rehabilitation and reintegration of prostitutes into society.

290. Notwithstanding the serious efforts of the Government to combat trafficking in women, the Committee expresses its concern about reports in some localities of corrupt officials who are involved or colluding in the trade in women, including through payments from prostitutes.

291. The Committee urges the Government to investigate reports of local officials' involvement in trafficking and the exploitation of prostitution, and to prosecute all persons engaged in such practices.

292. The Committee is concerned that the proportional representation of women in all spheres of public life, and especially at the higher decision-making levels, has increased only minimally since the consideration of China's second report.

293. The Committee urges the Government to adopt temporary special measures within the meaning of article 4, paragraph 1 of the Convention to increase the number of women at the higher echelons of Government. The women's talent bank of the All China Women's Federation should be used extensively to increase the percentage of women in all public bodies. The Government should also encourage gender-balance in the composition of village committees.

294. Notwithstanding the Government's positive efforts and achievements in reducing illiteracy, the Committee is concerned about the disproportionate persistence of illiteracy among women, especially women in rural and remote areas, and among ethnic and religious minority women. The Committee also notes a lack of information concerning the situation of women in science and technology.

295. The Committee recommends that the Government adopt a specific time-frame, with budgetary and resource allocation, for the achievement of universal literacy and primary education. It should also abolish official and unofficial school fees, which often result in the exclusion of girls from enjoying their right to education, particularly in poor rural areas. Special measures and incentives should be introduced to ensure that girls are able to fully utilize access to primary education, and are given opportunities for secondary and higher education and vocational training. Likewise, the Committee urges the Government to revise school textbooks and curricula to eliminate gender stereotypes and to include the achievement of gender equality as a societal goal in its education policy.

296. The Committee is concerned about the economic situation of women in the transition from a centrally planned to a market economy. The rising unemployment of women, difficulties in finding new employment, the lack of enforcement of labour laws for women workers and the continuing categorization of certain jobs as unsuitable for women are of particular concern. The Committee is concerned that retraining of unemployed women for jobs in the service sector may lead to further gender segregation of the labour market, with women being trapped in low-wage sectors. The Committee notes with concern that women are faced with age discrimination as they seek re-employment. It is also concerned that an overemphasis on the protection of, rather than equal opportunities for, women in the labour market perpetuates stereotypes and creates additional obstacles for women competing in a market economy. The Committee notes that the situation of women workers in special economic zones also remains a concern.

297. The Committee is concerned about the consequences of women's loss of employment, or of interrupted employment, on women's rights to housing, health care and social security.

298. The Committee urges the Government to analyse, from a gender perspective, the effects of its economic policies, and to take steps to mitigate and counteract their negative effects on women. In addition to enforcing existing labour laws, the Committee invites the Government to increase women's means of redress against discrimination and inequality at work, including by promoting the recognition of women's right to participate in workers' organizations and their right to strike.

299. The Committee recognizes that population growth is a genuine and severe problem and that considerable progress has been made in providing family planning services, but expresses concern about various aspects of the implementation of China's population policy, including the following:

(a) The Committee notes with concern that only 14 per cent of men use contraceptives, thus making contraception and family planning overwhelmingly a woman's responsibility. In the light of the fact that

vasectomy is far less intrusive and costly than tubal ligation, targeting mainly women for sterilization may amount to discrimination;

(b) Notwithstanding the Government's clear rejection of coercive measures, there are consistent reports of abuse and violence by local family planning officials. These include forced sterilizations and abortions, arbitrary detention and house demolitions, particularly in rural areas and among ethnic minorities;

(c) The Committee is concerned about the growing disparity in the male/female sex ratio at birth as an unintended consequence of the population policy, owing to the discriminatory tradition of son preference. The shortage of females may also have long-term implications regarding trafficking in women;

(d) The Committee is concerned about illegal practices of sex-selective abortion, female infanticide and the non-registration and abandonment of female children. The Committee expresses particular concern about the status of "out-of-plan" and unregistered children, many of them girls, who may be officially non-existent and thus not entitled to education, health care or other social benefits.

300. The Committee urges the Government to examine the ways in which its population policy is implemented at the local level and initiate an open public debate thereon. It urges the Government to promote information, education and counselling, in order to underscore the principle of reproductive choice, and to increase male responsibility in this regard. The Government should make clear that coercive and violent measures are prohibited and enforce such prohibition through fair legal procedures that sanction officials acting in excess of their authority. The Committee urges the Government to introduce gender-sensitivity training for family planning officials.

301. Recognizing that male children, especially in rural and remote areas, remain responsible for supporting people in old age, the Government should explicitly address the linkages between economic security in old age and its family planning policies. It should take all appropriate measures to modify and eliminate son preference, *inter alia*, by expanding educational and employment opportunities for women in rural areas. The Government should enforce laws against sex-selective abortion, female infanticide and abandonment of children and remove all legal disabilities from "out-of-plan" and unregistered children.

302. The Committee is concerned that traditional attitudes and prejudices against women remain particularly pronounced in rural areas. It notes, in particular, the lack of opportunities for rural women to benefit fully from the economic progress of China, and that rural women face loss of property rights as a result of change in marital status. In this regard, it notes that some 70 per cent of agricultural workers are women and that this requires particular attention. The Committee is also concerned about the high rates of suicide among rural women.

303. The Committee recommends that all government policy and planning for rural areas, including micro-credit, small enterprise development and other income-generating projects, be developed with the full and active participation of rural women. Urgent attention should be given to addressing women's suicide rates through measures such as the provision of mental health services and a better understanding of the causes of these suicides. Women's studies centres could be encouraged to undertake the necessary research. The Government is urged to ensure that women have equal enjoyment of land rights independent of their marital status.

304. The Committee notes that there is no discussion in the report of women's participation in the informal sector of the economy. The Committee requests that this issue be addressed in the Government's next report.

305. The Committee urges the Government to integrate, in its next report, statistical information under each article of the Convention, to provide analysis of the situation of women over time, as well as in comparison to the situation of men, so that an assessment can be made of the factual progress made in implementation of the Convention.

306. In the light of the diversity of the country and its population, the Committee repeats the request it made in its concluding comments on China's second periodic report, that the Government provide in its reports a breakdown of information by provinces and autonomous regions and also include information on ethnic minorities particularly the Uyghur and Tibetan peoples.

307. The Committee urges the Government to translate the Convention on the Elimination of All Forms of Discrimination against Women into local languages. It recommends a comprehensive public campaign to improve legal literacy of the Convention and to raise awareness of gender equality as a societal goal and of women's rights as human rights. It also recommends gender-sensitization training on the basis of the Convention for all government officials and cadres. The Committee urges the Government to initiate broad public discussions in the various provinces and autonomous regions in the preparation of its fifth periodic report under article 18 of the Convention.

Concluding comments by the Committee: Hong Kong Special Administrative Region

Introduction

308. The Committee expresses its appreciation to the Government of China, Hong Kong Special Administrative Region, for submitting, in a timely manner, an extremely well-structured and informative initial report. It commends the Government on its oral presentation of the report and for the detailed oral and written replies, including statistical information, to the questions posed by the Committee.

309. The Committee notes that there are many non-governmental organizations working actively in Hong Kong for the full implementation of the Convention.

Positive aspects

310. The Committee commends the Government of China for the continuing applicability of the Convention to the Hong Kong Special Administrative Region following resumption of Chinese sovereignty over Hong Kong on 1 July 1997 under the principle of "one country, two systems". It notes that the Government has disseminated the Convention, including through the Internet.

311. The Committee welcomes the guarantee of human rights and fundamental freedoms of women and men, contained in the Hong Kong Basic Law and in the Bill of Rights Ordinance. It also notes the recent adoption and revision of laws to eliminate discrimination against women. The Committee commends, in particular, the Sex Discrimination Ordinance of 1995 and the establishment thereunder of the Equal Opportunities Commission as an independent statutory body and with adequate resources, responsible for addressing complaints on discrimination and promoting gender equality through public education and other means.

312. The Committee welcomes the recent judicial decision which has enforced the right to non-discrimination by recognizing that a non-marital child can claim residence in the Hong Kong Special Administrative Region on the basis of the residence rights of either her mother or father.

313. The Committee expresses satisfaction at the high level of literacy and the universal system of free education.

Factors and difficulties affecting the implementation of the Convention

314. The Committee notes with concern that China has entered seven reservations and declarations in respect of the provisions of the Convention as applied to Hong Kong. Of particular concern is the reservation exempting "the affairs of religious denominations or orders" from the scope of the Convention.

Principal areas of concern and recommendations

315. The Committee expresses concern that the Basic Law does not contain a prohibition of discrimination against women.

316. The Committee recommends the adoption of a constitutional definition of discrimination, both direct and indirect, to complement the prohibition of discrimination in civil law under the Sex Discrimination Ordinance.

317. Notwithstanding the important mandate and valuable work of the Equal Opportunities Commission, the Committee is concerned about the absence of a governmental mechanism for the advancement of women in Hong Kong charged with the pro-active development of policy and long-term strategies on gender equality.

318. The Committee recommends that the Government of the Hong Kong Special Administrative Region establish a high-level central mechanism with appropriate powers and resources to develop and coordinate a women-focused policy and long-term strategy to ensure effective implementation of the Convention.

319. The Committee expresses concern that the electoral system of the Region contains structural obstacles to the equal political participation of women, which is indirect discrimination against women, especially with respect to the functional constituencies.

320. The Committee urges the Government to take all measures necessary to ensure the equal representation of women in all constituencies, including rural committees, on the basis of the principle of universal and equal suffrage, in accordance with the Committee's general recommendation 23.

321. The Committee notes the low representation of women in governmental advisory boards and statutory committees, as well as in the civil service and the judiciary.

322. The Committee recommends that the Government make use of affirmative action and temporary special measures in accordance with article 4, paragraph 1, of the Convention to realize women's right to participation in all areas of public life and particularly at high levels of decision-making. It also recommends that the Government study the experience of other countries in using quotas, timetables for achieving specified goals and databases on women candidates, with a view to applying them in Hong Kong.

323. The Committee is concerned that the Domestic Violence Ordinance applies only to physical abuse in marital relations, and that it does not provide for counselling and treatment of offenders. It also notes with

concern that the report does not contain information on rape and that marital rape is not considered a criminal offence in the Hong Kong Special Administrative Region.

324. The Committee recommends that the Government enhance services for survivors of domestic violence, including domestic workers, with a view to their empowerment and rehabilitation, including through psychological counselling, legal aid, temporary shelter and appropriate health services. The Committee also urges the amendment of existing legislation to include marital rape as a criminal offence. It requests the Government to provide information on sexual crimes, including rape and marital rape, in its next report under article 18 of the Convention.

325. The Committee notes that while prostitution itself is not unlawful, provisions to ensure the health and safety of sex workers are unclear, and there may be discrimination against women in the enforcement of related crimes.

326. The Committee recommends that adequate regulations to protect women sex workers be put in place and enforced. It also recommends that the Government monitor the links between the presence of migrant women, a regulatory approach to prostitution and trafficking in women.

327. The Committee commends efforts to develop a standard labour contract for migrant workers with provision for minimum wages, but it is concerned that these workers can be exposed to abuse and custodial violence.

328. The Committee recommends that the Government monitor and take action to protect women migrant workers from abuse and violence, as well as to prevent such violence.

329. Noting that over 50 per cent of recent university graduates were women, the Committee is nevertheless concerned at the degree of segregation in the educational specialization of women and men and at the low percentage of women in the higher levels of the teaching professions and academia.

330. The Committee recommends the adoption of temporary special measures aimed at increasing de facto equality between women and men within the meaning of article 4, paragraph 1 of the Convention, to increase the number of women in non-traditional areas of education, especially in science, technology and engineering, and to promote women from junior and auxiliary positions in teaching and academia to senior positions. It urges the Government to address the perpetuation of gender stereotypes and to allocate adequate resources for gender studies programmes.

331. Noting the growing participation of women in the formal economy and the low level of unemployment of women, the Committee is nonetheless concerned about the large discrepancies in wages earned by men and women. The Committee is also concerned about the highly disproportionate number of women in the lowest wage levels, especially given the absence of minimum wage laws. The Committee is also concerned that the contraction of the manufacturing sector affects particularly low-skilled women.

332. The Committee recommends that the principle of equal pay for work of equal value be included in relevant legislation and that criteria be established to determine the measure of equal value in a largely gender-segregated labour market.

333. The Committee encourages the Government to review regularly the reservations entered to the Convention. It urges the Government to amend all laws that are incompatible with the Convention, including those relating to immigration and to pension schemes, with a view to removing the relevant

reservations. In particular, it encourages the Government to eliminate discrimination against indigenous women following its review of the small house policy. The Committee also encourages the Government to re-examine the reservation relating to the favourable treatment of women in respect of labour law protection of pregnancy and maternity, which might well be in accordance with articles 4, paragraph 1, and 11, paragraph 2, of the Convention, as well as that regarding religious denominations.

334. The Committee invites the Government to hold public consultations with non-governmental organizations in the process of the implementation of the Convention and when preparing its second periodic report.

335. The Committee requests the Government of China and the Government of the Hong Kong Special Administrative Region to provide information addressing the concerns raised in the present concluding comments in the next periodic report required under article 18 of the Convention.

336. The Committee requests the wide dissemination in China and the Hong Kong Special Administrative Region of the present concluding comments, in order to make the people of China and the Region, and particularly its government administrators, politicians and senior level cadres aware of the steps that had been taken to ensure *de jure* and *de facto* equality for women and further steps that are required in that regard. It also requests the Government to continue to disseminate widely, and in particular to women's and human rights organizations, the Convention, the Committee's general recommendations and the Beijing Declaration and Platform for Action.

ANNEX V

*Concluding observations of the Committee on Economic, Social and Cultural Rights (Hong Kong) :
China. 21/05/2001.*

E/C.12/1/Add.58. (Concluding Observations/Comments)

Convention Abbreviation: CESCR
COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

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

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

China: Hong Kong SPECIAL Administrative Region

1. The Committee considered on Economic, Social and Cultural rights the initial report submitted by China on articles 1 to 15 of the Covenant as applied in the Hong Kong Special Administrative Region (HKSAR) (E/1990/5/Add.43) at its 9th, 10th and 11th meetings (E/C.12/2001/SR.9-11), held on 27 and 30 April, and adopted, at its 29th meeting (E/C.12/2001/SR.24), held on 11 May 2001, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the well-prepared and detailed initial report, which conforms in general with the Committee's guidelines on reporting. The Committee also notes with appreciation the written replies to its list of issues and the additional statistics provided by HKSAR. The delegation's professionalism and openness contributed to a fruitful and constructive dialogue.

B. Positive aspects

3. The Committee warmly welcomes the ratification of the Covenant by China.

4. The Committee warmly welcomes the withdrawal by HKSAR of reservations to articles 1 and 7 of the Covenant.

5. The Committee welcomes the wide consultations undertaken by HKSAR with civil society organizations and other interested parties as part of the preparation of its initial report. The Committee notes with appreciation that HKSAR made available to the public at large copies of the report.

6. The Committee commends HKSAR for its efforts to provide adequate housing for Hong Kong residents. In particular, the Committee notes with appreciation that:

(a) The old temporary housing accommodations have been demolished and their occupants adequately housed in interim housing while waiting to be permanently housed;

(b) The Government provides interim housing for evicted squatters, victims of domestic violence and families separated by divorce; and

(c) Self-built structures in squatter communities erected before 1982, and therefore protected by the relevant housing policy, have been provided in most cases with basic services including water, sanitation and access to roads, with a view to improving the living conditions of the residents.

7. The Committee notes with satisfaction that the Equal Opportunities Commission established in 1996 is effectively carrying out its mandate without interference from the Government of HKSAR.

8. The Committee notes with appreciation that the Committee's general comments are valuable source materials consulted frequently by the Human Rights Unit of the Justice Department.

9. The Committee welcomes the delegation's assurance that all rights enshrined in the Covenant contain certain justiciable aspects. Moreover, the Committee notes with satisfaction that the Covenant is invoked in Hong Kong courts.

10. The Committee welcomes the establishment of a Women's Commission in HKSAR.

11. The Committee commends the HKSAR programme for training unskilled and unemployed workers with the objective of finding employment for them. The Committee notes with appreciation that the Employers Training Board conducts training programmes for unskilled women and provides them with allowances during training courses.

C. Factors and difficulties impeding the implementation of the Covenant

12. The Committee notes that issues regarding the right of abode in relation to permanent residence and split families impede the enjoyment of economic, social and cultural rights by the families affected by the reinterpretation on 26 June 1999 by the National People's Congress Standing Committee of article 24 of the Basic Law.

13. While the "ultimate aim is the election of all the members of the Legislative Council by universal suffrage" (article 68, Basic Law), the Committee notes that the current arrangements for the election of the Legislative Council include some undemocratic features which impede the full enjoyment of economic, social and cultural rights in HKSAR.

14. The economic policies of HKSAR, based essentially on the philosophy of "positive non-interventionism", i.e. keeping taxes low and limiting government expenditure to the provision of essential services, in accordance with article 5 of the Basic Law, which guarantees a free trade, free enterprise and low tax regime for at least 50 years, have had a negative impact on the realization and enjoyment of the economic, social and cultural rights of Hong Kong's inhabitants, which has been exacerbated by globalization.

D. Principal subjects of concern

15. The Committee regrets that HKSAR has not implemented a number of the recommendations in its concluding observations of 1996, despite the delegation's assurance that these must be given effect. The Committee wishes to reiterate in particular its concern on the following issues:

- (a) The fact that the Covenant's status in the HKSAR domestic legal order continues to be different from that of the International Covenant on Civil and Political Rights, the provisions of which have been incorporated into domestic legislation;
- (b) The failure of HKSAR to extend the prohibition of race discrimination to the private sector;
- (c) The failure of HKSAR to prohibit discrimination on the basis of sexual orientation and age;
- (d) The failure of HKSAR to establish a national human rights institution with a broad mandate and its failure to establish adequate alternative arrangements for the promotion of economic, social and cultural rights;
- (e) The absence of protection against unfair dismissal and the lack of adequate regulations on statutory minimum wage, working hours, paid weekly rest, rest breaks and compulsory overtime pay;
- (f) The denial of the right of foreign domestic helpers upon expiration of their contract to freely seek employment and to protection from discrimination, owing to the two-week rule;
- (g) The lack of a comprehensive policy for the protection of children from all forms of abuse.

16. The Committee greatly regrets that some judgements of the High Court in HKSAR express the opinion that the Covenant is "promotional" (*Mok Chi Hung v. Director of Immigration*, judgement of 5 January 2001) or "aspirational" (*Chan To Foon v. Director of Immigration*, judgement of 11 April 2001) in nature. As the Committee has confirmed on numerous occasions, such opinions are based on a mistaken understanding of the legal obligations arising from the Covenant.

17. The Committee is concerned that the Women's Commission may not have appropriate resources and powers to ensure that a gender perspective is integrated into the formulation of policy.

18. The Committee is gravely concerned about the widespread and unacceptable incidence of poverty in HKSAR. It is especially concerned that a large number of older persons continue to live in poverty without effective access to social services.

19. The Committee is deeply concerned that HKSAR lacks adequate institutional arrangements to ensure the formulation and implementation of comprehensive, integrated, consistent and effective anti-poverty strategies.

20. The Committee expresses its regret that in relation to the care of persons with mental illness, HKSAR is reluctant to authorize the prescribing of new drugs that are more costly but more effective and have been shown to produce fewer side effects for the mentally ill. In addition, the Committee notes with concern the apparent lack of initiative on the part of HKSAR to undertake public education to combat discrimination against those with mental disabilities.

21. The Committee is concerned that many individuals, including women who are homemakers, persons with disabilities and older persons, are excluded from the Mandatory Provident Fund Scheme.

22. The Committee is deeply concerned about the hardship arising from HKSAR policies on permanent residence and split families.

23. The Committee expresses its concern about the reported increase in the incidence of child abuse and suicide among the youth.

24. The Committee is concerned that the age of criminal responsibility is set at the young age of seven years.

25. While acknowledging that HKSAR has made progress in relation to housing, the Committee remains deeply concerned that the right to housing of many people in Hong Kong remains unfulfilled. In the Committee's view, bed-space apartments, or cage homes, are an affront to human dignity and roof-top structures constitute a grave risk to the life and health of their inhabitants.

26. The Committee is concerned that the Public Order Ordinance may be used to restrict trade union activities, such as peaceful campaigns to promote labour rights, which are protected by article 8 (c) of the Covenant.

E. Suggestions and recommendations

27. The Committee reminds HKSAR that the provisions of the Covenant constitute a legal obligation on the part of the States parties. Thus, the Committee urges HKSAR not to argue in court proceedings that the Covenant is only "promotional" or "aspirational" in nature.

28. The Committee again urges HKSAR to implement the Committee's suggestions and recommendations contained in its concluding observations of 1996, as well as the current ones, and to undertake whatever relevant concrete measures may be necessary towards their implementation.

29. The Committee recommends that HKSAR withdraw its reservation on article 6 and the interpretative declaration replacing its former reservation on article 8.

