



HONG KONG
AND THE
IMPLEMENTATION
OF THE
INTERNATIONAL
COVENANT
ON
ECONOMIC,
SOCIAL
&
CULTURAL
RIGHTS

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***HONG KONG
AND THE IMPLEMENTATION OF THE
INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS***

**PREPARED FOR SUBMISSION TO THE

UNITED NATIONS COMMITTEE ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS

ON THE OCCASION OF ITS CONSIDERATION OF

THE UNITED KINGDOM'S SECOND PERIODIC REPORTS
IN RESPECT OF HONG KONG
REGARDING ARTICLES 10-15 OF
THE INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

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**HONG KONG AND THE IMPLEMENTATION OF THE
INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

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PRESENTATIONS

*THE INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS
AND THE WORK OF THE COMMITTEE ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS*

by

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THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND THE WORK OF THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS*

A paper for the Seminar on Hongkong and the Implementation of the International Covenant on Economic, Social and Cultural Rights, Faculty of Law, University of Hongkong, 15 October 1994, by

Virginia Bonoan-Dandan

Honored colleagues in academe, fellow advocates for human rights, let me thank you for inviting me to come to Hongkong. It is indeed my honor and pleasure to speak before you on the International Covenant on Economic, Social and Cultural Rights and the work of the Committee on Economic, Social and Cultural Rights. I am privileged to be able to share with you, common concerns that have brought us together today.

A grave error in public speaking is to presume and to assume that speaker and audience are exactly on the same wavelength. I know that we are on the same wavelength for we would not be here today otherwise. But just the same, please bear with me while I go through some introductory remarks about the Covenant before proceeding to the work of the Committee. Going straight to the point--the Committee--would be much like putting the carriage before the horse in a manner of speaking.

International Human Rights Covenants

At the core of the United Nations action to protect and promote human rights and fundamental freedoms is the International Bill of Human Rights. The Bill consists of three instruments:

the Universal Declaration of Human Rights;
the International Covenant on Economic, Social and Cultural Rights; and,
the International Covenant on Civil and Political Rights.

The Universal Declaration was proclaimed by the United Nations General Assembly in 1948. The two Covenants were adopted by the General Assembly in 1966.

These three documents define human rights and fundamental freedoms. They lay down basic standards which have inspired more than 50 United Nations human rights conventions, declarations, sets of rules and principles.

*Much of the material for this paper is based on United Nations documents and fact sheets on the Committee on Economic, Social and Cultural Rights.

The Covenants are international legal instruments. This means that Member States of the United Nations, when they become States parties to a Covenant, are accepting major obligations. They bind themselves to bring national law and practice into line with the provisions of the Covenant. They become answerable to the international community by reporting regularly on what they have done to ensure that the rights proclaimed in the Covenant are being respected and enjoyed, and on the progress they have made towards this end.

The International Covenant on Economic, Social and Cultural Rights entered into force in 1976 when, by ratification or accession, the number of States parties had risen to 35. And how does a human rights treaty enter into force anyway? A human rights treaty is first adopted by the General Assembly, then the treaty is opened for signature. The next step is ratification by national authorities--usually the parliament. In some cases, States become parties to a treaty without prior signature by accession. As of 31 July 1993, there was a total of 110 States parties to the International Covenant on Economic, Social and Cultural Rights. The United States and Liberia are signatories but have not yet ratified the Covenant.

The human rights which the International Covenant on Economic, Social and Cultural Rights seeks to promote and protect are of three kinds:

- the right to work in just and favourable conditions;
- the right to social protection, to an adequate standard of living and to the highest attainable standards of physical and mental health;
- the right to education and to enjoyment of the benefits of cultural freedom and scientific progress.

The Covenant expresses these basic human rights in a way which makes them understandable to everyone and sets standards which all countries can accept as desirable goals. The Covenant also addresses a second important task of governments and the United Nations in the field of human rights: implementation.

The need for laws to ensure that economic, social and cultural rights are, or will become, a reality for all, and for State guarantees that these rights may be enjoyed without any form of discrimination is emphasized in the Covenant.

The Covenant breaks new ground in international treaty-making by linking the advancement of human rights directly to government policies to promote economic, social and cultural development and the adoption and execution of international economic and technical cooperation programmes. Ensuring that economic and social development programs

safeguard and enlarge the enjoyment of human rights is one of its principal aims.

To that end, the Covenant provides not only for monitoring the implementation of its provisions through a system of State reporting but also through reporting by United Nations specialized agencies such as the International Labour Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), and the Food and Agriculture Organization (FAO) on the effects of policies and programmes on economic, social and cultural rights falling within the scope of their activities.

The Covenant entrusted the United Nations Economic and Social Council (ECOSOC) with the task of considering reports which the States parties are expected to provide regularly to the United Nations on the steps they have taken to promote and protect economic, social and cultural rights, and on the progress made in the enjoyment of these rights.

The reporting system now in force provides for each State party to submit an initial report within two years of ratifying or acceding to the Covenant, and thereafter to make reports at five-yearly intervals.

In 1978, ECOSOC established a 15-member sessional working group to assist it in considering the reports submitted by States parties. The working group, hitherto appointed by the chairman of ECOSOC, became an elected body of governmental human rights experts in 1982.

In 1985, the working group was transformed by ECOSOC into the Committee on Economic, Social and Cultural Rights, with 18 members--experts with recognized competence in the field of human rights--who serve in their personal capacity.

Members of the Committee are elected by ECOSOC in a secret ballot from a list of persons nominated by the States parties to the Covenant. The principles of equitable geographical distribution and the representation of different social and legal systems are maintained. Committee members are elected for four-year terms, and are eligible for re-election if re-nominated. Elections are held every two years for half the membership. The Committee elects its own chairman, vice-chairmen and rapporteur.

Apart from considering the reports submitted by States parties, the Committee may make general recommendations to ECOSOC based on its study of these reports and of those it receives from United Nations specialized agencies.

The Work of the Committee

The Committee on Economic, Social and Cultural Rights holds an annual three-week session in Geneva. The meetings are usually held in public and summaries of the meetings are issued to the media.

Several months in advance of each session, a five-member working group meets to study the reports of States parties which are scheduled for examination and to identify the points which may be taken up with the representatives of the countries concerned. A list of the questions which are likely to be raised with each report is sent in advance to the State party concerned.

The examination of a report by the Committee may take up to two days. An introductory statement by a representative of the State party is followed by comments and questions on particular points from the Committee members. The State party's representative then replies to the questions and may be asked by the Committee to obtain supplementary information to be sent in later, if answers are incomplete or not immediately available. Concluding observations on the report are drawn up by the Committee. The discussion on each report by a State party is summarized in the Committee's annual report to ECOSOC.

A feature of each Committee session is a day of general discussion on one specific right or a particular article of the Covenant or special concerns relevant to the work of the Committee. The Committee invites specialists to contribute to these discussions which have so far dealt the right to food, the right to housing, the use of indicators in monitoring economic, social and cultural rights, the right to participate in the cultural life of the community, the right to health, safety nets and structural adjustment programmes. During the coming session, the Committee will devote its day of general discussion to the topic of human rights education.

The Committee makes general comments on the Covenant and the issues it raises. These comments draw on the experience gained in examining the reports of States with various socio-economic, cultural, political and legal systems in different parts of the world. The intention is to help the State parties in their task of implementing the Covenant, as well as to bring to their attention to deficiencies in the reports they submit and to suggest improvements in the reporting procedure. The Committee's comments are also designed to accelerate action by the States parties, various international organizations and United Nations specialized agencies which will lead to the full enjoyment of economic, social and cultural rights.

To date, the Committee has adopted
General Comment 1 (1989) - Reporting by States parties;

General Comment 2 (1990) - International technical assistance measures;
General Comment 3 (1990) - The nature of States parties obligations; and
General Comment 4 (1991) - The right to adequate housing.

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights has recently called upon the relevant United Nations organs to consider the drafting and adoption of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights which would permit the submission of complaints, alleging violations of the rights recognised therein. The discussion paper submitted by the Committee to the World Conference on Human Rights in 1993, was lauded and the Committee was encouraged to further explore and work on a draft of the optional protocol. In a paper titled "The Importance of the Interplay between Economic, Social and Cultural Rights and Civil and Political Rights", Philip Alston, Chairperson of the Committee on Economic, Social and Cultural Rights presents the following arguments in favour of an optional protocol:

"(a) existing procedures are not adequate to protect the rights in question in the face of major violations;(b) the exclusion of economic, social and cultural rights from such procedures highlights the unequal treatment of one set of rights vis-a-vis the other; and (c) it is essential that such a procedure be created in order to provide the opportunity for the development of some jurisprudence relating to economic, social and cultural rights..."

Alston notes the following advantages of such a protocol:

"(a) a complaints procedure brings concrete and tangible issues into relief; (b) the focus on a particular case provides a framework for inquiry which is essential and is otherwise lacking in this area; (c) the existence of an international remedy of this type will encourage governments to provide more effective domestic remedies; (d) it would require individuals and groups to formulate their economic, social and cultural rights-related complaints more precisely and in terms of the specific obligations contained in the Covenant; (e) such a procedure would ensure that governments were much more responsive to international developments in relation to these rights; and (f) a complaints procedure is capable of producing a tangible, positive, outcome for an individual whose rights have been violated."

