

## CHINA

### Follow-up - State Reporting Action by Treaty Bodies

CCPR, A/61/40 vol. I (2006)

#### CHAPTER VII. FOLLOW-UP TO CONCLUDING OBSERVATIONS

234. In chapter VII of its annual report for 2003 (A/58/40, vol. I), the Committee described the framework that it has set out for providing for more effective follow-up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report (A/60/40, vol. I), an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2006.

235. Over the period covered by the present annual report, Mr. Rafael Rivas Posada continued to act as the Committee's Special Rapporteur for follow-up to concluding observations. At the Committee's eighty-fifth, eighty-sixth and eighty-seventh sessions, he presented progress reports to the Committee on intersessional developments and made recommendations which prompted the Committee to take appropriate decisions on a State-by-State basis.

236. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table. Over the reporting period, since 1 August 2005, 14 States parties (Albania, Belgium, Benin, Colombia, El Salvador, Kenya, Mauritius, Philippines, Poland, Serbia and Montenegro, Sri Lanka, Tajikistan, Togo and Uganda) have submitted information to the Committee under the follow-up procedure. Since the follow-up procedure was instituted in March 2001, only 11 States parties (Equatorial Guinea, Greece, Iceland, Israel, Mali, Moldova, Namibia, Suriname, the Gambia, Uzbekistan and Venezuela) have failed to supply follow-up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

237. The table below details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow-up responses provided to it, decided to take no further action prior to the period covered by this report.

State party	Date information due	Date reply received	Further action
<p>...</p> <p><i>Eighty-sixth session (March 2006)</i></p> <p>...</p>			
<p>Hong Kong Special Administrative Region (China)</p> <p>Second periodic report examined</p> <p>...</p>	<p>1 April 2007</p> <p>Paras. 9, 13, 15 and 18</p>		

## CCPR, A/62/40 vol. I (2007)

### CHAPTER VII. FOLLOW-UP ON CONCLUDING OBSERVATIONS

220. In chapter VII of its annual report for 2003 (A/58/40, vol. I), the Committee described the framework that it has set out for providing for more effective follow-up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report (A/61/40, vol. I), an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2007.

221. Over the period covered by the present annual report, Mr. Rafael Rivas-Posada continued to act as the Committee's Special Rapporteur for follow-up to concluding observations. At the Committee's eighty-fifth, eighty-sixth and eighty-seventh sessions, he presented progress reports to the Committee on intersessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State. In view of Mr. Rivas-Posada's election to the Chair of the Committee, Sir Nigel Rodley was appointed the new Special Rapporteur for follow-up on concluding observations at the Committee's ninetieth session.

222. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table.<sup>1</sup> Over the reporting period, since 1 August 2006, 12 States parties (Albania, Canada, Greece, Iceland, Israel, Italy, Slovenia, Syrian Arab Republic, Thailand, Uganda, Uzbekistan and Venezuela) have submitted information to the Committee under the follow-up procedure. Since the follow-up procedure was instituted in March 2001, only 12 States parties (Brazil, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea, Mali, Moldova, Namibia, Surinam, Paraguay, the Gambia, Surinam and Yemen) and UNMIK have failed to supply follow-up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

223. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow-up responses provided to it, decided before 1 August 2006 to take no further action prior to the period covered by this report.

...

**Eighty-sixth session (March 2006)**

...

**State party: Hong Kong (China)**

**Report considered:** Second periodic (due since 2003), submitted on 14 January 2005.

**Information requested:**

Para. 9: Whether the investigation of complaints against the police is carried out by an independent body whose decisions are binding on the authorities (art. 2).

Para. 13: Vigorous measures to prevent and prosecute harassment of media personnel; whether the media can operate independently and free from government intervention (art. 19).

Para. 15: Whether practice regarding the right of abode takes fully into consideration obligations regarding family rights (arts. 23 and 24).

Para. 18: Action to enable the Legislative Council to be elected by universal and equal suffrage and ensure that all interpretations of the Basic Law are in compliance with the Covenant (arts. 2, 25 and 26).

**Date information due:** 1 April 2007

**Date information received: NONE RECEIVED**

**Action taken:**

29 June 2007 A reminder was sent to the State party.

**Recommended action:** Consultations should be scheduled for the ninety-first session.

**Next report due:** 2010

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Note

1/ The table format was altered at the ninetieth session.

**CCPR, CCPR/C/SR.2564/Add.1 (2008)**

HUMAN RIGHTS COMMITTEE

Ninety-third session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)\* OF THE 2564th MEETING

Held at the Palais Wilson, Geneva,

on Wednesday, 23 July 2008 at 11.25 a.m.

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FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO  
VIEWS UNDER THE OPTIONAL PROTOCOL

...

