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# HONG KONG AND @HUMAN RIGHTS: FLAWS IN THE SYSTEM

## A Call for Institutional Reform to Protect Human Rights

### Introduction

#### ◆ Background of this report

In October 1993 an Amnesty International delegate visited Hong Kong to assess whether effective remedies exist for people who allege their human rights have been violated. Effective remedies are essential for implementing the International Covenant on Civil and Political Rights (ICCPR), including rights on which Amnesty International's work focuses, both before and after Hong Kong becomes a Special Administrative Region of China in July 1997. The delegate also assessed progress made in human rights promotion, education and training.

The Amnesty International representative met with and sought the views of government officials from various departments (including the Attorney General's Chambers/Legal Department, Home Affairs policy branch and Legal Aid Department), members of the partly-elected Legislative Council (commonly referred to as "Legco") from across the political spectrum, judicial authorities, the Commissioner for Administrative Complaints, representatives of the Bar Association and Law Society, legal scholars, practising lawyers, members of the business community, representatives of non-governmental organizations, people involved in human rights promotion and education, and Hong Kong members of the Preparatory Committee for the Hong Kong Special Administrative Region. All of these people were very willing to talk with the Amnesty International delegate and to answer questions; Hong Kong government officials are generally highly regarded for being personally accessible to representatives of non-governmental organizations, both local and international.

This report reflects information available to Amnesty International as of February 1994. It presents a series of recommendations, based on international human rights standards, to the governments of Hong Kong and the United Kingdom (UK).

#### ◆ Other human rights issues in Hong Kong

This report focuses on the need for new institutions, and for reform of existing institutions, in order to implement ICCPR rights in practice. It does not deal specifically with many important human rights concerns in Hong Kong which have been addressed by other organizations or individuals (or in other

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Amnesty International reports) -- however, since many of these concerns relate to infringement of ICCPR rights, implementation of these rights would be promoted by undertaking the institutional reform which this report recommends. These other concerns include: shortcomings of the Joint Declaration, Basic Law and Bill of Rights; proposals to speed up the "democratization" of the Legislative Council; discrimination (eg. against women, against the physically or mentally disabled); infringement of the rights of women; infringement of the rights of children; infringement of the rights of refugees and immigrants; restrictions on freedom of assembly and expression; restrictions on freedom of information; ill-treatment by the police; infringement of trade union rights; infringement of economic, social and cultural rights; emergency laws which provide for sweeping powers; and the need for protection against inter-citizen abuses (the Bill of Rights has been held to apply only to violations by government agents). Appendix 1 provides a list of recent reports covering many of these issues, as well as others.

In recent years Amnesty International's concerns in Hong Kong have centred on certain deficiencies in safeguards for human rights in the Basic Law and the Bill of Rights. Amnesty International has also been concerned about public order legislation used in relation with political activities. In 1990, five prominent pro-democracy activists were convicted under the Summary Offences Ordinance of having illegally used megaphones to address the public and of having collected money without authorization. At their trial in May 1990 lawyers suggested that the charges against them were politically motivated. They were fined but refused to pay the fines, which were eventually paid anonymously.

Amnesty International has repeatedly raised concerns about inadequacies of Hong Kong's procedures for identifying and protecting Vietnamese asylum-seekers at risk of human rights violations if returned to Vietnam. The organization has also been concerned about the detention of Vietnamese asylum-seekers.

For several years, Amnesty International has been concerned about reports of ill-treatment by law enforcement officials. Some of the victims of the reported ill-treatment were Vietnamese asylum-seekers detained in camps pending determination of their status; others were detainees held in police custody.

In 1993 Amnesty International welcomed the formal abolition in law of the death penalty. The death penalty had been mandatory for murder but death sentences were systematically commuted since 1966. The formal abolition of the death penalty came a year after a Legislative Council motion calling on the government to introduce abolitionist legislation.

### ◆ Some basic facts about Hong Kong and its government

Hong Kong is currently a "dependent territory" of the UK, administered by a Governor who is appointed by and responsible to the UK Government. The current Governor, Christopher Patten, was appointed in 1992. The Governor presides over an Executive Council, currently composed of the Governor, 10 members appointed by the Governor (one of whom is the Secretary for the Civil Service), plus three ex officio members (the Chief Secretary, Financial Secretary and Attorney General).

The Legislative Council enacts legislation, and approves the budget proposed by the Governor. The Legislative Council's acts become law only after approval by the Governor. The Council currently has 60 members: 18 elected by universal suffrage, 21 elected by functional constituencies (representing occupational or professional groups), 18 appointed by the Governor, and 3 civil servants. Governor Patten's proposals to introduce electoral reforms for the 1995 elections have been the subject of ongoing

debate with China.

Under the Joint Declaration between China and the UK (signed in 1984 and ratified in 1985), the UK will restore sovereignty over the whole of Hong Kong to China on 1 July 1997. The Declaration provides that Hong Kong will then become a Special Administrative Region of China (designated "Hong Kong, China"); that its capitalist system and lifestyle shall remain unchanged for 50 years; that it shall have its own laws and enjoy a high degree of autonomy (except in foreign affairs and defence); that it shall have executive, legislative and independent judicial power; that its legislature shall be constituted by elections; and that its government and legislature shall be composed of local inhabitants.

#### ◆ The application of the ICCPR to Hong Kong

The ICCPR was adopted by the United Nations (UN) General Assembly in 1966 and entered into force in 1976. The Hong Kong Government has been required to implement all terms of the ICCPR (except those to which the UK Government made reservations in respect of Hong Kong) since 1976, when the UK ratified that international human rights convention and extended its application to Hong Kong. Both the Joint Declaration and the 1990 Basic Law (adopted by the National People's Congress of the People's Republic of China as Hong Kong's future "mini-Constitution") confirm explicitly that the International Covenants (the ICCPR and International Covenant on Economic, Social and Cultural Rights) "as applied to Hong Kong" shall remain in force in Hong Kong after it becomes a Special Administrative Region of China in 1997. Hong Kong's 1991 Bill of Rights incorporates most provisions of the ICCPR into Hong Kong law.

Amnesty International welcomes the fact that the Joint Declaration and Basic Law confirm the continuing applicability of the International Covenants to Hong Kong, and the fact that the Bill of Rights explicitly adopts most ICCPR rights into domestic law. But the real test of human rights protection in any part of the world is whether the rights are implemented in practice.

### 1. The need for an accessible, affordable, speedy and effective human rights complaints system

#### ◆ International standards

The ICCPR requires that **in practice** there be an **effective** remedy for **all** victims of violations of the rights set forth in the Covenant (Article 2).

#### ◆ The record in Hong Kong; the need for reform

In Hong Kong there is not a sufficiently accessible, affordable, speedy and effective complaints system. Consequently, some victims of human rights violations are left without an effective remedy, in contravention of the ICCPR.

Of course the courts in Hong Kong have played, and should continue to play, a vital role in the implementation of human rights. There have been many criminal cases where Bill of Rights issues have been raised by defendants, with the courts often finding violations of rights. Victims of human rights  
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abuses should continue to have recourse to the courts, and indeed accessibility to the courts should be improved as Amnesty International is proposing in sections 5 and 7 of this report -- ICCPR Article 2 requires governments to "develop the possibilities of judicial remedy." Amnesty International is also calling for all efforts to be made to ensure an independent and competent judiciary in the future (section 6 of this report), and for effective training for the judiciary regarding the Bill of Rights (section 3).

**But the judicial system needs to be complemented by a less expensive, less formal, simpler and faster complaints system for the following reasons:**

(i) **People who have wished to bring civil cases against the Hong Kong public authorities for Bill of Rights violations have often been deterred from doing so by the expense.**<sup>1</sup> People who have applied for legal aid for Bill of Rights civil cases have often been refused it. A civil case against the government can be prohibitively expensive in Hong Kong. Even if a person finds a lawyer to represent them without charge, if the case is unsuccessful the individual will, under the normal rules relating to costs, be ordered to pay the government's costs -- even if their case raised an important matter of public interest. If the government appeals the case through the court system, the costs can be staggering.

It is not possible to ascertain fully how many people in Hong Kong have failed to take steps to protect their rights due to the lack of an affordable, accessible complaints system. Amnesty International has documented numerous cases of people who have wanted to complain about infringement of the Bill of Rights, but have reportedly not been able to do so because of the expense of bringing a civil case against the government. Four examples are presented below.

In one 1993 case, a woman applied for legal aid to bring a Bill of Rights challenge against the customary law in the New Territories which restricts succession to certain property to male descendants. She was refused legal aid, and as a result was not able to pursue her action.

Some students wished to challenge certain restrictions on public assembly (in the Public Order Ordinance) which they believed infringed their rights to freedom of assembly and freedom of speech under the Bill of Rights. As they did not have enough money to bring a civil case, they reportedly decided to ignore a police order not to enter a restricted area outside the New China News Agency (the Chinese Government's official news agency which in practice also represents the Chinese Government in Hong Kong) on 5 June 1992, with a view to challenging the law if criminal proceedings were brought against them (in criminal proceedings, unlike civil proceedings, there is no risk of being ordered to pay the government's costs). Several students were arrested and later charged with an offence of unlawful assembly under section 18 of the Public Order Ordinance, rather than under the legal provisions they wished to challenge. One of the students was acquitted for evidentiary reasons, two others were convicted and ordered to perform community service. The case is on appeal.

In another case, a woman voter sought to bring a Bill of Rights challenge in 1993 against Hong Kong's electoral system which allows certain legislators to be elected by "functional constituencies" (eg. by a particular occupational sector) rather than by the general public. She was refused legal aid, reportedly on the grounds that the action was politically oriented and that there would be no material benefit accruing to her as a result of the litigation. She was financially unable to pursue the matter further.