30. It is the Committee's view that the failure by HKSAR to prohibit race discrimination in the private sector constitutes a breach of its obligations under article 2 of the Covenant. The Committee calls upon HKSAR to extend its prohibition of race discrimination to the private sector.

31. The Committee also urges HKSAR to prohibit discrimination on the basis of sexual orientation and age.

32. The Committee urges HKSAR to establish a national human rights institution consistent with the Paris principles (1991) and the Committee's General Comment No. 10. Until such an institution is established, the Committee urges HKSAR to enhance its measures for the promotion of economic, social and cultural rights.

33. The Committee urges HKSAR to provide the Women's Commission with sufficient powers and resources to enable it to improve the status of women in Hong Kong, and to integrate gender in its policy-making and ensure wider participation of women in all spheres of public life.

34. The Committee reiterates its recommendation that HKSAR review its policy in relation to unfair dismissal, minimum wages, paid weekly rest time, rest breaks, maximum hours of work and overtime pay

rates, with a view to bringing such policy into line with the HKSAR obligations as set forth in the Covenant.

35. The Committee urges HKSAR to enact legislation on equal pay for work of equal value as provided for in the Covenant.

36. The Committee urges HKSAR to adopt a comprehensive pension system that provides adequate retirement protection for the entire population, in particular for housewives, self-employed persons, older persons and persons with disabilities.

37. The Committee recommends that the Public Order Ordinance be reviewed with a view to amending its provisions to ensure freedom of trade union activities as provided for under article 8 (c) of the Covenant.

38. The Committee strongly recommends that HKSAR establish either an inter-departmental anti-poverty unit or an independent anti-poverty commission, to conduct relevant research, formulate anti-poverty strategies and monitor all policies for their impact on poverty.

39. The Committee urges HKSAR to ensure that Comprehensive Social Security Assistance levels permit recipients a reasonable standard of living consistent with articles 9 and 11 of the Covenant.

40. When formulating and implementing its policies on permanent residence and split families, HKSAR is urged to give the most careful attention to all the human rights dimensions of the issue, including articles 2 (2), 3 and 10 of the Covenant. The Committee reminds HKSAR that any limitations in connection with article 10 must be justified in relation to each element set out in article 4. The Committee urges HKSAR to reconsider extending the "concession" made by HKSAR following the reinterpretation of 26 June 1999.

41. HKSAR is urged to enhance the transparency of all relevant processes concerning permanent residence and split families. For example, the Committee recommends that all data, appropriately disaggregated (e.g. by origin of applicant), are made publicly available and tabled in the Legislative Council every six months.

42. The Committee calls upon HKSAR to adopt urgent measures to address the problems leading to youth suicide and all forms of child abuse.

43. The Committee calls upon HKSAR to amend its laws to raise the age of criminal responsibility so as to ensure the rights of the child under article 10 of the Covenant.

44. The Committee calls on HKSAR to give urgent attention to the housing rights of all Hong Kong residents, including squatters and those living in roof-top structures and bed-space apartments or cage homes. In its next periodic report, HKSAR is requested to give special attention to the impact of current policies on squatters, roof-top structures and bed-space apartments or cage homes. In particular, the Committee would like HKSAR to comment on the operation and efficacy of the Bed-space Apartments Ordinance (chap. 447).

45. The Committee recommends that HKSAR undertake a comprehensive review of mental health policy and adopt effective measures to ensure that persons with mental illness enjoy the right to adequate and affordable health care. The Committee urges HKSAR to provide public education to combat discrimination against persons with mental illness.

46. The Committee requests that HKSAR disseminate these concluding observations as widely as possible among its citizens.

47. The Committee requests HKSAR to address, in its second periodic report, the implementation of these concluding observations.

48. The Committee requests HKSAR to submit information on its progress in implementing the Committee's recommendation in paragraph 30 (race discrimination) by 30 June 2003. The Committee requests HKSAR to submit its full second periodic report in accordance with the prescribed dates of submissions

ANNEX VI

Concluding observations of the Committee on the Rights of the Child : China. 07/06/96. CRC/C/15/Add.56. (Concluding Observations/Comments)

Convention Abbreviation: CRC

COMMITTEE ON THE RIGHTS OF THE CHILD

Twelfth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

Concluding observations of the Committee on the Rights of the Child: China

1. The Committee considered the initial report of China (CRC/C/11/Add.7) at its 298th to 300th meetings (CRC/C/SR.298-300), held on 28 and 29 May 1996, and adopted* the following concluding observations:

A. Introduction

2. The Committee notes that the initial report of the State party was prepared in accordance with the general guidelines. The Committee appreciates the self-critical elements of the report, although it is noted that greater focus was placed in the report on the content of domestic legal and administrative provisions than on their practical application. It also welcomes the State party's replies to the written list of questions posed by the Committee.

3. The Committee notes with satisfaction that different ministerial departments and other bodies were involved in the preparation of the report. The Committee expresses its appreciation to the State party for having ensured that many of these departments were represented on the delegation presenting the report to the Committee. The Committee welcomes the willingness of the State party and its delegation to engage in a constructive dialogue with the Committee. It appreciates the delegation's frank admission that various difficulties remain to be overcome before the rights and principles provided for in the Convention are guaranteed to all children in China.

B. Positive factors

4. The Committee takes note of the considerable improvement in the general standard of living which has been recorded in recent years. The Committee further notes the programme outline which has been devised at the national level and which is in the process of being developed in all 30 provinces and autonomous regions and implemented as a follow-up to the goals set in the Declaration and Plan of Action adopted by the World Summit for Children in 1990. Note is also taken that an outline is being prepared as a follow-up to the Fourth World Conference on Women held in Beijing.

5. The considerable progress achieved by the State party in reducing the infant and under-five mortality rates, especially through the extensive efforts focused on sustaining immunization coverage, increasing immunization rates and reducing the incidence of child malnutrition, is to be commended. The State party's commitment to protecting, promoting and supporting breast-feeding as well as to establishing children's hospitals is also welcomed.

6. Noteworthy also are the various activities undertaken and supported by the State party to increase school enrolment. The State party's recognition of the importance of supporting education as a tool for fostering social and economic development is noted. Special mention is accorded to Project Hope which is designed to assist children in poor districts, as well as to the Spring Buds Scheme, to promote girls' enrolment or return to school to complete their primary education.

7. The Committee also notes the information contained in the report that various laws and administrative regulations relevant to the rights of the child have been developed and introduced. The Compulsory Education Act, the Protection of Minors Act and the Protection of the Disabled Act and the work undertaken by the Help the Disabled Movement are noted.

C. Factors and difficulties impeding the implementation of the Convention

8. Taking into account the fact that the number of children in China represents one fifth of the child population of the world and that the population is spread throughout the vast territory of the country, the Committee notes that the task facing China in meeting the needs of all children under its jurisdiction presents enormous challenges, not least in the economic and social fields.

9. As was stated by the State party, the legacy of certain historical feudal traditions in parts of the country and the persistence of other harmful attitudes are adversely affecting children's lives and healthy growth.

D. Principal subjects of concern

10. The Committee notes the establishment of various structures for the promotion and coordination of the implementation of the Convention on the Rights of the Child though it remains concerned at the insufficient measures taken to ensure their effectiveness with regard to monitoring the Convention's implementation at the national, provincial and local levels.

11. The Committee is concerned about the prevailing disparities between urban and rural areas and between regions in relation to the provision of and access to social services, including education, health and social security.

12. It is the Committee's view that inadequate measures taken in the field of social security may have led to an over-reliance on children providing future care and support to their parents. This may have contributed to the perpetuation of harmful traditional practices and attitudes such as a preference for boys, to the detriment of the protection and promotion of the rights of girls and of disabled children.

13. The Committee feels there is a need to consider questions relating to the definition of the child, including in relation to the age of criminal responsibility, so as to ensure that national legislation and related procedures duly take into consideration the provisions and general principles of the Convention, including the best interests of the child.

14. In the view of the Committee, insufficient steps have been taken to create awareness of the provisions and principles of the Convention, notably its articles 2, 3, 6 and 12, among adults, including professionals working with or for children, and children themselves.

15. While noting the measures taken to confront the problems of discrimination on the grounds of gender and disability, the Committee remains concerned at the persistence of practices leading to cases of selective infanticide.

16. Serious concerns remain as to the effectiveness of measures taken to ensure the registration of all

children, through the household registry. As acknowledged by the State party, absence of registration may be due to parents' lack of knowledge of the relevant law and policy and of the negative effects of non-registration on children's legal status. The migration of people from their traditional place of residence may cause similar difficulties. Deficiencies in the registration system lead to children being deprived of basic safeguards for the promotion and protection of their rights, including in the areas of child trafficking, abduction, sale and maltreatment, abuse or neglect. In this connection, the situation of "unregistered girls" as regards their entitlement to health care and education is a matter of concern to the Committee.

17. The Committee remains concerned about the actual implementation of the civil rights and freedoms of children. The Committee wishes to emphasize that the implementation of the child's right to freedom of thought, conscience and religion should be ensured in the light of the holistic approach of the Convention and that limitations on the exercise of this right can only be placed in conformity with paragraph 3 of article 14 of the Convention.

18. The Committee is extremely concerned about the situation of children provided with care in welfare institutions. The Committee observes that the very high mortality rate in such institutions is a cause for serious alarm. While the Committee appreciates the steps being taken to ensure, *inter alia*, the separation of children from adults in institutions and in providing training to the staff, it remains deeply concerned about the inadequate measures adopted to ensure qualitative care to children as required by article 3, paragraph 3, of the Convention.

19. The Committee shares the concern expressed by the State party as regards the number of children in China who still do not attend school. It is also concerned about reports that school attendance in minority areas, including the Tibet Autonomous Region, is lagging behind, that the quality of education is inferior and that insufficient efforts have been made to develop a bilingual education system which would include adequate teaching in Chinese. These shortcomings may disadvantage Tibetan and other minority pupils applying to secondary and higher level schools.

20. In the framework of the exercise of the right to freedom of religion by children belonging to minorities, in the light of article 30 of the Convention, the Committee expresses its deep concern in connection with violations of human rights of the Tibetan religious minority. State intervention in religious principles and procedures seems to be most unfortunate for the whole generation of boys and girls among the Tibetan population.

21. The Committee remains concerned that national legislation appears to allow children between the ages of 16 and 18 to be sentenced to death with a two-year suspension of execution. It is the opinion of the Committee that the imposition of suspended death sentences on children constitutes cruel, inhuman or degrading treatment or punishment. Further, it is noted that under the Penal Code a juvenile offender aged between 14 and 18 may legally be sentenced to life imprisonment for a particularly serious crime. Although the sentence of life imprisonment may be reduced on the grounds of "repentance" or "merit" and judicial experience in China shows that sentences to life imprisonment can benefit from a mitigation, the Committee wishes to stress that the Convention prescribes that neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offences committed by persons below the age of 18. It is the Committee's view that the aforementioned provisions of national law are incompatible with the principles and provisions of the Convention, notably those of its article 37 (a).

22. Additionally, the Committee remains concerned about the extent to which adequate safeguards are in place within the present system of juvenile justice in China. In this context, the Committee expresses concern with respect to the access of parents during the pre-trial detention of their children, the possibilities for the provision of legal assistance to children, the sufficiency of the time allocated for the

preparation of a child's defence as well as respect for the presumption of innocence and the principle of nullum crimen sine lege, nulla poena sine lege as reflected in article 40, paragraph 2 (a).

23. The Committee shares the State party's concern that there has been an upsurge in recent years of kidnapping and abduction of children. In this connection, the Committee wishes to express its serious concern about the apparent inadequacy of measures taken to prevent and combat the problems of the sale, trafficking and sexual exploitation of children.

E. Suggestions and recommendations

24. In the light of the discussion in the Committee on the question of the continuing need for the State party's reservation to article 6 of the Convention and the information provided by the State party that it is open to considering making adjustments in regard to its reservation, the Committee encourages the State party to review its reservation to the Convention with a view to its withdrawal.

25. The Committee recommends that a comprehensive review of the domestic legal framework be undertaken. Such a review requires that the provisions and principles of the Convention serve as both its guide and support and that it encompass not only national but also local-level legislative and administrative measures impacting on the rights of the child.

26. The Committee recommends that the State party consider the possibility of setting up an independent institution such as an Ombudsperson for children's rights. Such a mechanism can play an important role both in monitoring institutions working in the field of the rights of the child, including in the areas of welfare, education and juvenile justice, as well as in contributing to the more rapid identification of emerging problems in these fields with a view to their constructive solution.

27. The Committee, in taking note of the activities undertaken throughout the State party to develop and implement outlines for the follow-up to the World Summit for Children, recommends that future outlines, development plans, programmes or plans of action on the rights of the child be prepared on the basis of all the provisions and principles of the Convention.

28. The State party is urged to take further action to strengthen its capacity for a systematic approach to collecting disaggregated statistical data and other information on the status of children. The Committee recommends that serious consideration be given to this matter by the State party as the analysis of such data and information is one additional and important means of designing programmes for the implementation of the rights of the child.

29. It is the recommendation of the Committee that the principles and provisions of the Convention on the Rights of the Child be widely disseminated throughout the country, including through the mass media, such as radio and television. It is suggested that the State party may wish to request the cooperation of the United Nations Children's Fund in this regard. The translation of the Convention into the major national minority languages would form an integral part of these dissemination activities.

30. The Committee would also like to recommend that measures be taken to incorporate education on the principles and provisions of the Convention into training programmes for different professionals working with or for children, including social workers, personnel in welfare institutions, doctors, health and family planning workers, teachers, judges, lawyers, police, personnel in detention facilities and armed forces personnel as well as government officials and decision makers.

31. A review of the policy in place for the implementation of article 4 of the Convention is recommended by the Committee. The Committee wishes to emphasize that the focus of any such review should be in relation to the measures being taken to reduce regional and urban-rural disparities in the allocation of

resources for the rights of the child, especially with respect to health and education.

32. Equally, the Committee recommends that greater attention and consideration be given to the provision of social security. It is the Committee's view that remedial measures should be sought to avoid families' over-dependence on their children, in particular providing them with care in their old age.

33. Further measures are required to ensure the implementation of the general principles of the Convention. With regard to article 12 of the Convention, it is the Committee's view that greater attention should be accorded to providing children with opportunities to participate and have their views heard and taken into account. It is important that awareness be developed of the child as a subject of rights and not only as a recipient of protection. The Committee suggests that further attention be accorded to reviewing the effectiveness of procedures available to children for the presentation and investigation of complaints of their abuse or neglect, in the event of such violations arising from, inter alia, domestic violence and abuse in institutions or detention facilities.

34. The Committee concurs with the observations of the State party that concerted action is called for to address the problems faced by the girl child. While acknowledging the measures taken by the State party in campaigning and creating awareness among the population of the equality of girls and boys, the Committee suggests that local and other leaders be invited to take a more active role in supporting the efforts to prevent and eliminate discrimination against the girl child and to provide guidance to communities in this regard.

35. From information provided by the State party, the Committee notes that, while the incidence of disability among the child population is low, disabled children have been the victims of abandonment and discrimination. In this regard, the Committee recommends that the State party undertake further research on the measures required to prevent and combat discrimination on the ground of disability.

36. It is the Committee's view that family planning policy must be designed to avoid any threat to the life of children, particularly girls. The Committee recommends in this regard that clear guidance be given to the population and the personnel involved in the family planning policy to ensure that the aims it promotes are in accordance with principles and provisions of the Convention, including those of its article 24. The State party is urged to take further action for the maintenance of strong and comprehensive measures to combat the abandonment and infanticide of girls as well as the trafficking, sale and kidnapping or abduction of girls.

37. The Committee acknowledges the information provided by the State party on the results of two population censuses conducted in 1982 and 1990 and that the non-registration of new-born girls is a major factor contributing to the imbalance in the ratio of boys to girls. The Committee, while noting that the State party has adopted measures to reduce the under-reporting of girl children, recommends that urgent measures be taken to develop more widespread awareness of the importance of registration. In the light of recent developments such as population movements within the country, the Committee also recommends that the State party consider the possibility of reviewing the effectiveness of the existing system of registration.

38. It is the opinion of the Committee that further measures should be taken by the State party to promote the possibilities for children, particularly those who have been abandoned, to grow up in a home-like environment through, inter alia, fostering and adoption. The Committee also suggests that the State party review the present legislation on adoption, in the light of the principles and provisions of the Convention, notably those of its articles 20 and 21, so as to evaluate the effectiveness of national legislation in facilitating domestic adoption.

39. The State party is urged to take further action to improve the situation of children in welfare

institutions. In this regard, the Committee wishes to draw the particular attention of the State party to the principles and provisions of the Convention, notably those of its articles 3 (3) and 25. The Committee recommends that a further review of the training provided to the staff of such institutions be undertaken. The training should be reviewed from the perspective of securing the most effective pedagogical, professional and child-oriented approach to the provision of care. Measures are also required to ensure the effective supervision of staff and the periodic review of the treatment provided to children in such institutions. In the light of other issues raised during the dialogue with the State party, the Committee also suggests that further consideration be given to reviewing the systems in place for monitoring welfare institutions and for providing such institutions with adequate financing. Within the framework of facilitating access to knowledge and the sharing of expertise and experiences on these matters, including in the light of the provisions of articles 4, 23, 24, 28 and 45 of the Convention, the Committee suggests that consideration be given to the possibility of inviting the United Nations Children's Fund, the World Health Organization and the United Nations Educational, Scientific and Cultural Organization to cooperate with the State party in this regard.

40. The Committee suggests that a review be undertaken of measures to ensure that children in the Tibet Autonomous Region and other minority areas are guaranteed full opportunities to develop knowledge about their own language and culture as well as to learn the Chinese language. Steps should be taken to protect these children from discrimination and to ensure their access to higher education on an equal footing.

41. The Committee recommends that the State party seek a constructive response to the concerns expressed in paragraph 20 above.

42. The Committee concurs with the contents of the observations adopted by the Committee against Torture where the points raised are relevant to the situation of children below the age of 18. The Committee recommends that a thorough review of the legislative and administrative measures and procedures in place within the State party in relation to juvenile justice be reviewed to ensure their conformity with the principles and provisions of the Convention, notably its articles 37, 39 and 40, and other instruments relevant to the field of the administration of juvenile justice, in particular the "Beijing Rules", the "Riyadh Guidelines" and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. The Committee would like to suggest that the State party consider the possibility of requesting assistance in this regard from the relevant United Nations bodies, including the Centre for Human Rights.

43. With regard to the issue of child labour, the Committee encourages the State party to consider the possibility of becoming a party to ILO Convention No. 138 concerning the minimum age for employment.

44. Finally, the Committee recommends that the widest dissemination be given to the State party's report, the discussion on the report in the Committee and the concluding observations the Committee has adopted following examination of the report.

45. In the light of the provisions of article 44, paragraph 4, of the Convention, the Committee requests that further written information be provided to the Committee with respect to the concerns raised in paragraphs 18, 21, 22 and 23 of the present observations. The Committee would appreciate receiving this information by December 1997.

* At the 314th meeting, held on 7 June 1996.

ANNEX VII

Conclusions and recommendations of the Committee against Torture : China. 09/05/2000. A/55/44,paras.106-145. (Concluding Observations/Comments)

Convention Abbreviation: CAT
COMMITTEE AGAINST TORTURE
24th Session
1-19 May 2000

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Conclusions and recommendations of the Committee against Torture

China

106. The Committee considered the third periodic report of China (CAT/C/39/Add.2) at its 414th, 417th and 421st meetings on 4, 5 and 9 May 2000 (CAT/C/SR.414, 417 and 421), and adopted the following conclusions and recommendations.

1. Introduction

107. The third periodic report of China consists of two parts. Part I covers the whole of China, with the exception of the Hong Kong Special Administrative Region, and Part II covers the Hong Kong Special Administrative Region only.

108. The Committee welcomes the third periodic report of China, which conforms with the general guidelines for the preparation of State party reports. The Committee expresses its appreciation for the additional information and replies provided by the State party and the continued and constructive cooperation of China with the Committee.

Part I China, excluding the Hong Kong Special Administrative Region

2. Positive aspects

109. The Committee appreciates and encourages the continuing efforts of the Government of China to introduce such amendments into its legislation and practices as would bring them into line with international human rights norms and to entrench legality constitutionally.

110. The Committee welcomes the action taken by the Government of China to implement a number of the recommendations made previously by the Committee, in particular with regard to timely access to defence counsel, the presumption of innocence, amendments to the Criminal Law and Procedure pertaining to fair trials and the introduction of more severe punishment for acts of torture.

111. The Committee notes the effective abolition of the procedure of shelter for investigation and protection and the introduction of certain aspects of fair trial in respect of other proceedings of administrative detention, including re-education through labour.

112. The Committee notes the State party's expressed willingness to cooperate internationally to provide rehabilitation for victims of torture.

113. The Committee welcomes the assurances of the State party that the Convention is binding on Chinese law enforcement and judicial organs.

114. The Committee expresses its appreciation of the State party's communication to the Secretary-General of the United Nations, dated 19 October 1999, whereby it extended the application of the Convention to the Macao Special Administrative Region.

