

## **Society for Community Organization (SoCO)**

### **List of issues for the Pre-sessional Working Group to take up in connection with the consideration of the third report of China: the Special Administrative Region of Hong Kong concerning the rights covered by the article 1 – 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) (March 2013)**

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#### **I. General legal framework within which the covenant is implemented**

1. Please explain why there is no domestic legislation which incorporated all the provisions of the Covenant a source of justiciable rights in Hong Kong. Please explain why there is no a single piece of domestic legislation of the Covenant in Hong Kong similar to the International Covenant on Civil and Political Rights (ICCPR) which is incorporated domestically by the Hong Kong Bill of Rights Ordinance in early 1990s? How the rights as stated in the Covenant are legally enforceable as enshrined in Article 39 of the Basic Law? Is it the policy of the SAR Government to incorporate the Covenant into the laws of Hong Kong? If the answer is “yes” please provide a detailed proposal to explain how the Government will bring this into practice. If the answer is “no”, please state the justification.
2. Please provide information on the extent to which the public at large is aware that the Covenant may be invoked before the courts of the Hong Kong Special Administrative Region. Please cite cases in the past 10 years when the Covenant has actually been invoked before the courts.
3. Please explain the Government’s reasons for maintaining the reservations to certain articles of the Covenant, including Article 6 (related to employment restrictions) and Article 8(1) (related to form or join national federations and confederations), and provide the time-frame for the HKSAR to review and withdraw these reservations.
4. Please state and explain whether the HKSAR will sign and ratify the optional protocol of the Covenant related to individual complaint so that the individual of the HKSAR can make use of the international human rights protection mechanism when their rights are being infringed.
5. Please explain why the Hong Kong SAR Government refuses to establish a human rights commission? How can the HKSAR government fulfil its obligations enshrined in the ICESCR and other international human rights treaties effectively without such an independent human rights monitoring body?
6. Please describe the measures taken by HKSAR to safeguard the independence of the Equal Opportunities Commission (EOC) and provide information on any interventions, if any, made by private or public actors on EOC’s operations. As one of the human right monitoring mechanisms in Hong Kong, please explain how the present appointment and composition of the EOC can comply with the Paris Principles and the Committee’s general comment No. 10.
7. Please indicate what change in circumstances would indicate to HKSAR that there is a need for a national human rights institution based on the Paris Principles and the Committee’s general

comment No. 10.

8. According to the present legal aid policy, the upper financial eligibility limit, in meritorious cases where a breach of the Hong Kong Bill of Rights Ordinance or an in-consistency with the International Covenant on Civil and Political Rights (ICCPR) as applied to Hong Kong, may be waived by the Director of Legal Aid. Please indicate whether the government will introduce the same waiver scheme for cases related to the ICESCR and the reasons for such a position.

## **II. Issues relating to the general provisions of the covenant (Article 1 to 15)**

### **Articles 2 & 3: Non-discrimination and equal rights of men and women**

9. Please discuss and explain if the Government decides to accept and implement the proposal of introducing single equality act for combating all forms of discrimination in Hong Kong.
10. Please explain the reasons for excluding immigrants from the Mainland China, as a class, from the Race discrimination Ordinance and the remedy provided there under, when the problem of discrimination against immigrants from the Mainland China is serious.
11. Please explain the justification for the failure to have a law prohibiting discrimination against a person on the basis of age or sexual orientation. Please provide detailed information, including a timetable, on the progress of such legislation. Please indicate the difficulties and obstacles that need to be addressed with respect to discrimination based on age and sexual orientation.
12. Please provide updated information on the amendments of the Sex Discrimination Ordinance, Family Status Discrimination Ordinance, Disability Discrimination Ordinance as proposed by the Equal Opportunities Commission and, in particular, the extent to which HKSAR has accepted these proposed amendments.

### **Article 6: Right to work**

13. Please describe the measures undertaken to address the problem of unemployment among middle-aged unskilled labor. Are there specific legal measures to prevent and combat age discrimination?

### **Article 7: The right to just and favorable conditions of work**

14. Given the new introduced statutory minimum wage in the labor market, please explain if the Government decides to shorten the review exercise from every 2 years to 1 year to ensure the rate of the minimum wage will be not lagged behind the inflation rate.
15. In light of the increasing working hours in the work force, please explain why there is no law to regulate standard working hours and rest breaks. Please explain why a significant number of workers are deprived of the rights to rest days. Please clarify further how HKSAR intends to

protect and fulfill the rights under article 7 of the Covenant in the absence of legislation regarding, inter alia, maximum working hours, statutory overtime pay and rest days.