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<sup>1</sup>A Bill of Rights *civil* action is a lawsuit brought by an individual against the government which has for its object the protection of one's rights; *criminal* proceedings, on the other hand, are initiated by the government against a person charged with an offence. AI Index: ASA 19/01/94 Amnesty International April 1994

In 1993 some civil servants in Hong Kong wished to bring a Bill of Rights challenge against the government's policy of allowing expatriate civil servants to switch to local terms of employment. They considered that this defeated the government's proclaimed localization policy and perpetuated existing discriminatory employment terms between local and expatriate officers. They reportedly attempted to raise funds for the proposed litigation but were not able to raise enough for what could be very high costs. Meanwhile, a Legislative Council private member's bill has resulted in a six-month freeze (until 20 April 1994) on the government's policy of allowing civil servants on expatriate employment terms to change to local employment terms.

ii) **The formality, complexity and delay of the Hong Kong court system are other factors which deter people from bringing civil cases against the government on Bill of Rights issues.** Court delays have become a matter of serious concern in Hong Kong, with lawyers and judges drawing attention to this as a significant problem. Delays can be particularly lengthy when the government appeals decisions against it.

iii) **Hardly any civil cases raising Bill of Rights issues have been brought against the Hong Kong Government.** The very few on record have tended to be brought by well-financed commercial interests, for example challenging certain investigatory powers of the Securities and Futures Commission or the Commissioner for Inland Revenue, with the Bill of Rights issues somewhat marginal to the cases. Meanwhile those who would wish to challenge the government on core Bill of Rights issues such as discrimination, or restrictions on freedom of assembly, speech or association, reportedly have not done so for the reasons cited above, particularly the expense of litigation in Hong Kong.

Legislator Emily Lau's prediction, made at the 26 February 1992 Legislative Council debate, has proved largely correct: "Given that court cases are hugely expensive and often very time consuming, a likely consequence of the Government's decision [against setting up an independent human rights commission] is that only people with very deep pockets and commercial interests at stake can afford to take the Government to court."

iv. **An effective, independent human rights complaints system could provide capacities which Hong Kong courts generally lack:** specialized, independent investigative powers combined with the ability to keep a human rights case under ongoing review, with follow-up powers.

Several leading Hong Kong barristers have commented to Amnesty International that the lack of an affordable, accessible human rights complaints system is an obstacle to promoting public awareness of the Bill of Rights -- they find it difficult to tell people in the street that the Bill of Rights means something to the ordinary people of Hong Kong, because they cannot also say that ordinary people have effective remedies for protecting their rights.

#### ◆ Background information

##### The Commissioner for Administrative Complaints

The Commissioner for Administrative Complaints, a position established in 1988, is responsible for investigating complaints relating to "maladministration" by public officials in Hong Kong. The scope of

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the Commissioner's jurisdiction (cases of "inefficient, bad or improper administration") means that the Commissioner's office does not tend to deal with many Bill of Rights issues and does not question whether laws are consistent with the Bill of Rights. Nevertheless, some of the reforms currently proposed to procedures of the Commissioner's office could prove instructive for a future independent human rights commission. The Commissioner has urged that two limitations put on the office's work be removed: people should be able to lodge a complaint directly with the office (rather than having to do so through a member of the Legislative Council), and the Commissioner should be able to issue decisions publicly when they are made (rather than being required to wait for publication of the office's annual report).

### ◆ Addendum: The public debate in Hong Kong - Calls for an effective complaints system

The legal community, Legislative Council members and others have repeatedly drawn attention to the unacceptable barriers which prevent Hong Kong people bringing civil cases to protect their human rights. They have called for establishment of an independent human rights commission which would offer an affordable, accessible and effective procedure for dealing with complaints about infringements of the Bill of Rights.

The Hong Kong Bar Association summed up the problem as follows, in its 27 August 1993 submission to the UK House of Commons Foreign Affairs Committee:

"[T]he [Bill of Rights] has had little impact save in the area of criminal law and the criminal justice system where challenges are regularly made to statutory presumptions as being in conflict with the presumption of innocence and where legal aid is generally available to persons of limited means who are charged with criminal offences.

"Legal aid is understood not to be generally available to the ordinary citizen who wishes to challenge a statutory provision as being in conflict with the Bill of Rights but who has nothing at stake in terms of personal liberty or financially and many procedural obstacles exist to a successful legal challenge."<sup>i</sup>

A leading Hong Kong barrister who is also a member of the Bar Association's Council told Amnesty International: "It is a joke to have a Bill of Rights without effective remedies for issues which cannot be resolved in any other way."

Andrew Byrnes (Lecturer at the University of Hong Kong Faculty of Law, who worked for a period as a special adviser to the Hong Kong Government Attorney General's Chambers on the Bill of Rights and other human rights issues during the drafting of the Bill of Rights Ordinance) noted in 1992:

"In a number of instances potential plaintiffs have been unable to commence civil cases which raise important matters of public interest under the Bill of Rights. The reason for this has been the prospect of a costs award against them if they are unsuccessful; the cases they wish to bring are strongly arguable, but the chances of success are difficult to predict at this stage of the development of the Bill of Rights."<sup>ii</sup>

Johannes Chan and Yash Ghai (respectively Senior Lecturer and Professor of Public Law, University of Hong Kong Law Faculty) noted in a 1993 analysis of Hong Kong's Bill of Rights that "litigation is extremely expensive in Hong Kong, and shuts off whole sections of the community from the courts. There is a danger that the Bill of Rights will mean rights only for the rich."<sup>iii</sup> They concluded that an independent human rights commission "would provide an informal and inexpensive way to resolve



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disputes and to help in the enforcement of standards necessary to give effect to various rights. It can empower groups who are not easily able to obtain access to courts."<sup>iv</sup>

Simon Ip, the Legislative Council member elected to represent the legal profession, noted in his 14 July 1993 speech to the Council advocating creation of an independent human rights commission which could deal with human rights complaints:

"There will be conflicts between citizens and the authorities under the BOR [Bill of Rights]. If resolution of these conflicts is left entirely to litigation with all the costs and delays involved, the average citizen with limited means and requiring quick relief will be greatly disadvantaged. Citizens need a cheap and speedy mechanism to air their grievances and seek redress."

Legislative Council member Henry Tang noted in the same debate:

"First, many people are intimidated by the formality of the court. Second, many people are ignorant or confused about the legal process. And thirdly, it requires money and not everyone can afford it."

Mr. Tang said that establishment of an independent human rights commission would help to solve many of these problems.

Legislator Christine Loh stated in the same Legislative Council debate: "The courts of Hong Kong are...too crowded and too expensive to offer a realistic avenue to private citizens seeking to enforce provisions of the Bill of Rights." She called for an independent human rights commission, which could hear complaints and submissions from the public.

Non-governmental human rights organizations in Hong Kong have also pointed to the need for an accessible and effective complaints system. The Hong Kong Human Rights Commission (a local grassroots human rights organization) noted in a May 1993 report that the judicial system in Hong Kong "is not accessible to and cannot be utilized by everyone, especially those who cannot afford the legal costs. By and large, the prohibitive legal costs effectively deny the rights of these people who seek justice through legal proceedings. Thus, there is an urgent need to establish an independent mechanism such as a Commission of Human Rights, as an alternative..."<sup>v</sup>

## 2. The need for a more proactive, forward-looking and effective approach to human rights implementation

### ◆ International standards

The ICCPR requires governments "to adopt such legislative *or other measures* as may be necessary to give effect to the rights recognized in the present Covenant" (Article 2, emphasis added).

The UN Human Rights Committee, the body of experts which monitors implementation of the ICCPR, has emphasized that a government must take positive and purposeful steps (more than adopting laws and abstaining from misconduct) to ensure that in practice the rights in the ICCPR are actually put into effect for all individuals:

"[I]mplementation does not depend solely on constitutional or legislative enactments, which in themselves are often not *per se* sufficient. The Committee considers it necessary to draw the attention of States parties to the fact that the obligation under the Covenant is not confined to the respect of human rights, but that States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities by the States parties to enable individuals to enjoy their rights." (General Comment on Article 2)

The Vienna Declaration and Programme of Action, adopted by consensus by 171 governments (including the UK and China) at the 1993 UN World Conference on Human Rights, "recommends that each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights" (para. II-71).

### ◆ What is needed from governments

In Amnesty International's experience of monitoring certain human rights throughout the world, it has observed that implementation can be fully effective only if all branches and all levels of government take vigorous steps to see that ICCPR rights are implemented in practice, not just in law. All sectors of government must take the initiative, stopping and preventing human rights abuses with determination and perseverance. They must be forward-looking: reviewing and reforming institutions, laws and policies before (rather than after) human rights are violated. They must launch effective investigations whenever there is reason to believe that human rights may be violated, even if no complaint has been received. They must set up complaints mechanisms which are affordable and accessible to victims. They must bring to justice the perpetrators. They must endeavour to develop a "human rights culture" throughout the society, by educating and informing everyone about their rights and remedies.

### ◆ The Hong Kong Government's approach to implementation

In 1988, when the ICCPR had been in effect in Hong Kong for 12 years, the UN Human Rights Committee asked the UK delegation what had been done by the authorities in Hong Kong to make people aware of their ICCPR rights, to introduce the ICCPR into educational programs, and to publicize the Covenant in the Chinese language. The UK representative admitted that the authorities had done nothing in this regard during the entire 12 years since the UK had ratified the Covenant; his response was summarized in the official records of the meeting as follows:

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"In the United Kingdom's dependent territories, there were no special methods of increasing public awareness of the Covenant's provisions and the study of the Covenant was not a specific feature of educational programmes....In Hong Kong the wide-ranging debate on the drafting of the Basic Law had been widely commented on by the media and there was no doubt that the population was fully aware of the Covenant's provisions....He could not say whether the Chinese version of the Covenant was readily available, but extracts from it were often published in the Chinese press in Hong Kong and quoted during debates in the Legislative Council."<sup>vi</sup>

His comment that there was "no doubt that the population was fully aware of the Covenant's provisions" came as a great surprise to Hong Kong people observing that meeting, who knew from their experience how little was known about the Covenant by ordinary people in Hong Kong.