3. Factors and difficulties impeding the application of the provisions of the Convention

115. There are no new factors and difficulties impeding the application of the Convention apart from those referred to in the Committee's conclusions following the examination of the second periodic report of China.

4. Subjects of concern

116. The Committee is concerned about the continuing allegations of serious incidents of torture, especially involving Tibetans and other national minorities.

117. The Committee notes with concern the absence of detailed information and statistics regarding torture and other forms of cruel, inhuman or degrading treatment or punishment, disaggregated by gender.

118. The Committee is concerned that reforms are not implemented uniformly and equally in all parts of China.

119. Concern is expressed about the fact that rules and practices of certain procurators limit the prosecution of torture suspects to certain serious cases.

120. The Committee is concerned about the system of administrative sanctions that permits extrajudicial custodial orders in respect of individuals that have not committed, or are not charged with, a violation of the law.

121. The absence of a uniform and effective investigation mechanism to examine allegations of torture is noted with concern.

122. The Committee expresses concern about reports of coercive and violent measures resorted to by some local officials in implementing the population policy of the State party, contrary to the relevant provisions of the Convention.

5. Recommendations

123. The Committee recommends that the State party incorporate in its domestic law a definition of torture that fully complies with the definition contained in the Convention.

124. The State party is invited to consider, in respect of both its mainland and the Hong Kong Special Administrative Region, declaring in favour of articles 21 and 22 of the Convention and withdrawing its reservation under article 20, and to ensure the continued applicability of article 20 in the Hong Kong Special Administrative Region.

125. The Committee recommends that the State party continue the process of reform, monitor the uniform and effective implementation of new laws and practices and take other measures as appropriate to this

end.

126. The Committee recommends that the State party consider abolishing the requirement of applying for permission before a suspect can have access for any reason to a lawyer whilst in custody.

127. The Committee recommends that the State party consider abolishing all forms of administrative detention, in accordance with the relevant international standards.

128. The Committee recommends that the State party ensure the prompt, thorough, effective and impartial investigation of all allegations of torture.

129. The Committee encourages the State party to continue and to intensify its efforts to provide training courses on international human rights standards for law enforcement officers.

130. The Committee recommends that in the next periodic report the State party provide answers to questions that it did not find possible to address during the present consideration and include detailed statistics, disaggregated, *inter alia*, by region and gender.

Part II Hong Kong Special Administrative Region

6. Factors and difficulties impeding the application of the provisions of the Convention

131. The Committee notes that the reintegration of the Hong Kong Special Administrative Region into China created no factors and difficulties impeding the application of the Convention.

7. Positive aspects

132. The Committee expresses its appreciation to the Government of China for the steps taken to ensure the continued application of the Convention in the Hong Kong Special Administrative Region, the authorities of which have prepared parts of the report.

133. The Committee welcomes the release of all Vietnamese refugees and migrants and the closure of the Pillar Point detention centre.

134. The Committee welcomes the adoption of legislation to facilitate the extradition of persons suspected of having committed acts of torture.

135. The Committee notes as positive the strengthening of the independence of the Independent Police Complaints Council.

136. The Committee welcomes the increase of the maximum sentence for certain sexual crimes, such as incest, and the abolition of the requirement of corroboration in respect of sexual offences.

137. The Committee welcomes the introduction of training courses and other educational measures targeting law enforcement personnel, and the fact that interviews of detainees are videotaped.

8. Subjects of concern

138. The Committee is concerned that the reference to "lawful authority, justification or excuse" as a defence for a person charged with torture, as well as the definition of a public official in the Crimes (Torture) Ordinance, chapter 427, are not in full conformity with article 1 of the Convention.

139. The Committee is concerned that there have as yet been no prosecutions under the Crimes (Torture) Ordinance, despite circumstances brought to the attention of the Committee justifying such prosecutions.

140. Concern is expressed that not all instances of torture and other cruel, inhuman or degrading treatment or punishment are covered by the Crimes (Torture) Ordinance.

141. It is noted with concern that practices in the Hong Kong Special Administrative Region relating to refugees may not be in full conformity with article 3 of the Convention.

9. Recommendations

142. The Committee recommends that the necessary steps be taken to ensure that torture, as defined in article 1 of the Convention, is effectively prosecuted and appropriately sanctioned and that efforts be made to prevent other acts of cruel, inhuman or degrading treatment or punishment, in accordance with the provisions of the Convention.

143. The Committee recommends that continued efforts be made to ensure that the Independent Police Complaints Council becomes a statutory body, with increased competence.

144. The Committee recommends the continuation and intensification of preventive measures, including training for law enforcement officials.

145. The Committee recommends that laws and practices relating to refugees be brought into full conformity with article 3 of the Convention.

ANNEX VIII

Concluding observations of the Human Rights Committee (Hong Kong) : China. 12/11/99. CCPR/C/79/Add.117. (Concluding Observations/Comments)

Convention Abbreviation: CCPR
HUMAN RIGHTS COMMITTEE
Sixty-seventh session

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

Concluding observations of the Human Rights Committee Hong Kong Special Administrative Region

1. The Committee considered the fifth periodic report of the Hong Kong Special Administrative Region (CCPR/C/HKSAR/99/1 and supplementary information CCPR/C/HKSAR/99/1/Add.1) at its 1803rd to 1805th meetings (CCPR/C/SR.1803-SR.1805), held on 1 and 2 November 1999. This report is the first submitted by the People's Republic of China after the return of HKSAR to Chinese sovereignty on 1 July 1997. The Committee adopted, at its 1810th meeting (sixty-seventh session) held on 4 November 1999, the following concluding observations.

A. Introduction

2. The Committee expresses appreciation to the delegation from HKSAR for the information it provided and for its willingness to submit further information in writing. It further welcomes the recognition given by the delegation to the contribution made by NGOs to the consideration of the HKSAR report.

3. The Committee thanks the People's Republic of China for its willingness to participate in the reporting procedure under article 40 of the Covenant by submitting the report prepared by the HKSAR authorities and by introducing the HKSAR delegation to the Committee. The Committee affirms its earlier pronouncements on the continuity of the reporting obligations in relation to Hong Kong.

B. Positive aspects

4. The Committee notes that article 39 of the Basic Law provides that the provisions of the Covenant as applied to HKSAR shall remain in force and shall be implemented through the laws of HKSAR. The Committee welcomes the fact that the primacy of the Covenant is ensured in domestic legislation by a combination of articles 39 and 11 of the Basic Law.

5. The Committee welcomes the efforts undertaken by the HKSAR to give publicity to its report and its commitment to give wide dissemination to the Committee's concluding observations.

6. The Committee welcomes the efforts undertaken by HKSAR to educate civil society about human rights. In particular, the Committee welcomes the great number of training courses, workshops and seminars conducted in HKSAR for all sectors of the population, including the civil service, the judiciary, the police and the educational establishments.

7. The Committee welcomes the steps taken by HKSAR to promote gender equality through educational campaigns and appropriate legislation.

C. Principal subjects of concern and recommendations

8. The Committee is concerned that most of the recommendations formulated in the Committee's concluding observations (published in A/51/40, paras. 66-72; A/52/40, paras. 84-85) have not yet been implemented.

9. The Committee remains concerned that there is no independent body established by law to investigate and monitor human rights violations in HKSAR and the implementation of Covenant rights.

10. The Committee is seriously concerned at the implications for the independence of the judiciary of the request by the Chief Executive of HKSAR for a reinterpretation of article 24 (2)(3) of the Basic Law by the Standing Committee of the National People's Congress (NPC) (under article 158 of the Basic Law) following upon the decision of the Court of Final Appeal (CFA) in the Ng Ka Ling and Chan Kam Nga cases, which placed a particular interpretation on article 24 (2)(3). The Committee has noted the statement of the HKSAR that it would not seek another such interpretation except in highly exceptional circumstances. Nevertheless, the Committee remains concerned that a request by the executive branch of government for an interpretation under article 158 (1) of the Basic Law could be used in circumstances that undermine the right to a fair trial under article 14.

11. The Committee takes the view that the Independent Police Complaints Council has not the power to ensure proper and effective investigation of complaints against the police. The Committee remains concerned that investigations of police misconduct are still in the hands of the police themselves, which undermines the credibility of these investigations.

The HKSAR should reconsider its approach on this issue and should provide for independent investigation of complaints against the police.

12. The Committee reiterates its concern, expressed in paragraph 19 of its concluding observations, adopted at the end of the consideration of the fourth periodic report, that the electoral system for the Legislative Council does not comply with articles 2, paragraphs 1, 25 and 26 of the Covenant. The Committee is concerned about the impending abolition of the Municipal Councils that would further diminish the opportunity of HKSAR residents to take part in the conduct of public affairs, that is guaranteed under article 25.

The HKSAR should reconsider this step. It should take all necessary measures to maintain and strengthen democratic representation of HKSAR residents in public affairs.

13. The Committee is concerned that the Interception of Communications Ordinance, which was passed in June 1997 in order to restrict the power of the authorities to intercept communications, has not yet been brought into effect. Section 33 of the Telecommunication Ordinance and Section 13 of the Post Office Ordinance still continue to be in force, thus allowing the authorities to violate the right to privacy under article 17 of the Covenant.

The HKSAR must ensure that its law and practice protect the rights guaranteed under article 17.

14. In the light of the fact that the Covenant is applied in HKSAR subject to a reservation that seriously affects the application of article 13 in relation to decision-making procedures in deportation cases, the Committee remains concerned that persons facing a risk of imposition of the death penalty or of torture, or inhuman, cruel or degrading treatment as a consequence of their deportation from HKSAR may not enjoy effective protection.

In order to secure compliance with articles 6 and 7 in deportation cases, the HKSAR should ensure that their deportation procedures provide effective protection against the risk of imposition of the death penalty or of torture or inhuman, cruel or degrading treatment.

15. The Committee remains concerned that no legislative remedies are available to individuals in respect of discrimination on the grounds of race or sexual orientation.

Necessary legislation should be enacted in order to ensure full compliance with article 26 of the Covenant.

16. The Committee is concerned that the educational system in HKSAR discriminates against girls in selection for secondary schools, that considerable differences exist in the earning levels between men and women, that women are under-represented in public boards and public offices, and that there is discrimination against women in the Small Home Policy.

The HKSAR should adopt positive measures to overcome discrimination against women and should ensure equal pay for work of equal value.

17. The Committee is concerned that the age of criminal responsibility is seven years and takes note of the statement by the Delegation that the Law Reform Commission is currently conducting a review of this matter.

The age of criminal responsibility should be raised so as to ensure the rights of children under article 24.

18. The Committee is concerned that the offences of treason and sedition under the Crimes Ordinance are defined in overly broad terms, thus endangering freedom of expression guaranteed under article 19 of the Covenant.

All laws enacted under article 23 of the Basic Law must be in conformity with the Covenant.

19. With regard to freedom of assembly, the Committee is aware that there are very frequent public demonstrations in HKSAR and takes note of the delegation's statement that permission to hold demonstrations is never denied. Nevertheless, the Committee is concerned that the Public Order Ordinance could be applied to restrict unduly enjoyment of the rights guaranteed in article 21 of the Covenant.

The HKSAR should review this Ordinance and bring its terms into compliance with article 21 of the Covenant.

20. With regard to freedom of association, the Committee is concerned that the Societies Ordinance may be applied in a way to restrict unduly the enjoyment of Article 22 rights.

The HKSAR should review this Ordinance so as to ensure full protection of the right to freedom of association, including trade union rights, under article 22 of the Covenant.

D. Date of examination of the sixth periodic report; dissemination of information

21. The Committee sets the date for the submission of the next periodic report as 31 October 2003. That report should be prepared in accordance with the Committee's new Guidelines (CCPR/C/66/GUI/Rev.1) and should give particular attention to the issues raised by the Committee in these Concluding Observations. The Committee urges that the text of these Concluding Observations be made available to the public as well as to the legislative and administrative authorities. It requests that the next periodic report be widely disseminated among the public, including civil society and non-governmental organizations operating in HKSAR.

ANNEX IX

Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy

Addendum 1 International, regional and national developments in the area of violence against women 1994-2003

E/CN.4/2003/75/Add.1
27 February 2003

China

1. China ratified the Convention on 4 November 1980, but maintains a reservation to article 29.

Legislation

2. Article 27 of the Constitution states that women enjoy equal rights with men in all respects and that the State protects marriage, the family and the mother and child, family violence against women is reported to be quite widespread.
3. Even though China has no national law specifically targeting domestic violence, amendments to the Marriage Law, passed in April 2001, provide some protection against spousal abuse. In addition, 13 provinces and provincial cities have passed their own legislation addressing domestic abuse. For example, the Domestic Violence Ordinance of 1997 provides protection in situations of domestic violence for the residents of Hong Kong.
4. The Law on Population and Family Planning 2002 makes China's 'One-Child' Policy an official law. Even though it provides for the improvement of reproductive health education and prohibits mistreatment of, and discrimination against women who give birth to female children, it severely restricts women's enjoyment of reproductive rights.
5. In 1996 and 1997 China revised its Criminal Procedure Law and Criminal Law with the aim of strengthening laws against forced prostitution and the abduction of women and children. The new legislation contains provisions that protect women from acts of violence in their every day lives as well as from violence administered while in police custody.⁸

Policies and programmes

6. In 1996 China began to execute the third five-year plan for the publicity and education of the legal system.⁹ The plan includes education of laws regarding women, as well as the creation of an inspection team to periodically inspect the enforcement of the Law on the Protection of the Rights and Interests of Women.
7. In July 1995 the Programme for the Development of Chinese Women was formulated with the participation of the State Council Working Committee on Women and Children and other ministries and commissions. Local governments also formulated plans for the development of women during 1996 and 1997, and corresponding bodies were set up in the provinces, prefectures and counties. In 1998/9 four regional conferences were held to monitor and analyse the progress made. As part of the media

⁸ The Falun Gong Human Rights Working Group Report to the UNSRVAW 2002.

⁹ www.un.org/womenwatch/daw/followup/countrylist.htm

component, the television programme “Half the Sky” deals with many topics including reproductive health, violence against women, sexual harassment, and women’s image in the mass media. Also in 1995, the Government launched a child-bearing insurance scheme for employed women that included a collective social fund to bear the expenses of childbearing.

Issues of concern

8. Despite the abovementioned protective measures, violence against women remains a serious problem. According to a July 2000 survey by the All China Women's Federation (ACWF), violence occurs in 30 per cent of Chinese families, with 80 per cent of cases involving spousal abuse. Domestic violence is present in all socioeconomic levels, and is reportedly more frequent in rural areas. Although awareness of this problem seems to be growing, there are reportedly no shelters for victims of domestic violence.

9. Despite central Government legislation that formally prohibits the use of force to compel persons to submit to abortion or sterilization, the intense pressure to meet Government imposed family planning targets sometimes leads family-planning officials to force women to undergo abortions and sterilization. In addition, Genetic testing, banned since January 1995, has become a lucrative underground business in the country and has also led to pressure to abort female fetuses.

10. Women in Tibet continue to undergo hardship and are also subjected to gender-specific crimes, including reproductive rights violations such as forced sterilization, forced abortion, coercive birth control policies and the monitoring of menstrual cycles. There have been many reports of Tibetan women prisoners facing brutality and torture in custody.¹⁰ (information received by the UNSRVAW from the Tibet Bureau in Geneva, 03 December 2002)

11. It has also been reported that China has intensified repression of the Falun Gong. According to reports, there are numerous cases of Falun Gong practitioners facing harassment and torture in various areas of the country. They face extortion, prolonged detention, physical and psychological abuse and imprisonment. Some have died in prisons under unacceptable circumstances.¹¹

12. According to statistics compiled by the World Bank, Harvard University, and the World Health Organization, over half of the world’s female suicides occur in China. About 500 Chinese women commit suicide a day, at a rate that the World Bank estimates to be five times the global average. The low economic and social status of women is thought to be largely to blame.

13. Another problem that has flourished in the last few years is the trafficking of women for the purposes of sexual exploitation and prostitution.¹² China is both a source and a destination for trafficking in persons, although most trafficking is internal. Even though the law prohibits trafficking in women and children, women are kidnapped and sold for the purpose of providing farmers with brides or sons, or are forced into prostitution in urban areas. There also reports that suggest that some victims, especially children, are trafficked for the purpose of forced labour.

¹⁰ Information received by the UNSRVAW from the Tibet Bureau in Geneva, 03 December 2002.

¹¹ The Falun Gong Human Rights Working Group Report to the UNSRVAW 2002.

¹² From a report prepared by the World Organisation against Torture to the Committee against Torture, 2000.

ANNEX X

Report of the Special Rapporteur on the right to education, Katarina Tomaševski

Addendum 1

Mission to China

E/CN.4/2004/45/Add.1

21 November 2003

Summary

This report highlights key issues which have emerged from examining education in China through the human rights lens. Using the international legal framework as the yardstick, the Special Rapporteur's mission and this report have focused on the role of the central Government as it is responsible for ensuring that China's international human rights obligations are complied with.

China's law does not yet conform to the international legal framework defining the right to education. Its Constitution defines education as an individual duty, adding a "right to receive education". Freedom to impart education is not recognized, nor is teachers' freedom of association, and religious education remains prohibited. Therefore, the Special Rapporteur recommends that China's law be reviewed using the yardstick of its international human rights obligations so that human and minority rights can be integrated in education policy, law and practice. She also recommends extensive public education, as has been done for the implementation of China's obligations stemming from its membership in the World Trade Organization. Moreover, an analysis should be made of the human rights impact of the coexistence of private and public education, and of the private and public law that regulate them.

China's international obligations include ensuring free education for all school-age children through the elimination of all financial obstacles. However, the private cost of public education precludes access to school and is the most important reason for non-attendance and school abandonment. Also, schoolchildren perform manual work at school and the Special Rapporteur recommends the immediate prohibition and urgent elimination of this practice. The Special Rapporteur recommends that the Government affirm, formally and explicitly, that all children have the right to free education, and invite all school-age children to enrol. This will reveal the exact number of schoolchildren, as nobody knows how many children there may be, especially migrant or out-of-plan children. She recommends that the budgetary allocation for education be increased to the internationally recommended minimum of 6 per cent of gross domestic product (GDP), that is, doubled from 3 to 6 per cent.

The Special Rapporteur recommends that specific Government institutions be made responsible and accountable for the implementation and enforcement of laws dealing with women and people with disabilities. Sustained public education is necessary for the elimination of gender discrimination and discrimination against people with disabilities. She also recommends a clarification of the rights of young unmarried people to sex education and family-planning services relating to their right to found a family and to self-protection against sexually transmitted diseases and HIV/AIDS.

The Special Rapporteur recommends a review of the strong emphasis on ideology in education and the adoption of a cross-sectoral strategy based on the indivisibility of human rights, with a view to adapting education to ongoing changes stemming from the introduction of the free market.

The Special Rapporteur recommends a review of Chinese law using the yardstick of international human rights law with a view to initiating adjustments with respect to international requirements.

The Special Rapporteur recommends that the extensive public education relating to the implementation of China's obligations stemming from its membership in the World Trade Organization (WTO) be replicated for international human rights law.

The Special Rapporteur recommends that the extensive public education relating to the implementation of China's obligations stemming from its membership in the World Trade Organization (WTO) be replicated for international human rights law.

The Special Rapporteur recommends an immediate affirmation of China's international obligation to ensure free education for all children by eliminating all financial obstacles.

The Special Rapporteur recommends the monitoring of school attendance, combined with the identification of the reasons for non-attendance and school abandonment, and the collection of data disaggregated by all internationally prohibited grounds of discrimination.

The Special Rapporteur recommends an immediate and explicit commitment by the Government to free compulsory education for all children. Sample studies to determine the real costs of education should be carried out as soon as possible, as the basis for a strategy to eliminate financial obstacles to the realization of the right to education of every child.

She recommends a comprehensive review of schoolchildren's work at school so as to develop a strategy for its urgent elimination and for the immediate protection of children's lives, health and safety where they are still obliged to work.

The Special Rapporteur recommends that the budgetary allocation for education be increased to the internationally recommended minimum of 6 per cent of GDP, that is, doubled from 3 to 6 per cent of GDP.

The Special Rapporteur recommends that budgetary allocations for education be increased to cover completely the costs of compulsory education for all school-age children. Both the costs and the disbursements should be made transparent as this will also facilitate eliminating corruption.

The Special Rapporteur recommends assessing the human rights impact of trade in education and measures to alleviate its most detrimental effects on the right to education.

The Special Rapporteur recommends a unified legal framework based on every child's right to free and compulsory education and an all-encompassing strategy for its realization and enforcement.

The Special Rapporteur recommends the adoption of a cross-sectoral strategy based on the indivisibility of human rights with a view to adapting education to ongoing changes stemming from the introduction of the free market.

The Special Rapporteur recommends that specific government institutions be made responsible and accountable for the implementation and enforcement of laws dealing with women.

The Special Rapporteur recommends clarification of the rights of young unmarried people to sex education and family-planning services relating to their right to found a family and to self-protection against STDs and HIV/AIDS.