Report of the Special Rapporteur for follow-up on concluding observations (CCPR/C/93/R.1)

1. Sir Nigel RODLEY, Special Rapporteur for follow-up on concluding observations, introduced his report contained in document CCPR/C/93/R.1.

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7. The following information should be inserted under "Action taken" in the case of Hong Kong (China): "During the ninety-third session the Special Rapporteur met with a representative of the State party, who stated that the issues identified by the Special Rapporteur as requiring further clarification would be transmitted to the Government and to the Hong Kong Special Autonomous Region authorities. On 18 July an aide-mémoire had been sent to the State party summarizing the issues identified by the Special Rapporteur as requiring further clarification." He recommended that the situation should be reviewed at the ninety-fifth session.

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39. The draft report of the Special Rapporteur for follow-up on concluding observations was adopted.

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**CHAPTER VII. FOLLOW-UP TO CONCLUDING OBSERVATIONS**

194. In chapter VII of its annual report for 2003,<sup>20</sup> the Committee described the framework that it has set out for providing for more effective follow up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report (A/62/40, vol. I), an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2008.

195. Over the period covered by the present annual report, Sir Nigel Rodley acted as the Committee's Special Rapporteur for follow-up on concluding observations. At the Committee's ninety-first, ninety-second and ninety third sessions, he presented progress reports to the Committee on inter-sessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State.

196. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table.<sup>21</sup> Over the reporting period, since 1 August 2007, 11 States parties (Bosnia and Herzegovina, Brazil, Hong Kong Special Administrative Region (China), Mali, Paraguay, Republic of Korea, Sri Lanka, Suriname, Togo, United States of America and Ukraine), as well as the United Nations Interim Administration Mission in Kosovo (UNMIK), have submitted information to the Committee under the follow up procedure. Since the follow up procedure was instituted in March 2001, 10 States parties (Barbados, Central African Republic, Chile, Democratic Republic of the Congo, Equatorial Guinea, Gambia, Honduras, Madagascar, Namibia and Yemen) have failed to supply follow up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

197. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow up responses provided to it, decided before 1 August 2007 to take no further action prior to the period covered by this report.

198. The Committee emphasizes that certain States parties have failed to cooperate with it in the performance of its functions under Part IV of the Covenant, thereby violating their obligations (Gambia, Equatorial Guinea).

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20/ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40 (A/58/40), vol. I.*

21/ The table format was altered at the ninetieth session.

...

**Eighty-sixth session (March 2006)**

...

<b>State party: Hong Kong (China)</b>
<b>Report considered:</b> Second periodic (due since 2003), submitted on 14 January 2005.
<b>Information requested:</b>  Para. 9: Ensure that complaints against the police are investigated by an independent body whose decisions are binding on the authorities (art. 2).  Para. 13: Measures to prevent and prosecute harassment of media personnel; ensure that the media can operate independently and free from government intervention (art. 19).  Para. 15: Ensure that policies and practice regarding the right of abode fully take into consideration the right of families and children to protection (arts. 23 and 24).  Para. 18: Ensure that the Legislative Council is elected by universal and equal suffrage; ensure that all interpretations of the Basic Law, including on electoral and public affairs issues, are in compliance with the Covenant (arts. 2, 25 and 26).
<b>Date information due:</b> 1 April 2007
Date information received:  <u>23 July 2007</u> Partial reply (responses incomplete with regard to paragraphs 9, 13, 15 and 18).
<b>Action taken:</b>  <u>29 June 2007</u> A reminder was sent. <u>11 June 2008</u> The Special Rapporteur requested a meeting with a representative of China.

16 July 2008 During the ninety-third session, the Special Rapporteur met with a representative of China, who stated that the issues identified by the Special Rapporteur as requiring further clarification will be transmitted to the Government and to the HKSAR authorities.

18 July 2008 An aide m émoire was sent to the Chinese Permanent Mission summarizing the issues identified by the Special Rapporteur as requiring further clarification.

**Recommended action: The situation should be reviewed at the ninety-fifth session.**

**Next report due: 2010**

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## VII. FOLLOW UP TO CONCLUDING OBSERVATIONS

237. In chapter VII of its annual report for 2003,<sup>20</sup> the Committee described the framework that it has set out for providing for more effective follow up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report (A/63/40, vol. I), an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2009.

238. Over the period covered by the present annual report, Sir Nigel Rodley acted as the Committee's Special Rapporteur for follow-up on concluding observations. At the Committee's ninety-fourth, ninety-fifth and ninety-sixth sessions, he presented progress reports to the Committee on inter-sessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State.

239. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table.<sup>21</sup> Over the reporting period, since 1 August 2008, 16 States parties (Austria, Barbados, Bosnia and Herzegovina, Chile, Costa Rica, Czech Republic, France, Georgia, Honduras, Hong Kong Special Administrative Region (China), Ireland, Libyan Arab Jamahiriya, Madagascar, Tunisia, Ukraine and United States of America), as well as the United Nations Interim Administration Mission in Kosovo (UNMIK), have submitted information to the Committee under the follow up procedure. Since the follow up procedure was instituted in March 2001, 11 States parties (Botswana, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea, Gambia, Namibia, Panama, Sudan, the former Yugoslav Republic of Macedonia, Yemen and Zambia) have failed to supply follow up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.<sup>22</sup>

240. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow up responses provided to it, decided before 1 August 2008 to take no further action prior to the period covered by this report.

241. The Committee emphasizes that certain States parties have failed to cooperate with it in the performance of its functions under Part IV of the Covenant, thereby violating their obligations (Gambia, Equatorial Guinea).

...

**Eighty-sixth session (March 2006)**

...

**State party: Hong Kong (China)**

**Report considered:** Second periodic (due since 2003), submitted on 14 January 2005.

**Information requested:**

Para. 9: Ensure that complaints against the police are investigated by an independent body whose decisions are binding on the authorities (art. 2).

Para. 13: Measures to prevent and prosecute harassment of media personnel; ensure that the media can operate independently and free from government intervention (art. 19).

Para. 15: Ensure that policies and practice regarding the right of abode fully take into consideration the right of families and children to protection (arts. 23 and 24).

Para. 18: Ensure that the Legislative Council is elected by universal and equal suffrage; ensure that all interpretations of the Basic Law, including on electoral and public affairs issues, are in compliance with the Covenant (arts. 2, 25 and 26).

**Date information due:** 1 April 2007

**Date information received:**

23 July 2007 Partial reply (responses incomplete with regard to paragraphs 9, 13, 15 and 18).

8 April 2009 Partial reply received (para. 9: cooperative but information incomplete/ recommendations not implemented; para. 13: cooperative but information incomplete; paras. 15 and 18: recommendations not implemented).

**Action taken:**

29 June 2007 A reminder was sent.

11 June 2008 The Special Rapporteur requested a meeting with a representative of China.

16 July 2008 During the ninety-third session, the Special Rapporteur met with a representative of China, who stated that the issues identified by the Special Rapporteur as requiring further clarification will be transmitted to the Government and to the HKSAR authorities.

18 July 2008 An aide m émoire was sent to the Chinese Permanent Mission summarizing the issues identified by the Special Rapporteur as requiring further clarification.

9 December 2008 A reminder was sent.

**Recommended action: A letter should be sent to request additional information and to state that the follow-up procedure with respect to certain issues is considered completed due to non-implementation and to ask the State party to report on these issues in its next periodic report.**

**Next report due: 2010**

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20/ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40 (A/58/40), vol. I.*

21/ The table format was altered at the ninetieth session.

22/ As the next periodic report has become due with respect to the following States parties, the Committee has terminated the follow-up procedure despite deficient information or the absence of a follow-up report: Mali, Sri Lanka, Suriname, Namibia, Paraguay, and the Democratic Republic of the Congo.

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## Chapter VII: Follow-up to Concluding Observations

203. In chapter VII of its annual report for 2003,<sup>16</sup> the Committee described the framework that it has set out for providing for more effective follow-up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report,<sup>17</sup> an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2010.

204. Over the period covered by the present annual report, Mr. Abdelfattah Amor acted as the Committee's Special Rapporteur for follow-up on concluding observations. At the Committee's ninety-seventh, ninety-eighth and ninety-ninth sessions, he presented progress reports to the Committee on intersessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State.

205. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table.<sup>18</sup> Over the reporting period, since 1 August 2009, 17 States parties (Bosnia and Herzegovina, Chile, Costa Rica, Czech Republic, Denmark, France, Georgia, Japan, Monaco, Spain, the former Yugoslav Republic of Macedonia, Sudan, Sweden, Tunisia, Ukraine, United Kingdom of Great Britain and Northern Ireland and Zambia), as well as the United Nations Interim Administration Mission in Kosovo (UNMIK), have submitted information to the Committee under the follow-up procedure. Since the follow-up procedure was instituted in March 2001, 12 States parties (Australia, Botswana, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea, Gambia, Namibia, Nicaragua, Panama, Rwanda, San Marino and Yemen) have failed to supply follow-up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the preparation of the next periodic report by the State party.<sup>19</sup>

206. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, the report does not cover those States parties with respect to which the Committee has completed its follow-up activities, including all States parties which were considered from the seventy-first session (March 2001) to the eighty-fifth session (October 2005).

207. The Committee emphasizes that certain States parties have failed to cooperate with it in

the performance of its functions under Part IV of the Covenant, thereby violating their obligations (Equatorial Guinea, Gambia).

...