16. Please explain why there are no legislative provisions to protect workers from unfair dismissal.
17. In order to qualify for employment protections, the Employment Ordinance requires that an employee be employed for at least 18 hours a week for a continuous period of 4 weeks (“4 -18” threshold). What measures have the government taken to counter the increasing exploitation of the Ordinance by employers with terms of employment expressly restricted to 17.5 hours of work or even fewer in every fourth week -- a restriction effectively excluding a large number of casual workers, again who are predominantly women, from the protection of the Ordinance.
18. Given the wide disparity between male and female workers both in terms of income level and occupational types in HKSAR, what measures have been taken to address such disparities, particularly in terms of fair wages and equal pay for work of equal value?
19. Please explain why there is no legislation to protect prisoners against work injuries in prison. What will the government do to ensure that prisoners who work enjoy equal protection with free workers?

#### **Article 8: The right to free trade union**

20. Please explain why most recommendations of the ILO Committee on Freedom of Association made in the conclusions of Case No. 1942 and Case No. 2186 have not been implemented by the SAR Government.

#### **Article 9: The right to social security**

21. What measures will the Government adopt to ensure that the 230,000 women domestic workers, now excluded from the Mandatory Provident Fund scheme, will be able to enjoy, on their retirement, economic provisions of a comparable level with those other employers who are covered by the Mandatory Provident Fund scheme?
22. Please explain if the SAR Government has the plan and timetable for introduction of universal retirement protection scheme for all walks of life in the view of the ageing population and widespread demand from the civil society.
23. Please outline the measures, if there are any, by which the disabled, or unpaid workers like homemakers and the non-working class, are protected by social security when they become senior citizens, given the fact that they are excluded from the Mandatory Provident Fund scheme.
24. Please outline the timeframe and the deadline for establishing an official poverty line. Please state if there is a plan to eliminate poverty after the official poverty line is established. Please provide data and a community profile, including sex, age and ethnicity, of people who are considered “poor” by the SAR Government. Please explain if the SAR Government conducted a comprehensive plan to combat poverty and to narrow the drastic disparity in incomes and wealth

among its people.

25. Given that there is an internal requirement from the Social Welfare Department that the CSSA recipient of the new immigrants woman, who are the significant carer of the child, has to work with monthly income of not less than HKD \$1,775 (USD 228) regardless the age of the child and the health condition of the father of the child, please explain how the child will not be adversely affected or left to be alone at home and lack of adequate care and support by the parent.
26. Given the amount of CSSA for children was deducted in 1999 and 2003 by the Government a number of special grants, such as glasses for pupils, rent deposit and removal allowance as well as telephone fee were also been deducted. Please explain if the Government decides to resume those items in order to strengthen the support to the welfare recipients.
27. Please explain the reasons for the introduction of the 7-year residency rule as one of the application criteria for the CSSA and discuss its impacts, particularly on the new arrivals, ethnic minorities, senior citizens and their families. Please state if the Government decides to abolish the residency rule to realize the welfare rights of an individual in need.
28. Please discuss and explain if a regular review on the minimum standard of living would be conducted in view of the scope and amount of the Comprehensive Social Security Assistance.
29. Please explain if the Government has any measures and new policies to assist the welfare recipients of the CSSA who are living at private rental housing as over half number of the population whose monthly rent exceeded the maximum rate of rent allowance adjustment mechanism to ensure all the CSSA recipients living at private rental housing can afford the basic rent rate. Please provide the justification for not introducing policy reform even if the problems have existed for over 10 years.
30. Please discuss whether there is any further assistance or subsidies provided for children living in poverty so as to realize the social and studying life of what they deserved, including acquiring leisure books, learning an instrument or taking part in extra-curricular activities.

#### **Article 10: Family and children**

31. What has the SAR Government done to eliminate the number of split families in Hong Kong?
32. In view of the situation that for single-parent families, usually in which the mother from mainland China is a widow or abandoned by the Hong Kong father, depriving them from getting a One-way Entry Permit to Hong Kong when their children are born or are already allowed to stay in Hong Kong, please explain how the Hong Kong Government have apportioned the left quota for reunification of couples or widow or single mothers to ensure their children living in Hong Kong can receive adequate care and development.
33. Please provide information on the number of children having their right of abode in Hong Kong recognized as a result of the Chong Fung-yuen's case (i.e. those who are Chinese citizens born in Hong Kong to Mainland parents, neither of whom are Hong Kong residents), who reside in Hong Kong with no parents in Hong Kong to take care of them and have no valid "hukou" (household

registration) in Mainland China? Are there any mechanisms for these young Hong Kong permanent residents to reunite with their parents without compromising the best interests of the children? What measures have been adopted to ensure the well being of these children in the absence of their parents?