The Special Rapporteur recommends the adoption of a comprehensive strategy for attaining gender equality both in and through education at the highest level of the Government.

The Special Rapporteur recommends an explicit and authoritative affirmation that all children have the right to education, and an invitation to all school-age children to enrol. This will reveal the exact number of schoolchildren, as nobody knows how many migrant or out-of-plan children there may be. It will also create the necessary background for assessing the cost of educating all the children and the public funding that ought to be provided.

The Special Rapporteur recommends an urgent and clear affirmation of China's human rights obligations, which pertain to all parts of the Government and encompass all rights of all people with disabilities, and the assignment of institutional and personal accountability for ensuring that these are translated into reality.

The Special Rapporteur recommends revising the definition of disability, and initiating comprehensive and sustained public education aimed at eliminating the underlying prejudices and stereotypes.

The Special Rapporteur recommends adaptation of education to the best interests of the principal subjects of the right to education.

The Special Rapporteur recommends full integration of human and minority rights in education policy, law and practice.

The Special Rapporteur recommends that the raising of teachers' status include guarantees of their freedom of association.

ANNEX XI

E/CN.4/2004/G/16
11 December 2003

Note verbale dated 10 December 2003 from the Permanent Mission of China to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

Comments by the Chinese Government on the Report on the Mission of the Special Rapporteur on the Right to Education to the People's Republic of China

In order to strengthen the exchanges and cooperation with the special procedures of the UN Commission on Human Rights, help the international community to further understand China's efforts in promoting the right to education, as well as to enable China to learn more from the successful experiences of other countries, so as to promote its work in realizing the right to education, the Chinese government invited Ms. Katarina Tomasevski, the Special Rapporteur on the right to education, to visit China from 9 to 20, September 2003.

Based on the requests of the Special Rapporteur, the Chinese government tried its best to make a thoughtful arrangement. During her stay in China, the Special Rapporteur visited government departments, including the Ministry of Foreign Affairs, the Ministry of Education, the Ministry of Justice, the State Ethnic Affairs Commission and non-governmental organizations including the All-China Women's Federation and China Disabled Person's Federation. She had discussions with Chinese scholars on human rights education and paid visits to schools of all levels and all kinds including schools for ethnic minorities and disabled children. With a positive, candid, open and objective approach, the Chinese side introduced to the Special Rapporteur the achievements made by China in protecting the rights to education as well as the existing problems. China believes that as long as the Special Rapporteur adopts an objective and impartial attitude and seeks truth from facts, she will draw a conclusion that reflects reality from the first-hand information she has got in China.

However, Ms. Tomasevski paid little attention to the information provided by the Chinese government. By speaking to the media, she made groundless comments and accusations against the Chinese Government's efforts on the protection of human rights and the realization of the right to education, based on materials, information and news report by some overseas individuals and organizations. Ms. Tomasevski visited Beijing only and didn't go to Tibet. Nevertheless, this did not prevent the Special Rapporteur from making biased and irresponsible comment on the education in Tibet. Moreover, when in China, the Special Rapporteur did not ask for information concerning China's policy on public health, military expenditure, the Olympic project and NGO activities, yet she made false and inappropriate comment on these issues which are irrelevant to the right to education. The Chinese government is dissatisfied and expresses its regret over the irresponsible approach of the Special Rapporteur. The Chinese side would like to take this opportunity to reiterate its position and clarify the facts and request that the Special Rapporteur revise the report accordingly and fairly assess the efforts made by China in realizing the right to education from a historical and developing perspective.

I. The Right to Education

According to the Chinese Constitution and the Education Law, the right to education is, first of all, a basic right of the citizen, regardless of their ethnicity, race, gender, occupation, property and religious belief. Secondly, for children at the school age and their parents, the right to education is a legal obligation. The provisions of Chinese law are in consistency with Article 13 of the International Covenant on Economic, Social and Cultural Rights concerning "the right of everyone to education".

The Chinese Law does not prohibit the education of children by their parents. Nevertheless, in order to give children comprehensive knowledge, cultivate their personality and team spirit, it is necessary to have children go to school.

This notion is well received by most parents and children. Facts have proven that children educated only by their parents at home tend to have narrower knowledge and might have difficulties in communicating with others when they grow up at their adult age, which is detrimental for their growth. The above facts are the basic knowledge of pedagogy for educators of all countries.

It is one-sided and false for the Special Rapporteur to accuse China of defining the right to education as merely an obligation and not affirming "the right to education as the right of the child".

II. Education Input and Compulsory Education

In recent years, the Chinese government has been steadily strengthening its financial support for education. The ratio of education expenditure to GDP has been increased for years in a row, from 1997 to 2002 it was respectively 2.5%, 2.59%, 2.87%, 3.19% and 3.41%. The government departments concerned had discussed this issue with the Special Rapporteur during her visit and provided her with the latest statistics.

The Chinese government regards compulsory education as a priority in the work of education and implements the nine-year compulsory education. It is clearly provided in China's Education Law and Compulsory Education Law that the state, society, school and family should guarantee that children at school age receive compulsory education. During the ninth "Five-year Plan", the Chinese government set out the objective of basically achieving the goal of nine-year universal compulsory education and eliminating illiteracy, namely, nine-year compulsory education should cover 85% of the population, the gross school enrollment rate of junior high school should reach 85%, and the illiteracy rate among young people should decrease below 5%. The objective has been reached in time. The meeting of Ministers of Education of 9 developing countries was held in Brazil in 2000. According to the figure released by the meeting, the school enrollment rate of primary schools and junior high schools of China ranked top among the 9 countries. The achievements made by China in the elimination of illiteracy have been highly praised by the international community. China has won the UNESCO International Award for Eliminating Illiteracy for several times. It is not true for the report to say that neither of the two goals set by China during the ninth five-year plan was accomplished.

The Chinese government has a comprehensive evaluation system for the nine-year compulsory education. County is the basic unit for evaluation, and the items and indicators of the evaluation cover the universal compulsory education, the quality of faculty, the school equipment, education allocation and teaching quality. The universal compulsory education includes the school enrollment rate and drop-out rate of both primary schools and junior high schools, and school enrollment rate for disabled children. It is incorrect to say that China's statistics of nine-year compulsory education is the "creation of statistics" and monitor "only enrollment rather than attendance or completion".

The report's statement that "government policy of aiming for 9 years of compulsory education is, in the case of the poorest parts of the country, reduced to 6 years" is not true either. After the objective of nine-year universal compulsory education was declared, considering the different levels of economic and educational development, the Chinese government adopted the method of "different plans in different regions, different guidance for different kinds of education, and promoting compulsory education in a progressive process" by realizing six-year universal compulsory education first, and then they can move on to nine-year universal compulsory education. It is absolutely not "diminishing the urgency of equalization transfer".

Moreover, it is stated in the report that 80% of the children in primary school "make it to the secondary school and some 5% to higher education", the figures of which are incorrect. In fact, 97% of the primary school graduates go to junior high school, 58.3% of the junior high school students make it to senior high school, and the gross school enrollment rate of higher education is 15%.

III. Education of Ethnic Minorities and Religions Education

It is provided in China's Education Law that schools and educational institutions with the majority of students from ethnic minorities may use the oral and written languages of the ethnic group in their teaching. It is also provided in the Law of Ethnic Regional Autonomy and Compulsory Education Law that schools and classes enrolling mainly students of ethnic minorities may use the oral and written language of the ethnic groups in teaching and use the oral and written language commonly used nationwide as the subordinating method of teaching. For ethnic minorities that has no written languages, oral and written language commonly-used nationwide will be used in the teaching, and their own oral languages will be used as the subordinating methods." Therefore, bilingual education is clearly provided for in these legislations for schools of ethnic minorities. In areas where ethnic minorities live in compact communities, both Chinese mandarin and the languages of ethnic minorities will be used in education. In the national entrance examination of colleges and universities, test papers for students of ethnic minorities are all in their own languages so as to protect the minority languages and the students' right to use their own languages.

It is the basic policy of the Chinese government to respect and protect religious freedom. The Chinese Law doesn't prohibit children under the age of 18 from believing in any religion. In the mean time, it is provided in the Chinese law that no state departments, social organizations and individuals are entitled to force people to believe in or not to believe in any religion. While emphasizing that the people enjoy the religions freedom, it is also stressed that the people enjoy the freedom of not believing in any religion. Like the way of forcing believers not to believe in any religion, to force non-believers to believe certain religion is also a violation of religious freedom.

China adopts the policy of separating education from religion and religion shouldn't interfere with education. It is not allowed to force anyone, especially children under the age of 18, to become a church member, monk or to study religious scriptures in temples. In fact, separation of education and religion and religion shouldn't interfere with education has become an important principle of modern education. This principle is supported widely by the majority of the countries. The Compulsory Education Law provides that no organizations and individuals are allowed to make use of religion to interfere school and public education. The laws and policies of China are consistent and clear-cut.

It is a twist of the facts and the Chinese Law to state in the report that education in China "denies the religious or linguistic identity" of ethnic minorities.

IV. The Education in Tibet and the Status of Other Ethnic Minority Languages

The Rapporteur claimed in her report that Tibetan "cannot be used in economic, political and social life". The fact is that the central government and the government of the Tibetan Autonomous Region (hereafter referred as TAR) have always regarded it as an important task to develop education in Tibet and to improve the overall level of education of science and culture of the Tibetan ethnic minority. For that purpose, as early as in 1982 the government of TAR stipulated the Provisional Regulations on the Popularization of Compulsory Education of Tibet. In 1994, Measures on the Implementation of Compulsory Education Law in Tibetan Autonomous Region and the Plan of Implementing Compulsory Education in Tibetan Autonomous Region were stipulated. It has been made clear that the education allocation must account to 17% of both the annual budget and the annual infrastructure investment plan of TAR. At present, the TAR has formed a rather sound modern educational system. Its education popularization has been increasing, the enrollment rate of children of school age has reached 83.4%, the illiteracy rate among young and middle aged Tibetans is 41 lower than that during

the Dalai Lama regime. All these achievements have represented a sharp contrast to the education situation of old Tibet when only a few privileged children of the religious leaders and noble families could have the opportunity for education, the enrollment rate of children was lower than 2%, the illiteracy rate amounted to 95% and the serfs and slaves who constituted the majority of the population were deprived of their right to education.

The Chinese government has been actively promoting the study, usage and development of Tibetan language in Tibet. At present, the resolutions, laws and regulations adopted by the People's Congress of TAR, the official documents and notices issued by all levels of governments of TAR and all governmental departments must be in both Tibetan and Chinese. In the legal process, Tibetan is used when cases involve Tibetans, and the legal documents are in Tibetan too. The TAR has issued and implemented the Provisional Regulations on the Study, Usage and Development of Tibetan language into the legal framework. With the development of times and social advancement, the vocabulary and grammar of Tibetan language have enriched and developed. Great achievements have been accomplished in regularizing technical terms in Tibetan and harmonizing it with information technology. The Tibetan coding has officially passed the national standards as well as the international standards. The combination of information technology and Tibetan language is put in place.

The report states that "out of more than 120 languages spoken in China, 50% are endangered", which reinforces the necessity to remold guidance for education with a view to preserving the inherited cultural diversity... " This is not in line with the facts. China is a country with many ethnic minorities, languages and cultures. The Chinese government has been consistently attaching importance to the protection of the ethnic minority languages. The ethnic minorities like Mongolia, Tibet, Korea that have large populations have their own languages and their languages have been widely used in the political life of the country. In the past, a few ethnic minorities only had their oral languages but no written languages. The Chinese government organized experts to help them compose their written words based on the Roman letters. Some ethnic minorities like Man, She, Tujia, Jing, Hezhe have only a small population and their languages are only used in their daily life and academic studies. With the intention of protecting the common cultural heritage of mankind, since the year of 2001, the Chinese government started to record, collect and compose their languages and the government is also ready to integrate the protection of the endangered languages of ethnic minorities into the protection project of the Chinese folk cultural heritages.

V. The Corporal Punishment

China attaches great importance to the protection of minors' physical and psychological health. China has joined the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor and other international treaties and instruments aiming at protecting the children's rights, and also comply itself to its international obligations.

China enjoys the traditional virtues of respecting teachers and prioritizing education. The parents and children respect and admire teachers. Most of the teachers can obey their professional ethics and serve as a good law-biding role model for their students. But some teachers who have little legal awareness and low moral standard wrongly believe that corporal punishment is a way to help the growth of children and to strengthen the administration of education. The corporal punishment to students in the schools of Beijing and other places are isolated cases conducted by a few primary and secondary school teachers who are held responsible for what they did.

VI. The Categorization of Educational Institutions in China

The Chinese government attaches importance to enlisting resources from all social sectors to run educational institutions together. It is not accurate for the report to state that "'private' or 'non-governmental' encompasses three different types". In China, only the community-run (Minban) education is a recognized legal term and form as provided for by Private Education Promotion Law of the People's Republic of China. The term of "education run by social force" appears in the Measures of Running Education by Social Force which was promulgated by the State Council. With the abolition of the Measures, the concept of "education run by social force" has been covered by the community-run education. The so-called "private school" is not a legal term, rather a phrase people use when they refer to the community-run education. As a result, the education with a private or non-governmental nature is called as community-run education or community-run schools. The law also stipulates that these schools enjoy the same legal status as public schools.

In addition, article 3 of the Private Education Promotion Law of the People's Republic of China that has come into force since September 1 s of 2003 regulates that the community-run education serves the public interests, which has clarified the nature of community-run education. This does not, as the report states, blur "the boundary between education as an entitlement and as a traded service".

VII. Students' Part-time Job at School

According to the Provisional Management Measures on Work-Study Program in Primary and Secondary Schools of China, the primary and secondary schools in China may carry out work-study program for the purpose to promoting the combination of education and working practice and improving the students' practical skills. In the Measures, there are clear provisions on the scope and conditions of such work-study program.

It's strictly forbidden to organize the primary and secondary school students to participate in the production of toxic, harmful and explosive goods. In recent years, the Chinese government has stepped up its law enforcement efforts and stopped all the practice of organizing students into the above-mentioned harmful work in China.

It must be pointed out that "no formal prohibition of children being made to work at school" by the law in China should not be interpreted as that the students are encouraged to work at school, nor as the reason for "the tragedy of schoolchildren's deaths". As to the case mentioned in the report, it has been investigated by the Chinese judicial departments and conclusions reached that this was not an accident took place when the students were organized by the school to work, rather it was a crime plotted and carried out intentionally by a criminal. The statement in the report does not follow the fact.

VIII. Education for Girls and Women

The report alleges in many places that girls and women are discriminated in the field of education and it quotes completely wrong figures. In fact, according to the data provided by the Ministry of Education, in recent years the proportion of female receiving education at all levels has been rising and the overall educational level of women has been improved. From 1990 to 2000, the illiteracy rate among women has decreased from 32% to 13.5%, and the total population of female illiteracy decreased from 159 million to 61.81 million. In 2000 the rate of enrollment of Chinese girl student reached 99.1%. Even in the economically less-developed western regions, the rate of school enrollment of girl student also reached 95%. At present, the proportion of girl students in China's primary schools is 47.2% and that in colleges and universities is 43.95%.

IX. The Right to Education of the Disabled Persons

The Chinese government protects the right to education of the disabled persons. China's Constitution clearly stipulates that "the State and society has the responsibility to help the blind, deaf, mute and other disabled citizens with their work, life and education." Over the past 20 years, China has promulgated and implemented the Education Law, Compulsory Education Law, the Law on the Protection of Disabled Persons, Rules for the

Implementation of Compulsory Education Law, Regulations for Disabled Persons' Education, the Provisional Regulations on the Schools for Special Education, etc. Meanwhile, a series of development program have been stipulated and carried out to make the education for the disabled persons an important component of the State's work on education and the compulsory education for the disabled children part of the State's overall plan of nine-year compulsory education.

It needs to be clarified that according to China's Law on the Protection of Disabled Persons, disabled children refers to those who have visual, audio, oral, body or mental impairment. While handicapped children attend regular schools, those who have visual, audio and mental impairment receive education in one of the three options: in schools for special education, in classes for special education in a regular school, or attending classes together with healthy children. Among all the disabled students, 68.3% of them attend classes together with healthy students. With the popularization of the education for the disabled children, some developed areas in China such as Beijing and Shanghai have started to carry out one-on-one education for children with special educational need such as those with autism and learning disability. In 2000, the number of disabled students receiving compulsory education reached 370,000, 4 times more than that of 1990. At present, the special educational framework has taken shape, with the special education school as its backbone and the special classes of the normal school and the disabled students attending classes together with the normal students as its main body. Most of the disabled children and youth receive education by attending classes together with other normal students. Therefore it is not true for the report to state that "if a few schools exist for children with disabilities, this does not mean that all children with disability have a rights to appropriate schooling as the schools cater for the selected few, while there is not even a quantitative estimate of how many others are left with no access to education."

The Chinese government prohibits colleges and universities from rejecting disabled students. The Law on the Protection of Disabled Persons, Regulations for Disabled Persons' Education and the Law on Higher Education all stipulate that no college or university is allowed to reject enrolling eligible disabled students. The Law on Higher Education provides that "colleges and universities must enroll the disabled students who meet the national standard of enrollment and it is not allowed to reject any disabled student only for the reason that he or she is disabled." According to the statistics by China Disabled Person's Federation, in each year more than 1000 disabled students apply for entrance to colleges and universities and the enrollment rate is over 90%. China has established the Special Education College of Changchun University, the Technology Institute for the Deaf of Tianjin University of Science and Technology, the Special Education College of Beijing United University to enroll exclusively deaf and blind students.

As for the reference in the Special Rapporteur's report that "other condition excludes students who have a big scar or pigmented mole, or are lame, from studying diplomacy, law or pedagogy", the fact is that in March of 2003 the Ministry of Education, the Ministry of Public Health and the China's Disabled Person's Federation jointly formulated the Guidance for the Health Checkup Work of Colleges and Universities Enrollment, which provides the above-mentioned guiding advice for future employment and only serves as a reference for students when they decide which schools they are going to apply. But it does not allow college or university to reject students who meet the requirements of enrollment on the basis of the advice in this Guidance. The report by the Special Rapporteur picked a small part of the document out of context. What's more, because the education for the disabled students has been integrated into the overall education program, there is no breakdown on the proportion of educational budget earmarked for the disabled in China. It is unknown how the Rapporteur drew the conclusion that "only 0.4% of education budget is allocated to education of people with disabilities."

X. The Curriculum for Primary and Secondary Schools

In China the curriculum for primary and secondary schools is offered according to the Constitution, relevant laws and the national situation, and is an expression of national sovereignty. The curriculum stresses that the fundamental goal is to enhance children's development, to cultivate the awareness of democracy and rule of

law, to abide by law and public ethics, to foster sense of responsibility and spirit of innovation, to develop the practical ability, to cultivate scientific and humane character, to raise the awareness of environmental protection, to master the basic skills and methods for life-long study, to be physically and psychologically sound and strong, and to cultivate healthy taste for beauty and life style.

The teaching practice has proven that China's curriculum and teaching contents are in line with China's national conditions, physical and mental development of primary and secondary school students, and are playing a positive and enhancing role to the overall development of children and youth. The majority of the students study hard with great vitality. What needs to be clarified is that it is the common practice of schools all over the world to have ideology education or to give guidance on the values. Every country and nation has its own ideology, and every country or nation use its own ideology and values to guide their people so as to increase solidarity and cohesion.

The guidance of ideology or values in Chinese schools is provided gradually according to students' ability of understanding, psychological development and their daily lives. For example, the course of Morality and Life provided at lower grades of primary schools is aimed at cultivating good habits of the students by teaching rudimentary knowledge. The course of Morality and Society at higher grades of primary schools helps students to have a fundamental understanding of social life based on knowledge of their own lives. The course of Moral Character for junior high school students focuses on the relationship between individual, collective, state and the society, provides general knowledge on morality, psychology, law and national condition, and help the students understand meaning of life, so as to lead them to form correct values and concept of good and evil, right and wrong. The course of Politics for the senior high school students provides basic knowledge on economics, philosophy and politics so as to help students form a scientific world view, philosophy and values. All sorts of schools at different levels in China are making efforts to find an easily accepted way to provide students with guidance on ideology and values. For instance, courses for lower grades of primary schools use games and other activities as the main method of teaching. Courses for higher grades of primary schools pay more attention to use examples in the daily lives, which make the students see with their own eyes, feel with their own hearts and study with their own methods. These teaching methods are very popular among students.

It is an extremely sided statement by the report that "more than 80% of pupils dislike school for being forced to memorize large amounts of data so as to pass entrance exams" and that "the strong emphasis on ideology' cannot continue attracting new generations."

XI. The Education for Migrant Children

Since the initiation of the reform and opening-up, the schooling of migrant children has become a notable issue, along with the acceleration of urbanization, the restructuring of rural production and the continuous increase of the floating population. Vigorous measures have been taken by governments at various levels and competent departments to guarantee the migrant children's rights to receive compulsory education and great achievements have been scored. In order to ensure the migrant children can receive education, the Chinese government has incorporated the compulsory education for the migrant children into the Development Plan of Urban Social Programs, the building of schools mainly for migrant children into the program for urban infrastructure development. The financial departments have allocated necessary fund to subsidize these schools. A portion of the additional urban educational budget has been earmarked for the compulsory education of migrant children. Some scholarships are set and free textbooks are given out for the migrant children from families with economic difficulties. Therefore, it is not correct for the Report to state that the migrant children in China are denied education due to their lack of residence permits (Hukou).