The Importance and Functions of Reporting Procedures

The development of reporting systems lies at the very heart of the international system for the promotion and protection of respect for human rights. The first General Comment adopted by the Committee on Economic, Social and Cultural Rights, sets out a variety of objectives which, in the view of the Committee should be served by reporting. The following are relevant excerpts from General Comment 1:

"A first objective, which is of particular relevance to the initial report required to be submitted within two years of the Covenant's entry into force for the State party concerned, is to ensure that a comprehensive review is undertaken with respect to national legislation, administrative rules and procedures and practices in an effort to ensure the fullest possible conformity with the Covenant....

"A second objective is to ensure that the State party monitors the actual situation with respect to each of the rights on a regular basis and is thus aware of the extent to which the various rights are, or are not, being enjoyed by all individuals within its territory or under its jurisdiction...

"While monitoring is designed to give a detailed overview of the existing situation, the principal value of such an overview is to provide the basis for the elaboration of clearly stated and carefully targeted policies, including the establishment of priorities which reflect the provisions of the Covenant. Therefore, a third objective of the reporting process is to enable the Government to demonstrate that such principled policy-making has in fact been undertaken...

"A fourth objective of the reporting process is to facilitate public scrutiny of government policies with respect to economic, social and cultural rights and to encourage the involvement of the various economic, social and cultural sectors of society in the formulation, implementation, and review of the relevant policies...

"A fifth objective is to provide a basis on which the State party itself, as well as the Committee, can effectively evaluate the extent to which progress has been made towards the realization of the obligations contained in the Covenant...

"A sixth objective is to enable the State party itself to develop a better understanding of the problems and shortcomings encountered in efforts to realize progressively the full range of economic, social and cultural rights...

"A seventh objective is to enable the Committee, and the States parties as a whole, to facilitate the exchange of

information among States and to develop a better understanding of the common problems faced by States and a fuller appreciation of the type of measure which might be taken to promote effective realization of each of the rights contained in the Covenant..."

These objectives focus on the importance attached to the role of national level institutions in virtually all phases of the reporting process. The monitoring role played by the international treaty bodies is, for the most part, only a secondary or catalytic one. The primary role in the procedure should be played by all of the relevant constituents on the national level. After all, the best promoters and protectors of human rights are those with the biggest stake in the outcome and the best knowledge and understanding of the situation--the citizens and residents of the country in question. What is essential is for the text of the report itself to be readily available at the domestic level and for national debate or discussion of the content of the report.

It also needs to be pointed out that, no matter how thorough the examination of a State party report is, the entire exercise is futile unless there is some effective follow-up at the national level to the concluding observations adopted by the Committee.

One problem encountered in the course of the work of the Committee, is the situation of overdue reports. The situation is all the more disturbing since it constitutes prima facie evidence that the State concerned has failed to undertake the initial comprehensive review of law, policy and practice that should enable it to identify the measures required to bring the situation into conformity with the treaty.

The Committee has recently begun examination, even in the absence of a report, of the situation in countries with significantly overdue reports. It should be made clear however, that this action is in the nature of purely a last resort. Even when a situation is scheduled for examination, the preferred option is for the State party to notify the Committee that a report will be submitted within a short, specified timeframe and for that report to provide the basis for a dialogue between the Committee and representatives of State party.

The Committee on Economic, Social and Cultural Rights draws on many sources in monitoring the application of the Covenant. It has the evidence presented to other bodies and their conclusions on both specific and general problems in the human rights areas which directly concern each of them.

The Committee is kept informed of the activities of the General Assembly and ECOSOC on human rights matters. It hears evidence from special rapporteurs appointed by other bodies to report on the situation in specific countries or on general human rights problems, as well as from outside experts. United Nations specialized agencies provide the Committee with reports of their activities, and its members also draw on the experience of nongovernmental organizations.

At present, the approach to non-governmental organizations varies significantly from one treaty body to another. The Committee on Economic, Social and Cultural Rights recently adopted the practice of providing an opportunity, during its pre-session working group and at the beginning of each session, for groups to present any information of direct relevance to the work of the Committee.

The Committee continues to explore creative ways and means to make its work more effective in monitoring compliance to treaty obligations of States parties to the International Covenant on Economic, Social and Cultural Rights. In a general comment, the Committee notes that United Nations agencies should recognize the need to establish a close relationship between development activities and efforts to promote respect for human rights. It supports the proposal made by the Secretary-General of the United Nations that all major development co-operation activities should be accompanied by an assessment of their impact on human rights.

The United Nations has accomplished the task of defining and describing basic human rights and fundamental freedoms. It has built--in the form of international treaties--an interlocking structure of defence for these rights and freedoms. It has created the means to measure progress towards the progressive realization of human rights.

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*HONG KONG AND THE IMPLEMENTATION OF THE
INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS*

by

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HONG KONG AND THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

ANDREW BYRNES*

My task today is to move from the general overview of the International Covenant on Economic, Social and Cultural Rights and the work of the Committee on Economic, Social and Cultural Rights which Professor Bonoan-Dandan has already given and to focus on the relevance of the Covenant and the Committee to Hong Kong. My presentation will be of a fairly general nature, because for the rest of day you will be hearing from experts in various fields who will illuminate and analyse Hong Kong law and practice in those fields in the light of the standards contained in the Covenant. They will also be assessing the adequacy of the Hong Kong government's recent reports under the Covenant. My comments will therefore be confined to some of the more general issues of application and implementation of the Covenant in the Hong Kong context.

Despite the many achievements that Hong Kong has made in the areas of economic, social and cultural life, there are nevertheless serious problems and deficiencies in many areas. Hong Kong faces a number of major challenges in ensuring the enjoyment of the rights contained in the Covenant; my purpose is to challenge the government, NGOs, and the Economic Committee to increase their efforts towards employing the standards contained in the Covenant to respond to those challenges.

There are four matters I wish to address briefly. These are:

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- the manner in which the reporting obligations under article 16 of the Covenant are carried out in relation to Hong Kong;
- the transfer (or possibly the non-transfer) of the obligations (including the reporting obligations) under the Covenant to China after 1997;
- the method of implementing the Covenant in Hong Kong, in particular the lack of a general mechanism or a guarantee for economic, social and cultural rights; and
- some specific, and in my view egregious, failures to implement obligations under this Covenant, in particular in the area of discrimination.

Finally, I will make a number of suggestions as to ways in which the profile of the Covenant can be significantly enhanced in Hong Kong, in order to promote the ultimate goal of ensuring a higher level of enjoyment of economic, social and cultural rights in Hong Kong.

THE COVENANT AND HONG KONG

Let me first say a few things about the Covenant and Hong Kong. As Professor Bonoan-Dandan mentioned, the Covenant came into force in 1976, and it was in that same year that the Covenant was ratified by the United Kingdom and extended to Hong Kong. Unfortunately, when the United Kingdom extended the Covenant to Hong Kong, it entered a number of reservations. These reservations include the restriction on the obligation to ensure equal pay for women in the private sector. Those reservations are still in force, and there has been no suggestion from any of the governments involved that they are under review with a view to their eventual removal. The passage of almost 20 years has, it seems, done little or nothing to change the circumstances which, it was thought, required such reservations to be entered.

Perhaps the most striking thing about the Economic Covenant is the relatively minor role that it has played in human rights discourse in Hong Kong, at least until very

recently. This may be due in part to the generally low level of attention given to international human rights standards in Hong Kong until the last ten years (especially in the last five years). But it also reflects the second-class status generally accorded to economic, social and cultural rights as human rights. Admittedly, it was only following the criticism of the United Kingdom and Hong Kong governments by the Human Rights Committee in 1989 that the Hong Kong government took steps to publish the texts of the two Covenants and to disseminate those texts throughout the community. Nevertheless, it is civil and political rights issues which have tended to dominate the public discussion on human rights, a tendency aided in no small part by the enactment of the International Covenant on Civil and Political Rights as part of Hong Kong's domestic law in the form of the Bill of Rights Ordinance. This initiative was accompanied by a refusal to consider enacting some or all of the rights contained in the Economic Covenant as part of Hong Kong law, a refusal then (and now) justified by reference to the allegedly different nature of those rights. It is really only since the late 1980s that Hong Kong NGOs have become particularly literate in invoking those standards in seeking to change law and policy in Hong Kong. The enactment of the Bill of Rights provided a significant impetus for discussions of civil and political rights, but there has been no corresponding impetus in relation to economic, social and cultural rights.

As Professor Bonoan-Dandan mentioned, the Covenant requires States Parties to report regularly on the steps that they have taken to give effect to their obligations under the Covenant. Until the last year or so, there was little awareness of the fact that Hong Kong submitted reports under the Covenant, and even less public discussion of the contents of those reports. One of the reasons for this was that there had not been a report submitted in respect of Hong Kong for nearly 10 years. Since that time the monitoring procedures under the Covenant have been altered radically, with the establishment in 1987 of the Committee on Economic, Social and Cultural Rights, which replaced the earlier, rather ineffectual Working Group of Governmental Experts which had been entrusted by the Economic and Social Council with reviewing reports under the Covenant.

In addition to the establishment of a new monitoring body, there has been a change in the reporting cycle. Under the old system, States parties were required to report in sequence on a cluster of rights: articles 6-9, 10-12 and 13-15 over a nine-year period. A new system of comprehensive reports has now been introduced by the Committee on Economic, Social and Cultural Rights. However, the most recent reports in respect of Hong Kong have been submitted under the old cycle; they concern articles 10-12 and 13-15 of the Covenant. This is the reason why we are not spending a great deal of time talking today about the question of employment or work-related rights, which are an essential feature of the Covenant, but are primarily addressed in articles 6-9. These articles will not be directly considered by the Committee this time, but will be when Hong Kong submits its next report, its first comprehensive report. That report, covering all substantive articles of the Covenant, was due in 1994, but has not yet been submitted.