34. Please provide figures on the number of CSSA recipients who have been able to sponsor their family's immigration to Hong Kong on dependent visas. Are families who are poor being deprived of the opportunities to family visits or re-unions?
35. Please provide figures relating to asylum seekers and torture claimants arriving in Hong Kong in each year over the past 5 years. Please describe the immigration procedures relating to asylum seekers and torture claimants. Please describe the kind of support and assistance the HKSAR Government provided to these families. Please state when the Refugee Convention (in force on the mainland) may be extended to the Hong Kong SAR.
36. Please provide a definition of family and domestic violence. What has the HKSAR Government done to protect women and children from domestic violence? Please provide information on existing legislation to protect women and children from psychological and sexual abuses as well as harassment by separated or divorced spouses. What is the plan and timetable for the HKSAR Government to review its existing laws and policy to help eliminate the problem of domestic violence? Please provide information on the existing governmental bodies that have the resources and power to address the problems of domestic violence and how such bodies plan to tackle the problem.
37. Please explain whether the government plans to increase its assistance-in-kind to asylum seekers, refugees and torture claimants, given the fact that the current assistance does not meet the basic needs of this vulnerable group.

#### **Article 11: The right to an adequate standard living**

38. Please provide information on the issues critical to the formulation of urban development related to the Hong Kong 2030 study, and how HKSAR intends to effectively address these issues.
39. Please provide up-to-date statistics on the number of inadequately housed persons in HKSAR. The Committee should ask the SAR Government whether it has taken any steps to help improve the living conditions of those living as squatters, in interim housing, sub-divided units, partitioned rooms, cubicles, roof-top huts, cockloft, as well as non-self-contained housing.
40. In the view of the increase of waiting time for public rental housing and the increasing number of applications for public rental housing, please explain and discuss if the Government will introduce rent subsidy to financially support those applicants who are eligible but still waiting for public housing.
41. Please explain how the Government will assist the tenants of low-income singletons and families to afford the high rent at private market in view of the supply shortage of public rental housing. Please state and explain if rent control and legislation of tenancy rights will be introduced in order

to strengthen the protection for tenants at private rental flat.

42. In view of the widespread criticism on the points system for the application of public rental housing for non-elderly singletons, please state and explain if the Government decides to abolish or improve the system and increase the housing supply for 1-person household to shorten the waiting time for public rental housing.
43. Please explain if the Government introduces the secondary safety net for the low-income individuals and families, who are not eligible for the primary safety net (i.e. Comprehensive Social Security Assistance), in order to support those poor population be alleviated from poverty.
44. Please explain why the government has no plans to set up a prison telephone system for prisoners to call their families in order to enhance rehabilitation.

### **Article 12: The right to physical and mental health**

45. Please provide detailed information on the protection against discrimination of people with HIV/AIDS, homosexual men and sex workers, particularly with regard to their enjoyment of health care, as well as their access to HIV/AIDS prevention services.
46. Please explain the adverse impact of the medical charges schemes, the self-purchase drugs scheme and other spending cuts on the patients of different ages, especially the senior citizens, in the public hospitals or clinics. Please indicate whether there are measures to assist them. Are these measures adequate to address the problem of high cost healthcare effects on the indigent?
47. Does the HKSARG decide to formulate a mental health policy in order to strengthen the integrate training and rehabilitation plan for the people with mental illness?
48. At present, there are over 5,000 people with mental illness living at inadequate housing like cagehome, cubicles, small suites, etc.,. How does the Government tackle the issue and if any policy to improve their living conditions?
49. In view of the inadequacy of community support and residential care services, does the Government have any plan to assist the people with mental illness to live independently and integrate into the community? If yes, what is the timetable for the implementation? If no, please explain why.
50. Does the Government have any positive measures of employment policy to encourage the employer to employ the persons with disability, such as quota systems in Governmental department or public bodies, or tax exemption for company who employee the disabled persons? If yes, what is the timetable for the implementation? If no, please explain why.
51. How does the Government assist the carer of persons with disability to look after the disabled persons in the community? Will the Government decide to provide any financial assistance to the carer living in poverty? If yes, what is the timetable for the implementation? If no, please explain why.
52. Please clarify further why HKSAR does not introduce the Mental Health Policy as recommended by the Equal Opportunities Commission and civil society, in the light of the fragmented mental

health-care policies currently in place.