### **Eighty-sixth session (March 2006)**

#### **State party: Hong Kong (China)**

**Report considered:** Second periodic (due since 2003), submitted on 14 January 2005.

#### **Information requested:**

Para. 9: Ensure that complaints against the police are investigated by an independent body whose decisions are binding on the authorities (art. 2).

Para. 13: Measures to prevent and prosecute harassment of media personnel; ensure that the media can operate independently and free from government intervention (art. 19).

Para. 15: Ensure that policies and practice regarding the right of abode fully take into consideration the right of families and children to protection (arts. 23 and 24).

Para. 18: Ensure that the Legislative Council is elected by universal and equal suffrage; ensure that all interpretations of the Basic Law, including on electoral and public affairs issues, are in compliance with the Covenant (arts. 2, 25 and 26).

**Date information due:** 1 April 2007

#### **Date information received:**

*23 July 2007* Partial reply (responses incomplete with regard to paragraphs 9, 13, 15 and 18).

*8 April 2009* Partial reply received (para. 9: cooperative but information incomplete/recommendations not implemented; para. 13: cooperative but information incomplete; paras. 15 and 18: recommendations not implemented).

#### **Action taken:**

*29 June 2007* A reminder was sent.

*11 June 2008* The Special Rapporteur requested a meeting with a representative of China.

*16 July 2008* During the ninety-third session, the Special Rapporteur met with a representative

of China, who stated that the issues identified by the Special Rapporteur as requiring further clarification will be transmitted to the Government and to the Hong Kong SAR authorities.

*18 July 2008* An aide-memoire was sent to the Permanent Mission of China summarizing the issues identified by the Special Rapporteur as requiring further clarification.

*9 December 2008* A reminder was sent.

*30 July 2009 (sent late)* A letter was sent to request additional information and to state that the follow-up procedure with respect to certain issues is considered completed due to non-implementation and to ask the State party to report on these issues in its next periodic report.

**Recommended action: No further action recommended.**

**Next report due:** 1 April 2010

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<sup>16</sup> *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40*, vol. I (A/58/40 (vol. I)).

<sup>17</sup> *Ibid.*, *Sixty-Fourth Session, Supplement No. 40*, vol. I (A/64/40 (vol. I)).

<sup>18</sup> The table format was altered at the ninetieth session.

<sup>19</sup> As the next periodic report has become due with respect to the following States parties, the Committee has terminated the follow-up procedure despite deficient information or the absence of a follow-up report: Austria, Brazil, Central African Republic, Democratic Republic of the Congo, Hong Kong (China), Mali, Namibia, Paraguay, Republic of Korea, Sri Lanka, Suriname and Yemen.

**Follow-up - State Reporting  
Action by State Party**

**CCPR, CCPR/C/HKG/2005/2/Add.1 (2007)**

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

[21 August 2007]

**Introduction**

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

2. The relevant recommendations were –

THAT the HKSAR should –

(a) ensure that the investigation of complaints against the police is carried out by an independent body, the decisions of which are binding on relevant authorities (*paragraph 9*);

(b) take vigorous measures to prevent and prosecute harassment of media personnel, and ensure that the media can operate independently and free from government intervention (*paragraph 13*);

(c) ensure that its policies and practices regarding the right of abode fully take into consideration its obligations regarding the right of families and children to protection enshrined in articles 23 and 24 of the Covenant (*paragraph 15*);

AND THAT

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

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

**Investigation of complaints against the Police**

4. At present, the Complaints Against Police Office (CAPO), which is responsible for investigating into complaints against the Police, already operates independently of all operational

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

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

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

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

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

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

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



## **Right of abode**

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

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

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

13. Eligible Mainland residents who wish to settle in Hong Kong must apply under the One-way Permit Scheme for exit permits from the Mainland authorities in accordance with the relevant national laws and administrative regulations. To ensure orderly entry at a rate that our socio-economic infrastructure can practicably absorb, the Scheme is subject to a daily quota of 150, or 54,750 a year. Applications are assessed by Mainland authorities in accordance with a points-based system. From July 1997 to February 2007, over 500,000 Mainland residents have settled in Hong Kong under the Scheme. Mainland residents may also apply for Two-way Permits from the relevant Mainland authorities to visit their family members in Hong Kong. In 2006, 1,740,120 Two-way permit holders entered Hong Kong on exit endorsement for visiting relatives.