The reports which will be considered by the Economic Committee at the end of November were considerably overdue. The early reports submitted in respect of Hong Kong under the Covenant were very scanty in their coverage; much of their content consisted of references to other reports submitted to the International Labour Organisation under international labour conventions covering the same subject-matter – reports which were also largely unknown to the public. Nor were they especially self-critical. Things have now changed considerably and the Hong Kong government has to be given credit for its now much more detailed reports. The government has begun to take the reporting procedure much more seriously than it (and the United Nations) took it ten years ago, both under this treaty, and under other treaties. We will be hearing from later speakers as to the adequacy of the reports – what is included, what is not included.

One important dimension of the reporting procedure is the way in which the reports have been prepared. As I have already mentioned, the present exercise is the first occasion on which significant attention has been given to the Economic Covenant. But the process of reporting has been characterised, as it has been under other

international human rights treaties in Hong Kong, by a policy of government secrecy, and the exclusion of NGO participation and input into the drafting of the report. The Foreign and Commonwealth Office in London radiates an attitude of great disdain towards those in Hong Kong who consider that, as the Covenant concerns the rights of people in Hong Kong, they should have the opportunity to have input into the report as it is being prepared – a view which the Economic Committee has explicitly endorsed in its *General comment No 1*. The Hong Kong administration is, by its acceptance of this formalistic and imperialistic attitude, complicit in this exclusion.

It is perhaps useful first to describe how a report is prepared in respect of Hong Kong and submitted to the United Nations. The Hong Kong government will prepare a draft. Within the Hong Kong government the Secretary for Home Affairs will have overall responsibility for co-ordination of that task, and works in close co-operation with the Attorney General's Chambers. The preparation of the draft will involve consultation among the various branches of the Hong Kong government with responsibility for the areas covered by the Covenant. This draft is then sent to London to be finalised before submission to the United Nations.

Unfortunately, there it may sit, sometimes for many months. As you know, the United Kingdom has the responsibility of submitting reports in respect of a whole range of dependent territories, leftovers, in a sense, from the 19th century; of these Hong Kong is the largest and the most important. The United Kingdom government has taken the view that it will generally wait a group of reports from its dependent territories to be ready before submitting them to the United Nations. This can result in considerable delays, in view of the limited resources that many of the smaller territories may have for the preparation of the reports. As a result, Hong Kong's reports, which are often submitted reasonably punctually, will be delayed by the tardiness of other territories. Furthermore, the United Kingdom government has consistently refused to release to the people of Hong Kong the text of the report on Hong Kong, prepared on behalf of the people of Hong Kong, even though the text is ready to be submitted, until the report is actually sent to the United Nations.

Well, you may ask, what is wrong with that? After all, isn't the report one to the United Nations and would it not be grossly impolite and inappropriate to let the people who are affected by the report know of its contents before the intended recipients, the members of the Committee on Economic, Social and Cultural Rights, are given copies? The answer, in my view, is no. In its *General comment No 1* the Economic Committee has made it very clear that the Committee would be happy with the people of the country concerned being given an opportunity to review the report before submission. The Committee has almost gone so far as to say that governments should be consulting with NGOs and that the preparation of the report by the government should involve the community. In the Committee's view, the reporting procedure is not to be seen as a formalistic process of governments' making submissions to the United Nations, but as providing the opportunity for a real discussion, *at the national level*, of the substantive issues involved. So, it seems to me that the United Kingdom government – and to the extent that the Hong Kong government has not pushed them on this – the Hong Kong government have failed to abide by the spirit of the reporting procedure insofar as they fail to involve NGOs at the drafting stage, and certainly when reports are left mouldering in London for lengthy periods.

Let me give you two examples. First, the reports under the Economic Covenant were sent to London by the Hong Kong government well before their eventual submission to the United Nations and they were not released to the Hong Kong public until then. Now, almost two years later, they describe the state of play as of two years ago. Such a position is far from optimum for the Committee because much of the material may be out of date. It is not good for the government because significant initiatives have been taken since the report was prepared in Hong Kong. Nor is it a desirable situation for those in Hong Kong interested in the issues, since the report reaches them months after the information in the report was still fresh.

The report in respect of Hong Kong under the Convention Against Torture is an equally unfortunate example. It was sent on time to London in January 1994. It is still in London. We do not know what is in the report. The Hong Kong government refuses to

release it. They say the United Kingdom government will not let them release it. The United Kingdom government steadfastly refuses to release it, saying that they are waiting for reports from other dependent territories to come in. Something needs to be done about this situation. It manifests disdain for the people who are meant to be the beneficiary of the rights about which the government is reporting, and starkly inconsistent with the rhetoric, not least in the mouth of the Governor of Hong Kong, about the importance of the people of Hong Kong having a say in their own affairs. It also provides an unfortunate precedent for the practice after 1997. Assuming that China will be reporting under various human rights treaties in respect of Hong Kong, one can just see the scenario replicated. The reports may or may not be prepared in Hong Kong. If prepared in Hong Kong, they will then be sent to the Foreign Ministry of the Central People's Government, and there may be little opportunity for Hong Kong people to comment on what is being said on their behalf. What is most disheartening about such a scenario is that the Chinese government will be able to say that "This is the way that it has always been done, so what are you complaining about?"

If one is to talk so much of participatory democracy and Hong Kong people having a say in Hong Kong affairs – and we have heard a good deal of this language from Governor Patten – then perhaps the time has come for Mr Patten to put his money where his mouth is. Mr Patten, we all know, has considerable say in the corridors of power in Westminster. Some months ago, in a speech to Amnesty International in Hong Kong, Mr Patten said that he was committed to doing all that was reasonably within his power to ensure the protection of human rights in Hong Kong. If influence needs to be exerted for the Foreign Office to let Hong Kong people know what it is planning to say about the situation in Hong Kong, then perhaps he may have to take this job on personally.

Despite these problems, I think that it would be unfair not to give credit to the Hong Kong government. As soon as the United Kingdom government gives them clearance they publish the relevant reports in Hong Kong. In recent years they have made more concerted efforts to distribute reports to the members of the Legislative

Council, and to those in the broader community who may be interested. They are working uphill against the London bureaucracy's penchant for secrecy, but have been more than willing to provide whatever information they are not barred from making available.

Despite these formal barriers to NGO participation in the preparation of the government's reports, NGOs have nevertheless actively followed the developments and will be participating in the work of the Committee when it meets in Geneva. A pre-session working group of the Committee met in June 1994 to conduct a preliminary examination of State reports and to draw up a list of questions to be sent in writing to the States concerned. A number of NGOs with experience of the reporting procedure under the ICCPR and of other United Nations human rights bodies knew that the process was underway and have organised to provide information to the Committee. A leading role in that regard has been played by the Hong Kong Human Rights Commission. (That is the non-government Commission. We still hope that there will be an official one, but that may be quixotic.) Those NGOs provided material to the pre-session working group, which drew on that material when drawing up the list of question to be sent to the United Kingdom/Hong Kong governments.

Another important role was played by the Legislative Council. I do not know whether this was an unprecedented role (it does seem to be so for Hong Kong), but certainly it is unusual to have a Legislative Panel debating what has gone into a government report. Mr Andrew Wong Wang-fat will speak to you today about the role that the Constitutional Affairs Panel of the Legislative Council has played, which includes the preparation of the Panel's own report raising their concerns about the limitations of the government's report. This they have sent to the Committee, and members of that Panel will present its content to the Committee in Geneva.

In addition the papers presented at today's conference will also be compiled and sent to members of the Committee. Various NGO representatives will attend the Committee's session in Geneva in order to brief other members of the Committee as well. That will just be the start, and it will be what comes out of that Committee – the

Concluding observations, which Professor Bonoan-Dandan referred to – that will provide those who are committed to economic, social and cultural rights in Hong Kong with more grist for their mill. I will come back to this issue when I make some specific suggestions about action.

SUCCESSION TO THE OBLIGATIONS UNDER THE COVENANT BY CHINA AFTER 1997

The next issue is the thorny question of 1997 and the problems of state succession. We all know that in the Joint Declaration, the two governments involved – the United Kingdom and China – have agreed that the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights “as applied to Hong Kong” will “remain in force”. Article 39 of the Basic Law reiterates and expands upon that assurance: the treaties will remain in force and be implemented through the laws of the SAR. The big question is “Will there still be reporting after 1997”? China is not a party to the two Covenants. One may hope that China will one day in the near future decide to become a party to them. But if China is not a party to the Covenants, it will not be reporting to the United Nations with respect to its own territory, which will then include Hong Kong. How can one then reasonably think that it is bound or likely to do so in respect of Hong Kong alone?

There are three questions that need to be answered: (a) Does the Joint Declaration oblige the PRC vis-à-vis the United Kingdom to report on Hong Kong? (b) Would the United Nations Committee on Economic, Social and Cultural Rights have competence to accept such reports if they were submitted? (c) Even in the absence of a report by China, does the Committee have the competence to consider the implementation of the Covenant in Hong Kong?

(a) Is China under an obligation to report in respect of Hong Kong?