The government's slow progress in reforming laws, and its tendency to abstain from action on the grounds that less clear-cut Bill of Rights issues should only be dealt with by the courts, are reflected in remarks by the government's Secretary for Constitutional Affairs to the Legislative Council on 14 July 1993:

"[S]ince the enactment of the Bill of Rights Ordinance, the Government has tried to meet the demands arising from its application through a number of channels. In some cases, because of competing priorities, we may not have been able to proceed as fast as we would wish....We appreciate [Legislative Council] Members' wish to see a faster pace of review and amendment of legislation. But only the courts can determine whether a particular provision is inconsistent with the BOR [Bill of Rights]. Unless there is a clear case of inconsistency we would not want to pre-empt the courts by jumping to conclusion."

The government has made certain amendments to 14 ordinances (as of January 1994) since enactment of the Bill of Rights in 1991. According to the government, proposed amendments to another seven ordinances (including the Public Order Ordinance, Summary Offences Ordinance, and Prison Rules) were "in the pipeline" as of January 1994.

While the government's undertaking of law reform has been welcome, there has been much criticism of the relatively restricted scope of the amendments, and of the very slow pace of progress. For example, the Hong Kong Journalists Association in October 1993 expressed disappointment with the government's indication that it would amend only 7 of the 17 laws which the Association had identified as potentially infringing press freedoms. The Journalists Association is continuing to raise its concern. Governor Patten, in answer to a question put to him on 17 January 1994, said "we are happy to continue to have a dialogue with the Journalists Association and other interested parties about other laws which should be changed or taken off the statute book and then we will put those amendments to the Legislative Council in due course."<sup>vii</sup>

The above statement by the Secretary for Constitutional Affairs indicates the government's tendency to leave to the courts "grey areas" of law (which might infringe human rights). This is not a proactive approach or an approach which puts the priority on preventing human rights violations before they occur. Unfortunately this means that some laws infringing human rights may be changed only after a violation has taken place, and only if the victim takes the initiative to bring a lawsuit against the government. But given the current lack of an affordable, accessible complaints system in Hong Kong, and the expense of litigation (see section 1 of this report), in practice the victim may not be in a position to challenge the

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government, resulting in the law remaining on the books and violations potentially continuing.

Legislative Council member Emily Lau stated in the 26 February 1992 Council debate:

"[I]t is unacceptable and even irresponsible to leave this task [reviewing all laws and introducing legislation to ensure full compliance with the Bill of Rights and ICCPR] to the courts. By adopting such an attitude, the Government appears to be telling us `I may be breaking the law, but I will not do anything about it. If you have the money, you can take me to court. If I lose, then I will be forced to amend the law.'"

As explained elsewhere in this report, the government has so far been reluctant to create new institutions whose role would be to facilitate more vigorous implementation of the ICCPR. It has not moved to establish an affordable, accessible complaints system which would provide an effective remedy for all victims of human rights abuses. So far the government has resisted strong calls by the Legislative Council, the legal community and many others for establishment of an independent human rights commission and of an independent legal aid agency. Some innovative work has been done to promote human rights awareness and to develop tools for human rights education, but this has fallen far short of what is needed.

### ◆ Background information

Coordination of the government's human rights policy is currently the responsibility of the Home Affairs policy branch. The Home Affairs branch also coordinates policy on building management (including hotel licensing, gambling, and amusement game centres), district administration, community-building, women, youth and access to information. The branch considers that the Bill of Rights is essentially a legal matter (with implementation through developing case law), but that it needs a support mechanism in government to ensure that it has a practical aspect as well. Home Affairs sees this support mechanism coming partly through the various policy branches of government dealing with their respective areas of responsibility, and partly through its own policy and coordination role. The Home Affairs policy branch heavily utilizes the government's Legal Department for legal and technical advice.

### ◆ Addendum: The public debate in Hong Kong - Calls for more effective implementation

Various members of the Legislative Council during 1993 debates criticized the government's approach to implementing the Bill of Rights and reforming Hong Kong's laws as "half-hearted", "hesitant", "minimalist", "reluctant" and "extremely slow". They called for the establishment of an independent human rights commission to promote more effective implementation.

The Hong Kong Bar Association, in a 27 August 1993 submission to the UK House of Commons Foreign Affairs Committee, commented:

"[T]he Administration has been less than lukewarm in making [the Bill of Rights] an effective instrument for the protection of human rights. The Administration has taken a very limited initiative to review existing legislation and administrative practices for consistency with the Bill of Rights preferring to await decisions by the courts that provisions or practices are inconsistent before preparing amending legislation."<sup>viii</sup>

Andrew Byrnes of the University of Hong Kong Faculty of Law has made the following comments in two separate assessments of the Hong Kong Government's record of implementing the Bill of Rights:

- i) "[T]he government, while trumpeting its commitment to the Bill of Rights, has persisted in relying on laws which are very likely inconsistent with it, stating that it is for the courts to determine their validity, secure in the knowledge that very few of the vulnerable provisions will ever be challenged in court."<sup>ix</sup>
- ii) "The record of the Hong Kong administration has been rather patchy to date, with support for the goals of the Bill of Rights varying over time and among the various branches of the administration....[S]ince there is no insistent pressure from the top to ensure that the letter and spirit of the ICCPR and the Bill of Rights are embraced, policy-makers in the different areas are relatively free to define their own approach to the Bill of Rights."<sup>x</sup>

Johannes Chan and Yash Ghai of the University of Hong Kong Law Faculty referred in 1993 to "the extreme reluctance of the government to take any positive steps towards implementation" of the Bill of Rights.<sup>xi</sup>

## 3. The need for effective human rights awareness, education and training

## programs

### ◆ International standards

The Universal Declaration of Human Rights (1948) emphasizes the obligation to "strive by teaching and education to promote respect for these rights and freedoms...."

The "Vienna Declaration and Programme of Action," adopted by consensus by 171 governments (including the UK and China) at the 1993 UN World Conference on Human Rights, recommends:

"... that States develop specific programmes and strategies for ensuring the widest human rights education and the dissemination of public information, taking particular account of the human rights needs of women" (para. II-81).

The Vienna Declaration also "calls on all States and institutions to include human rights, humanitarian law, democracy and rule of law as subjects in the curricula of all learning institutions in formal and non-formal settings" (para. II-79, emphasis added).

The UN Human Rights Committee emphasized in its authoritative General Comment 3/13 on the ICCPR:

"[I]t is very important that individuals should know what their rights under the Covenant...are and also that all administrative and judicial authorities should be aware of the obligations which the State party has assumed under the Covenant. To this end, the Covenant should be publicized in all official languages of the State and steps should be taken to familiarize the authorities concerned with its contents as part of their training. It is desirable also to give publicity to the State party's co-operation with the Committee."

### ◆ The record in Hong Kong

As noted in section 2 above, in November 1988 the UK representative told the UN Human Rights Committee that the authorities in Hong Kong had taken no initiatives to promote awareness of the ICCPR or to introduce it into educational programs, nor did he know whether a Chinese-language version of the Covenant was available to the public. Since 1988 some progress has been made, and some of the initiatives taken have been very imaginative. However, significantly greater resources are needed for this endeavour. A human rights commission with proper resources, independence and specialized skills would be able to ensure that human rights promotion and education are implemented effectively and comprehensively.

In 1992 the government created a Sub-Committee on Human Rights operating under the auspices of the governmental Committee on the Promotion of Civic Education. The Sub-Committee, led by lawyer William Tsui, is composed of lawyers, university lecturers, members of the parent Committee on the Promotion of Civic Education, and others. It has worked with local non-governmental organizations to develop a number of innovative, Chinese-language public information materials and teaching kits for secondary schools, and has initiated public exhibitions, seminars, television and radio programs, and youth projects aimed at informing people about their rights. Details of the Sub-Committee's projects are listed under "Background information" (below). The Sub-Committee receives secretarial and material support from the Committee on the Promotion of Civic Education. Sometimes the Sub-Committee has

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had to seek outside lawyers and other volunteers to assist with the work.

The budget for human rights promotion and education in Hong Kong is extremely small and inadequate. The annual budget of the entire Committee on the Promotion of Civic Education (which carries out human rights work as well as many areas of civic education work not directly related to human rights) for budget year 1993-94 is only HK\$2.4 million (approximately US\$310,760).<sup>xii</sup> Of this, only about HK\$1 million (approximately US\$130,000) is being spent during the year directly on human rights promotion and education -- approximately HK\$600,000 (approximately US\$78,000) of the HK\$1 million is money donated by the Royal Hong Kong Jockey Club for human rights education and production related areas, which freed up some money in the government budget to be used during the year for other projects, including a special exhibition (funded from the general civic education budget during this fiscal year) which related to promotion of human rights and the rule of law, at a cost of around HK\$500,000 (approximately US\$65,000).<sup>xiii</sup> In any event, the budget for human rights promotion and education is very small for a population of around 6 million people. In addition to the HK\$1 million figure from the central budget, District Boards in Hong Kong spend money at the local level for community programs which may include civic education or human rights promotion elements.