## **Universal suffrage for election to the Legislative Council**

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

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

16. Regarding NPCSC's interpretation of the Basic Law, the HKSAR Government's consistent position is that, the power of interpretation of the Basic Law, which is enshrined in the

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

ANNEXES:

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

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

**CCPR/C/HKG/CO/2/Add.1(2009) [French]**

**Renseignements supplémentaires reçus de la RSA de Hong Kong sur la mise en œuvre des observations finales du Comité des droits de l'homme (CCPR/C/HKG/CO/2)**

[23 avril 2009]

**INTRODUCTION**

1. Après avoir examiné le deuxième rapport périodique de la Région administrative spéciale (RAS) de Hong Kong (CCPR/C/HKG/2005/2), les 20 et 21 mars 2006 (CCPR/C/SR.2350 et 2351) et les renseignements supplémentaires envoyés par le Gouvernement de Hong Kong le 23 juillet 2007 (CCPR/C/HKG/2005/2/Add.1), le Comité des droits de l'homme avait demandé un complément d'information sur les questions ci-après:

- a) Le traitement des plaintes contre la police;
  - b) La liberté de la presse et l'indépendance des médias;
  - c) Le droit de séjour des habitants de la Chine continentale dans la RAS de Hong Kong;
  - d) Les interprétations de la Loi fondamentale faites par le Comité permanent de l'Assemblée nationale populaire.
2. On trouvera dans le présent rapport, classés par rubriques, les réponses de la RAS de Hong Kong aux questions posées.

**A. Traitement des plaintes contre la police**

3. En vertu du système actuel, à deux degrés, de traitement des plaintes contre la police, le Bureau des plaintes contre la police de Hong Kong est chargé d'examiner les plaintes portées par la population contre des membres de la police et de mener des enquêtes. Ce bureau agit en toute indépendance à l'égard des autres formations de la police ce qui garantit son impartialité dans le traitement des plaintes.

4. Le Conseil indépendant d'investigation des plaintes contre la police est un organe civil indépendant de contrôle chargé de surveiller et de contrôler le traitement des plaintes et les enquêtes menées par le Bureau des plaintes contre la police<sup>1</sup>. Le Conseil indépendant d'investigation est composé de représentants de tous les secteurs de la collectivité. Leur compétence, leur expérience et leur engagement à l'égard du service public permettent de garantir que toutes les plaintes contre la police sont traitées de façon approfondie, en toute équité et impartialité. Un secrétariat doté d'employés à plein temps lui fournit l'appui administratif nécessaire.

## Mécanismes correcteurs en place

5. Il existe des mécanismes correcteurs efficaces qui permettent de garantir que toutes les plaintes contre la police soient traitées de façon approfondie, en toute équité et impartialité. Le Bureau soumet régulièrement au Conseil, à des intervalles fixes, la liste des plaintes recevables et la liste des plaintes non recevables<sup>2</sup>. La deuxième liste est accompagnée d'une brève description de la teneur de chaque plainte reçue et des motifs qui justifient qu'elle soit considérée comme irrecevable. Le Conseil peut demander à la police d'expliquer pourquoi elle a classé telle plainte dans la catégorie des plaintes non recevables et peut donner son avis au sujet de la recevabilité ou de l'irrecevabilité d'une plainte. La police tiendra compte de cet avis et réexaminera la décision. Pour toutes les plaintes non recevables la police agit conformément à la procédure établie et informe le plaignant du résultat.

6. Pour les plaintes recevables, le Bureau établit un rapport d'enquête circonstancié pour chaque affaire et l'adresse au Conseil d'investigation. Avec l'aide du secrétariat, les membres du Conseil indépendant d'investigation examinent rigoureusement les rapports d'enquête. Le secrétariat passe minutieusement en revue chaque rapport et demande au Bureau les précisions nécessaires pour lever les ambiguïtés qui peuvent être constatées dans le rapport ou dans le dossier. Il peut aussi demander des précisions pour vérifier si l'enquête a été menée assez loin. Le secrétariat du Conseil transmet alors aux membres du Conseil, pour examen, le rapport d'enquête, accompagné de ses observations et de toutes précisions ou renseignements complémentaires obtenus du Bureau. Les membres peuvent demander au Bureau un complément d'information ou des éclaircissements au sujet du rapport d'enquête examiné. La Commission des plaintes pour infractions graves, qui relève du Conseil d'investigation, peut également identifier des plaintes recevables qui dénoncent des agressions ayant entraîné la mort ou des blessures graves ou qui mettent en jeu un intérêt général et les qualifier de plaintes pour infractions graves appelant un suivi étroit. Elle peut demander au Bureau de lui faire tenir tous les mois des rapports intermédiaires sur les affaires qu'elle a relevées et peut demander que certains points soient éclaircis avant que le Bureau n'achève son enquête.