The Joint Declaration states that the Covenant shall remain in force. The United Kingdom position has been that the Joint Declaration applies to all obligations under the Covenant, including the reporting procedures. Until recently, as recently as a couple of

days ago, there had been no real dissent from China on this issue. Indeed, in June 1994, Mr David Edwards, Law Officer (International Law), the Hong Kong government's principal international legal adviser, told the Legislative Council that discussions in the Sino-British Joint Liaison Group were proceeding on the basis that all that needed to be settled was the precise mode of giving effect to the position as understood by the United Kingdom, in particular the problem that two States (one not a party to the treaty) are seeking to amend the provisions of a treaty to which some 130 other states are parties. Progress was, so it seemed, being achieved by quiet diplomacy.

However, if you read the *Eastern Express* two days ago (13 October 1994), you would have seen that this mutual understanding of the meaning of the relevant provisions of the Joint Declaration seems to have become unstuck. Senior Chinese government officials are reported as saying that China does not have to report because it is not a party to the Covenant. The United Kingdom's response has been that the PRC has agreed to do so in respect of Hong Kong. To which the Chinese response is, "Well, we were not told. In 1984, no one ever told us that this involved reporting obligations." Whatever the rights and wrongs, and the "correct" interpretation according to accepted methods of treaty interpretation, there is now once again a problem in an area which seemed set for a smooth transition.

Obviously this is an issue that needs to be sorted out. I note in passing that the suggestion that the Hong Kong government might submit its own reports to the United Nations (a suggestion the *Eastern Express* reports some Chinese officials as attributing to Mr Patten) is as unlikely an event to occur from a political perspective, as it would be from a legal perspective that the United Nations bodies would accept such a report as submitted on behalf of the Chinese government.

(b) Could the Committee accept reports submitted by China only in respect of Hong Kong?

Although China's present refusal to accept that it must or can submit reports under the Covenants renders this question moot at present. If China does agree that it is

bound by the Joint Declaration to report, how does one proceed? The problem is, of course, if you and I agree on something, that does not affect what one of us may have already individually agreed with other persons. China is not a party to this treaty; the United Kingdom is, and accordingly has treaty relations with 130 or so other States parties to the Covenant. The agreement in the Joint Declaration that China will continue to report in Britain's stead is problematic, not least because it appears to amount to an amendment of the treaty. You simply cannot change a multilateral agreement by a bilateral agreement between one party and one non-party.

How would the British understanding of the Joint Declaration amend the treaty? The difficulty arises because when States become parties to the Covenant, they must do so with respect to the whole of their territory. Permitting China to report only in respect of Hong Kong is tantamount to permitting China to become a party to the Covenant only in respect of part of its territory. There may be ways of addressing this issue satisfactorily, for example by obtaining the agreement of all the other parties on the ground that this was an unusual situation and that an exception to the general rule be made. The possibility that this would encourage China eventually to ratify the Covenant in respect of all of its territory might be seen as a good political reason for permitting this. But it is by no means certain that other States parties would accept partial application of the treaty in this way. In the case of the Economic Committee (but not in the case of the Human Rights Committee) a further option might arise from its status as a body created by the Economic and Social Council rather than being created by the Covenant itself. There would appear to be no reason why ECOSOC could not authorise the Committee to receive such reports, though such proposals might face stiff opposition from China if China is opposed to reporting under the Covenant.

(c) What powers does the Committee have to examine the position in Hong Kong without an official report?

If China does not agree that it is obliged to and fails to submit any reports, how does one proceed? Clearly neither the neither Chinese government nor the Hong Kong SAR government will be submitting any official reports. The question then is whether the

Committee will then look at the implementation of the Covenant in Hong Kong in the absence of such reports. Professor Bonoan-Dandan has spoken about the Committee's reviewing situations in a country whose report is considerably overdue. But those instances have involved States parties, and we will not be dealing with a State party in the Hong Kong context.

So it may be that the Committee will have to break even more new ground than it has, and look at other models, perhaps the types of measures taken by the various treaty bodies in relation to former Yugoslavia, where a number of the committees have requested reports from some of the successor states. Even that is not a direct analogy, although it is one that should be explored. It would be much better if the whole thing was sorted out between the governments.

A further option might arise from the Committee's status as a vcreation of ECOSOC. The Council could presumably authorise the Committee to examine the implementation of the Covenant in Hong Kong, whether a report had been presented or not.

You might ask whether the continuation of the reporting obligation really matters, as long as we have the substantive guarantees, particularly in view of the fact that it is likely to be 1998 or 1999 that the Committee has to respond to any failure to report by China. Nevertheless, I think that Professor Bonoan-Dandan has explained why the process of reporting is significant, both from the point of view of international scrutiny and internal debates.

IMPLEMENTATION OF THE COVENANT IN HONG KONG -- THE LACK OF A COMPREHENSIVE APPROACH

In Hong Kong, there is no Bill of Economic, Social or Cultural Rights. We do have a Bill of Rights that incorporates the International Covenant on Civil and Political Rights. That instrument, with the exception of the guarantees of non-discrimination, does not guarantee economic, social and cultural rights directly. There was virtually no support for including economic, social and cultural rights when the Bill of Rights was

being enacted. A number of people suggested that that might be done, but that was dismissed with the only partially accurate statement that economic, social and cultural rights are "different", that is that they are not justiciable in any meaningful sense, unlike civil and political rights. One brave attempt was made by my colleague Nihal Jayawickrama who drafted his own bill of rights, which was published in the Hong Kong Standard. He included a number of economic, social and cultural rights, but even he restricted the list to those that are considered to be clearly justiciable, such as the right to education and the right to work.

So what we have basically is implementation, or partial implementation, of economic, social and cultural rights through general law and policy. There is no place where you can go and lodge an explicit complaint that your "rights under the International Covenant on Economic, Social and Cultural Rights have been infringed". Nowhere. Of course, one can do that with the Bill of Rights in relation to civil and political rights. With economic, social and cultural rights you have to do it indirectly, you have to do it partially, using different categories. Such avenues might have been available if the Governor had permitted Anna Wu's Human Rights and Equal Opportunities Commission Bill to be introduced into the Legislative Council. That Commission Bill would have permitted individuals in Hong Kong to complain to the Human Rights and Equal Opportunities Commission that provisions of the International Covenant on Economic, Cultural and Social Rights had not been implemented or that the individual concerned was a victim of a violation of a right guaranteed by the Covenant. That would have gone at least some of the way towards giving more reality to these rights in Hong Kong and rendering them more justiciable.

Perhaps one of the most distinctive features of Hong Kong in this context is that it is in a different situation in terms of material resources to virtually any other major industrialised country in the world. If you look at article 2(1) of the Covenant you will see that the obligations are to do the best you can within the available resources to progressively implement the obligations contained in the Covenant. States continually appear before the Committee and other fora and say that the Covenant requires only

progressive implementation to the best of their resources, that they are poor and therefore cannot be expected to do much (yet).

This is an argument that simply cannot be made in the context of Hong Kong. Hong Kong cannot plead poverty. And Hong Kong cannot plausibly plead lack of time. It has been 18 years now since the Covenant was extended to Hong Kong. Ten or fifteen years ago the government might legitimately have said that in some areas more time was needed. But now, in many areas, particularly in the area of discrimination, it can no longer plead lack of time. The government has had time enough, and it needs to get on with it.

THE FAILURE TO FULFIL OBLIGATIONS IN THE AREA OF DISCRIMINATION

I would now like to discuss briefly one substantive area, the issue of discrimination, in particular, discrimination in the employment context, which is not dealt with in the reports that are now before the Committee and because it is an area that is only going to be touched on by others today.

The Economic Covenant is very clear. As Professor Bonoan-Dandan said, rights must be guaranteed without discrimination. And it is very clear that one of the rights to be guaranteed without discrimination is the right in relation to work and employment. It is also very clear that this includes private discrimination, not just discrimination by public bodies, which is all the Bill of Rights covers.

It is also very clear that the Covenant requires effective legislative protection of the right to enjoy the guarantees without discrimination. If you look at the grounds of discrimination mentioned in article 2(2) of the Covenant, you will see that they cover race, colour, sex, language, religion, political or other opinion, national and social origin, property, birth or other status. Of course, it is not just the Economic Covenant which imposes obligations to address discrimination by legislative means; similar obligations are contained in the Racial Discrimination Convention and the Convention on the Rights of the Child.

Yet, what protection is there under Hong Kong law against discrimination in employment on these grounds? There is, in theory, protection in public sector employment by virtue of the Bill of Rights, but virtually no protection in the area of private employment. In my view it is fair to say that there has been a signal failure to fulfil the obligations to legislate against discrimination, particularly as concerns discrimination involving race, ethnic origin, political and other opinion, union membership and activities, and other areas of concern. The only concessions we have been given by the administration – 18 years after the Economic Covenant, and 25 years after the Racial Discrimination Convention were applied to Hong Kong – are proposals to enact sex discrimination and disability discrimination legislation. There have been no initiatives on race, and no initiatives on a whole range of other matters. Furthermore, the government has shown considerable resistance to Anna Wu's initiatives in these areas.

Even the proposals that the government *has* put forward in the area of sex discrimination legislation do not go as far as the Economic Covenant requires. Marital status discrimination under the government's Sex Discrimination Bill is limited to employment, as though there is no marital discrimination in other areas. A case of indirect discrimination cannot be brought directly before the courts by the person who is affected. There is no explicit coverage of discrimination in government laws and programs.