Following are some other 1993-94 Hong Kong budget figures<sup>xiv</sup> for an idea of how the HK\$1 million allocated to human rights promotion/education compares (all figures in Hong Kong dollars, estimates for the budget year ending 31 March 1994):

\$ 1.5 million: cash awards to civil servants for suggestions on improving the efficiency of the civil service

\$ 3.5 million: relief and welfare for civil servants including television sets for staff recreation rooms, recreational activities, purchase of retirement souvenirs, and commemorative awards for long and meritorious service

\$ 4.1 million: expenses of special visitors to Hong Kong and overseas speaking engagements by prominent Hong Kong personalities (transport, hotel, meals, laundry)

\$ 7.6 million: cost for engaging consultants to conduct "minor studies" for the Planning Department (costing between \$50,000 and \$2,000,000 each)

\$ 18.8 million: cost of "long service travel award scheme" for overseas travel for local non-directorate civil service officers and their spouses, "in recognition of long and meritorious service"

\$ 29 million: Consumer Council

\$ 60.9 million: Hong Kong Sports Development Board

\$ 180.7 million: transportation costs for civil servants and their families eligible for overseas passages, and children of civil servants being educated overseas

\$ 337 million: Hong Kong Tourist Association

\$ 358.7 million: payment of local and overseas education allowances to civil service officers whose

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eligible children are receiving education either locally or overseas

\$ 1270 million: payment of home purchase allowances to civil service officers

By October 1993 the Sub-Committee reportedly had received about 30 funding applications for human rights promotion projects, but had only been able to fund nine of these due to financial constraints.<sup>xv</sup>

Teaching kits have only been produced for secondary schools so far, not yet for primary or tertiary students, though there are plans to produce more kits in the future. The government has not even ensured that all over-15 secondary students will have the benefit of the Bill of Rights teaching kits designed for them. The government, rather than introducing the human rights teaching kit as an integrated part of the curriculum for all students in that category, is just "inviting" schools to use the kits. Though the response to the teaching kit from many school teachers and supervisors has been very positive, it is a matter of concern that some school supervisors have shown resistance to allowing the teaching kits into their schools, reportedly in some cases because of their view that it would not be good for "discipline".

The Amnesty International delegate who visited Hong Kong in October 1993 spoke with several of those most active in the Sub-Committee's work. Each emphasized that the current situation was very inadequate, and that they believe the establishment of an independent human rights commission is needed for more effective promotion of human rights awareness and education in Hong Kong. One of them stated:

"A human rights commission, being independent, could carry out promotion activities more effectively, and with greater resources and manpower. Currently we are doing the best that we can, but we have limited resources. Members of the Sub-Committee serve on a voluntary basis -- and we have to squeeze in this work on top of our ordinary jobs."

#### ◆ Training

There has been some progress in training judges, police, prison staff, government officials and lawyers about the ICCPR and Bill of Rights, but it has been uneven. There appears to be inadequate central coordination to ensure that human rights training of each professional sector is effective and comprehensive. An independent human rights commission with proper expertise, working closely with each sector and taking into account the particular needs of each, could take a lead in ensuring effective Bill of Rights training.

A summary of training carried out so far for certain sectors is listed below under "Background information."

#### ◆ The need for international human rights standards to be integrated into training programs and professional codes of conduct

To move toward ensuring more effective implementation of the ICCPR, UN human rights standards should be integrated into human rights training programs and professional codes of conduct for various occupational sectors, including: law enforcement officers, the judiciary, prosecutors, government officials/civil servants, the legal and medical professions.

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The UN instruments containing such standards include:

- i) UN Code of Conduct for Law Enforcement Officials
- ii) UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- iii) UN Basic Principles on the Independence of the Judiciary
- iv) UN Guidelines on the Role of Prosecutors
- v) UN Basic Principles on the Role of Lawyers
- vi) UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- vii) UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- viii) UN Standard Minimum Rules for the Treatment of Prisoners
- ix) UN Rules for the Protection of Juveniles Deprived of their Liberty
- x) UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions
- xi) UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief
- xii) UN Declaration on the elimination of violence against women
- xiii) Universal Declaration of Human Rights
- xiv) International Covenant on Civil and Political Rights
- xv) International Covenant on Economic, Social and Cultural Rights
- xvi) UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- xvii) International Convention on the Elimination of All Forms of Racial Discrimination
- xviii) UN Convention and Protocol relating to the Status of Refugees
- xix) Convention on the Elimination of All Forms of Discrimination against Women
- xx) UN Convention on the Rights of the Child

All of the declarations and other instruments listed in (i) to (xiii) above apply to all countries and territories, including Hong Kong. The international human rights treaties listed in (xiv) to (xvii) currently apply to Hong Kong. The last three international human rights treaties listed - the UN Convention and Protocol relating to the Status of Refugees, the Convention on the Elimination of All Forms of Discrimination against Women, and the UN Convention on the Rights of the Child - have been ratified by the UK itself, but so far the UK has not extended them to Hong Kong. As noted in section 8 of this report, Amnesty International is calling on the UK Government to extend these three conventions to Hong Kong.

### ◆ Background information

Human rights promotion/education projects undertaken

Projects which the Sub-Committee on Human Rights had helped to organize include:

- i) exhibitions (including poster exhibitions) about human rights and the Bill of Rights, in various districts

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of Hong Kong;

- ii) a series of radio programs, aired free of charge, where celebrities present a story which raises human rights issues. After the story, a lawyer gives a brief explanation of the issue, and time is allowed for the audience to telephone in and ask questions;
- iii) a series of television programs about human rights aired at prime time;
- iv) telephone hot-lines where people can call to hear Hong Kong celebrities give a short message about human rights;
- v) seminars and lectures to train young people how to be "human rights ambassadors" who promote human rights;
- vi) teaching kits aimed at secondary school students aged 15 and over. The kits include a manual for teachers and teaching modules covering various human rights issues;
- vii) a crossword puzzle competition with basic human rights questions;
- viii) a comic book about the Bill of Rights, with stories highlighting the various rights, and at the end the full text of each right and a list of various non-governmental organizations where people can go for human rights information (the first print run of 100,000 has been distributed, and it is being reprinted);
- ix) special cards of the sort which young people in Hong Kong collect, each bearing the picture of a celebrity and referring to one article of the Bill of Rights. (For example, one card has a picture of pop singer Jacky Cheung over the caption: "If I want to express an opinion, I can do this through various channels. This is a good thing about human rights" [translation from Chinese-language original]. The text of Article 16 [freedom of opinion and expression] is on the back of the card.)

The ad hoc Committee on the Rule of Law (operating under the Committee on the Promotion of Civic Education) has helped to carry out some of these projects, including the teaching kits and phone-in programs. Chaired by solicitor Walter Chan, the ad hoc Committee seeks to promote the rule of law, particularly fair trial, the right to a jury, equality before the law, and independence of the judiciary.

### Training measures undertaken

Following is a brief summary of some of the Bill of Rights training measures undertaken by early February 1994 for occupational sectors in Hong Kong:

i) **Judiciary:** Regarding training of the judiciary, Andrew Byrnes (Faculty of Law, University of Hong Kong) noted:

"In contrast to the steps taken by the legal profession, it appears that no steps were taken under the in-house education program of the judiciary (the Judicial Studies Board) in preparation for the enactment of the Bill of Rights. Since the commencement of the Bill, the first (and so far only) organized measure as part of this program was a visit by a former Canadian Chief Justice and an official from the Canadian Justice Department some nine months after the enactment of the Bill of Rights."<sup>xvi</sup>

A judicial authority indicated that by January 1994 there had still been no further training of the judiciary about the Bill of Rights, and none was planned.

ii) **Police:** The police consider that by training new recruits about current Hong Kong legislation, this includes the Bill of Rights since it is part of Hong Kong law. Serving officers are reportedly briefed on new developments resulting from the Bill of Rights. The police say that all training material is reviewed

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and updated regularly in an effort to promote police practices which are compatible with the Bill of Rights.

iii) **Correctional services:** The Correctional Services Department reportedly incorporates talks about the Bill of Rights into their regular in-service and recruit-training programs.

iv) **Government legal officers:** The Attorney General's Chambers has reportedly instituted Bill of Rights training seminars for the government legal officers.

v) **Senior government officers:** The Civil Service Branch is reported to have organized Bill of Rights seminars targeted at the more senior government officers involved in the legislative process.

vi) **Practising lawyers:** The Bar Association and Law Society have organized courses for their members related to the Bill of Rights, and a number of practising lawyers have attended the annual conferences on the Bill of Rights organized by the Hong Kong University Faculty of Law. However, more could be done. For example, the courses have been voluntary rather than mandatory. One leading barrister expressed concern that the Bar Association courses had "focused more on the practicalities of how to conduct Bill of Rights litigation than on the bigger issues of what the Bill of Rights means for Hong Kong. In other words, the focus has been on readying members for the job rather than instilling a Bill of Rights consciousness."

### ◆ Addendum: The public debate in Hong Kong - Calls for more effective human rights promotion

Legislative Council members have argued that an independent human rights commission could promote human rights awareness much more effectively. Selina Chow, in her comments to the Council on 14 July 1993 advocating establishment of such a commission, referred to problems arising from the government's delegation of human rights promotion to the Committee on the Promotion of Civic Education:

"I must stress this is by no means any criticism of the Committee. But the fact remains that the Committee only has an annual budget of something to the tune of [HK]\$ 2.4 million and a promotional budget of [HK]\$ 800,000. And its terms of reference cover a wide area of civic education...[T]he Committee cannot be expected to give the necessary attention to the promotion of human rights...."

Legislative Council member Henry Tang noted in the same debate: "Although we passed the Bill of Rights in 1991, the majority of the Hong Kong population is still very ignorant about these rights." He advocated establishment of an independent human rights commission which could take the lead in "campaigns in promoting and campaigns in educating the public on human rights," which were "desperately needed."

James Tien, another Legislative Council member advocating establishment of an independent commission, declared in the same debate:

"At present, the Committee on the Promotion of Civic Education is responsible for promoting the Bill of Rights Ordinance. Not only was the amount of funds allocated to the committee meagre, but its lack of expertise and overload of work also undermine the effectiveness of the promotion efforts. The

government should be determined to make an impact on the hearts of the citizens. It is now time to put more resources on educating the public."