XII. The Employment of University Graduates

China is under great employment pressure due to its huge population, abundant human resources and economic restructuring. Taking the promotion of employment as a strategic task for national economic development and social progress, and a major objective for macro-economic management, the Chinese government has increased employment through economic growth and kept a comparatively stable situation for employment.

At present, employment of university graduates is a matter of "two-way choice" between the graduates and employers and graduates are to "find a job according to one's own will". The work of the government is mainly to provide employment information, employment guidance, encourage students to start their own business, and create more jobs. The Report's statement that "more than 2 million university graduates...have created a pressure to increase employment by the government, in opposition to its pledge to reduce the number of government employers", which demonstrate that the Special Rapporteur do not fully understand the reform of employment system in China.

XIII. The Sex Ratio of Newly-born Children

Though this subject has nothing to do with the Rapporteur's mandate, the Chinese government would like to make a brief explanation. According to the 2000 census, the sex ratio of newly born boys to girls is 100:117. The imbalanced sex ratio of newly born babies is a social phenomenon, which stems from various factors, such as son preference originated from the traditional view of men's superiority, rural people's expectation of raising a son for old-age care due to low level of production in the rural areas, the tendency of families getting smaller and smaller, etc. It should not be oversimplified as the consequence of family planning policy. Besides China, some countries, which do not carry out family planning, also suffer from imbalanced sex ratio at birth.

The Chinese government has attached great importance to this problem and taken a series of measures to contain this tendency. It is stipulated, in Law on Maternal and Infant Health Care, the Population and Family Planning Law, the Outline for Chinese Women's Development, the Outline for Chinese Children's Development and other laws and documents, as well as the local regulations on population and family planning, that the discrimination and ill-treatment against sterile women and women giving birth to girls are prohibited, and discrimination, ill-treatment or abandoning baby girls are forbidden. The laws and regulations also prohibit pre-natal sex determination by ultrasonic or other technologies or sex-selective artificial termination of pregnancy for non-medical purposes, the offenders will be dealt with in accordance with laws. The people's congresses in some areas have laid down special statutes to address the gender imbalance. Governments at various levels have mobilized all social forces to strengthen publicity and awareness campaign, foster scientific, civilized and advanced concepts on marriage and birth, protect the legitimate rights and interests of women and children, and increase the social status of women. Meanwhile, efforts are made to establish rural social security system with priority placed on households having only one or two girls.

From the above, one can see that the gender imbalance is not due to the policies of the Chinese government, rather a result of a complicated set of social and historical factors. According to the practical condition, the Chinese government has provided positive guidance to people through legislation, publicity and education, and severely punished those violating the laws and regulations.

XIV. Providing Sex Education and Family Planning Service for Unmarried Adolescents

According to China National Statistical Bureau, Chinese women's age for initial marriage has risen from 22-23 in 1991 to 24-25 in 2001, which indicates the increased social status for Chinese women and growing importance attached to career development by women. The urban women tend not to consider marriage until they complete their higher education. On the other hand, the family planning policy enforced by the State has convinced the majority of women of the negative effects of early marriage and child-birth to their reproductive health, so more and more women have changed their idea and choose to marry later than before. After the 1994 Cairo International Conference on Population and Development, the Chinese government has resolutely

implemented the program of action, including the incorporation of the adolescent sex education and contraceptive medicine and instruments for adolescence into its work on family planning and reproductive health.

China has put the knowledge about adolescent sex education in middle-school textbooks. Adolescent sex education and HIV/AIDS control and treatment are two important items for publicity and education campaign in the 60 project counties by the State Population and Family Planning Commission and UN Population Foundation in their projects of phase 4 and 5. Adolescent sex education program, held by China Family Planning Society and Bill Gates Foundation, is carried out within 12 municipalities and some rural areas with 150-odd counties and cities involved. The agencies in the hygienic and family planning service provide consultation and service to adolescent and unmarried youth. With the further development of China, better service with greater social tolerance will be available for adolescence's sexual and reproductive health. Therefore, the unmarried youth in China are not ignorant about sex and reproduction. It is groundless for the Report to state that that "virtually every woman in China follows the same pattern of contraceptive use-she uses no birth control until the first child."

XV. Necessary protection and sex education for juvenile inmates

The Chinese government would like to point out once again that, there is only one Juvenile Delinquency Prison in Beijing. It is not, as the Special Rapporteur complained to relevant Chinese agency, the "best one".

For years the Beijing Juvenile Delinquency Prison (BJDP) has been following the guideline of "combination of punishment and correction with the aim of rehabilitation" as well as "education, persuasion and redemption". BJDP strictly observes both the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Standard Minimum Rules for Administration of Juvenile Justice. BJDP also takes full consideration of the physical, psychological and behavior characteristics of juvenile inmates, and effectively protects the rights and interests of the juveniles. It is mainly manifested as follows:

1. The files of juvenile inmates are well protected. Publication and dissemination of these files are strictly prohibited.
2. The living and educational expenses of juvenile inmates are higher than these of adult inmates.
3. The Chinese government promulgated the Provision on Direct Administration of Juvenile Inmates by the People's Police. According to the Provision, the police is directly involved in everyday administration of juvenile inmates. The responsibilities of the police are specified in great details, which efficiently prevent older and stronger juvenile inmates from attacking the younger and vulnerable.
4. All juvenile inmates are allowed to make phone calls to their families. In respect of the duration and frequency for family visit, relevant regulations are more favorable to juvenile inmates than to adult.
5. The law protects the rights of juvenile inmates to appeal, sue and report.

In terms of education, BJDP has fully implements the Law on the Protection of Minors, the Beijing Juvenile Protection Provision and the Provision on Juvenile Delinquency Prison Administration. BJDP, guided by the ideal of protection, rehabilitation and returning to normal life, takes all necessary measures to promote juvenile education, and tries its best to educate, persuade and help the juvenile inmates back to normal life. Their efforts turn out to be quite successful. The sex education in BJDP is conducted through education concerning sex morality, scientific puberty physiology, necessary psychological counseling and behavior correction. Sex education always takes an important place in the overall education. Besides courses on rule of law, morality, culture, science and technology, which are helpful for juvenile inmates to learn useful skills to make a living, BJDP also conducts activities such as psychology counseling and psychological adjusting, so as to solve the juvenile inmates' psychological problems. In 1995, the BJDP established the psychology counseling and health section. The section conducts psychological test, set a mail box, and counsels those juveniles who suffer psychological problems caused by their families and personal experiences. The section also tries to help and rectify those juvenile inmates who suffer psychological problems about sex or violent tendency. At the same

time, a project called "Oasis in Desert" has played a positive role in psychological counseling. This project is supported by the Psychology School and Education School of Capital Normal University. The allegations by the Special Rapporteur on these issues are groundless.

XVI. Education on Contemporary History

The issue of the Japanese history textbook referred to by the Special Rapporteur in the Report is a matter of principle for the Chinese people. It touches on the feelings of Asian peoples including the Chinese people who suffered the Japanese aggression. Japan's aggression of China is a historical fact, which can never be altered. The nature of the issue of Japanese history textbook is whether the Japanese government could truly acknowledge the history of Japan's aggression and treat it in the right manner. In particular, the Japanese government is obliged to honor its promise and commitment with regard to history and educate its younger generation with the correct historical perspective.

The 1989 political turmoil disrupted the normal social order and economic development of China. The Chinese government took resolute measures to put an end to the turmoil and riots, stabilized the situation, consolidate the achievements of 10 years' reform and opening to the outside world and carried on its way of socialism with Chinese characteristics by furthering its reform and opening up policy. The remarkable achievement made during the last 13 years has proven that stability is of utmost importance. The Chinese government has already made the final conclusion on this issue, and 1989 is never "a blank sheet in the official history".

Conclusion

China is a party to the international Covenant on Economic, Social and Cultural Rights and always fulfills its obligations earnestly. Its Constitution clearly promulgates that the Chinese people enjoy extensive economic, social and cultural rights. In recent years, China has formulated its development strategy in line with its national conditions, and enacted a series of laws concerning economic, social and cultural rights. The enjoyment of various economic, social and cultural rights by the Chinese people has improved notably.

In terms of the right to education, the Chinese government has made tremendous efforts to guarantee "the right of everyone to education" contained in the Covenant. The whole world has witnessed China's achievements in this regard. Either comparing with the past or with other countries in the world, China has made historic achievement in the last 50 years, though as a developing country, China still has a long way to go in its efforts to realize the right to education due to China's level of economic development as well as resource and population constraints. However, the realization of various rights in the Covenant is a progressive process, not one single country could finish it overnight. The Chinese government is ready to engage in active exchanges and cooperation with other countries and international mechanisms, so as to learn from the international community their useful experiences. We have every reason to believe that, with the economic development and social advancement in China, the right to education of the Chinese people is to be further guaranteed.

ANNEX XII

E/CN.4/2002/24
13 February 2002

Report by Mr. Maurice Glèlè-Ahanhanzo, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

REPLIES TO ALLEGATIONS TRANSMITTED TO GOVERNMENTS BY THE SPECIAL RAPPORTEUR

A. China

1. Communication dated 23 July containing allegations on racial discrimination in the Tibetan Autonomous Region

58. It has been reported that Tibetans in the Tibetan Autonomous Region (TAR) suffer various forms of systematic and institutional discrimination in the fields of employment, health care, education, housing and public representation. The following examples have been given:

(a) **Employment:** Chinese language has become a determining factor in candidate selection, marginalizing Tibetans who must learn it as a second tongue. Furthermore, Tibetans generally occupy the lower employment positions, while Chinese coming from other parts of the country are given the higher posts, despite the fact that Tibetans form the majority of the population in TAR. In some cases, Tibetans are forced to perform manual work with long hours. There are also express restrictions on contracting Tibetans when the work involves contact with foreigners. Additionally, Tibetans have to fulfil special requirements in order to open their own business and frequently face difficulties in obtaining bank loans. In the agricultural sector Tibetan farmers are forced to sell their harvest to the government authorities for lower than market prices. Such a burden is not imposed on non-Tibetan farmers;

(b) **Health-care:** Health-care facilities are not available in TAR rural areas, where the majority of Tibetans live. Furthermore, Tibetans receive lower quality medical care and have to pay for it, while other Chinese citizens receive it for free. Tibetans are subject to birth control policies which are not applied to other Chinese citizens. Tibetan women are often subjected to forced abortion when they are unable to pay the fines imposed for infringement of the birth control policies. Additionally, Tibetans are purposely given incorrect or expired medicine. In other cases very expensive medicines are prescribed to Tibetans who cannot afford them because of their low income;

(c) **Education:** Unlike the urban centres, rural areas of TAR have very few schools. Where they exist they are inadequately equipped. Tibetans are also given differential treatment regarding admission fees, which in some cases are twice as expensive than those paid by other Chinese. Tibetan teachers are forbidden to prepare their own local educational programme, although laws guarantee such rights to national minorities. Furthermore, Tibetan students face problems in secondary and higher institutions, which use Chinese as the only teaching language;

(d) **Housing:** Tibetans are evicted from their houses to permit construction to accommodate other Chinese. Furthermore, other Chinese are given preference in regard to allocation of housing. Chinese from other parts of the country inhabit modern buildings, while Tibetans are allocated old and dirty

buildings. Additionally, Tibetans wishing to relocate have difficulties obtaining residence permits. Arbitrary and unwarranted searches of Tibetan houses are a common practice of the Government;

(e) **Public representation:** Although laws guarantee Tibet self-government, Tibetans' governing power is very restricted and is subject to strict supervision and authorization by the central authority.

2. Response by the Government of the People's Republic of China

59. The Chinese Government states that it has given thorough consideration to the questions raised in the Special Rapporteur's communication and has provided the following reply:

"1. China is an integrated multi-ethnic State. For many years, the Chinese Government has been implementing an ethnic policy whose key principles are the maintenance of unity and equality between the various nationalities, the establishment of national autonomy at the regional level and the promotion of prosperity for all. Article 4 of the Chinese Constitution clearly stipulates: 'All the nationalities are equal: any discrimination or oppression vis-à-vis a particular nationality is prohibited'. The Chinese Government is currently adopting a broad range of policies and measures to ensure that equality of rights for all the nationalities in social and political life is effectively guaranteed and duly preserved so as to achieve equality and equilibrium between all the various peoples and to ensure their unity and harmony, together with a positive social climate based on friendship and mutual assistance.

2. Tibet is the region where the majority of Tibetans live; they make up 95 per cent of the total population of that part of the country. In conformity with the Chinese Constitution, the State applies to Tibet the system of regional national autonomy, comprising the establishment of a Tibetan Autonomous Region, and, in conformity with the law, guarantees to all ethnic groups in Tibet the exercise of their rights on an equal footing. Several decades ago, with the support and close concern of the central Government, the sustained efforts and cooperation of the whole population of the autonomous region and the devoted support of the other provinces of China, Tibet experienced great upheavals, after which the Tibetans became genuine masters in their own house and progressed along the path of prosperity.

3. All the country's laws and institutions fully guarantee the political right of each ethnic group in Tibet to participate on an equal footing in the management of national and regional affairs and, in particular, the autonomous exercise by the Tibetans of their right to manage, on their own initiative, the affairs of their region and its population. In conformity with the provisions of the Chinese Constitution and the law on the autonomous regions, the regions enjoying national autonomy exercise, on an autonomous basis, extensive rights concerning, in particular, the use of their own language and writing, the management of human resources, the conduct of economic and financial affairs, the administration of education and culture, and the management and development of their natural resources.

4. As a local organ of the State, the People's Assembly of the Tibetan Autonomous Region and its permanent commissions, fully exercising the autonomous rights conferred on them by the Constitution and laws of the country, have devoted enormous efforts to formulating a special law adapted to the national autonomous region comprising over 160 special articles and covering all aspects of the life of the population. Since the establishment of the national autonomous region in 1965, the representatives of the Tibetans and other minorities have constituted 80 per cent of the delegates participating in the meetings of the Tibetan People's Assembly. The representatives of the indigenous Tibetan population and the other minorities form, at all levels, the vast majority of senior officials of the autonomous region and, in the year 2000, their proportion totalled 78.89 per cent. The indigenous Tibetan population and the representatives of the other minorities not only play a leading role in affairs concerning local autonomy, but fully participate in the formulation of the principal policies of the State and in decision-making at this level. In the Chinese Peoples' Assembly, Tibet holds 19 seats, of which 82 per cent are occupied by

indigenous Tibetans and members of other minorities. Through their participation in political consultative conferences at all levels, Tibetans from all social strata and public personalities from every sector take part in the consideration of policies and exercise their democratic rights. At the present time, the Chinese political consultative conference includes among its members numerous indigenous Tibetans and leading Tibetan religious personalities.

5. In the sphere of employment, in order to improve Tibetans' living conditions to the fullest extent possible, the authorities not only ensure that there is no discrimination against them but have taken even more favourable measures than those which have been adopted in other Chinese provinces. In the autonomous region, when workers have to be hired, specialist personnel recruited or students enrolled, priority is granted to Tibetan-speakers. Since the basis of the Tibetan economy is weak and the country has been hit by extremely severe weather conditions since 1980, the State exempts Tibetan farming communities from all national taxes and sales taxes on their products, which means that they are able to keep the whole of their earnings: this arrangement is without equivalent in any other region of the country. Furthermore, in certain very remote areas of the autonomous region, the State grants substantial sums for use as capital in assisting the local population to develop their own production, to rid themselves of the yoke of poverty and to proceed along the path to prosperity.

6. In the health sector, before the peaceful liberation of Tibet, there was not a single modern health-care centre or clinic in the whole region. Over a few decades, the State has allocated a total of over 1.8 billion yuan to the sector, setting up cooperative health care centres in most villages. At present, the region has 1,254 health-care centres comprising a total of 6,440 beds and 10,957 specialists; the number of beds and health personnel for every 1,000 inhabitants is equivalent to the national average. Moreover, in

view of the conditions currently existing in the autonomous region, free medical care is provided in agricultural areas, and a public mutual-assistance system has been set up under which the cost of providing integrated health care is absorbed by the whole of the urban population; this enables members of all nationalities living in the region, and in particular indigenous Tibetans, to enjoy greatly enhanced protection in the area of health. The average life expectancy in the region as a whole has thus increased from 36 in the 1950s to 67 today.

7. Although family planning is a fundamental principle of the Chinese State, the Government has, exceptionally, adopted a flexible policy with regard to Tibetans, given their current situation, and is not imposing a birth control programme on the farming population, who make up 80 per cent of total inhabitants of the region; it is simply conducting an information campaign to encourage families to bring up their children in accordance with traditional methods. In urban areas, it is also implementing the principle of encouraging the 'use of natural resources and available services for a better life', and all types of forcible abortion have been stopped. The population of Tibet has increased from 1 million in the 1950s to 2,620,000 at the present time.

8. In the area of education, the Government attaches particular importance to the development of education services for the ethnic minorities and has devoted a total of over 5 billion yuan to the establishment of a modern education system taking into account local Tibetan features and special characteristics at all levels, including pre-school, primary, secondary, specialized, technical and higher education, and other levels. It has also set up an adult education system and educational television programmes. In the year 2000, there were in Tibet about 4,000 educational establishments of various types, attended by 381,500 pupils and students. The enrolment rate for Tibetan children in the various age groups is 85.8 per cent. According to the above-mentioned note, Tibetans have to pay two times the school fees paid by the members of other nationalities. In fact, the opposite is true: in order to develop education in Tibet, the State provides completely free education services for Tibetan pupils and students; from the primary stage onwards, their education costs are borne by the Government in their entirety.

Since 1985, an assistance policy consisting in providing food, housing and clothing is being pursued for the benefit of some Tibetan pupils and a boarding system has been set up in areas where extensive agriculture is practised. Regarding the enrolment of pupils in secondary, higher, specialized and technical education establishments, priority is also given to indigenous Tibetan candidates and candidates from the ethnic minorities of the region. An integrated system is followed in schools, enabling tuition to be given in three languages: Tibetan, Chinese and English, priority being given to education in Tibetan. The educational materials and aids needed for all primary and secondary classes have already been compiled, translated and published in Tibetan. This language is not used only in secondary schools; pupils who, at the end of secondary education, take common entrance examinations for the national higher-education institutions can also use their mother tongue. The right to study and to use the languages of the ethnic minorities on an equal footing is thus fully protected.

9. In the area of housing, thanks to economic and social development and the increase in public investment, the situation of Tibetans has considerably improved. According to the statistics of the old Tibetan local authorities, in 1950 about 90 per cent of Tibetans did not own their own home. At present, with the exception of families living in a small number of farming areas, all families have their own home. Between 1990 and 1995, the size of the homes of Tibetans living in the countryside and the towns increased from 18.9 to 20 m² and from 11 to 14 m² respectively. In some areas, far-reaching measures have been taken for the benefit of 90 per cent of farmers' households in order to enable them to renovate their homes and build new dwellings.

10. As is apparent from the facts outlined above, the development and progress achieved by the Tibetans are indisputable; the Tibetan question originates not from racial discrimination, but from the ethnic separatism of the Dalai Lama clique. The various accusations leveled in the above-mentioned letter are in stark contrast to the actual situation and constitute a malevolent attack furthering covert political designs. It is to be hoped that, given its devotion to facts and the cause of justice, the United Nations human rights system and the persons and organizations forming part of it will not allow themselves to be misled."

60. The Chinese appended to its reply a "white book" on the question of Tibet, which is available for consultation in the secretariat.

3. Comments by the Special Rapporteur

61. The Special Rapporteur thanks the Chinese Government for its cooperation and will continue to follow carefully the effective implementation of the measures intended to promote and protect all the human rights of Tibetans.

ANNEX XIII

E/CN.4/2003/5

3 March 2003

Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination, Miloon Kothari

II. ACTIONS TO PROMOTE HOUSING RIGHTS

B. Dialogue with States

24. The Special Rapporteur has continued to engage in active dialogue with both States and civil society, particularly in situations where States have not observed relevant principles and standards on housing rights. He is grateful to those civil society organizations that submitted information on urgent cases. He has acted upon several of them, and is pleased to note that all of the concerned States, with the exception of Israel, have provided him with substantive replies that broadened the scope for continued and constructive dialogues with a view to finding solutions.

25. In May 2002, following a large number of appeals received from civil society groups and individuals through urgent action campaigns, the Special Rapporteur wrote to the Government of China concerning the demolition of historic buildings and housing complexes in Lhasa, Tibet, and allegations of forced eviction of residents, mostly indigenous Tibetans. In October 2002, he received a reply from the Government of China that detailed government efforts to amend laws and set policies to renovate unsafe buildings while conserving their historical and cultural value. While appreciating the Government's constructive reply, he notes the need to continue the dialogue on this case and to study the impact of planning legislation and policies on the realization of the human right to adequate housing. This is particularly relevant in the context of the State obligations under ICESCR, which China ratified in 2002.