The government's Bill would exempt small employers from at least five years from some provisions of the Bill. It would exempt the small house policy, in clear violation of the Letters Patent and obligations under this and other human rights treaties. Admittedly, the government's Bill would establish an Equal Opportunities Commission, whose principal virtue in the government's eyes seems to be that it is based on United Kingdom legislation. So if one were to ask what the Hong Kong government's record in relation to discrimination in the employment area, one would have to give the government barely a passing grade.

What of protection of economic, social and cultural rights after 1997? After 1997 we shall have article 39 of the Basic Law. Will that be justiciable? Will it stop the

government from legislating or acting in contravention of the Covenant on Economic, Cultural and Social Rights? Once again, no one knows. While some thought that the provision might be capable of being litigated before the courts after 1997, now the position is less clear. We do not know whether we will have additional protection after 1997, at least in formal terms.

WHERE TO FROM HERE?

Where do we go from here? We have to begin by taking economic, social and cultural rights seriously, to borrow from that doyen of Anglo-American jurisprudence, Ronald Dworkin. The Hong Kong government must do a whole range of things, but there are also many things that those of us outside of government must do.

First, the government must fulfil its obligations in relation to discrimination by enacting legislation in accordance with the law governing its international obligations. It should, as it has with the Bill of Rights, carry out regular and comprehensive reviews of its policies and practices in light of its obligations under the Covenant. The government should report annually to the Legislative Council on the progress it has made in implementing economic, cultural and social rights, such reports to be within the framework of the Covenant. It should confer on any Equal Opportunities Commission or Human Rights Commission or some other body a general power to consider complaints that a person's rights under the Economic Covenant have been infringed. It should open up the process of reporting to the United Nations by involving NGOs in the preparation of the reports. That will keep them busy, I think.

What can the Legislative Council do? The Legislative Council has been asserting itself and playing an important role in the protection of human rights. It has a role in ensuring that all legislation is seriously vetted for consistency with the Economic Covenant, in the same way as is now happening in relation to the ICCPR and Bill of Rights. Of particular importance in the context of this reporting exercise, the Legislative Council should put on its agenda the *Concluding Observations* adopted by the Committee in November/December and hold public hearings on them, including

discussion with the administration. It should ensure that the government reports back to it on the steps taken to implement any recommendations of the Committee, and it should continue to follow up. The role of NGOs is to keep doing what they have been doing, but to consider that invoking rights discourse may add legitimacy and further power to their claims.

CONCLUSION

Overall, despite Hong Kong's considerable achievements, there are some significant failures in the area of economic, social and cultural rights. In some cases the problem is half-hearted legislation, in others inadequate implementation measures, as well as the lack of a general procedure for scrutinising the level of enjoyment of economic, social and cultural rights in a comprehensive manner. Hong Kong is in some ways still a young society in many of these areas, but we must not forget that the Hong Kong economic miracle is perhaps inaptly named. Miracles are things that do not have explanations for their happening. But if we look at Hong Kong, the explanations of why Hong Kong's miracle has occurred is to be found in the hard work of those many of whom who have been paid subsistence wages, or who now eke out their existence in cages. Whether Hong Kong should be termed a miracle or something else, it is important to acknowledge the downside as well as the advantages.

We all know that rights can play an important role in transforming recipients of privilege, beneficiaries, those in the thrall of the "welfare syndrome" into active agents. Rights can empower Hong Kong people, enabling them to claim the right to economic self-sufficiency and dignity rather than to beg for their handouts, their welfare or pension payments. But there remains much to be done in this wealthy society to give content to these high-sounding, idealistic promises.

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*HOUSING AND THE INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS*

by

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HOUSING AND THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

MR HO HEI WAH¹

In 1966, the British State signed the International Covenant on Economic, Social and Cultural Rights. Since the covenant became effective in 1976, the State Party has been responsible for guaranteeing all the citizens in the Commonwealth countries to enjoy all the rights enshrined in the covenant.

Article 2 in the ICESCR has indicated clearly what responsibility the State should have.

Text of Article 2:

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discriminated of any kind as to race, colour, sex language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognised in the present Covenant to non-nationals.

When the State implements the International Covenant, it has to follow three basic principles and responsibility:

1. RESPECT: The State must respect the right of the citizens to fully enjoy the rights enshrined in the covenant. No exploitation can take place. The State can guarantee the basic human rights of the citizens through the procedure of legal-establishment and through

¹ Society for Community Organisation (SOCO);
Hong Kong Human Rights Commission (HKHRC)

clearly written constitution.

2. **ENSURE:** The state has the responsibility of protecting its citizens against any violations of their rights by a third party. The state can pass laws and enforce the laws to guarantee that no violation of human right shall take place. If violations of human rights do take place, the State shall propose remedial methods.

3. **PROMOTE:** The State must play an active role in utilising the resources to provide services to its citizens.

In the area of housing, the ICESCR and the International Covenant on Civil and Political Rights (ICCPR) have both mentioned the housing rights the citizens should enjoy, these rights are summarised as follow:

1. A SECURE STATUS TO LIVE

Every citizen should have a secure and safe residence. No one can make his/her liable to forfeit his/her living place and possessions. His/her privacy should not be violated.

2. THE ABILITY TO AFFORD

The way of living should not exceed their ability to afford. They should be guaranteed that they can still afford their basic necessities after paying living wats.

3. AN OPPORTUNITY TO GAIN THE APPROPRIATE HOUSING

Citizens should have the opportunity to live in a safe place away from pollution. They should be provide with basic utilities in their living and community facilities. They have the right to be well-informed of their dwellings.

4. A DESIRABLE LIVING CONDITION

A desirable house involves not only a safety-inhabited condition, but also the availability of health family life and community life for the inhabitants.

5. THE RIGHT TO GOVERN AND PARTICIPATE

One has the authority to govern one's living place, not subject to influence of the landowner, government or state. Also, one can participate in the organizations in relation with housing rights. Those organizations include Owners Incorporations and Mutual Aid Committees. Through collective effort one can have say in the housing affairs, like the design of buildings, construction, management and environmental business.

6. THE RIGHT TO SELECT

One can decide one's living place and living ways. Forfeiture of one's house is

intolerable. Unless there is detailed enquiries made by the residents and they agree on the new places, they should not be forced to move by unruly deliberation.

7. NO GROUNDS FOR DISCRIMINATION

Housing rights are exercised regardless of differentiation in terms of religions, colour, sex, ethnic groups, political background, age, family size, sexual affiliation, physical disability. No one is authorized to forfeit one's right to live under such consideration.

When a state is being criticized for not implementing the covenant, it always gives the excuses of not having enough resources or not having enough economic production force. However, when the state becomes much more well-off, it does not necessary mean that the state will fully implement the covenant. Hong Kong is a typical example. Although the Hong Kong Government keeps on boosting that the Hong Kong economy system ranks within the first ten in the world, its effort on protecting its citizens to enjoy the rights in the covenant has been very little and its performance very disappointing.

Here are a number of reasons explaining why the citizens in Hong Kong still cannot fully enjoy their housing rights and why their rights not being respected or protected.

1. Lack of sincerity on the government side to pass laws to protect the citizens' rights.
2. The covenant has not been inscribed in the guideline and target of the policy-making.
3. Lack of progression in amending laws which violate housing rights.
4. Lack of central coordinating body to monitor all kind of housing problems.
5. Neglect on the manipulation of property prices which are far beyond the citizens' ability to afford.
6. Even flooded with resources, the Government provides no assistance to citizens who cannot afford to buy properties. Nor has it ever tried to monitor or control the rent of private properties.
7. Housing policies are still full of discrimination.
8. No proper service has been given to the vulnerable group.
9. Commercial development has always been given priority on land utility and city planning whereas the needs of families and communities are always neglected.
10. Lack of proper channel to enable citizens to participate in policy making with regards to land and housing.

*THE RIGHT TO A CLEAN AND SAFE
ENVIRONMENT UNDER THE COVENANT:*

*THE IMPLEMENTATION OF ANTI POLLUTION
LEGISLATION IN HONG KONG*

by

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THE RIGHT TO A CLEAN AND SAFE ENVIRONMENT UNDER THE COVENANT -- THE IMPLEMENTATION OF ANTI POLLUTION LEGISLATION IN HONG KONG

TERRI MOTTERSHEAD¹

INTRODUCTION

The Stockholm Conference on the Environment in 1972 raised the collective consciousness of many Asia Pacific countries to the severe pollution problems within and external to their borders. Regrettably, despite Article 12 of the covenant on economic and cultural rights (in particular the right to a clean and safe environment) being ratified for Hong Kong by the United Kingdom on 20th May, 1976, little was done to overcome the pollution of the environment until 1989. On 5th June 1989 the Hong Kong government published a White Paper titled "Pollution in Hong Kong - A Time to Act."

In the past the Hong Kong government had funded many ad hoc consultancy reports, studies and re-arrangements of administrative infrastructure² to detail or deal with the pollution problem. The White Paper differed from this approach because it outlined a comprehensive and integrated ten year programme for dealing with waste and water, air and noise pollution. The programme in essence recognised the need to identify the sources of pollution, devise methods to controlling this pollution and enact legislation to enforce this control.