#### 4. The need for an independent human rights commission

##### ◆ International standards

The UN Commission on Human Rights, the UN General Assembly, the UN World Conference on Human Rights, a Commonwealth conference and conferences in Asia have all endorsed the important role played by human rights institutions such as human rights commissions. The 1993 UN World Conference, in the "Vienna Declaration" adopted by consensus by 171 governments (including the UK and China), emphasized the important role played by such institutions, "in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights" (para. I-36). The UN World Conference encouraged the establishment and strengthening of such institutions, having regard to the "UN Principles relating to the status of national institutions." These principles, adopted by the UN Commission on Human Rights in 1992 and by the UN General Assembly in 1993, set forth standards for institutions such as human rights commissions, emphasizing the importance of the body's independence. The Commonwealth Workshop on National Institutions (Ottawa, 1992) concluded by recommending "that where they have not already done so, Commonwealth Governments should establish national institutions specifically responsible for the promotion and protection of human rights."

##### ◆ Potential achievements of a commission In Hong Kong

The proposed independent human rights commission, which Hong Kong's Legislative Council has voted (without dissent) to establish, could accomplish all the goals outlined in the previous three sections of this report, which are necessary for implementation of the ICCPR.

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The commission endorsed by the Legislative Council would have statutory powers to:

- i) receive and investigate complaints;
- ii) advise individuals who allege their rights have been violated;
- iii) recommend reform of laws conflicting with the Bill of Rights;
- iv) take the lead in promoting human rights awareness and developing human rights education; and
- v) perhaps also exercise an adjudication role.

### ◆ The decision whether or not to establish a commission

Despite the Legislative Council's consensus vote in favour of establishing an independent human rights commission, it cannot be established until approved by Hong Kong's UK-appointed Governor. Governor Patten has so far not agreed to establish a commission, though he has stated that he is keeping an "open mind" and is "open to persuasion". Some recent comments by the Governor about the rule of law, human rights, and the call for an independent commission are included in the section below entitled "Comments by Governor Patten".

### ◆ 32 arguments supporting the establishment of an effective, independent human rights commission

Following are 32 arguments supporting the establishment of an effective, independent human rights commission in Hong Kong:

1. An independent commission could be instrumental in helping the Government of Hong Kong, both before and after 1997, fulfil its continuing obligation to implement the ICCPR fully, not just in law but also in practice. That continuing obligation is recognized by the Joint Declaration and Basic Law.
2. An independent commission applying the Bill of Rights could provide an effective remedy for human rights violations: an affordable, accessible, speedy and effective mechanism for dealing with complaints in a way which complements the judicial system. Both the ICCPR and Bill of Rights require that there be an effective remedy.
3. Other countries have created effective human rights commissions which complement the jurisdiction of their courts. Some of these other countries have legal systems very similar to that in Hong Kong.
4. An independent commission could have a level and breadth of human rights expertise and experience unmatched by the courts or government departments.
5. An independent commission could have capacities which Hong Kong courts generally lack: specialized, independent investigative powers combined with the ability to keep a human rights case or issue under ongoing review, with follow-up powers.
6. An independent commission could comprehensively examine human rights issues on its own initiative, unlike courts which are generally limited to examining individual cases which happen to come before them.
7. An independent commission could hold public hearings and undertake special reviews of human rights

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issues of particular concern to the people of Hong Kong.

8. An independent commission could give expert attention to identifying the underlying causes of human rights abuses.

9. An independent commission could play an important preventive role by identifying measures needed (such as institutional or legal reform) to prevent abuses in future. The courts, which generally deal with individual cases only after violations have occurred, are more limited in their preventive role (though their decisions may set important precedents or strike down laws infringing human rights).

10. Hong Kong's Legislative Council voted without dissent in July 1993 to establish an independent human rights commission. This was not a sudden decision -- in 1990 and 1991 a Legislative Council ad hoc group chaired by Selina Chow had held extensive deliberations on the subject, and concluded by recommending the establishment of an independent commission. Legislative Council debates over the years have demonstrated very strong support for an independent commission by legislators from different parts of the political spectrum. As indicated in the addenda to sections 1, 2 and 3 of this report, legislators have repeatedly called for an independent commission as a means of addressing fundamental shortcomings of the system for protecting and promoting human rights in Hong Kong.

11. Numerous public petitions advocating an independent human rights commission have been presented to the Legislative Council, indicating strong support among the public. Local non-governmental organizations have also been vocal in their support.

12. The legal community of Hong Kong has firmly advocated establishment of an independent human rights commission.

The Law Society has argued that the existence of an independent commission "would serve as a strong deterrent to human rights abuses."

Jacqueline Leong, then Bar Association chairperson, stated in her "Opening of the [1992-93] Legal Year Speech":

"Repeated calls for the establishment of a Human Rights Commission have been rebuffed by the Government citing cost, staffing problems and claims that this could be fully undertaken within the existing framework of the Administration. This has proved to be sadly incorrect and the results speak for themselves.

...[The] haphazard and disorganised approach must end. Some direction and order must be introduced. An optional avenue must be found to test issues under the Bill of Rights without the necessity of resorting to costly and time-consuming litigation in the Courts."<sup>xvii</sup>

The Bar Association's conclusion was summarized in its 27 August 1993 submission to the UK House of Commons Foreign Affairs Committee: "We believe that the establishment of a Human Rights Commission is necessary as a domestic measure for the better protection of human rights in Hong Kong."<sup>xviii</sup>

Simon Ip, the Legislative Council member representing the legal community, has repeatedly voiced

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strong support for the proposal. In the 22 October 1992 Legislative Council debate he stated:

"Despite widespread support, the Government has taken the view that a Human Rights Commission is unnecessary. That view is unsupportable. As things stand the rights prescribed by the Bill of Rights are more theoretical than real. We need concrete actions, not just words and legislation, to demonstrate our commitment to the rule of law. Without a Human Rights Commission, development of human rights law will be a piecemeal and haphazard process of legal challenge in the courts. Promotion of a human rights culture in our community will stagnate. We will be unable to inculcate an attitude in our society of respect for the rule of law without the existence of a secure institution such as a Human Rights Commission."

Simon Ip noted in a 14 July 1993 Legislative Council speech that an independent human right commission could make particularly important contributions to the development of human rights in a place like Hong Kong, "where history of... legislation is short and development of human rights is embryonic."

Legal scholars have joined in the call for an independent commission. Johannes Chan and Yash Ghai of the University of Hong Kong Law Faculty noted recently that:

"It is obvious that [the courts] can handle only a small number of cases, while the expense of litigation cuts off a large proportion of the population from access to them.... One of the most effective means for the implementation of human rights is a commission of human rights....It would provide an informal and inexpensive way to resolve disputes and to help in the enforcement of standards necessary to give effect to various rights. It can empower groups who are not easily able to obtain access to courts. It can play a particularly useful role in supervising affirmative action policies. It can, through co-operation with non-governmental organizations, involve the community in the safeguarding of human rights."<sup>xix</sup>

13. An independent commission could provide the impartiality required to credibly monitor treatment of the people of Hong Kong by public agencies and authorities. Legislative Council member Simon Ip noted in his 14 July 1993 statement to the Council: "[A]s the primary objective of the BOR [Bill of Rights] is to prevent encroachment of rights by the Government, how can that objective be fulfilled by a government department which acts on the instructions of the Government?"

14. An independent commission with proper expertise and resources would be able to develop more comprehensive and effective programs for raising public awareness about human rights.

15. An independent commission with proper expertise and resources could work with schools in Hong Kong to develop innovative, effective human rights education materials for all Hong Kong's students, so that human rights becomes an integral part of the curriculum at all levels.

16. A human rights commission would have the expertise to work with various official and professional sectors to organize more comprehensive and effective human rights training programs, and to ensure that internationally-recognized minimum standards relevant to their work are incorporated in codes of practice. These sectors would include law enforcement officials; the judiciary; prosecutors; the legal and medical professions; government officials and civil servants generally.

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17. An independent commission could work closely with the Hong Kong police and other law enforcement officials to make clear to the public that effective and professional crime prevention, and maintenance of law and order, are not jeopardized by ensuring the protection of internationally-recognized, fundamental rights.

18. An independent commission could work with the commercial sector in Hong Kong to organize educational programs for the business community about the Bill of Rights. These programs could emphasize the long-term importance of human rights, the rule of law, an independent judiciary and an effective human rights complaints system to Hong Kong society and to the area's future as a respected international business centre.

19. An independent commission could play a key role in the process of reviewing and amending legislation and proposed legislation to ensure consistency with the ICCPR and Bill of Rights. Working with the Executive branch and Legislative Council, the commission with its expertise could help to establish a more adequate, more coordinated and speedier ongoing process of legislative review and reform.

20. An independent commission could conduct its regular business (including its complaints procedure) primarily in the Chinese language, using English as needed. This would help it to be more accessible and less intimidating to Cantonese-speaking people of Hong Kong than the courts, as all of the higher courts conduct their proceedings in English (with Chinese translation available).

21. An independent commission with the necessary expertise could establish human rights information centres and advice bureaus accessible to all the Hong Kong public, providing advice to those who believe their rights have been infringed.

22. An independent commission could be cost effective, as has been demonstrated in other countries. Simon Ip, the Legislative Council member elected to represent Hong Kong's legal community, has dismissed the argument raised by some government officials that a commission would entail considerable costs:

"I accept that the protection of human rights should not involve layers of bureaucracy with exorbitant expense to taxpayers. However, a Commission will decrease the call on judicial resources and reduce publicly funded court proceedings. The likely result would be a net saving of resources." (excerpt from 14 July 1993 statement to Legislative Council)

23. As in other countries, an independent commission could play a mediation role in community relations, helping to defuse tensions which may arise between public agencies or officials and the people of Hong Kong.

24. An independent commission could benefit from consulting with non-governmental organizations in Hong Kong on particular issues. For example, it could work with women's organizations in Hong Kong to address issues relating to the human rights of women, including the strong call that has been made for a specialized Women's Commission for Hong Kong.