7. Le Bureau des plaintes contre la police est tenu de répondre aux questions et aux observations du Conseil indépendant d'investigation. Par exemple en 2007, le Conseil a formulé 1 700 questions et suggestions<sup>3</sup>, qui ont toutes été prises en considération par le Bureau. Sur les 123 questions et observations relatives au bien-fondé de la classification des plaintes<sup>4</sup>, le Bureau a accepté 82 suggestions et a traité de façon satisfaisante les 41 autres ou y a donné suite. Il est également tenu de signaler au Conseil indépendant d'investigation toute action que la police a prise ou devra prendre comme suite aux recommandations que le Conseil lui adresse sur le traitement des plaintes ou les enquêtes menées sur les plaintes recevables ou sur toute pratique ou procédure de la police considérée comme fautive ou déficiente et qui a conduit ou pourrait conduire à des griefs dénoncés dans des plaintes. Quand les membres du Conseil d'investigation ont des doutes au sujet de l'enquête menée sur une plainte déterminée, ils peuvent inviter les plaignants, les policiers mis en cause et toute autre personne qui peut ou pourrait donner des renseignements ou apporter une quelconque aide et les entendre. Le Conseil indépendant d'investigation peut aussi demander au Bureau de lui faire parvenir les documents de référence ou les informations qui se rapportent à une plainte recevable. S'il n'est pas convaincu par le résultat d'une enquête, il peut demander au Bureau d'apporter des précisions pour lever

d'éventuels doutes, ou de rouvrir l'enquête sur une plainte. Il peut également porter l'affaire à l'attention personnelle du chef du pouvoir exécutif de la RAS de Hong Kong. Le Conseil dispose donc d'une gamme étendue de moyens pour faire en sorte que les enquêtes sur les plaintes recevables contre la police soient menées de façon approfondie et impartiale et pour veiller à ce que la police tienne effectivement compte de ses observations et recommandations.

8. Le Conseil indépendant contrôle également les enquêtes menées sur les plaintes recevables avec son système d'observateurs qui permet à des membres du Conseil ainsi qu'à des observateurs non professionnels venus de différents horizons d'effectuer des visites, annoncées ou inopinées, afin d'assister aux interrogatoires et de constater comment les preuves sont rassemblées par la police pendant les enquêtes. Les membres et les observateurs font rapport au Conseil et font savoir si l'interrogatoire et la recherche de preuves se sont déroulés de façon équitable et impartiale et s'ils ont constaté des irrégularités. Le Conseil signale toute irrégularité à la police de façon que celle-ci y remédie.

9. Pour accroître la transparence de ses travaux, les réunions du Conseil sont en partie ouvertes au public et aux médias. Il soumet en outre au Conseil législatif un rapport annuel dans lequel sont exposés ses activités de surveillance du traitement des plaintes et des enquêtes menées par la police. Le Conseil a pour habitude d'exposer en détail dans son rapport la façon dont sont traitées quelques affaires particulières, qu'il sélectionne pour illustrer ses travaux.

### **Ordonnance relative au Conseil indépendant d'investigation des plaintes contre la police**

10. L'ordonnance relative au Conseil indépendant d'investigation des plaintes contre la police a été promulguée le 12 juillet 2008; elle codifie le système en place et fait du Conseil indépendant un organe statutaire. Le texte énonce clairement les fonctions, les attributions et le fonctionnement du Conseil dans le système de plaintes contre la police et fait à la police obligation de respecter les ordres donnés par le Conseil en vertu de l'ordonnance. Le cadre statutaire accroît la transparence du système de plaintes contre la police et renforce le rôle de surveillance du Conseil indépendant.

11. En vertu de l'ordonnance le Conseil indépendant a les attributions suivantes:

- a) Il contrôle la décision de classer les plaintes contre la police en plaintes recevables et plaintes «notifiables» non recevables<sup>5</sup> et donne son avis à ce sujet;
- b) Il observe, surveille et examine le traitement des plaintes recevables et des enquêtes menées et fait des recommandations à ce sujet;
- c) Il suit les mesures que le Commissaire de police prend ou doit prendre à l'égard d'un membre de la police mis en cause dans une plainte recevable et il donne son avis sur ces mesures;
- d) Il constate toute action fautive ou toute déficience dans les pratiques ou procédures adoptées par la police et qui ont conduit ou pourraient conduire à des plaintes recevables et il fait des recommandations à ce sujet;

e) Il examine toute question ou affaire qui lui est soumise par la police conformément à l'ordonnance;

f) Il fait connaître son rôle à la population;

g) Il réalise toute action qui est raisonnablement nécessaire pour s'acquitter de ses fonctions en vertu de l'ordonnance, facilite l'exercice de ses fonctions ou a un rapport avec ses attributions.