There had been anti pollution legislation in Hong Kong since 1980³ but little use was made of this legislation until later that decade. Other anti pollution legislation followed a few years later from the middle and towards the end of the 1980s.⁴ The legislation has never been used with any great regularity despite the fact that numerous offences were and continue to be committed. Common themes are identifiable from the commentary to explain the government's inactivity during these early days:

(a) the structure of the government meant it was too susceptible to the views of the industrial lobby which opposed the introduction of anti pollution laws and their enforcement;⁵

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² See generally Dr. R. Bidwell "15 Years of Progress? Environmental Institution Building in Hong Kong" in P. Hills et. al (eds.) Pollution in the Urban Environment Polmet 88 Vol. 1 (Vincent Blue Copy Co. Ltd., 1988, pp. 18-28)

³ The Water Pollution Control Ordinance Cap.358 was enacted in 1980 as was the Waste Disposal Ordinance Cap. 354.

⁴ Air Pollution Control Ordinance Cap. 311 (in 1983) and the Noise Control Ordinance Cap. 400 (in 1988).

⁵ See generally Simon S.C. Chau "The Environment" in Richard Y. C. Wong and Joseph Y.S. Cheng (eds.) The Other Hong Kong Report 1990 (The Chinese University of Hong

(b) the laissez faire style of government resulted in positive non intervention⁶ and a small number of prosecutions compared with the amount of pollution illegally produced;⁷

(c) the positive discouragement of public participation in all anti pollution measures greatly decreased the likelihood of efficient and comprehensive decision making by the government;⁸

(d) the reluctance to embark on a comprehensive pollution awareness and education programme⁸ has decreased the vital participation of grass roots support for anti pollution measures and has left industry uninformed, confused and unsupportive of these measures;

(e) the legislation enacted by the government was seen as the spearhead for a cure to the pollution problem. This premise ignored the fact that the legislation was, in most respects, premature and therefore inadequate. For example legislation was often enacted before the sources of pollution were identified,⁹ before a collection, disposal and transportation system

Kong, 1990, pp. 491 - 505 at pp. 497 - 500)

⁶ P.R. Holmes, "Policies and Principles in Hong Kong's Water Pollution Control Legislation", (1992) Vol. 26, No. 7-8, Wat. Sci. Tech., pp. 1905-1914 at p. 1906.

⁷ For example in 1992 there it was reported that there was 100 "expedient connections" rectified in relation to trade effluents in water control zones but there was, in total, only 7 prosecutions under the Water Pollution Control Ordinance for the same year. See Hugh Witt (ed.) "The Environment" Chapter 24 in Hong Kong 1993, (Hong Kong Government, 1993, pp. 350-380 at p. 369 and Anti Pollution Prosecution Figures- 1993 from the Environmental Protection Department (comprising prosecutions under all anti pollution legislation from 15th July, 1991 - 16th September, 1993).

⁸ Supra note 4 at pp. 496-496.

⁸ The education programmes were initially left mostly to the non government organisations like Friends of the Earth or government programmes were sponsored by these organisations or private enterprise like The Hong Kong Jockey Club. There has been some effort made by the government to co-ordinate programmes, implement their own programmes in schools and educate the public through media advertisement. The overall effect, particularly in media advertising, has been unsatisfactory. See generally, Environment Hong Kong 1993 "Environmental Education and Awareness" Chapter 7 pp. 119-130; Survey of Community Attitudes to the Environment May, 1993 by the Education Working Group of Environmental Campaign Committee and Social Sciences Research Centre of The University of Hong Kong and "The Environmental Challenge - A Shared Responsibility" Chapter 10 in The Hong Kong Environment: A Green Challenge for the Community Second review of the 1989 White Paper Pollution in Hong Kong - A time to act", pp. 111-126.

⁹ For example, the Waste Control Ordinance was enacted in 1980 but the Waste Disposal Plan which detailed sources of pollution and a scheme for collection, transportation, treatment and disposal was not compiled until 1989. The Waste Disposal Plan itself notes in the Executive Summary at the beginning of the Plan at p. VI that the legislation was enacted prematurely in "To ensure waste treatment and disposal facilities are operated to an acceptable environmental standard, full use must be made of the licensing provisions of section 16 of

critical to the operation of the legislation was identified or available¹⁰ and having determined enforcement should fall on the public purse, before the enforcement authority had sufficient resources to undertake the monitoring required to enforce the legislation. This has also led to original target dates for the introduction of anti pollution measures not being met and rescheduled often several times.¹¹

Unfortunately, these themes as readily explain the government's inactivity today as they did in the past. It is regrettable that the government did not rectify some of these problems when the administration and management of pollution matters was centralised in the newly formed Environmental Protection Department on 1st April, 1986. Instead, the government has allowed history to repeat itself or has continued to enact legislation with too little thought given to implementation.

There is comprehensive anti pollution legislation in Hong Kong. Article 12 of the covenant does, however, require more than the recognition of the right to a clean and safe environment in legislation, it requires "that steps be taken to realise those rights" or, to put it more simply, it requires implementation. It is in the area of implementation that Hong Kong's record is very poor. In this paper I will concentrate on this poor implementation record, review and expand on the themes advanced for this and conclude with suggested priorities the Hong Kong government should adopt to ensure implementation is effective.

HONG KONG'S IMPLEMENTATION RECORD

Implementation of the rights under Article 12 envisage more than the enforcement of anti pollution laws. In Hong Kong it involves changing government policy, changing the government's attitude towards public participation, amending existing legislation and educating the people about the severe pollution problem this territory faces.

Government Policy

The government has long prided itself on its laissez faire style. As mentioned earlier, this has translated to a non interventionist approach to the way business is conducted in Hong Kong. Where business was to be affected by anti pollution laws the industrial lobby became very

the Waste Disposal Ordinance (Cap. 354) which must be amended to bring within its ambit facilities operated by government departments" (My emphasis).

¹⁰ Supra note 9. Note also that the Strategic Sewage Disposal Scheme is many years from full implementation and three of the four stages will now definitely not be completed by the current Hong Kong government so that Hong Kong's waters have no immediate prospect of major decreases in the levels of pollution. See generally *The Hong Kong Environment: A Green Challenge for the Community* p.66.

¹¹ A good example of this is the declaring of Victoria Harbour as a water control zone under the Water Pollution Control Ordinance. Until the declaration is made, illegal discharges cannot be controlled. Victoria Harbour is the most polluted of Hong Kong's waters. It was originally intended that the whole Harbour would be declared by 1991 (White Paper Summary para. 3.25 p. 20) but in fact, the Harbour water control zones will now be phased in with the first phase being on 1st November, 1994.

vocal. The voice of industry was heard by government above that of non government organisations due to the strong presence of industry in the non democratically elected government. Even after partial elections of Legislative Council members in 1991, and the consequent introduction of a more organised group of "green" voices, the industrial lobby still outweighs these voices in the decision making process.

One of the best examples of the influence of the industrial lobby on government was when the government exempted existing polluting industry from the provisions of the Water Pollution Control Ordinance and actually permitted an annual increase of the level of water pollution by 30% after the Ordinance was enacted. It was not until the 1990 amendments to the Ordinance that this was stopped.

Whilst the voice of industry continues to be heard over that of non government organisations, decisions taken by even the most democratically elected government, will be one sided. The policy changes needed in government will not just be solved by more government "green" voices even if they are organised into special bodies like the Legislative Council Panel on Environmental Affairs or more remotely from government, representative and influential bodies like the Advisory Council on the Environment¹². The government needs to adopt a policy of comprehensive consultation with the public; more will be written on this shortly.

Government policy has manifested itself in Hong Kong as a reluctance by government to enact anti-pollution legislation or a reluctance to fully enforce stringent legislation. Recent amendments to the Water Pollution Control Ordinance and the Waste Disposal Ordinance have seen some more stringent measures taken for example, the extension of liability to corporate officers, partners and those involved in the management of an organisation¹³ the increase penalties for offences by increase in fines and the introduction of jail terms for polluters¹⁴. In reality, these and other amendments to legislation that adopt more stringent measures achieve very little as the legislation is not enforced.

The number of prosecutions under all anti-pollution legislation remains very low. The average fines imposed under this legislation encourages polluters to treat the fines as a business expense to be passed on to the consumer.¹⁵ Even repeat offenders are generally so leniently

¹² It is important to note The Advisory Council on the Environment (formerly Environmental Pollution Advisory Committee) did extend its terms of reference and its membership to 17 by adding another green group (The World Wide Fund for Nature) and another government department (Agriculture and Fisheries) in January, 1994. This seems to indicate recognition by the government that some greater and broader review and opinions in environmental matters is appropriate. See generally Kathy Griffin, "Advisory powers of green panel expanded", The South China Morning Post, 14th January, 1994, p.7.

¹³ For the Water Pollution Control Ordinance see section 10A enacted in 1990 and for the Waste Disposal Ordinance see section 39 enacted in 1991.

¹⁴ For example under the Water Pollution Control Ordinance fines were most recently significantly increased and imprisonment added as an additional penalty in 1993.

¹⁵ Kathy Griffin and Carrie, "Fines fail to deter polluters", The South China Morning Post, 24th February, 1992, 5.

dealt with that it is cheaper to pay the slightly higher fines and repeat the offences than to comply with the legislation.¹⁶

The Environmental Protection Department has for years indicated that conviction figures would not increase until resource shortages and in particular staff shortages were overcome. In short, people were needed "on the ground" to conduct the investigations and bring the prosecutions and thereby increase the likelihood of convictions. The Environmental Protection Department's argument does pail into insignificance since that Department has clearly not pushed hard enough for more stringent laws and has had significant increases in both staffing and funding over the last 8 years. If more staff was needed then surely funds to pay for staff should have been a budgetary priority no matter what the monetary amount available to the Environmental Protection Department!