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ANNEX XIV

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COMMISSION ON HUMAN RIGHTS
Fifty-first session
Item 22 of the provisional agenda

IMPLEMENTATION OF THE DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF

Report submitted by Mr. Abdelfattah Amor, Special Rapporteur, in
accordance with Commission on Human Rights resolution 1994/18

Conclusions and recommendations

The Special Rapporteur's visit to China afforded a better understanding of the present situation in that country. Through all the information received from various governmental and non-governmental sources and from various talks and visits, he was able to observe some developments in the human-rights situation in China, especially as far as tolerance of and non-discrimination against religion or belief were concerned. Some aspects of these developments represent progress, while others call for correction and improvement.

The Special Rapporteur is aware of the complexity of the situation in China, a vast, densely populated, multi-religious, multi-ethnic territory which has to come terms with and reconcile many factors, or even contradictions, such as the atheism and marxist doctrine espoused by most of the population, the spread of religious movements, and the need to strike a balance between non-interference and national political sensibilities on the one hand and the requisite respect for human rights on the other. During his visit, the Special Rapporteur was therefore able to perceive the beginnings of a trend which should become one of steady change, accommodating itself to, and thus unhindered by, the passage of time. It must bring changes in legislation on religious freedom and its application, as well as in policy on the matter.

The Special Rapporteur believes that substantial progress has been made in the field of laws on religious freedom. Article 147 of the Penal Code punishing all violations committed by State officials is important and the Special Rapporteur likewise considers the promulgation of two Council of State decrees, Nos. 144 and 147, to be a step forward, despite some legal ambiguities and an apparent sensitivity to the outside world. The Special Rapporteur regards these new regulations as transitional measures in a process leading to gradual improvement. In this context, the Special Rapporteur wishes to submit the following recommendations, based on a study of Chinese legislation and the talks held on this subject with various people in China.

With regard to the right of freedom to manifest one's religion, the Special Rapporteur recommends that amendments be made to the pertinent legal texts, such as article 36 of the Constitution, so as to provide a

constitutional guarantee of respect for freedom to manifest one's religion or belief in accordance with article 1, paragraph 1, of the 1981 Declaration.

With regard to the right of persons under the age of 18 to freedom of belief, the Special Rapporteur recommends that steps be taken to adopt a provision explicitly mentioning this right, so as to ensure the requisite compliance with the Convention on the Rights of the Child, especially article 14, which was ratified by China on 2 March 1992.

The Special Rapporteur further recommends the adoption of a text recognizing the right to freedom of belief and freedom to manifest one's belief for all, including members of the Communist Party and other socio-political organizations.

With reference to places of worship, the Special Rapporteur recommends that the notion of a "fixed place" (para. 2 of decree No. 145) be defined so as to clarify legally the particular terms, conditions and restrictions applying to worship at home. The Rapporteur recommends a more precise definition of the criteria for the registration of places of worship, especially the number of believers and the qualifications of members of religious orders.

Lastly, with regard to religious freedom in general, the Special Rapporteur recommends the introduction in the medium term of a law on religious freedom, so as to harmonize all the pertinent legal texts, remedy legal ambiguities and, in keeping with established international standards, overcome the particular fears and sensitivities prompted by the distinction between nationals and foreigners.

The Special Rapporteur was encouraged to note a political determination to apply legislation and policy in the field of tolerance of and non-discrimination against religion and belief, despite some practical monitoring difficulties. In particular, some adjustment of traditions and modes of behaviour seems to be needed if a new culture among administrative and prison authorities is gradually to take shape. Of course, this aim cannot be achieved in the immediate future. Nevertheless, the Chinese authorities could begin by clearly showing the way to reduce and combat abnormal situations and excesses. There is a risk that if an administration has discretionary power of judgement, this can degenerate into arbitrariness. Endeavours must therefore be made to ensure that progress in legislation on religious freedom is not negated by individual, administrative or political design. It is essential to secure the principle of religious freedom and its manifestation and to limit it only in exceptional circumstances justified by objective legal grounds of which the persons concerned are notified immediately.

Furthermore, it is necessary to define the notion of "trespass to the person" expressly as an act committed by a public official, which may be unrelated to the performance of that person's duties or of a public service activity, so that the official has greater personal liability under civil and criminal law for direct or indirect, overt or covert infringements of or interference with religious freedom.

The Special Rapporteur noted during his talks that the distinction between normal and abnormal religious activities was not drawn very clearly and was applied fairly flexibly. In some cases, for example, it had been found that people had been prosecuted for engaging in abnormal activities, whereas, in others no action had been taken on activities which might be regarded as abnormal. The Rapporteur is of the opinion that this flexible approach should be extended so that ultimately the distinction effectively disappears. The Special Rapporteur considers that there must be no interference with religious activity falling within the scope of the 1981 Declaration. At all events, there must not be any surveillance of a kind to infringe the right to freedom of belief and to manifest one's belief. With regard to sects, the Special Rapporteur particularly wishes to point out that the 1981 Declaration protects not only religion, but also theist beliefs and that article 1, paragraph 3, of that Declaration states that freedom to manifest

one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

With regard to the alleged arrest or detention of members of religious orders and believers belonging to unofficial religious organizations (including members of sects and Tibetan monks) and restrictions affecting them, the Special Rapporteur reiterates his request that these persons be freed. A decision of this kind would be even clearer evidence of the moves in China towards religious freedom which the Special Rapporteur discerned during his visit.

The Special Rapporteur realises that it is difficult to draw a distinction between the religious and the political sphere in Tibet. This distinction cannot be general or absolute. Nevertheless, although he was aware of these real or supposed links between politics and religion in Tibet, the Special Rapporteur deliberately examined only questions which principally concerned religious freedom as defined in the 1981 Declaration, without passing any judgement whatsoever on other aspects.

The Special Rapporteur noted the extremely devout attitude perceptible in Tibet, the full scale and extent of which has not, perhaps, been sufficiently appreciated so far. This factor must be taken into account when analysing the religious situation in Tibet. Moreover, the question of Tibet would be less acute if it did not have an added dimension, in other words if it turned solely on religious aspects.

The Special Rapporteur considers that deep religiousness may be the source not only of great spirituality, but also of real difficulties. The latter should be dealt with through dialogue, tolerance and education. Any repression of religion can lead to greater religiousness, or even, in some cases, a form of extremism, despite the apparently non-violent nature of Buddhism in general and Tibetan Buddhism in particular, the values of which might be severely tried by changes to the demographic data of Tibet. The Special Rapporteur recommends that the balances and compromises required by social dynamics be reached, so as to avoid the deeply religious being tempted by religious extremism.

The Special Rapporteur strongly recommends that religious figures who have served their sentences for "counter-revolutionary acts" should no longer be banned from entering places of worship. Furthermore, he recommends that a reasonable balance be worked out between the number of students of religion and the quality, duration and time set aside for their instruction. Likewise, the basically religious function of places of worship and the aims of making them financially independent should be made reasonably compatible.

As for more general recommendations about policy and practice concerning tolerance of and non-discrimination against religion and belief throughout China, the Special Rapporteur wishes to stress the importance of giving State officials and judges adequate human-rights training, especially on the subject of religious freedom. He recommends that the technical assistance and advisory services of the Centre for Human Rights should help in this area.

The Special Rapporteur also recommends that the principal texts on religious freedom should be posted in the administrative services concerned. Furthermore, the publication and distribution of a compendium of texts on religious freedom, including implementing instructions, is strongly recommended. The distribution of documentation about human rights to all religious institutions would also be desirable. The Special Rapporteur also recommends that citizens and institutions be informed about appeal procedures available in the event of a refusal to register religious organizations.

Education about tolerance of and non-discrimination against religion and belief should be considered and introduced as soon as possible, as a way of combating all forms of intolerance and discrimination based on religion or belief. At the same time, the Special Rapporteur urges the creation of universities offering

religious instruction as a main or subsidiary subject. More broadly, the Special Rapporteur recommends that a culture of human rights and in particular of tolerance should be spread by promoting the creation of human rights clubs in universities, which would strive chiefly to further the development of tolerance of and non-discrimination against religion and belief.

ANNEX XV

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COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Item 8 of the provisional agenda

**QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED
TO ANY FORM OF DETENTION OR IMPRISONMENT**

Report submitted by the Working Group on Arbitrary Detention

Addendum

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Visit to the People's Republic of China

SUMMARY

The Working Group on Arbitrary Detention visited China from 18 to 30 September 2004 at the invitation of the Government. The Working Group had carried out a previous visit to China from 6 to 16 October 1997 (E/CN.4/1998/44/Add.2), preceded by a five-day preparatory mission in July 1996 (see E/CN.4/1997/4). In contrast to other missions conducted by the Working Group in countries which it visits for the first time, this visit focused on developments since its visit in 1997, and in accordance with the follow-up character of the mission, the Working Group held meetings with officials of the same ministries, institutions, departments as it had in 1997. Moreover, it visited the same cities (except Shanghai) and, with some minor exceptions, the same detention facilities as in 1997.

The Working Group visited Beijing and the cities of Chengdu, capital of Sichuan Province, and Lhasa, capital of the Tibet Autonomous Region. The Working Group visited 10 detention facilities included in a list previously submitted to the authorities. This list also included police stations, pre-trial detention centres, prisons, re-education through labour camps and psychiatric hospitals. At those detention facilities, the Working Group was able to meet with and interview more than 70 detainees, chosen at random and from a list previously submitted to the authorities, including pre-trial detainees, convicted individuals serving their sentences, women, minors and persons held in administrative detention in re-education through labour camps. The interviews with detainees were carried out in conformity with the Working Group's terms of reference, i.e. in private, without the presence of government officials or guards and in locations chosen by the Working Group.

The report notes that legislation pertaining to the judicial organization and the legal framework governing judicial and administrative deprivation of liberty has not undergone basic changes since the Working Group's last visit. However, the Working Group recalls that China has signed the International Covenant on Civil and Political Rights, and is making preparatory steps for its ratification. Three major decisions were adopted:

(a) In 1999, a constitutional amendment enshrined in the Constitution the principle that the People's Republic of China is a State governed by the rule of law;

(b) In 2000, the NPC enacted a statute intended to standardize China's law-making process and define the boundaries of legislative power. Only the NPC, and in some cases its Standing Committee, can pass legislation on matters relating to the structure of State organs, the criminal justice system, and the deprivation of liberty of Chinese citizens;

(c) The Constitution has been complemented by a provision granting constitutional rank to the protection of human rights. On 14 March 2004, the NPC amended the Constitution to add the provision "The State respects and safeguards human rights", providing for the first time in its history a constitutional protection of human rights. The Working Group was informed that as a consequence of this decision, the Criminal Law, the Criminal Procedure Law and the framework governing administrative detention are under consideration by the NPC Standing Committee in order to bring them into line with the new provisions of the Constitution.

The Working Group attaches primary importance to the decisions taken recently at the political level to further reinforce and develop the protection of human rights in China. Concerning the revised Criminal Law and the revised Criminal Procedure Code, the Working Group reiterates its previous recommendations and invites the authorities to take them into consideration in the course of the ongoing reform process.

The Working Group considers that the rules and practice concerning judicial deprivation of liberty are not in keeping with international law and standards. The period of time for which criminal suspects can be held in police custody without judicial approval is too long, and the status of the public prosecutor does not meet international requirements. The Working Group doubts whether the status of the prosecutors as regulated by Chinese law fulfils the requirement toward the independence of an officer authorized by law to exercise judicial power within the meaning of article 9, paragraph 3, of the International Covenant on Civil and Political Rights.

The report further notes that placing the judiciary in a position of inferiority to the prosecution is incompatible with relevant international norms. As far as the rights of defence are concerned, the 1996 reform does not in certain of its aspects, constitute progress as compared to the previous legal framework. Access to the case file by the defence counsel during the pre-trial phase has been excessively restricted. The rights of the defence are even further restricted if the case concerns charges of endangering national security or State secrets.

There exists no genuine right to challenge administrative detention, including detention for the purpose of re-education through labour and detention in a psychiatric facility. The avenues to challenge placement in re-education through labour institutions do not satisfy international law requirements. The Working Group welcomes the information that the NPC wishes to put on its agenda the reconsideration of the current legal framework for the system of re-education through labour. The unduly long duration of this measure needs to be reduced and an effective remedy against the decision of the authority to placement in re-education through labour must be introduced.

The Working Group recommends to the authorities that they examine the possibility of instituting a simplified emergency procedure to allow a person detained to be brought before a judge and not only before a procurator. As far as minor administrative offences are concerned, it recommends that all conduct subject to sanction be described in great detail, and that all persons deprived of their liberty on account of administrative offences be guaranteed a public and adversarial trial. All persons placed against their will in a psychiatric hospital or disintoxication centre should enjoy an effective judicial remedy.

Lastly, the Working Group recommends the amendment of all legal provisions that could be used to sanction the peaceful exercise of rights and freedoms enshrined in the Universal Declaration of Human Rights and in the Constitution of the People's Republic of China.

V. Conclusions

A. POSITIVE ASPECTS OF DEVELOPMENTS SINCE THE WORKING GROUP'S LAST VISIT

67. The Working Group expresses its deep satisfaction that China has signed the International Covenant on Civil and Political Rights and that preparations are being made for the ratification of the Covenant. The Working Group is confident that as a result, the requirements of international law pertaining to deprivation of liberty will be better reflected in the Chinese legal system.

68. The Working Group attaches great importance to the decisions taken recently on the political level to further reinforce and develop the protection of human rights in China. As a consequence of this decision, the Constitution has been complemented by a provision granting constitutional rank to the protection of human rights and fundamental freedoms. Together with the constitutional provision already in force stipulating that China is a State governed by the rule of law, this constitutional provision will surely lay the foundation for a more effective legal framework for the protection of human rights in China.

69. The Working Group welcomes the fact that in the spirit of the recent political and constitutional decisions, the following issues are being examined by the National People's Congress as possible matters for new legislation or legislative amendments:

- That the State governed by the rule of law requires that all arrests by the public security organs should be ordered on the basis of more solid evidence than is currently the case;
- Limitation of the length of detention and the introduction of alternative measures to detention, and reinforcement of the defence lawyers' participation in criminal proceedings, including their immediate involvement after arrest;
- Compulsory recording of the questioning by the police of the suspected person, in order to eliminate the possibility of coercion by investigators;
- Inadmissibility of evidence gathered under duress;
- The right to silence of the person charged;
- More efficient methods to ensure the appearance and testimony of witnesses, through, *inter alia*, the reimbursement of their travel expenses and other financial losses they may suffer.

70. The Working Group welcomes the information that the National People's Congress wishes to put on its agenda the reconsideration of the current legal framework for the system of re-education through labour. According to a representative of the NPC whom the Working Group met, the main weak points of the current regulation are the unduly long duration of this measure, which needs to be reduced, and the lack of an effective remedy against the decision of the authority to assign re-education through labour.

71. The Working Group was informed that the question of including in the criminal law legislation a provision that clearly reflects the principle of the presumption of innocence is being discussed. The

Working Group welcomes this initiative, which would constitute the implementation of a recommendation it has made previously.

72. The Working Group is especially satisfied that certain improvements made in the places of detention it had previously visited are, in part, attributed to the recommendations made during its previous visit. It also noted that the Government has allocated important financial resources to the improvement of the conditions of detention, and the good practices introduced to better protect the rights of the detainees.

B. AREAS OF CONCERN

73. None of the recommendations that the Working Group formulated in its earlier report have been followed. No definition of the term “endangering national security” in criminal law was adopted, no legislative measures have been taken to make a clear-cut exemption from criminal responsibility of those who peacefully exercise their rights guaranteed in the Universal Declaration of Human Rights, and no real judicial control has been created over the procedure to commit someone to re-education through labour.

74. The rules and practice concerning judicial deprivation of liberty are not in keeping with international law and standards. The holding period in police custody of criminal suspects without judicial approval is too long, and the status of the procurator called to approve arrest pending investigation does not meet the requirements of an officer authorized by law to exercise judicial power. In addition, since the procurator is a party in the criminal proceedings, he lacks the requisite impartiality to take decisions in matters relating to arrest.

75. There exists no genuine right to challenge administrative detention, including detention for the purpose of re-education through labour and psychiatric confinement. The avenues to challenging placement in re-education institutions do not satisfy international law requirements.

76. As no law provides a clear definition of “State secrets”, the Working Group is concerned about the restriction on the right to defence imposed by regulations issued by public security departments, prison administration or prosecutors when a case involves State security or State secrets.

VI. RECOMMENDATIONS

77. The Working Group welcomes the commitment of China to human rights, reflected in a newly adopted constitutional provision declaring the paramount importance China attaches to human rights protection. The Working Group believes that the best way to demonstrate this commitment would be an early ratification of the International Covenant of Civil and Political Rights.

78. In the spirit of assisting China to improve the system of protection against arbitrary detention, the Working Group makes the following recommendations:

(a) Laws governing criminal detention should be reconsidered. Either the procuratorates empowered to take decisions on arrest should be vested with the requisite independence in order to meet the criteria of a judicial officer authorized by law to exercise judicial power, or the power to order or approve arrest should be shifted from the procuratorate to courts;

(b) In all cases of administrative deprivation of liberty, an effective right to challenge before a court the lawfulness of the detention and the right to be represented by a legal counsel shall be granted;

- (c) Noting with satisfaction that high-level political decisions have been taken to review the system of re-education through labour, the Working Group believes that the minimum requirements for complying with international standards are the following:
- (i) All acts giving rise to re-education through labour should be clearly provided by law;
 - (ii) Due process requirements - e.g., the personal appearance before and hearing of the individual concerned by the competent body, the opportunity to put forward his/her arguments against being sent to a re-education through labour facility, the right to be represented by legal counsel, the right to appeal against unfavourable decisions and the like - should be provided by law and scrupulously implemented in each case;
 - (iii) If the person so wishes, a genuine review of his case should be made by a court;
 - (iv) The time one can spend in re-education through labour centres should be considerably reduced;
 - (v) The system of re-education through labour should never be used to punish the peaceful expression of one's opinion or belief;
- (d) Conditions of the admission against his/her will and the forcible holding of people who are allegedly mentally ill or for detoxification shall be meticulously provided by law. Bearing in mind the vulnerable situation of mental health patients, that law shall prescribe effective safeguards against arbitrariness. Courts shall be vested with competence to review, upon request, the legality as well as the necessity of keeping someone against his/her will in a mental health institution;
- (e) Persons charged often invoke their freedom of opinion, expression, religion or belief, freedom of association or assembly, or the right to take part in the conduct of public affairs of the country as a legal basis for their conduct and exempting them from criminal responsibility. The Working Group recommends that the question - to which of the conflicting interests shall priority be given - shall be decided after careful consideration of all the relevant circumstances, giving proper weight to the rights of the individuals. Definitions in criminal law legislation having such vague, imprecise or sweeping elements like "disrupting social order", "endangering national security", "violating the unity and integrity of the State", "subverting public order", "affecting national security" and the like shall not be used to punish the peaceful expression of the rights and freedoms that the Declaration of Human Rights grants to everyone.

ANNEX XVI

Concluding observations of the Committee on Economic, Social and Cultural Rights : China (including Hong Kong and Macau) 13/05/2005

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Thirty-fourth session

25 April – 13 May 2005

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

CONCLUDING OBSERVATIONS OF THE COMMITTEE ON Economic, Social and Cultural Rights

People's Republic of China (including Hong Kong and Macao)

1. The Committee on Economic, Social and Cultural Rights considered the initial report of the People's Republic of China (including Hong Kong and Macao) on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/1990/5/Add.59) at its 6th to 10th meetings, held on 27, 28 and 29 April 2005 (E/C.12/2005/SR.6-10), and adopted, at its 27th meeting held on 13 May 2005, the following concluding observations.

A. INTRODUCTION

2. The Committee welcomes the submission of the initial report of the State party, which was submitted on time and prepared in general conformity with the Committee's guidelines. The Committee also notes with appreciation the comprehensive written replies to its list of issues.

3. The Committee welcomes the constructive dialogue with the delegation of the State party, which included representatives of Hong Kong Special Administrative Region (HKSAR) and Macao Special Administrative Region (MSAR). The Committee appreciates that the delegation was composed of experts in the different areas covered by the Covenant.

I. CHINA

B. POSITIVE ASPECTS

4. The Committee welcomes the promulgation by the State Council of Rules on Supervision of Labour Security and its amended Regulations on Collective Contracts and Regulations on Minimum Wages.
5. The Committee welcomes the increase, in 2004, of basic retirement benefits for retirees of State-owned enterprises throughout the country.
6. The Committee welcomes the establishment of a new social security system based on contributions from employers and employees and of a new pension system in which employers and employees contribute to a communal pension fund and to individual pension accounts.
7. The Committee welcomes the adoption of the China Rural Communities Poverty Relief Programme (2001-2010).
8. The Committee welcomes the State Council's Directive No. 1/2004 to safeguard farmers' rights and interests and Directive No. 1/2005, waiving taxes on animal husbandry for all regions and agricultural tax for 592 counties listed as priority counties for poverty alleviation.
9. The Committee notes with appreciation the measures adopted by the State party for the prevention and treatment of HIV/AIDS, including the establishment of the National Committee on HIV/AIDS as part of the Directive on Effective Strengthening of the Prevention and Treatment of AIDS.
10. The Committee welcomes the adoption of the Framework for Education Development into 2020, a strategic plan for the reform and development of the education sector in the State party.