12. L'ordonnance confère au Conseil indépendant une gamme étendue de pouvoirs qui lui permettent de s'acquitter de ses fonctions:

a) Il peut demander à la police de donner des explications pour justifier sa décision de considérer qu'une plainte est «notifiable» (non recevable);

b) Il peut demander à la police de transmettre des informations ou des documents se rapportant aux plaintes recevables et d'apporter des éclaircissements sur les faits, divergences éventuelles ou les constatations;

c) Il peut demander à la police d'enquêter ou d'enquêter de nouveau sur des plaintes recevables;

d) Il peut interroger des personnes dans le cadre de l'examen des rapports d'enquête de la police sur les plaintes recevables;

e) Il peut demander à la police d'apporter des explications concernant toute action prise ou à prendre à l'égard d'un membre de la police mis en cause dans une plainte recevable;

f) Il peut demander à la police de rassembler des statistiques sur les types de comportements des membres de la police qui ont conduit au dépôt des plaintes recevables et de les lui soumettre;

g) Il peut demander à la police de lui soumettre des rapports sur toute mesure que la police a prise ou doit prendre pour donner suite à ses recommandations;

h) Il peut demander à la police de le consulter au sujet de tout projet de disposition nouvelle ou de modification importante concernant les instructions de la police ou les manuels utilisés par la police et qui porte sur le traitement des plaintes recevables ou sur les enquêtes.

13. En vertu de l'ordonnance, la police est tenue de répondre aux demandes du Conseil indépendant et de l'aider à s'acquitter de son rôle de surveillance. Ses obligations statutaires sont les suivantes:

a) Soumettre au Conseil la liste des plaintes recevables et la liste des plaintes non recevables («notifiables»), à intervalles réguliers, en donnant un certain nombre de renseignements exigés;

b) Réexaminer la décision de considérer une plainte comme non recevable («notifiable»)

compte tenu de l'avis du Conseil à ce sujet;

c) Soumettre un rapport d'enquête sur chaque plainte recevable en donnant toutes les informations spécifiques à la plainte et en expliquant comment elle a été traitée et comment l'enquête a été menée;

d) Soumettre un rapport d'enquête intérimaire au Conseil pour chaque plainte recevable quand l'enquête n'est pas achevée dans les six mois;

e) Répondre à toute demande du Conseil en vertu de l'ordonnance, sauf circonstances particulières<sup>6</sup>.

14. Les membres et des observateurs du Conseil indépendant sont également habilités à assister à tout interrogatoire mené par la police en ce qui concerne une plainte recevable et à constater la façon dont les preuves sont rassemblées à tout moment et sans prévenir. De plus le Conseil indépendant pourra employer son propre personnel pour l'aider à s'acquitter de ses fonctions de surveillance.

15. Suite à la promulgation de l'ordonnance, le Conseil indépendant travaille à la mise en place des dispositions transitoires nécessaires pour pouvoir commencer à fonctionner en 2009 en tant qu'organe statutaire.

## **B. Liberté de la presse et indépendance des médias**

16. Le Gouvernement de la RAS de Hong Kong est fermement attaché à la protection de la liberté d'expression et de la liberté de la presse et s'efforce de préserver un environnement dans lequel une presse libre et active peut travailler en étant soumise à une réglementation minimale. La liberté d'expression et la liberté de la presse sont des droits fondamentaux dont jouit toute la population de la Région administrative spéciale. Ils sont consacrés à l'article 27 de la Loi fondamentale. L'exercice de la liberté d'expression et de la liberté de la presse est démontré par le grand nombre de quotidiens - plus de 40 - et de périodiques - 690 - qui paraissent à Hong Kong. De nombreuses agences de presse internationales ont également installé leur siège pour l'Asie et le Pacifique ou ouvert des bureaux régionaux à Hong Kong. Elles travaillent librement et commentent intensément et sans entrave, l'actualité locale et étrangère, même toutes les politiques et activités du Gouvernement sans exception.

## **Mesures prises pour prévenir et réprimer les actes d'intimidation et de harcèlement visant les professionnels des médias**

17. Comme il était souligné dans le rapport soumis en juillet 2007 (CCPR/C/HKG/2005/2/Add.1), le Gouvernement de la RAS de Hong Kong attache la plus grande importance à la protection de la sécurité et des biens de la communauté et ne tolère aucune infraction pénale, qu'elle vise un membre d'une catégorie particulière ou non. Cette position reste inchangée. Le Gouvernement est fermement attaché à la prévention des actes d'intimidation et de harcèlement dont peuvent être l'objet les professionnels des médias.

18. Pour améliorer le traitement de l'information ou des rapports sur les infractions concernant directement les médias, la police a spécialement affecté un de ses agents, avec rang de commissaire adjoint, pour étudier toute information nouvellement reçue de cette nature et donner aux policiers de l'unité concernée des instructions pour la suite; ce fonctionnaire a commencé à travailler début janvier 2008. Ainsi on peut être assuré que la police prend les mesures qui s'imposent dans toutes ces affaires, dans les meilleurs délais et de façon professionnelle. Quand des preuves suffisantes sont établies, la police fait les démarches nécessaires pour engager des poursuites.

### **Radiotélévision de Hong Kong (RTHK)**

19. La RTHK est un département du Gouvernement qui est également l'unique chaîne de diffusion financée par l'État de Hong Kong. Du point de vue éditorial elle est indépendante et a pour objectif de diffuser des émissions d'information, d'éducation et de divertissement de bonne qualité.