25. An independent commission could issue regular public reports covering all areas of its work and



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providing an overview of human rights issues in Hong Kong. Such reports should document all complaints it has received (together with action taken in each case), explain reforms undertaken and proposed, and describe human rights awareness, education and training initiatives.

26. An independent commission could work with the Government of Hong Kong to ensure the preparation of more comprehensive reports to the UN Human Rights Committee about implementation of the ICCPR in Hong Kong.

27. The UN Commission on Human Rights and the UN General Assembly (the UK and China are both voting members of these two bodies), in resolutions adopted by consensus in 1992 and 1993 respectively (Commission resolution 1992/54; General Assembly resolution 48/134), affirmed "that priority should be accorded to the development of appropriate arrangements at the national level to ensure the effective implementation of international human rights standards." The resolutions reaffirm "the importance of developing... effective national institutions for the promotion and protection of human rights and of ensuring the pluralism of their membership and their independence." Such national institutions very often take the form of a human rights commission. The annex to the resolutions, "Principles relating to the status of national institutions," attached in Appendix 2, sets forth standards for such institutions. These UN Principles emphasize the importance of the human rights institution being genuinely independent. These standards were originally adopted at a special International Workshop on National Institutions for the Promotion and Protection of Human Rights (Paris, 1991), organized by the UN and attended by representatives of human rights commissions from many countries in Africa, Asia and the Pacific, Europe, Latin America and North America.

The General Assembly resolution welcomes:

"the growing interest shown worldwide in the creation and strengthening of national institutions expressed during the Regional Preparatory Meeting for Africa for the World Conference on Human Rights [Tunis, 1992]..., the Regional Preparatory Meeting for Latin America and the Caribbean [San José, 1993]..., the Regional Preparatory Meeting for Asia [Bangkok, 1993]..., the Commonwealth Workshop on National Human Rights Institutions [Ottawa, 1992]... and the Workshop for the Asia and Pacific Region on Human Rights Issues [Jakarta, 1993]..., and manifested in the decisions announced recently by several Member States to establish national institutions for the promotion and protection of human rights."

It is important to note that in a number of countries with national human rights commissions, such as Canada, India and Australia, there is provision for human rights commissions also at the provincial or state level.

28. The Commonwealth Workshop on National Institutions (Ottawa, 1992) concluded by recommending "that where they have not already done so, Commonwealth Governments should establish national institutions specifically responsible for the promotion and protection of human rights."

29. The governments (including China) attending the Asia Regional Meeting (Bangkok, 1993) in preparation for the UN World Conference on Human Rights adopted the "Bangkok Declaration" which welcomed "the important role played by national institutions in the genuine and constructive promotion of human rights...."

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30. The 1993 UN World Conference on Human Rights, in the "Vienna Declaration and Programme of Action" adopted by consensus by 171 governments (including the UK and China), reaffirmed:

"...the important and constructive role played by national institutions for the promotion and protection of human rights [eg. human rights commissions], in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights.

"The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the [UN] `Principles relating to the status of national institutions'...." (para. I-36).

31. The 1988 Lawasia Conference on the Role of Human Rights Commissions and Other Organs concluded by recommending "that each government in the region establish a strong, effective and independent national Human Rights Commission the purpose of which will be to investigate complaints of Human Rights abuses, to recommend prosecution where necessary and to conduct comprehensive Human Rights education programmes."<sup>xx</sup> The Lawasia Conference was attended by participants from many parts of the Asia and Pacific region, including Supreme Court justices, legal experts, and members of three human rights commissions in the region: Australia, New Zealand and the Philippines.

32. Members of the UN Human Rights Committee, during the review of reports from countries which have established a human rights commission, have emphasized the positive role that can be played by such commissions in implementation of the ICCPR. For example, Sir Vincent Evans referred to the New Zealand commission as "a valuable example for other countries to follow"; Felix Ermacora referred to Australia's commission as "a very important instrument for the promotion of human rights."

### ◆ Comments by Governor Patten

Governor Patten has spoken out forcefully regarding the importance of the rule of law and human rights to Hong Kong and its future. In a 22 November 1993 address to the Foreign Correspondents' Club of Hong Kong, he stated:

"What does that rule of law amount to? Independent Courts. Equality before them - for Governor and governed alike. It means the Bill of Rights and all that it contains. It means not being able to lock people up on a whim. It means a free Press, free to enquire and free to ask difficult questions. It means laws properly and fairly enacted by the legislature, the legislature to which the Executive is accountable....A fundamental component of the rule of law is a proper regard for human rights....

"The best protection for human rights in Hong Kong - now and beyond 1997 - lies in the strength and integrity of Hong Kong's legal system and its institutions. That is why I am so concerned to ensure that they are maintained; frankly, I am inclined to regard that task as more important than trying to establish new bodies, such as a Human Rights Commission. If your human rights are infringed in Hong Kong, remedies and means of redress already exist. I am a passionate believer in human rights; but whether a Human Rights Commission is really necessary, in addition to the Bill of Rights, the Courts, the ICAC [Independent Commission Against Corruption], the legislature, the free Press, to defend them is a more open question. There is always the risk that it might prove an unnecessary distraction from the main task at hand. But I remain open to the arguments, open to persuasion as any accountable Governor should. I would welcome further public debate on the issue."<sup>xxi</sup>

As this report indicates, the already-existing remedies and means of redress have clearly failed to provide an effective remedy for those who wish to bring a challenge against the government (in a non-criminal context) aimed at protecting their human rights. Far from being an unnecessary distraction, an independent human rights commission could finally provide an accessible, affordable and effective remedy for all victims of human rights violations, as well as effective human rights promotion, education and training to the people of Hong Kong. Such a commission could effectively complement the judicial system.

In the same speech the Governor referred to "the legislature to which the Executive is accountable"<sup>xxii</sup> and said: "[I]n recent years, of course, the rule of law has been supported here by an evolving system of accountability to an increasingly democratic assembly in Hong Kong."<sup>xxiii</sup> The spirit of these remarks suggest that the Legislative Council's consensus vote to establish an independent commission must be considered to be among the strong arguments in favour of the executive branch of government agreeing to do so.

#### ◆ Addendum: The public debate in Hong Kong - Calls for an independent human rights commission

The repeated and strong calls within Hong Kong for establishment of an independent human rights commission as a means of addressing shortcomings in Hong Kong's system for the protection and promotion of human rights are referred to in the addenda of sections 1, 2 and 3 of this report, as well as points 10 through 13 of the "32 arguments supporting the establishment of an effective, independent human rights commission" (above).

## 5. The need for an independent legal aid agency

### ◆ International standards

The ICCPR requires:

- i) that "any person whose rights or freedoms...are violated shall have an effective remedy", and that governments "develop the possibilities of judicial remedy." (Art. 2);
- ii) equal access to the courts (Art. 14); and
- iii) that in the determination of any criminal charge, the accused shall have "legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it" (Art. 14).

When people seek judicial remedies for alleged human rights violations, neither their income level nor the political sensitivity of their case should ever be a barrier. As long as their complaint is not frivolous, they should have their day in court.

If the ICCPR is to be effectively implemented in Hong Kong, the public must have full confidence in the impartiality of the agency determining which cases qualify for legal aid. This is vital, because in practice the denial of legal aid can amount to denial of a remedy. Bringing a case to court in Hong Kong can be very expensive, and without legal aid a great number of people in Hong Kong can be left effectively

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without any remedy and without any access to a court. See, for example, cases referred to in section 1 of this report, where people denied legal aid were unable to pursue human rights challenges against the government.

### ◆ The record in Hong Kong

In Hong Kong, a government department continues to make legal aid decisions. From June 1991 through November 1993, over 92% of applications for legal aid in *Bill of Rights* civil cases (excluding immigration cases) were rejected under the "merits test", the Legal Aid Department officials deciding that those applicants did not have "a reasonable claim or reasonable defence which justifies taking some action in law." The overall rejection rate under the "merits test" for *all* civil cases was much lower, for example between 31.3% and 33.7 % from mid-1992 until the end of 1993. Public confidence in the Legal Aid Department has been undermined to some degree by allegations that certain decisions about which cases to fund may have been affected by governmental considerations rather than being based purely on the merits of the case. Those wishing to raise sensitive human rights issues are understandably concerned that the determination as to whether or not their case against the government receives legal aid is made by civil servants in a department of that same government.

The Legislative Council has voted overwhelmingly for establishment of a legal aid agency entirely independent of the government. The Law Society of Hong Kong and the Hong Kong Bar Association have made forceful calls for the same. The final decision, to be made by the executive branch of the government, is expected in 1994 or 1995. Meanwhile, debate continues on a "Consultative Paper on Legal Aid" issued by the government in mid-1993, which does not advocate a fully independent legal aid agency.

### ◆ Background information

General information about the current legal aid system

The Legal Aid Department grants legal aid (financial assistance for legal representation and costs) to cases if they pass both of two tests:

- i) a "means test" (the family's income and "disposable resources" must be under a certain level); and
- ii) a "merits test".