C. FACTORS AND DIFFICULTIES IMPEDING THE IMPLEMENTATION OF THE COVENANT

11. The Committee, while recognizing the sizeable population in the vast expanse of the territory of the State party, notes that there are no significant factors and difficulties impeding its capacity to effectively implement the Covenant.

D. PRINCIPAL SUBJECTS OF CONCERN

12. The Committee regrets that the State party's report was not disseminated prior to submission and therefore did not go through a public consultation process.
13. The Committee regrets that the lack of comparative statistical data in the field of economic, social and cultural rights within the State party has not allowed a clear evaluation of the degree of the actual implementation of many of the rights enshrined in the Covenant.
14. The Committee is concerned that non-citizens, including asylum-seekers, refugees and stateless persons, are excluded from the constitutional guarantees to the enjoyment of rights and freedoms enshrined in the Covenant extended to all citizens in the State party. The Committee notes that some asylum-seekers are excluded by the refugee determination procedure of the State party, in particular those coming from the Democratic People's Republic of Korea, who are regarded by the State party as economic migrants and are thus compelled to return to their countries.
15. The Committee notes with deep concern the de facto discrimination against internal migrants in the fields of employment, social security, health services, housing and education that indirectly result from inter alia, the restrictive national household registration system (*hukou*) which continues to be in place despite official announcements regarding reforms.
16. The Committee is concerned about the reported persistence of discrimination against persons with physical and mental disabilities, especially in terms of employment, social security, education and health.
17. The Committee notes with concern the persistence of gender inequalities in practice in the State party, particularly with regard to employment and participation in decision-making. The Committee regrets that it has not received sufficient information from the State party regarding affirmative action to promote gender equality and measures to prevent sexual harassment in the workplace.
18. The Committee is deeply concerned about the high rate of abortion of the girl foetus.

19. The Committee is concerned about the problem of the sale of women and girl children and of the abandonment of elderly women.
20. The Committee notes with concern the increasing rate of unemployment in the State party, particularly in rural areas.
21. The Committee is concerned about the large-scale redundancies made in recent years, which have disproportionately affected women.
22. The Committee is gravely concerned about the use of forced labour as a corrective measure, without charge, trial or review, under the “Re-education through Labour” (*laodong jiaoyang*) programme.
23. The Committee expresses its deep concern regarding children working in hazardous occupations such as mining, often in precarious conditions that fall short of labour safety standards. The Committee is also of the view that the “Diligent Work and Economical Study” (*qingong jianxue*) programme for schoolchildren constitutes exploitative child labour, in contradiction of the provisions of articles 6 and 7 of the Covenant, and Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour of the International Labour Organization (ILO) to which China is a party.
24. The Committee is deeply concerned about the insufficient implementation of existing labour legislation in the State party that has resulted in generally poor conditions of work, including excessive working hours, lack of sufficient rest breaks and hazardous working conditions. The Committee notes with concern that the problem is especially acute for migrant workers. The Committee is also alarmed by the high incidence of serious occupational accidents in the State party, particularly in the mining sector.
25. The Committee is concerned that the low level of wages, particularly in rural areas and in the west of the country is insufficient to provide a decent standard of living for workers and their families. The Committee notes that the situation is aggravated by the persistent problem of wage arrears, especially in the construction sector.
26. The Committee regrets the State party’s prohibition of the right to organize and join independent trade unions in the State party.
27. The Committee is concerned that many of the reforms in the formal welfare system have not been extended to the countryside, where the local authorities of poor regions have a limited capacity to generate the funds necessary to provide welfare and social services. The Committee notes with concern that the means-tested non-contributory social assistance extended to all urban areas starting in 1996 was similarly extended to some, but not all rural areas.
28. The Committee regrets that, in the absence of reliable data, it could not assess the nature and extent of the reportedly high incidence of domestic violence in the State party and the degree of enforcement of existing legislation for the protection of victims of domestic violence.
29. The Committee is also concerned at the lack of reliable information, including statistics, on the extent of the problem of sexual exploitation of women and children in the State party, including prostitution, sale and trafficking in persons.
30. The Committee is deeply concerned that despite the rapid economic development in recent years, poverty persists in the country, disproportionately affecting the rural population. The Committee is concerned that in spite of the efforts made by the State party to improve the economic and social conditions of rural populations, the disparity in income and in the enjoyment of an adequate standard of living continues to widen between the rich and the poor, in particular those in urban/rural areas, as well as those in coastal provinces/inland provinces. The Committee also regrets the absence of an official poverty line that would enable the State party to define the extent of poverty and to monitor and evaluate progress in alleviating poverty.
31. The Committee is concerned about the reports of forced evictions and insufficient measures to provide compensation or alternative housing to those who have been removed from their homes in the context of urban development projects as well as of rural development projects such as the Three Gorges Project. The Committee is concerned about the number of forced evictions and demolitions that have occurred in anticipation of the 2008 Olympic Games to be hosted by the State party. The Committee further expresses concern about the lack of effective consultations and legal redress for persons affected

by forced evictions and demolitions, including those of historic structures, buildings and homes in Lhasa, Tibet. The Committee also regrets that insufficient information was provided on the extent and causes of homelessness in the State party.

32. The Committee notes with concern that funds allocated to public health have diminished despite the overall increase of health-care expenditures over the past decade in the State party. Furthermore, the Committee notes with concern that the health-care system that had in the past delivered basic health care to the majority of rural residents has been considerably reduced.

33. The Committee is concerned about the insufficient preventive care programmes that have resulted in the spread of infectious diseases, including sexually transmitted diseases and HIV/AIDS.

34. The Committee notes with concern the shortage of access to safe drinking water in highly industrialized areas.

35. The Committee is concerned about the significant number of persons, especially women, who suffer from mental illnesses and about the inadequacy of measures to ensure a decent life for persons suffering from mental illnesses. The Committee is also concerned that, in addition to suffering social stigmatization, persons with mental illnesses often spend a long time in psychiatric facilities, where they live in sub-standard conditions and receive sub-standard treatment and care. The Committee also notes that suicide among women is alarmingly high in the State party.

36. The Committee is deeply concerned about reports of forced abortions and forced sterilizations imposed on women, including those belonging to ethnic minority groups, by local officials in the context of the one-child policy, and about the high maternal mortality rate as a result of unsafe abortions.

37. The Committee is concerned about the continued irregularities in the State party's provision of universal access to free compulsory primary education, in particular with regard to rural communities, minority regions, disadvantaged families and internal migrant population. The Committee is also concerned about the high junior middle school dropout rate in some rural areas.

38. The Committee notes with concern the reports regarding the discrimination of ethnic minorities in the State party, in particular in the field of employment, adequate standard of living, health, education and culture. In this regard, the Committee regrets the insufficient information provided by the State party regarding the enjoyment of economic, social and cultural rights enshrined in the Covenant by populations in the ethnic minority areas. The Committee notes with concern the reports from sources other than the State party relating to the right to the free exercise of religion as a right to take part in cultural life, and the use and teaching of minority languages, history and culture and the Xinjiang Uighur Autonomous Region (XUAR) and the Tibet Autonomous Region (TAR).

39. The Committee notes with deep concern the restrictions placed on access to information with regard to academic research, foreign and domestic publications and the Internet.

E. SUGGESTIONS AND RECOMMENDATIONS

40. The Committee requests the State party in its next periodic report to submit updated annually collected comparative data disaggregated by sex, age and rural/urban regions in the fields of all the provisions in the Covenant, paying particular attention to the disadvantaged and marginalized groups. The Committee also requests the State party in its next periodic report to include annual comparative data, disaggregated by rural/urban regions, the percentage of gross domestic product allotted for education, health and housing programmes, in particular in the ethnic minority regions.

41. The Committee recommends that the State party adopt a national human rights plan of action, and report back in its next periodic report on how the plan promotes and protects economic, social and cultural rights in the State party. In this connection, the Committee recommends that the State party consider establishing a national commission for human rights on the basis of the Paris Principles.

42. The Committee urges the State party to ensure that legal and judicial training takes full account of the justiciability of the rights contained in the Covenant and promotes the use of the Covenant as a source of law in domestic courts. The Committee draws the attention of the State party to general comment No. 9 on the domestic application of the Covenant and invites the State party to include information concerning case law on the application of the Covenant in its next periodic report.

43. The Committee requests the State party to provide in its next periodic report detailed information on the public consultation process in the preparation of the report, including a listing of all civic organizations or non-governmental organizations consulted. The Committee urges the State party to bear in mind that public consultation is a requirement in the reporting process, the objective of which is to inform the general public and to generate interest and debate on the steps the State party has undertaken in fulfilling its treaty obligations under the Covenant.
44. The Committee encourages the State party to submit in its next periodic report relevant updated and periodically collected statistical data disaggregated by sex, age and urban/rural region, paying particular attention to the disadvantaged and marginalized groups of society. Such comparative information will enable the Committee and the State party itself to monitor and evaluate the progressive implementation of the rights enshrined in the Covenant.
45. The Committee calls upon the State party to undertake necessary measures to ensure that all persons under its jurisdiction enjoy economic, social and cultural rights enshrined in the Covenant without discrimination. In addition, the Committee urges the State party to ensure that its asylum procedures do not discriminate, in purpose or in effect, against asylum-seekers on the basis of race, colour or ethnic or national origin, as provided for under article 2, paragraph 2, of the Covenant. The Committee recommends that the State party consider adopting subsidiary forms of protection to guarantee the right to remain for persons who are not formally recognized as refugees but are seeking asylum and nevertheless require protection during that period, and granting the United Nations High Commissioner for Refugees and humanitarian organizations access to them. The Committee requests the State party to provide, in its next periodic report, detailed information in this regard, including measurable progress achieved as well as difficulties encountered.
46. The Committee calls upon the State party to implement its decision to dismantle the *hukou* system of national household registration and to ensure that in any system that replaces it, internal migrants will be able to enjoy the same work, social security, housing, health and education benefits enjoyed by those in the urban areas.
47. The Committee recommends that the State party adopt effective measures to ensure equal opportunities for persons with disabilities, especially in the fields of employment, social security, education and health, to provide for more appropriate living conditions for persons with disabilities and to allocate adequate resources for improving the treatment of, and care for, persons with disabilities. The Committee requests the State party to provide detailed information in its second periodic report on the measures undertaken with regard to persons with physical and mental disabilities.
48. The Committee calls upon the State party to undertake effective measures to ensure the equal right of men and women to enjoy economic, social and cultural rights as provided for in article 3 of the Covenant, including by implementing the principle of equal pay for work of equal value, eliminating wage gaps between men and women, and providing equal opportunities for both men and women.
49. The Committee strongly recommends that the State party undertake effective public education measures, including awareness-raising programmes designed to eliminate gender-based prejudices and traditional practices that are harmful to women and girls. The Committee requests the State party to provide, in its next periodic report, detailed information on the progress made on gender discrimination issues.
50. The Committee recommends that the State party reinforce its programmes designed to reduce unemployment and, in this regard, to target on a priority basis the most affected groups and regions. The Committee urges the State party to strengthen the enforcement of the existing protection for workers under its labour laws. The Committee requests the State party to provide information in its next periodic report on the measures taken to facilitate re-employment of women, including of those made redundant as a result of the ongoing economic restructuring of State-owned enterprises. The Committee recommends that the State party consider ratifying ILO Convention No. 2 on unemployment.
51. The Committee recommends that the State party abolish the use of forced labour as a corrective measure, and amend or repeal the relevant provisions of its legislation to bring them into line with the

provisions of article 6 of the Covenant. In this connection, the Committee recommends that the State party consider ratifying ILO Convention No. 29 on forced or compulsory labour.

52. The Committee urges the State party, as a matter of priority, to strengthen its efforts to effectively enforce its legislation prohibiting unlawful employment of children. The Committee also urges the State party to make every effort, including the adoption of preventive measures, to ensure that those children who engage in labour do not work under conditions that are harmful to them. The Committee further encourages the State party to consider withdrawing the programme of “Diligent Work and Economical Study” (*qingong jianxue*) from its school curriculum.

53. The Committee urges the State party to take immediate steps to ensure effective and equal application of its current labour legislation for the protection of the rights of all workers, including migrant workers, to just and favourable conditions of work as enshrined in article 7 of the Covenant. The Committee further recommends that the State party ensure the right to decent work and to provide sufficient resources to the labour inspectorate to enable regular and independent inspections of safety and health conditions in all sectors and to ensure that employers who fail to observe safety regulations are duly sanctioned. In this connection, the Committee recommends that the State party consider ratifying the ILO Convention No. 81 concerning Labour Inspection in Industry and Commerce.

54. The Committee urges the State party to continue to take necessary measures to ensure that the minimum wage enables workers and their families to enjoy an adequate standard of living and that the minimum wage standard is effectively enforced, particularly in rural areas and in western areas. The Committee further encourages the State party to establish a wage enforcement mechanism that periodically adjusts minimum wages to the cost of living, facilitate the redress of wage claims, and take sanctions against employers who owe wages and overtime pay and impose fines and penalties on their workers.

55. The Committee urges the State party to amend the Trade Union Act to allow workers to form independent trade unions outside the structure of the All China Federation of Trade Unions. Further, the Committee strongly urges the State party to consider withdrawing its declaration on article 8, paragraph 1, of the Covenant.

56. The Committee recommends that the State party strengthen the redistributive mechanisms between regions and levels of government, so as to ensure that local authorities receive additional funds necessary for adequate provision of welfare and social services to their populations. The Committee urges the State party to extend non-contributory social assistance to the rural areas that are presently not covered, as a means to combat poverty among the rural populations.

57. The Committee requests that the State party provide, in its next periodic report, detailed information on the extent of domestic violence, in particular violence against women, and on the legislative and other measures taken by it to address this phenomenon, including facilities and remedies provided for victims. The Committee urges the State party to provide training to law enforcement officials and judges regarding the serious and criminal nature of domestic violence, in particular violence against women.

58. The Committee urges the State party to adopt legislation that specifically criminalizes the trafficking of human beings and to establish mechanisms to effectively monitor its strict enforcement and provide protection and assistance to victims of sexual exploitation. The Committee requests the State party, in its next periodic report, to provide detailed information, including comparable statistical data, on the extent of the problem of sexual exploitation of women and children in the State party, including prostitution, sale and trafficking in persons.

59. The Committee strongly recommends that the State party take immediate measures, inter alia by increasing allocations, for the protection of economic, social and cultural rights of persons living in disadvantaged areas, in particular with regard to adequate housing, food and water, health services and sanitation. The Committee calls upon the State party to develop a mechanism for measuring the poverty level and to monitor it closely, and refers the State party to the Committee’s statement on poverty adopted in May 2001.

60. In line with its general comment No. 14 (2000) on the right to the highest attainable standard of health, the Committee urges the State party to undertake effective measures to improve the delivery of health services in rural areas and ethnic minority regions, inter alia, by allocating adequate and increased resources. The Committee encourages the State party to take urgent measures to stop the spread of HIV/AIDS and other sexually transmitted diseases, including through sex education in schools and awareness-raising campaigns to eliminate discrimination against HIV-positive persons.

61. The Committee recommends that the State party take immediate measures to enforce laws and regulations prohibiting forced evictions and ensure that persons evicted from their homes be provided with adequate compensation or offered alternative accommodation, in accordance with the guidelines adopted by the Committee in its general comment No. 7 (1997) on forced evictions. The Committee also recommends that, prior to implementing development projects, the State party should undertake open, effective and meaningful consultations with affected residents. In this connection, the Committee wishes to draw the attention of the State party to its general comment No. 4 (1991) on the right to adequate housing and requests it to provide information in its next periodic report on progress achieved in this regard. The Committee further requests the State party to provide, in its next periodic report, detailed information on the number and nature of forced evictions and on the extent of homelessness in the State party, disaggregated by gender, age, urban/rural residence.

62. The Committee recommends that the State party undertake effective measures to guarantee access to safe drinking water to all persons under its jurisdiction.

63. The Committee requests the State party to include, in its next periodic report, detailed information on environmental policies formulated by the State party, in particular, policies to reduce atmospheric pollution, and to evaluate the impact of large infrastructure development projects on the environment.

64. The Committee recommends that the State party allocate adequate resources and undertake effective measures for the treatment of, and care for, persons with mental illnesses, and to ensure that appropriate standards are established and enforced in psychiatric facilities to prevent maltreatment and neglect of mentally ill patients. The Committee also recommends that the State party conduct a study regarding factors and causes of the high rate of suicide among women, and report back to the Committee on its findings in its next periodic report.

65. The Committee urges the State party to undertake effective measures to ensure that abortions are carried out voluntarily and under adequate medical and sanitary conditions and to ensure that the existing legislation governing the one-child policy does not violate the rights enshrined in article 10 of the Covenant. The Committee requests the State party to provide information in its next periodic report in this regard, including information on women belonging to ethnic minority groups.

66. In line with its general comments No. 11 (1999) on plans of action for primary education and 13 (1999) on the right to education, the Committee calls upon the State party to take effective measures to ensure that all children, including migrant children and ethnic minority children, have access to free compulsory primary education. The Committee also calls upon the State party to undertake effective reforms in the current education financing policies so as to allocate sufficient funds to support the provision of free and compulsory nine-year education to all children on national, state and local levels; and to eliminate all school-related fees so as to make compulsory primary education truly free for all children. The Committee further urges the State party to increase public expenditure on education in general, and to take deliberate and targeted measures towards the progressive realization of the right to education for the disadvantaged and marginalized groups throughout the country.

67. The Committee calls upon the State party to provide, in its next periodic report, detailed information, including disaggregated comparative statistics, to evaluate progress made and obstacles encountered in the implementation of all the provisions of the Covenant in the ethnic minority regions, including in XUAR and TAR.

68. The Committee urges the State party to remove restrictions on freedom of information and expression in the State party, to enable all persons under its jurisdiction to take part in cultural life, enjoy the benefits of scientific progress and its applications, and benefit from the protection of the moral and

material interests resulting from any scientific, literary or artistic production of which he or she is the author.

69. The Committee strongly recommends that the State party's obligations under the Covenant be taken into account in all aspects of its negotiations with the international financial institutions and other regional trade agreements in order to ensure that economic, social and cultural rights, particularly of the most disadvantaged and marginalized groups, are not undermined.

70. The Committee recommends that the State party continue to ensure that its international human rights obligations and the present recommendations are taken fully into account when entering into technical cooperation and other arrangements.

II. HONG KONG SPECIAL ADMINISTRATIVE REGION

B. POSITIVE ASPECTS

71. The Committee welcomes the information that the age of criminal responsibility has been raised.

72. The Committee notes with appreciation the establishment of a Commission on Poverty to devise in this connection future strategies to combat poverty.

73. The Committee welcomes the establishment of the Sexual Minorities Forum, a formal communication channel between HKSAR and persons with different sexual orientation, and the planned establishment of the Gender Identity and Sexual Orientation Unit within the Home Affairs Bureau.

74. The Committee welcomes the extensive efforts made by HKSAR, including sensitization campaigns, to combat prejudices and discrimination against persons with physical and mental disabilities.

75. The Committee welcomes the enactment in 2002 of the Marital Rape Ordinance.

76. The Committee welcomes the enactment in 2003 of the Law on Prevention of Child Pornography.

C. FACTORS AND DIFFICULTIES IMPEDING THE IMPLEMENTATION OF THE COVENANT

77. The Committee notes the absence of any significant factors or difficulties preventing the effective implementation of the Covenant in HKSAR.

D. PRINCIPAL SUBJECTS OF CONCERN

78. The Committee regrets that HKSAR has not implemented a number of the recommendations contained in its concluding observations of 2001. The Committee wishes to reiterate in particular its concern at the following issues:

- (a) The present anti-discrimination legislation does not cover discrimination on the basis of race, sexual orientation and age;
- (b) The absence of a human rights institution with a broad mandate, while noting the position of HKSAR that the Equal Opportunities Commission has comparable functions;
- (c) The lack of effective protection from discrimination and abuse, of foreign domestic helpers, affected by the “two-week rule”, upon expiration of their contract;
- (d) The continuing spread of poverty and lack of effective access to social services, which affects the disadvantaged and marginalized groups;
- (e) The exclusion of many individuals, including women who are homemakers, persons with disabilities and older persons, from the Mandatory Provident Fund Scheme, due to their inability to make sufficient voluntary contributions;
- (f) The hardship arising from the right of abode policies in relation to permanent residence and split families; and
- (g) The persistence of inadequate housing in the form of cage-homes and bed-space apartments, despite measures taken by HKSAR to provide alternative housing to residents who choose to remain in such homes.