At the very least the Environmental Protection Department could have asked for:

- (1) a specialist legal adviser who could act as a prosecutor and free up their officers to do more monitoring work rather than spending their time in court. Further, such a specialist may be more inclined to take cases to the higher courts and achieve higher fines against polluters;
- (2) and sought an assurance from government that fines from convictions would go directly into funding monitoring and prosecution work rather than into consolidated revenue. This principle has recently been advanced by the Secretary for Works, Mr. James Blake when he asked the Legislative Council for a trading fund to reduce water pollution in the sum of HK\$6.8 billion. This fund was to be supported in part by charging polluters fees. It seems therefore that these fees from polluters would be directly referable to this fund.¹⁷

It must be noted that the government's policy for the environment would be of less concern if industry would act environmentally responsible. Industry has generally and consistently demonstrated its irresponsibility. It has been suggested that as 1997 draws nearer, Hong Kong people will be more concerned with making money than with preserving the environment.¹⁸ If this proves to be accurate, there is an even more pressing need for the government to intervene. It is fair to note that in Hong Kong there are more frequent examples of monetary gain outweighing environmental considerations than the reverse. Some recent examples are:

¹⁶ It required the Environmental Protection Department to take unusual action in prosecuting a repeat offender in the District Court (rather than the Magistrates Court) and eight previous offences for illegally dumping mud at sea before Fanta Construction Co. was fined a record HK\$200,000 recently. The company had received a mere HK\$5,000 fine for each of five of its previous offences. See Kathy Griffin, "Firm given record \$200,000 fine", South China Morning Post, 19th August, 1994, p. 3.

¹⁷ Agatha Ngai, "Fund to improve water", The South China Morning Post, 22nd January, 1994, p.4.

¹⁸ Chau, *supra* note 4, pp. 498-499.

- (1) the conversion of rural lands in the New Territories into container dumps;¹⁹
- (2) the short dumping of contaminated mud despite satellite monitoring of the offence;²⁰
- (3) the reluctance of farmers to build treatment plants on their land to stop livestock waste running into coastal waters;²¹
- (4) the reluctance of contractors to separate recyclable construction waste to avoid unnecessary overfilling of landfills;²²
- (5) the reluctance of restaurants and water suppliers to restaurants to take measures not to use or supply contaminated water in which to store fish for human consumption in seafood restaurants. This reluctance was evident despite the health risk and subsequent direct link to the contraction of cholera by seafood consumers.²³

On the other hand there have been a number of concerned groups from industry which have set themselves up to give advice to industry on environmental matters eg. the Private Sector Committee on the Environment through the Centre of Environmental Technology and the Swire Marine Laboratory. The Hong Kong Productivity Council offers consultancy services in a number of environmental areas and environmental committees have been established in a number of trade organisations like the Hong Kong General Chamber of Commerce and the American Chamber of Commerce. Some companies have also been proactive in their approach to business for example the San Miguel and the Body Shop respective environmental audit manuals.

On the balance, however, those businesses causing environmental harm far out number those practising sound environmental management. In short, in Hong Kong self regulation does not exist and industry is unlikely to avoid environmental damage unless it is forced to do so and even then, only if the cost of non compliance is more expensive than the cost of compliance

¹⁹ Kevin Sinclair, "Can Pattern regain paradise?", The South China Morning Post, 1st November, 1993, p. 27; Kevin Sinclair, "Task force's bid to melt river of steel", The South China Morning Post, 25th November, 1993, p.25; and Ng Kang-Chung, "NT clean-up moves lack legal muscle", The South China Morning Post, 11th July, 1994, p.3.

²⁰ Supra note 16.

²¹ Wanda Szeto, "Livestock farmers defy licence law", The South China Morning Post, 29th August, 1994, p.4.

²² Susan Furlong, "EPD and builders fail to agree on refuse dumping", The South China Morning Post, 16th October, 1992, p.5 and "Call for broad waste policy", The South China Morning Post, 13th August, 1993, p.5.

²³ Ruth Mathewson, "Cholera traced to fish tanks in restaurant", The South China Morning Post, 3rd July, 1994, p.1; Alison Wiseman, "New seafood laws agreed in cholera battle", The South China Morning Post, 12th July, 1994, pp.1-2; and Josephine Ma and Alison Wiseman, "Fishermen defy warnings Risk of cholera ignored", The South China Morning Post, 14th July, 1994, p.3.

with legislation.

If the environment in Hong Kong is to improve, the government must do more than enact anti-pollution legislation, it must enforce the most stringent provisions to the fullest extent or allow others to enforce them.

Public Participation

As mentioned earlier, the government process in Hong Kong does not lend itself to public participation in decision making. This policy of non participation also extends beyond the process of government.

The limited rights of individuals and non government organisations to be heard on environmental issues extends to civil procedure before the courts. Old fashioned rules for standing or locus standi still exist in Hong Kong courts where they have been removed in other jurisdictions. Although this matter has never been adjudicated in Hong Kong²⁴ the fact that the Rules of Court have not been amended to allow easier access to the courts by individuals or representative groups, does demonstrate a consistent reluctance by the government to encourage public participation or at the very least, a lack of understanding of how or why such suits should be brought.

Since the government has demonstrated a reluctance to or insufficient resources to permit polluters to be brought before the courts, it seems only sensible that the government explore and permit private individuals to bring actions thereby doing the job the government fails to do. Relaxing these laws of standing may allow private implementation of environmental protection.

Even if the government legislative making process did become more open to public participation and the government did relax the rights of access to the courts, this alone would be insufficient for effective participation. For the public to fully participate it must have access to all relevant information. The government in Hong Kong has steadfastly resisted the idea of legislating the right of access to information. Only recently has it agreed to a consultant study which may cause it to review this policy.

In environmental matters perhaps more so than many others, all information must be available if arguments for and against polluting industry are to be properly put and questions on the sustainability of the development answered. The best cases will be made and therefore the most impartial and best informed decisions taken, where all parties have the same information or there is a "level playing field". In most decisions by government affecting the environment in Hong Kong today, the field is more like a very dangerous slope.

Giving the right to the public to participate does not guarantee it will occur. In Hong Kong there are non government organisations who have recently demonstrated an interest to participate despite the archaic rules of standing before the courts. It can only be in the best interests of all concerned to encourage participation in environmental decisions and

²⁴ Although several green groups were the plaintiffs in World Wide Fund for Nature et. al. v. Attorney General (unreported decision of Mayo, J. on 13th April, 1993 - HCMP 273 of 1992) their standing before the court was not in issue.

enforcement. The Hong Kong government should urgently amend and implement legislation to allow ready access to the courts and all relevant information.

Legislative Amendments

Apart from the amendments suggested to accommodate public participation but hand in hand with these, is the need to review the monitoring systems in place in anti pollution legislation. As mentioned earlier, the government is the sole prosecutor of offenders under this legislation. The legislation requires monitoring to be very labour intensive which in turn makes it slow and costly to the public purse. Perhaps it is time for Hong Kong to consider amending the legislation to require the expense of monitoring to be borne by the polluter and at the same time, allow the public the opportunity to prosecute offenders.

In other jurisdictions industry is required to submit, at regular intervals, reports on its compliance with legislation. Failure to comply will result in the government prosecuting or the public bringing actions against the polluter. There is the prospect of abuse through reports being falsified, but the Environmental Protection Department should retain the right to do an unannounced "spot check" in the same way it undertakes the current monitoring. This "spot checking" should reduce the likelihood of abuse. Also heavy penalties should be introduced for abuse including the shutting down of the business found to be indulging in this.

As the system stands at the moment, only those industries inspected by the Environmental Protection Department and offending against the legislation will be prosecuted i.e. if you are unlucky enough to get caught you may get fined. Given Hong Kong's enormous number of small businesses, this means the majority will not be inspected. If all industries were compelled to file these reports, everyone would be treated equally. The Environmental Protection Department's role would be to do "spot checks" only and the increase in resources would not be "in the field" but in the administration of the reports. The role of existing administration could be reviewed to see if existing staff could be used in the new system.

If this new system was adopted and the role of the public to bring actions against polluters enhanced, the net result, if the public participated, would be acceptable increase to the resource demand of the Environmental Protection Department and would certainly amount to fairer treatment of industry. The widespread affect of this approach is also likely to make the sort of real impact that the low levels of prosecutions and consequent fines under the anti pollution legislation has, to date, failed to achieve. The impact will be a recognition by industry of the pollution they are causing, an incentive (self motivated or legislatively compelled) to stop polluting and a more accurate implementation of the "polluter pays" principle.

Education

No matter how many anti pollution laws are enacted or the severity of their penalties, they cannot be as effective as they should be until the law makers and those affected by the laws understand the laws, understand their intent and accept them as valid. This "meeting" of minds" will only be achieved by education.

The groups requiring this education in Hong Kong are the general public, industry and the judiciary.

As detailed earlier, to date education of the general public by the Hong Kong government has been superficial and largely ineffective. Education has been aimed generally at a mature audience.

The government has accepted the need to educate the young but has too often left this to non-government organisations alone or sponsored by industry or by industry alone. Clearly the government needs to urgently review its role in education of the general public and accept it has the primary responsibility to act. This review should be immediate and must include a comprehensive plan of action directed to all groups young and old and through the most effective medium.