Under the "merits test" for *civil* cases, the Legal Aid Department must decide that a person has "a reasonable claim or reasonable defence which justifies taking some action in law." In making the decision the Legal Aid officers are supposed to consider "the relevant law and the evidence available in support of the applicant's case, balancing same with the value of the benefit sought, the chances of succeeding in obtaining the benefit and the costs of doing so." Between June 1991 (when the *Bill of Rights* took effect) and 30 November 1993, out of 15 applications for legal aid in civil cases raising mainly *Bill of Rights* issues (excluding immigration cases) only one application was granted, 12 were refused under the "merits test", and two were withdrawn. By rejecting 12 out of 13 applications on which decisions were taken under the "merits test", the Legal Aid Department's rejection rate for non-immigration *Bill of Rights* civil cases was over 92%. For immigration cases raising *Bill of Rights* issues (involving judicial reviews against removal orders of the Director of Immigration), all such cases were

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granted legal aid until 22 June 1993 when a Hong Kong court ruled that the Bill of Rights does not permit challenges against removal orders. Since then, no legal aid has been granted in such immigration cases.<sup>xxiv</sup>

During the second half of 1993 there were 10,433 applications for legal aid in civil cases overall: 804 applications (7.7% of total applications) were refused under the "means test", and 3521 (33.7% of total applications) were refused under the "merits test".<sup>xxv</sup>

For *criminal* cases, if a person passes the "means" test legal aid is always granted for a trial. But there is a "merits test" to receive legal aid for an appeal (other than a murder appeal for which the grant of legal aid is mandatory): legal aid is supposed to be granted if the Legal Aid Department considers that the applicant has "meritorious grounds of appeal." In the second half of 1993 there were 2330 applications for legal aid in criminal cases: 10 applications (0.4% of total applications) were refused under the "means test", and under the "merits test" there were 632 refusals for appeals.<sup>xxvi</sup> The Director of Legal Aid since July 1992 has had discretion to grant legal aid in criminal cases to people whose financial resources exceeded the usual "means test" limits, if the Director is "satisfied that it is desirable in the interests of justice."

The Legal Aid Department's case-related expenditure for 1992-93 was HK\$158,776,000 (approximately US\$20,558,850). As of 31 December 1993 the Department had 463 staff including 62 lawyers and 144 paralegals.<sup>xxvii</sup>

If a person is granted legal aid they will sometimes be assigned a Legal Aid Department lawyer, and in other cases the Legal Aid Department may pay for them to use a private lawyer.

### The "Consultative Paper on Legal Aid"

In mid-1993, following a review of the legal aid system by an inter-departmental government working group, the government issued a "Consultative Paper on Legal Aid," inviting comments from the legal community and the public. The Consultative Paper contained the preliminary findings of the government's working group. It acknowledged that:

"the perception of independence is important. The Working Group therefore gave serious consideration to ways of further enhancing the independence of legal aid administration, and the mechanism for monitoring efficiency and cost-effectiveness."<sup>xxviii</sup>

The Consultative Paper put forward three options for the future structure of the legal aid agency:

- a) The status quo would be maintained (decision-making would remain with the government), except for establishment of a broad-based Advisory Committee on Legal Aid.
- b) Legal Aid would be made completely independent of the government, and the employees would no longer be civil servants. Administration would be supervised by a newly-established non-government authority.
- c) A Legal Aid Services Council would be established for the overall management of legal aid (chaired by a community person independent of the legal profession, with members including lawyers, non-lawyers and government officials). However, Legal Aid would still be a government department, and the Council

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"would not interfere with the handling of individual cases,...but would examine and advise the Government on general matters...."<sup>xxix</sup>

The government's Consultative Paper advocated option (c), stating that option (b) would involve substantial cost and administrative disruption. This failure to recommend independence for legal aid has been heavily criticized, as explained in the addendum below.

The Legislative Council voted on 21 July 1993, by a margin of 37 to 2, for full independence of legal aid by adopting the following motion:

"That since Legal Aid is necessary to uphold the right to equality before the law, this Council urges the Government to set up an independent statutory authority to be responsible for the administration of Legal Aid, so as to ensure its independence; enhance the perception of fairness and increase its accountability to the public."

The forthcoming decision

Comments on the Consultative Paper are now being studied by an inter-departmental government working group, which will finalize recommendations and submit them to the Executive Council. The government is expected to make a final decision on this issue sometime during 1994 or 1995.

### ◆ Addendum: The public debate in Hong Kong - Calls for an independent legal aid agency

The Consultative Paper's failure to recommend independence was sharply attacked in the 21 July 1993 Legislative Council debate on the subject. Simon Ip, elected to represent the legal community, explained in some detail his reasons for disagreeing with the Consultative Paper's claim that full independence would involve substantial cost and disruption. He then noted:

"What is in issue here is the initial decision whether to grant or refuse legal aid. The danger lies in the Government denying legal aid in cases which go against its interests... Once it is accepted that independence, both in fact and in perception, is important, as the Government has done, there is no place for half measures of the type proposed by the Government in the Consultation Paper. Protection of the rule of law requires that legal aid services should be independent of the Government and outside the Civil Service."

Legislator Anna Wu, speaking in the same debate, also criticized the Consultative Paper's failure to recommend complete independence of legal aid:

"Retaining the Legal Aid Department within the Government simply will not do. Adopting a half-hearted measure by creating a body to monitor the Legal Aid Department simply makes matters worse. This would only lead to a false sense of security, when in fact the Legal Aid Department will continue to be nothing more and nothing less than a government department..."

"Where is the credibility of legal aid if the public, rightly or wrongly, feels that the provision of such aid is dependant on the Government being favourably inclined? Where is the credibility of legal aid if the merit tests of applicants are vetted by civil servants?"

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The Law Society of Hong Kong and the Hong Kong Bar Association have repeatedly advocated that legal aid be fully independent of the government, supervised by an independent Legal Aid Commission. The Law Society and Bar Association, in a September 1993 joint statement, said that the government's recommendation in the Consultative Paper (option c) would make only cosmetic changes: "The fact remains that its staff would still be civil servants within the Government system and dependent on the whims and accountable to other civil servants within the executive."<sup>xxx</sup> The statement concluded:

"Past experience and individual cases have shown the need for an independent authority to be set up outside Government which is, and is seen to be, free from Governmental influence in the granting of Legal Aid and the conduct of litigation by aided persons... Without legal aid an independent judiciary is of limited benefit to the majority of the population -- without an independent legal aid authority we have a system of access to the courts that cannot be said to be fully effective and assured of a sound future."<sup>xxxi</sup>

## 6. The need to take all possible steps to safeguard judicial independence

### ◆ International standards

The ICCPR requires an independent judiciary, and the UN Basic Principles on the Independence of the Judiciary explain in some detail what is needed for such independence. For example, Principle 2 of the UN Basic Principles states: "The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."

### ◆ Concern about the future

The Hong Kong Bill of Rights guarantees an independent judiciary. The Joint Declaration and Basic Law also state that there shall be an independent judiciary, though some articles of the Basic Law (such as Article 160 which confers upon the Standing Committee of China's National People's Congress the power to decide whether any existing law in Hong Kong contravenes the Basic Law) have been criticized as compromising the authority and independence of the Hong Kong courts after 1997.

Despite the multitude of laws providing for the independence of the judiciary in Hong Kong, there is concern about the extent to which judicial independence will be respected in practice in the future. Several years ago the Chairman of the Hong Kong Bar Association surveyed senior barristers to learn how many of them would consider taking judicial appointments. Of the respondents very few indicated an interest in joining the judiciary; the main reason given was concern over the independence of Hong Kong's judiciary after 1997. This reluctance was confirmed by a number of leading barristers who have spoken with Amnesty International. The rule preventing judges in Hong Kong from later returning to the practice of law after resignation from the bench contributes to the reluctance of barristers to accept appointment to the judiciary.



## 7. The need to reduce financial obstacles to bringing a Bill of Rights court case

### ◆ International standards

ICCPR Article 2 requires an effective remedy for all those who allege their rights under the Covenant have been violated. The same article also requires that governments "develop the possibilities of judicial remedy." ICCPR Article 14 requires equal access to the courts.

### ◆ The record in Hong Kong

As explained in detail in section 1 of this report, people in Hong Kong have been deterred from bringing civil cases against the government to enforce their rights by the very high cost of litigation, and by the fear that they may be ordered by the judge to pay the government's costs (which can reach a staggering level) if they lose the case.

As noted in section 5 of this report, in July 1992 the Director of Legal Aid was given discretion to grant legal aid in *criminal* cases to people whose financial resources exceed the usual "means test" limits, if the Director is "satisfied that it is desirable in the interests of justice." However, the government has not provided for such discretion in *civil* cases, including those where an individual wishes to initiate a case against the government for an alleged infringement of human rights.<sup>xxxii</sup>

### ◆ Background information

Legislative Council member Martin Lee, speaking at the Council debate of 5 June 1991 on the Bill of Rights where he also urged establishment of an independent human rights commission, proposed that the Director of Legal Aid be given "discretion...to grant legal aid to an applicant with a meritorious human rights claim, even though he or she may not pass the rigid means test." He also proposed "that costs would not be awarded against plaintiffs who have failed in actions under the Bill [of Rights] unless the court believes the actions to have been brought frivolously, vexatiously or maliciously."

## 8. The need to extend international human rights conventions to Hong Kong

### ◆ International standards

The Vienna Declaration, adopted by consensus by 171 governments (including the UK and China) at the 1993 UN World Conference on Human Rights,

"strongly recommends that a concerted effort be made to encourage and facilitate the ratification of and accession or succession to international human rights treaties and protocols adopted within the framework of the United Nations system with the aim of universal acceptance" (para. II-4).

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The Vienna Declaration also calls on states to "regularly review any reservations with a view to withdrawing them" (para. II-5).

### ◆ Human rights conventions not yet extended to Hong Kong

As of February 1994, the UK had not yet extended the following international human rights conventions to Hong Kong (although the UK had itself ratified these): the UN Convention and Protocol relating to the Status of Refugees, the Convention on the Elimination of All Forms of Discrimination against Women, and the UN Convention on the Rights of the Child.

The UK has not yet ratified (for itself or for Hong Kong) the Optional Protocol to the ICCPR, which enables the UN Human Rights Committee to consider at closed meetings communications from individuals who claim to be the victims of violations of rights set forth in the ICCPR. The usual rule is that such communications cannot be considered unless the individual has exhausted all available domestic remedies. The Optional Protocol procedure provides a forum where human rights issues can be constructively addressed and where ill-founded allegations may be dispelled.

The UK also has not ratified or extended to Hong Kong the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty, which allows states to commit themselves under international law not to carry out any execution.

The UK has ratified and extended to Hong Kong the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but has not yet declared under Article 22 of that convention that it recognizes the competence of the UN Committee against Torture to consider individual complaints of violations.