79. The Committee is concerned that in the proposed racial discrimination law, the protection it affords will not cover migrants from the Mainland despite the widespread *de jure* and *de facto* discrimination against them on the basis of their origin. The Committee is also concerned that according to the proposals made by the Hong Kong Home Affairs Bureau, the new law will not affect the existing immigration legislation in HKSAR.

80. The Committee is concerned that HKSAR lacks a clear asylum policy and that the Convention relating to the Status of Refugees of 1951 and the Protocol thereto of 1967, to which China is a party, are not extended to HKSAR. In particular, the Committee regrets the position of HKSAR that it does not foresee any necessity to have the Convention and the Protocol extended to its territorial jurisdiction.

81. The Committee is concerned that the wage disparity between men and women continues to be a problem despite the position of HKSAR that the Sex Discrimination Ordinance provides sufficient protection for women in the field of employment, in accordance with the principle of equal pay for work of equal value.

82. The Committee is concerned that the social security system in HKSAR does not include unemployment benefits.

83. The Committee expresses its concern about the particularly precarious situation of foreign domestic workers, a majority of whom are from South-East Asia, who are underpaid and are not entitled to social security.

84. The Committee is seriously concerned that under the existing social security system, and in particular under the Comprehensive Social Security Assistance (CSSA), the levels of benefit are not sufficient to guarantee a decent standard of living and that many low-income persons, in particular older persons, are not covered by the scheme. The Committee is further concerned that new migrants are unable to apply for CSSA due to the seven-year residence requirement.

85. The Committee expresses concern about reports of the high incidence of trafficking in persons, especially women and children, into HKSAR, mainly for the purpose of sexual exploitation. The Committee regrets that it did not receive sufficient information regarding this problem and the measures taken in this respect by HKSAR.

86. The Committee notes with regret that the information provided on the extent of poverty and social exclusion in HKSAR was insufficient. The Committee is also concerned about reports of increasing poverty among older persons, the more so as HKSAR is facing the problem of a rapidly ageing society.

87. The Committee, while noting the generally high level of enjoyment to health in HKSAR, remains concerned that spending on public hospitals has been on the decline, resulting in longer waiting lists for patients. The Committee is also concerned that under the current fee waiver system, low-income patients still do not receive the most appropriate medical care. The Committee further notes with regret that many of the expensive drugs required by chronically ill and mentally ill patients are not subsidized, and are thus in practice denied to these patients.

88. The Committee remains concerned about the low level of awareness of the general public in HKSAR of sexual and reproductive health issues. The Committee also regrets that no comprehensive sexual and reproductive health programme exists in HKSAR and that education on sexual and reproductive health is not part of the school curriculum.

89. The Committee is concerned that the measures taken to facilitate enrolment in local schools of children of migrants from the Mainland and other foreign migrant workers who do not have the legal right to remain in HKSAR are insufficient.

E. SUGGESTIONS AND RECOMMENDATIONS

90. The Committee once again urges HKSAR to implement the Committee's relevant suggestions and recommendations, contained in its concluding observations made in 2001 (E/C.12/1/Add.58), as well as in the current ones, and urges it to undertake whatever relevant concrete measures may be necessary towards their implementation.

91. The Committee strongly urges HKSAR to extend the protection afforded by the proposed racial discrimination law to internal migrants from the Mainland, and to put a stop to the widespread discriminatory practices against them on the basis of their origin. The Committee further recommends that the relevant provisions of the existing immigration legislation governing entry into, period of stay, and departure from, HKSAR are amended to ensure full conformity and consistency with the new racial discrimination legislation.

92. The Committee recommends that HKSAR reconsider its position regarding the extension of the Convention relating to the Status of Refugees and its Protocol to its territorial jurisdiction, and that it strengthen its cooperation with UNHCR, in particular in the formulation of a clear and coherent asylum policy based on the principle of non-discrimination.

93. The Committee requests that HKSAR provide, in its next periodic report, the results of the Equal Opportunities Commission Study on Gender-based Pay Inequalities and the measures to follow up the findings of the study.

94. The Committee recommends that HKSAR consider extending its social security system to cover unemployed workers through the payment of an unemployment benefit based on contributions from employers and employees.

95. The Committee urges the State party to review the existing "two-week rule", with a view to eliminating discriminatory practices and abuse arising from it, and to improving the legal protection and benefits for foreign domestic workers so that they are in line with those afforded to local workers, particularly with regard to wages and retirement benefits. The Committee recommends that HKSAR enable domestic helpers to acquire pension rights through their inclusion in the Mandatory Provident Fund.

96. The Committee urges HKSAR to review the eligibility criteria for the CSSA so as to ensure that all those in need, including low-income persons and families, older persons and new migrants are adequately covered by the scheme to enable them to enjoy a decent standard of living.

97. The Committee requests that the State party provide, in its next periodic report, detailed information on the problem of trafficking and commercial sexual exploitation of persons in the State party and on measures taken to effectively address these problems. The Committee urges the State party to ensure respect for the necessary procedural safeguards when deporting victims of trafficking in persons, particularly when such victims are minors, and to provide them with the necessary medical, psychological and legal support. The Committee requests HKSAR to report back to the Committee in its next periodic report on the result of the study by the Commission on Women on domestic violence.

98. The Committee urges HKSAR to strengthen its efforts to combat poverty and social exclusion, in particular with regard to disadvantaged and marginalized groups and older persons. The Committee also recommends the State party to adopt an official poverty line, which would enable the State party to define the extent of poverty and to monitor and evaluate progress in alleviating poverty. The Committee requests that the State party provide, in its next periodic report, disaggregated and comparative annually collected data on the number of people living in poverty, on the progress made in reducing the incidence of poverty, and on the impact, if any, that the newly-established Commission on Poverty has had on the issue of poverty in HKSAR.

99. The Committee urges the State party to continue its efforts to improve its health services, inter alia, through the allocation of adequate and increased resources. The Committee recommends HKSAR to consider revising the current list of subsidized drugs to meet the needs of the chronically and mentally ill. The Committee encourages the State party to submit in its next periodic report annually collected comparative data, disaggregated by sex, age and urban/rural residence, paying particular attention to disadvantaged and marginalized groups.

100. The Committee recommends HKSAR to develop a comprehensive sexual and reproductive health programme, including a public awareness-raising campaign about safe contraceptive methods. The Committee also calls upon HKSAR to introduce education on sexual and reproductive health in the school curriculum.

101. The Committee urges HKSAR to amend its legislation to provide for the right to education of all school-age children in its jurisdiction, including children of migrants without the legal right to remain in HKSAR.

102. The Committee encourages HKSAR to ensure that human rights education is provided in schools at all levels and to raise awareness of human rights, in particular economic, social and cultural rights, among State officials and the judiciary.

III. MACAO SPECIAL ADMINISTRATIVE REGION (MSAR)

B. POSITIVE ASPECTS

103. The Committee welcomes the assurance that the Covenant may be directly invoked before domestic courts in MSAR, and that there have been specific decisions of domestic courts in which reference has been made to the Covenant and its provisions.

104. The Committee welcomes the assurance provided by MSAR that the Office of the Ombudsman has the mandate to receive complaints on violations of economic, social and cultural rights.

105. The Committee commends MSAR for the establishment of a special unit within the Social Welfare Institute offering assistance to victims of domestic violence.

106. The Committee welcomes the planned enactment of legislation to protect the rights of children, specifically aimed at protecting their rights and interests.

C. FACTORS AND DIFFICULTIES IMPEDING THE IMPLEMENTATION OF THE COVENANT

107. The Committee notes the absence of any significant factors or difficulties preventing the effective implementation of the Covenant in MSAR.

D. PRINCIPAL SUBJECTS OF CONCERN

108. The Committee expresses its concern that women continue to be in a disadvantaged position in society in MSAR, especially with regard to employment and equal pay for work of equal value and participation in decision-making.

109. The Committee is concerned about the differences in the criteria for entitlement to maternity leave for workers in the public and private sectors, and that the entitlement of male workers to five days of paternity leave is only applicable in the public sector.

110. The Committee is concerned that no legislation exists to criminalize sexual harassment in the workplace.

111. The Committee expresses its concern that persons with disabilities are not sufficiently integrated in the labour market.

112. The Committee is concerned about the increasing incidence of domestic violence in MSAR and the irregular protection given to victims of domestic violence under existing legislation.

113. The Committee notes with concern that trafficking in women and children for sexual exploitation is a serious problem in MSAR and that prosecution of traffickers generally has not been effective.

114. The Committee is seriously concerned that migrant workers, who account for a significant proportion of the working population of MSAR, are excluded from the social welfare system.

115. The Committee is concerned about the high incidence of consumption of illicit drugs and the ineffective enforcement of the law prohibiting it.

116. While welcoming efforts made by MSAR to enable the integration of children of migrants in the school system, the Committee notes with regret that education provided to children of migrant workers is not free of charge.

117. The Committee notes the lack of sufficient information on efforts made by MSAR to involve non-governmental organizations in the preparation of the report.

E. SUGGESTIONS AND RECOMMENDATIONS

118. The Committee recommends that MSAR establish a State institution responsible for the promotion and protection of gender equality and engage in sensitization campaigns to raise awareness on gender equality, particularly in employment, and to report, in its next periodic report, on the results achieved in this regard.

119. The Committee recommends that MSAR take effective measures to increase public awareness, especially in the private sector, about the importance of maternity and paternity leaves that reconcile professional and family life for men and women. The Committee further recommends that MSAR take immediate measures to ensure workers in the private sector their right to maternity leave, without placing limitations on the number of births, and to ensure that male workers in the private sector are granted the right to five days of paternity leave, as in the public sector.

120. The Committee urges MSAR to consider enacting legislation to criminalize sexual harassment in the workplace.

121. The Committee recommends that MSAR take effective measures to promote the integration of people with disabilities into the labour market, including by providing incentives to employers and strengthening the system of job quotas for persons with disabilities.

122. The Committee calls upon MSAR to intensify its efforts to combat domestic violence. In particular, the Committee encourages MSAR to consider enacting specific legislation criminalizing domestic violence and affording effective protection to victims. The Committee also urges MSAR to take effective measures to provide training for law enforcement personnel and judges regarding the criminal nature of domestic violence. Moreover, the Committee urges MSAR to ensure the availability and accessibility of crisis centres where victims of domestic violence can find safe lodging and counselling.

123. The Committee recommends that MSAR make concerted efforts to combat the phenomenon of trafficking in persons. MSAR should also ensure that victims of trafficking have access to crisis centres

where they can receive assistance. The Committee also recommends that MSAR provide in its next periodic report detailed information on the measures taken to combat trafficking and commercial sexual exploitation of women and children, as well as comparative statistical data indicating the extent of the problem.

124. The Committee recommends that MSAR take effective measures to ensure that all workers are entitled to adequate social security benefits, including migrant workers. The Committee requests MSAR to provide detailed information in its next periodic report on the extent of the coverage of its social security system, including protection for migrant workers and other disadvantaged and marginalized groups.

125. The Committee recommends that measures be continued and strengthened for the effective implementation of programmes to prevent illicit drug consumption, and to report back to the Committee on the progress achieved in its next periodic report.

126. The Committee recommends that MSAR strengthen its efforts to provide free compulsory education to all school-age children, including children of migrant workers.

127. The Committee encourages MSAR to ensure that human rights education is provided in schools at all levels and to raise awareness about human rights, in particular economic, social and cultural rights, among State officials and the judiciary.

128. The Committee underlines the importance of the role of civil society in the full implementation of the Convention and recommends that MSAR consult NGOs and other members of civil society in Macao during the preparation of the next periodic report.

129. The Committee requests the State party to include, in its second periodic report on the implementation of the Covenant, all available information on any measures taken and progress made, particularly with regard to the suggestions and recommendations made by the Committee in the present concluding observations.

130. The Committee requests the State party to widely disseminate the present concluding observations among all levels of society, and in particular, members of the judiciary, law enforcement officials and NGOs. It also encourages the State party to engage NGOs and other members of civil society in the process of discussions at the national level prior to the submission of the second periodic report.

131. The Committee requests the State party to submit its second periodic report before 30 June 2010.

ANNEX XVII

CRC/C/Q/CHN/2

15 June 2005

Original:

ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD

Fortieth session

Pre-sessional Working Group

12-30 September 2005

IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD LIST OF ISSUES TO BE TAKEN UP IN CONNECTION WITH THE CONSIDERATION OF THE SECOND PERIODIC REPORT OF CHINA (CRC/C/83/ADD.9, PART I AND PART II)

PART I

Under this section the State party is requested to submit in written form additional and updated information, if possible, before 5 August 2005.

A. DATA AND STATISTICS, IF AVAILABLE

Unless otherwise specified, these questions apply equally to all parts of the State party, except with regard to aspects that may not be applicable such as the disaggregation of data for rural areas in the Special Administrative Region of Hong Kong, for instance.

1. Please provide disaggregated statistical data (by gender, age groups, ethnic groups, urban and rural areas) covering the years 2002, 2003 and 2004 on the number and percentage of children under 18 living in mainland China and the Special Administrative Regions of Hong Kong and Macau respectively.
2. In the light of Article 4 of the Convention, please provide disaggregated data on budget allocations and trends (in absolute figures and percentages of the national budget) for the years 2003, 2004 and 2005 regarding the implementation of the Convention evaluating also the priorities for budgetary expenditures given to the following:
 - (a) education (different types of education, i.e. pre-primary, primary and secondary education, and vocational training);
 - (b) health care (different types of health services, i.e. primary health care, vaccination programmes, adolescent health care, HIV/AIDS and other health-care services for children, including social insurance);
 - (c) programmes and services for children with disabilities;
 - (d) support programmes for families;
 - (e) support for children living below the poverty line;
 - (f) protection of children who are in need of alternative care including the support of care institutions;
 - (g) programmes and activities for the prevention of and protection from child abuse, child sexual exploitation and child labour;
 - (h) programmes and services for children belonging to minority groups, and refugees;
 - (i) programmes and services for abandoned children, including street children; and
 - (j) juvenile justice and the rehabilitation of juvenile offenders.

Please also indicate the estimated expenses of the private sector, in particular for health and education.

3. With reference to children deprived of a family environment and separated from parents, please provide disaggregated data (by gender, age groups, if possible ethnic groups, urban and rural areas) for the years 2002, 2003 and 2004 on the number of children:
 - (a) separated from their parents;
 - (b) placed in institutions;
 - (c) placed with foster families; and
 - (d) adopted domestically or through intercountry adoptions.
4. Please specify the number of children with disabilities, up to the age of 18, disaggregated by gender, age groups and, if possible, ethnic groups, urban and rural areas, covering the years 2002, 2003 and 2004:
 - (a) living with their families;
 - (b) living in institutions;
 - (c) placed with foster care;
 - (d) attending regular schools;
 - (e) attending special schools; and
 - (f) not attending schools.
5. Please provide disaggregated statistical data (by gender, age groups, if possible ethnic groups, urban and rural areas) covering the years 2002, 2003 and 2004:
 - (a) rates of infant and child mortality;
 - (b) rates of immunization;
 - (c) rates of malnutrition;
 - (d) children infected with and/or affected by HIV/AIDS;
 - (e) adolescent health, including early pregnancy and sexually transmitted infections (STIs), abortions, mental health and suicide, drug, alcohol and tobacco abuse; and
 - (f) percentage of health professionals working in the health-care services for children.
6. With reference to child abuse, please provide disaggregated data (by age, gender, if possible ethnic groups, and types of violations reported) covering the years 2002, 2003 and 2004 on the:
 - (a) number of child abuse cases reported;
 - (b) number and percentage of reports which have resulted in either a court decision or other types of follow-up; and
 - (c) number and proportion of victims that have received counselling and assistance in recovery.
7. With reference to the right to education, please provide disaggregated statistical data (by gender, age groups, urban and rural areas, ethnic minorities and immigrant children) covering the years 2002, 2003 and 2004 in percentage of the relevant age group on the:
 - (a) rates of literacy, below and over 18 years;
 - (b) rate of enrolment in pre-primary schools, primary schools and in secondary schools;
 - (c) percentage of children completing primary and secondary education;
 - (d) number and percentage of dropouts, repetition and retention;
 - (e) number of children in private schools; and
 - (f) ratio teacher per children and number of children per class.
8. Please provide disaggregated statistical data (including by gender, age and type of crime) covering the years 2002, 2003 and 2004, in particular on the number of:
 - (a) persons below 18, who have allegedly committed a crime, reported to the police;

- (b) persons below 18 who have been charged with a crime and of them those who are sentenced, and the type of punishment or sanctions related to offences including length of deprivation of liberty;
 - (c) detention facilities for persons below 18 in conflict with law and their capacity;
 - (d) persons below 18 detained in these facilities and persons below 18 detained in adult facilities;
 - (e) persons below 18 kept in pre-trial detention and the average length of their detention;
 - (f) reported cases of abuse and maltreatment of persons below 18 occurred during their arrest and detention; and
 - (g) percentage of recidivism cases.
9. With reference to special protection measures, please provide statistical data (including by gender, age, if possible ethnic group, urban and rural areas) for the years 2002, 2003 and 2004 on the number of children:
- (a) involved in sexual exploitation, including prostitution, pornography and trafficking and the number of children provided with access to recovery and other assistance;
 - (b) involved in substance abuse and the number of children who received treatment and recovery assistance;
 - (c) involved in child labour; and
 - (d) unaccompanied asylum-seeking, refugee and displaced children.

B. GENERAL MEASURES OF IMPLEMENTATION

1. The Committee would appreciate to receive detailed information on activities meant to implement recommendations contained in the Committee's previous concluding observations (CRC/C/15/Add.56 of 7 June 1996 on mainland China, and CRC/C/15/Add.63 of 30 October 1996 with respect to Hong Kong) on the initial reports of China (CRC/C/11/Add.7) and Hong Kong (CRC/C/11/Add.9), which have not yet been fully implemented.

With regard to mainland China, the Committee would like information related to the implementation of its concluding observations regarding the establishment of a national human rights institution (para. 26), the strengthening of data collection mechanisms (para. 28), the elimination of rural and urban disparities through budgetary allocations (para. 31), and ensuring Tibetan children are guaranteed full opportunities to develop knowledge about their own language and culture (para. 40). Please explain the obstacles to implementation and how the State party envisages overcoming them.

With regard to the Special Administrative Region of Hong Kong, the Committee would like to inquire whether the State party has changed, or foresees a change in its position with regard to the non-implementation of the Committee's concluding observations on the development of a comprehensive child policy (para. 20), the establishment of an independent monitoring mechanism (para. 20) and the coordination of policies on child abuse (para. 22).

- 2. Please provide information on cases, if any, where the Convention has been directly invoked in domestic courts in mainland China or the Special Administrative Regions of Hong Kong and Macau, and if so, please provide examples of such cases.
- 3. Please provide updated information on the current status of implementation of the National Children's Development Programme (2001-2010) for mainland China.
- 4. Please provide updated information on efforts to develop a National Plan of Action or similar child policy in the Special Administrative Regions of Hong Kong and Macau.

5. Please explain whether there are any plans to establish a national human rights institution with a specific mandate on children's rights in conformity with the Committee's general comment No. 2 in mainland China or either of the Special Administrative Regions. With regard to the Special Administrative Region of Hong Kong, please provide additional information on the specific mandate of the Ombudsman and the Equal Opportunities Commission as related to children and the extent to which children may file a complaint with these bodies.
6. Please provide updated information on the dissemination of the Convention and the State party report and on efforts made to provide training, awareness on the Convention and on human rights in general, to children, parents, teachers, social workers and other professionals working with and for children in all parts of the State party.
7. Please indicate the issues affecting children that the State party considers to be priorities requiring the most urgent attention with regard to the implementation of the Convention.

PART II

Please provide the Committee with copies of the text of the Convention on the Rights of the Child in all official languages or the State party as well as in other languages or dialects, when available. If possible, please submit these texts in electronic form.

PART III

Under this section, the State party is to briefly (3 pages maximum) update the information provided in its report with regard to:

- new bills or enacted legislation;
- new institutions;
- newly implemented policies;
- newly implemented programmes and projects and their scope.

PART IV

The following is a preliminary list of major issues (that does not contain issues already covered in Part I) that the Committee may take up during the dialogue with the State party. They do not require written answers. This list is not exhaustive as other issues might be raised in course of the dialogue.

Unless otherwise specified, these apply to all parts of the State party

1. Non-discrimination, in particular with respect to girls, children with disabilities, internal migrants and children living in rural areas, refugees and other migrants, and ethnic minorities.
2. The right of the child to express his or her views freely in all matters affecting him or her.
3. Freedom of religion in mainland China.
4. Violence against children both within the home, schools and other institutions.
5. Adoption and alternative care for children separated from their parents.
6. Access to health care in rural areas of the mainland.
7. Children infected and affected by HIV/AIDS.
8. Adolescent health concerns, including reproductive health, mental health, alcohol and drug abuse and youth suicide.

9. Disparities with respect to standard of living and social security.
10. Access to education, including for children living in rural areas, ethnic minorities, internal and international migrants, and refugees.
11. Child labour.
12. Sexual exploitation.
13. Trafficking and sale of children.
14. Juvenile justice.
15. The situation of children belonging to ethnic minorities and the implementation of the Ethnic Regional Autonomy Act.