20. Compte tenu du changement du paysage audiovisuel, le Gouvernement a désigné en 2006 une commission indépendante composée exclusivement de professionnels extérieurs à l'État, pour étudier la politique relative au service public de l'audiovisuel. En 2007 la commission a soumis son rapport, qui contenait des recommandations sur des dispositions d'ordre institutionnel et financier et concernant les futurs programmes du service public de l'audiovisuel. Ce rapport est disponible sur l'Internet ([www.cedb.gov.hk/ctb/eng/new/pr28032007/.htm](http://www.cedb.gov.hk/ctb/eng/new/pr28032007/.htm)). Parallèlement, certains secteurs de la société ont fait part de commentaires sur des questions comme la radiotélévision communautaire et les chaînes publiques.

21. Les questions évoquées plus haut ont des conséquences importantes pour le paysage audiovisuel, social et culturel de Hong Kong et ne manqueront pas d'avoir une incidence sur l'avenir de la RTHK. C'est pourquoi le Gouvernement étudie attentivement et en détail le rapport de la commission et toutes autres questions connexes et associera largement la population et le personnel de la RTHK à toutes consultations préalables à l'élaboration de la future politique du service public de l'audiovisuel.

### **C. Droit de séjour des habitants de la Chine continentale dans la RAS de Hong Kong**

22. Le Gouvernement comprend parfaitement que les familles aspirent à être réunies. L'article 22 de la Loi fondamentale dispose que pour entrer dans la RAS de Hong Kong les habitants d'autres régions de la Chine doivent demander une autorisation. Les chinois du continent qui souhaitent s'installer à Hong Kong doivent, en vertu du système d'autorisation de voyage sans obligation de retour, demander un permis d'entrée à Hong Kong. D'après les statistiques du Gouvernement au mois de septembre 2008 plus de 560 000 Chinois du continent étaient arrivés à Hong Kong dans le cadre de ce système depuis juillet 1997.

23. Le Directeur de l'immigration peut, à sa discrétion, autoriser au cas par cas des Chinois du continent à demeurer à Hong Kong pour des raisons humanitaires ou personnelles exceptionnelles. Dans l'exercice de ce pouvoir discrétionnaire, le Directeur tient compte de toutes les circonstances, eu égard également aux dispositions des conventions internationales



relatives aux droits de l'homme qui s'appliquent à Hong Kong.

#### **D. Interprétations de la Loi fondamentale données par le Comité permanent de l'Assemblée nationale populaire**

24. Conformément à la Constitution de la République populaire de Chine et à la Loi fondamentale de la RAS de Hong Kong, le pouvoir d'interpréter la Loi fondamentale est conféré au Comité permanent de l'Assemblée nationale populaire. Depuis l'instauration de la RAS de Hong Kong, le Comité permanent n'a exercé ce pouvoir que quand il était absolument nécessaire de le faire. De plus, l'exercice de ce pouvoir n'a pas porté atteinte et ne portera jamais atteinte à l'indépendance de la justice, à la primauté du droit ou au degré élevé d'autonomie dont jouit la RAS de Hong Kong.

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<sup>1</sup> En général une plainte est jugée recevable si

- a) Elle porte sur
  - i) Le comportement d'un membre de la police en service ou dans l'exercice réel ou supposé de ses fonctions;
  - ii) Le comportement d'un membre de la police qui s'est identifié comme tel alors qu'il n'était pas en service
  - iii) Toute pratique ou procédure observée par la police;
- b) Elle n'est pas insultante ou futile et est portée de bonne foi;
- c) Elle est formulée par une personne ou au nom d'une personne directement touchée par l'action de la police;
- d) Elle n'est pas anonyme.

<sup>2</sup> Les plaintes non recevables sont celles qui visent un membre de la police qui n'est pas en service ou qui ne s'est pas identifié comme membre de la police, les plaintes déposées par quelqu'un qui n'est pas directement touché et les plaintes anonymes.

<sup>3</sup> Ces questions ou suggestions portent sur les résultats de l'enquête et visent à vérifier si l'enquête a été suffisamment approfondie, à préciser des points ambigus des rapports d'enquête ou des dossiers, à demander des précisions sur l'exercice des pouvoirs de police et sur l'observation des pratiques et procédures de la police et à proposer des améliorations aux procédures suivies.

<sup>4</sup> Par «classification» d'une plainte on entend la classification du résultat de l'enquête.

<sup>5</sup> Les plaintes «non recevables» sont appelées «notifiables» dans l'ordonnance.

<sup>6</sup> Il s'agit de circonstances dans lesquelles le Secrétaire à la sécurité certifie que donner suite à la demande du Conseil risquerait de compromettre la sécurité de Hong Kong ou de compromettre une enquête sur une infraction quelconque.