Although the UK extended the ICCPR to Hong Kong in 1976, it did so with a number of reservations in respect of Hong Kong.

## 9. The need to agree on an effective method for post-1997 reporting to the UN about implementation of the International Covenants

### ◆ International standards

Article 40 of the ICCPR requires all States Parties to the Covenant "to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights." These reports to the UN Human Rights Committee are an absolute and integral requirement of the ICCPR. The International Covenant on Economic, Social and Cultural Rights also has a reporting requirement.

### ◆ Fulfilling the reporting obligations after July 1997

As the Joint Declaration and Basic Law guarantee that the International Covenants shall remain in force  
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in Hong Kong after July 1997, the international reporting obligations also remain in force. There is a need for agreement as to how the reporting obligations for Hong Kong can be carried out effectively, given that China has not yet ratified the International Covenants.

## 10. Conclusion - Amnesty International's Recommendations

"What do human rights amount to without suitable machinery and structures to ensure their effectiveness...?"<sup>xxxiii</sup>

UN Secretary-General Boutros Boutros-Ghali, June 1993

"[M]uch remains to be done, such as developing a human rights culture in Hong Kong, creating human rights consciousness....The Bill [of Rights] is neither a device to oppose China nor just 'a fake Rolex watch'; on the contrary, its proper role should be to strengthen the foundation of the existing legal system and thereby to reassure ordinary people that their rights will be protected....It is only right to hold that 'only if the Bill and the values it stands for are brought into contact with the lives of ordinary people, and are supported by them will the system survive.'"<sup>xxxiv</sup>

Beijing University Professor of Comparative Law Gong Xiangrui, June 1991

The quotations above emphasize two important obligations of any government in implementing the ICCPR: to ensure that all people in a society understand their rights, and to ensure that they all have access to affordable, effective remedies if their rights are violated. These are obligations which the Hong Kong Government has not yet fully discharged, as explained in this report.

Since 1976 the governments of the UK and Hong Kong have been bound by the ICCPR to establish remedies that are **effective in practice** for **all** victims of human rights violations in Hong Kong. This is a **minimum** international treaty obligation - a legal imperative of the present, not an aspirational goal for the future. The UK and Hong Kong governments also have a duty to set up adequate human rights awareness, education and training programs in Hong Kong.

Until such steps are taken, the UK and Hong Kong governments will not be fulfilling those international obligations, nor will the Hong Kong Bill of Rights (which incorporates most of the ICCPR) be properly implemented.

**Amnesty International calls on the Government of Hong Kong (or, in respect of recommendations 5 and 6, the Government of the UK) to take the following steps, without further delay, toward effective implementation of the ICCPR:**

- 1. The government should establish an independent human rights commission, with a mandate to develop:**
  - a. an accessible, affordable, speedy and effective human rights complaints system, to complement the judicial system;**
  - b. a more proactive, forward-looking and effective approach to human rights implementation; and**
  - c. effective human rights awareness, education and training programs.**

**The commission should reflect the principles adopted for such bodies by the United Nations (see Appendix 2 of this report). It should also meet the Amnesty International standards proposed for human rights commissions (also in Appendix 2), which were first issued by the organization at the UN Asia-Pacific Workshop on Human Rights Issues (Jakarta, January 1993) and which were circulated by the UN as an Amnesty International statement to the Asia Regional Preparatory Meeting (Bangkok, March-April 1993) for the UN World Conference on Human Rights.**

**2. The agency and staff determining which cases qualify for legal aid should be made independent of the government, to ensure that their decision-making is impartial and seen to be impartial.**

**3. The government should commission an independent review aimed at identifying any further measures which may be needed to guarantee the future independence of the judiciary in Hong Kong and to ensure recruitment of judges with the highest standards of competence, integrity and independence. This review should examine the extent to which the UN Basic Principles on the Independence of the Judiciary have been integrated into law, practice and training in Hong Kong, and should propose any measures which may be needed for fuller integration.**

**4. The government should ensure that people who bring a Bill of Rights court case against the government should not have to pay the government's costs if they lose the case (assuming the court does not deem the case to be abusive or frivolous). Also, the Director of Legal Aid should have and should exercise discretion to grant legal aid to an applicant with a meritorious Bill of Rights civil case against the government, even though they do not meet the "means test".**

**5. The UK should extend to Hong Kong the following international human rights conventions: UN Convention and Protocol relating to the Status of Refugees, Convention on the Elimination of All Forms of Discrimination against Women, and UN Convention on the Rights of the Child. The UK should ratify and extend to Hong Kong the Optional Protocol to the ICCPR, and the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty. The UK should declare under Article 22 of the UN Convention against Torture (with extension to Hong Kong) that it recognizes the competence of the Committee against Torture to consider individual complaints of violations. Reservations made to fundamental rights of individuals in the ICCPR by the UK in respect of Hong Kong should be withdrawn.**

**6. Amnesty International urges the UK Government to take the initiative in seeking agreement with the governments of Hong Kong and China, and with the UN Human Rights Committee and the UN Committee on Economic, Social and Cultural Rights, on the method of reporting to those committees about implementation of the International Covenants in Hong Kong after July 1997, given that China has not yet ratified the Covenants. This should be agreed without further delay, and the Committee experts should be satisfied that the reporting procedures will be effective. Amnesty International is renewing its call on China to ratify both International Covenants.**

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## Endnotes

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# Appendix 1: Selection of recent reports about human rights issues in Hong Kong

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United Nations documents relating to the more recent United Kingdom reports to the UN Human Rights Committee about implementation of the ICCPR in Hong Kong. The following documents are available from UN Information Centres. The documents relating to the third periodic report are reproduced in Byrnes and Chan, Public Law and Human Rights: A Hong Kong Sourcebook (details above):

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**Appendix 2: Standards for Human Rights Commissions (Principles adopted by the United Nations; Amnesty International's proposed standards)**

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- iiAndrew Byrnes, "The Impact of the Bill of Rights on Litigation," in Law Lectures for Practitioners 1992 (Hong Kong: The Hong Kong Law Journal Limited, 1992), p. 213.
- iiiJohannes Chan and Yash Ghai, "A Comparative Perspective on the Bill of Rights," in The Hong Kong Bill of Rights: A Comparative Approach, ed. Johannes Chan and Yash Ghai (Hong Kong, Singapore, Malaysia: Butterworths Asia, 1993), p. 10.
- ivIbid.
- vHong Kong Human Rights Commission, "Human Rights Now and Beyond 1997: A report on the human rights situation in Hong Kong" (Hong Kong: Hong Kong Human Rights Commission, 30 May 1993), p. 7.
- viSummary record of the 856th meeting of the Human Rights Committee held on 3 November 1988, UN Doc. CCPR/C/SR.856, paras. 6 and 7.
- vii"Speech by The Rt Hon Christopher Patten, Governor of Hong Kong, at the inauguration of the Freedom Forum Asian Centre," 17 January 1994, question and answer session, p.7.
- viiiHong Kong Bar Association, Submission to the UK House of Commons Foreign Affairs Committee, 27 August 1993, para. 12.
- ixByrnes, "The Impact of the Bill of Rights on Litigation," p. 221.
- XAndrew Byrnes, "And Some Have Bills of Rights Thrust Upon Them: The Early Experience of Hong Kong's Bill of Rights," in International Human Rights in Comparative Perspective, ed. Philip Alston (Oxford: Clarendon Press, forthcoming).
- xiChan and Ghai, "A Comparative Perspective on the Bill of Rights," p. 16.
- xiiHong Kong Government, Estimates for the year ending 31 March 1994 (1993), volume II, pp. 109, 112.
- xiiiInformation supplied by the Hong Kong Government's Committee on the Promotion of Civic Education, January/February 1994.
- XIVBudget figures from: Hong Kong Government, Estimates for the year ending 31 March 1994 (1993, three volumes).
- xvInformation supplied by Sub-Committee on Human Rights, Committee on the Promotion of Civic Education, October 1993.
- xviByrnes, "And Some Have Bills of Rights Thrust Upon Them: The Early Experience of Hong Kong's Bill of Rights."
- XVII"Opening of the Legal Year Speech by Jacqueline Leong, QC", in Hong Kong Bar Association 1992/1993 Annual Statement, pp. 28-29.
- xviiiHong Kong Bar Association, "Submission to the UK House of Commons Foreign Affairs Committee," 27 August 1993, para. 14.
- xixChan and Ghai, "A Comparative Perspective on the Bill of Rights," p. 10.
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- xxiSpeech by Governor Christopher Patten at the Foreign Correspondents' Club, Hong Kong (22 November 1993), pp. 3,4,8.
- xxiiIbid., p. 3.
- xxiiiIbid., p. 2.
- xxivStatistics from the Legal Aid Department, Hong Kong Government.
- xxvIbid.
- xxviIbid.
- xxviiIbid.
- xxviiiHong Kong Government, "Consultative Paper on Legal Aid" (1993), para. 46.
- xxixIbid., para. 53.
- xxxThe Law Society of Hong Kong and The Hong Kong Bar Association, joint statement regarding the Consultative Paper on Legal Aid, 24 September 1993.
- xxxiIbid.
- XXXiiThe Director of Legal Aid only has discretion in civil cases when computing income from any source for the purposes of "means test" limits, where the Director can disregard any amount considered reasonable having regard to the nature of the income or to any other circumstances of the case.
- XXXiiiUN Secretary-General Boutros Boutros-Ghali, "Human Rights: The Common Language of Humanity," in World Conference on Human Rights (New York: United Nations Department of Public Information, 1993), p. 13.
- XXXIVGong Xiangrui, "Constitutional protection of human rights: The Chinese view under the notion of 'one country, two systems'," in The Hong Kong Bill of Rights: A Comparative Approach, ed. Johannes Chan and Yash Ghai (Hong Kong, Singapore, Malaysia: Butterworths Asia, 1993), pp. 490-491.