53. In view of the long waiting time for the institutional care (including nursing home as well as care and attention home) and over thousands of the elderly applicants passed away while being on the waiting list, how does the Government solve the problem and realize the rights of adequate health care for the disabled elderly persons?
54. It is commonly known that a significant number of elderly persons at institutions were abused and received inappropriate treatment, how does the Government ensure the quality of the service and avoid the re-occurrence of elderly abuse.
55. As elderly abuse becomes more serious among the institution and the community, will the Government introduce specific legislation to prohibit different forms of elderly abuse? If yes, what is the implementation plan? If not, please explain why.
56. How does the Government assist the carer of elderly with disability to look after the elderly persons in the community? Will the Government decide to provide any financial assistance to the carer living in poverty? If yes, what is the timetable for the implementation? If no, please explain why.
57. In view of the long waiting time for the psychiatric service and the related allied health professional of the children with disability, how the Government tackle the problem?
58. In the absence of the centralized health database for the children in Hong Kong, how can the Government proactively monitor the health status of the children and formulate appropriate services?
59. The poor population, especially the ill children living in poverty, always complained about the long waiting time at the general out-patient clinic and the accident and emergency service at public health service causing the delayed and deteriorated medical treatment. How does the Government tackle the problem, for example, increase the government expenditure on health and medical service, or setup a child hospital in Hong Kong? If yes, what is the timetable for the implementation? If no, please explain why.
60. Many elderly with chronic illness complained that the telephone appointment system for the general out-patient clinic is complicated and the quotas are inadequate, how does the Government solve the problem?
61. The current health assessment for the students in Hong Kong does not cover the mental health and intelligence quotient aspects. Does the Government have planning to widen the scope of health assessment for better health care prevention?
62. The existing student dental healthcare scheme does not cover students of pre-school and secondary school level. Does the Government have any planning to extend the scheme for better dental care?
63. The self-finance drug formulary scheme does not cover all effective drugs for patients with chronic illness. How does the Government alleviate the financial burden of the chronically ill patients?
64. The application procedures for the medical fee waiver mechanism at public health service are too

complicated which hindered the poor chronically ill to apply the waiver. Does the Government decide to simplify the application procedures? If yes, what is the timetable for the implementation? If no, please explain why.

65. This is a growing trend that the waiting time for first consultation and next appointment at specialist clinic at public hospitals become longer and the quality of service is decreasing. Does the Government have any effective measures to shorten the waiting time and improve the service quality in order to realize the health rights of the patients? If yes, what is the timetable for the implementation? If no, please explain why.
66. The current public expenditure of public health and medical service does not increase in accordance to the need of the society, which leads to the deterioration of public health service. Does the Government have any plan to change the present budget allocation on public health service? If yes, what is the timetable for the implementation? If no, please explain why.

### **Articles 13 & 14: The right to education**

67. Please explain if the Government has timetable and the content of 15-year free education by extending the free education to pre-school education that the amount and the scope of the student financial assistance should be reviewed in order to ensure all learning related expenses can be covered by the financial assistance.
68. Given the findings from surveys that the children living in poverty have to afford a lot of learning expenses under the new school curriculum, please explain if the Hong Kong SAR Government decide to review the scope and amount of and amount and the scope of the student financial assistance for primary and secondary school education to ensure the equal learning opportunities of the students living in poverty.
69. Given the research finding of the lower rate of students from poor families are receiving tertiary education, please explain if the Government can ensure the students from poor families having equal opportunities for tertiary education.
70. In view of the remaining low percentage (around 18%) of subsidized university degrees, please explain if the Hong Kong SAR Government would increase the amount of subsidized university degree course to ensure the students whose academic performance qualifies to proceed to tertiary education with appropriate financial support.
71. Is it the Government's policy to ensure that all children have access to basic education, irrespective of their legal status? How many, by year, children, asylum seekers, right of abode claimers or illegal immigrants, new arrivals from other parts of China, and new arrivals from other countries respectively, have been deprived of school education for a period longer than 3 months from the authorities' first knowledge of their presence in Hong Kong in the past 5 years?
72. Please describe support mechanisms that are in place, if any, to assist ethnic minority students in schools to cope with subjects that are taught using Chinese as the medium of instruction. What monitoring mechanisms are in place, if any?



73. Please provide disaggregated data over the past five years on the ratio of applications to admissions at tertiary-level institutions by household income level of the students in HKSAR.
74. How will the increase in fees or growing number of “direct subsidy scheme schools” affect the choice of schools, especially the high quality ones, for economically less well off families? Are there special measures to protect the more vulnerable groups? Are such measures effective?