Education of industry has been sponsored by government generally through advice centres set up for consultation for example local control offices, the Industry Department and the Environmental Resource Centre. It is fair to say this has been largely unsuccessful due to the fact that industry remains generally ignorant of what is expected of it and voices this concern through many avenues not least of which is the court. As mentioned earlier, it has been suggested that the biggest incentive and the most efficient means of conveying the anti-pollution message to industry will be achieved when government prosecutions are sufficient in number and level of fines sufficiently high to force industry to comply with legislation on a cost/benefit analysis.

As mentioned earlier, since the judiciary actually imposes the fines, prosecutions by the government do not guarantee a deterrent fine.

Comments by the judiciary in Hong Kong have demonstrated a disappointing but predictable lack of environmental awareness. It has frowned upon the EPD privately informing it about the need for deterrent fines.²⁵ First offence environmental polluters have been treated like minor criminal offenders. The average of fines for first and repeat offences under all anti-pollution legislation overwhelmingly remains well below the statutory maximum. The judiciary in Hong Kong have consistently demonstrated a reluctance to treat environmental crimes as serious criminal offences.

The approach of the judiciary has led to a call from at least one Legislative Councillor²⁶ that they be educated in the pollution problem, the effects of pollution on the environment and the need for offences to carry heavy penalties. The need to educate the judiciary has been accepted and acted on in other jurisdictions²⁷. The government in Hong Kong should immediately act to put into place a comprehensive education package about environmental crimes and their consequences for the judiciary in Hong Kong for as long as the judiciary

²⁵ See comments of Keith, J. in The Queen v. Chan Chi Kuen (MCP No. 915 Of 1993) at p.3.

²⁶ Comments of Miss Christine Loh on the Water Pollution Control (Amendment) Bill 1992 in Legislative Council Debates, 9th December, 1992, p.1046.

²⁷ Theodore M. Hammett and Joel Epstein, Local Prosecution of Environmental Crime, (United States Department of Justice, Office of Justice Programs, National Institute of Justice in Issues and Practices in Criminal Justice Series of the National Institute of Justice, June 1993).

remains uninformed, implementation of environmental protection in Hong Kong will remain largely ineffective.

CONCLUSION

Whilst over two million tonnes of solid and semi solid wastes are being discharged into Victoria Harbour each day, Hong Kong cannot state that it has implemented the right of its people to a clean and safe environment. Even the cleansing of Victoria Harbour will not guarantee that right but, the commitment to stop this pollution, together with the commitment to ensure it never happens again will go some way to implementing that right.

As at 1994, Hong Kong has come a long way in its battle against pollution but the government has fallen well short of implementing the right it committed itself to give its people in 1976.

If the government is to achieve full implementation in the near future it must:

- (1) immediately commit funds to fully implement the Sewage Strategy;
- (2) immediately commit funds to engage an in house legal specialist to co-ordinate and undertake prosecution, advice work and legislative review for the government but more particularly the EPD. This review would consider the feasibility of placing the onus and expense of monitoring pollution on the potential polluter.
- (3) immediately give full effect to the anti-pollution laws;
- (4) immediately amend the Rules of Court and introduce legislation to allow public participation in the government's decision making processes and promote civil action against pollution;
- (5) as soon as feasible after existing consultancy studies are concluded, introduce legislation to permit easy access by the public to the information on which the government will make decisions affecting the environment;
- (6) undertake a comprehensive study on how the government can do more to encourage environmental concerns amongst the young and devise an action plan for further education;
- (7) undertake a comprehensive study on how the government can do more to encourage environmental concerns amongst the more mature;
- (8) comprehensively review the success all past and present media education campaigns, engage a consultant to address deficiencies and devise a action plan for further education;
- (8) immediate engage a consultant to devise a programme for education of the judiciary in environmental crimes and their effect. Thereafter make attendance of any course compulsory;

- (9) assist itself by funding all these suggestions through a dedicated fund which itself would comprise moneys from licensing fees and from fines under the anti pollution legislation. This fund would not be consumed into consolidated revenue.

Hong Kong is our home and we have the right to expect more of our government in the protection of our environment and of ourselves than we have experienced to date. When the Hong Kong government agreed to adopt the covenant, it effectively made a promise to improve our environment, it made a commitment to our neighbours and to each one of us, it must continue implement its anti pollution legislation if it is to honour its obligations and to satisfy our rights!

FAILURE TO SERVE THE HONG KONG ELDERLY:

*AREAS FALLING SHORT OF THE
INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS*

by

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FAILURE TO SERVE THE HONG KONG ELDERLY: AREAS IN SHORT OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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1. *Article 3: ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the Covenant.*

1.1 A recent study shows that there is a significant sex difference in many aspects of retirement life (see Chi and Boey, 1994). Female respondents had fewer sources of income and poorer compared with the male counterparts. They were also more isolated and have smaller social circle. Usually they received less social support from their families. In the authors' words, "the cumulative effects of wage discrimination, occupational segregation, unpaid labour in the home, and interrupted workforce participation, couple with their survivorship, place these women in a financially precarious position throughout old age. In addition, wage and retirement income policies have been based on the assumption that women are economically dependent on a wage earning male head of household, who will share with his spouse his earnings . . .". (Chi & Boey, 1994:53) It was also found in the 1986 Bi-Census and 1991 Census, more than 20000 old women worked 55 hours or more per week to support their living, which violated the Labour Ordinance Clause of restricting women from overwork 200 hours a year or in average not more than 4 hours a week. Yet the sufferings of the disadvantaged women elderly has not been a social issue, which received little attention from the professionals and the policy-makers.

1.2 A significant portion of the Hong Kong community such as the Liberal Party, the Chambers of Commerce and the local 78 Chicago School economists, still support provident fund schemes as a major measure to provide financial protection for the elderly. They fail to see that women's employment history are usually interrupted by child birth, child-rearing and caring for the family dependents, and therefore

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may not have an equal number of contribution to save as much as the men do for retirement protection.

2. *Article 6: recognize the right to work.*
Article 7: enjoy just and favourable conditions of work.
- 2.1 Many welfare policies in Hong Kong depicts elderly people as a collective dependency which require assistance and service from the community. The aged are seldom seen as unique individuals who may like disabled youth, have something to contribute, and thus are not given equal opportunity for both remunerative and non-remunerative work. Very often, it is due to unfavourable working environment which prevent elderly from efficient performance. A recent study reveals that over 80% of the family carers found the dependent elderly eager to help with household chores such as looking after young children (HK Council of Social Service, 1994). The society tends to stereotype the elderly as people dependent on other's care.
- 2.2 When the elderly are forced to take up paid jobs due to the financial difficulties, they are less paid and treated differentially from others. They receive less training, and employers seldom provide appropriate working conditions to suit the working style and the work pace of the elderly (Confederation of Trade Union Bulletin, 1994).
3. *Article 9: recognize the right of everyone to social security including social insurance.*
Article 11: recognize the right of everyone to an adequate standard of living for himself and his family...and to the continuous improvement of living conditions.
- 3.1 Some members of the community still see the availability of public assistance scheme as an adequate provision for protecting the elderly poor. However, it has been well-documented that the rate of impoverishment of the elderly exceeded 40% from 1976 to 1986 and 50% from 1985 to 1994; that the number of elderly living with their family members was estimated to be halved by 2000; and that the financial support and physical care provided by the family members to the elderly were found to be increasingly heavier, due to the increasing participation

of the female members in the labour force. Currently more than 10% of the elderly population are public assistance recipients, which is six times more than that of the non-elderly population (Mok, 1988 and 1994)

- 3.2 A Government survey (Social Welfare Department, 1987) reveals that over 60% of the aged had no pocket money, and less than 20% received around \$200 only from their family members. In 1994, around 70% of age 65 to 69 declared asset less than \$130000, thus qualifying for Ordinary Old Age Allowance. All these reflect the presence of about 70% of the elderly are in need of financial support for retirement protection. However, despite continuous outcry from the community for a contributory social security scheme to protect retirement, the Government had not endorsed until recently any contributory pension or provident fund scheme since the recommendation for some form of retirement protection in 1967 (Mok, 1993). Currently, less than 10% of the elderly in Hong Kong are offered with private retirement protection schemes, and less than 5% can live on their own with their savings (Mok, 1993).

4. *Article 10: recognize that the widest possible protection and assistance should be accorded to the family...while it is responsible for the care and education of dependent children... Children and young persons should be protected from economic and social exploitation...*

- 4.1 Article 10 of the Covenant seems to put too much emphasis on the family care of children, and fails to mention the role of family care for the elderly, who should be given equal attention with proper protection from economic and social exploitation.

- 4.2 The elderly population in Hong Kong does not enjoy a high status in social and economic terms. About half of them live the public rental housing estates and over 80% of them have primary education or below (see 1991 Census). A study shows that about 15% of the elderly are not capable of self-care and in need of assistance such as cooking, shopping, household cleaning, laundry and money management (HK Council of Social Service, 1994). On average the elderly require 5 tasks for assistance on a regular basis, and always require 2 tasks on a daily basis. The study also reveals that care-givers spend on average 8 hours a day for caring the elderly and they have spent more than 10 years looking after them. About half of the carers have to accommodate the caring roles by either

quitting the employment or reducing the number of working hours. Thus quite a number of carers feel under strain, unhappy and depressed. In fact, one-third of the carers in the study feel that their family would be better off financially without caring responsibility, and another 20% feel they would be happier if caring tasks for the elderly were not required. Looking into the future, one quarter of them expect an increase in care-giving demand and worry about meeting the needs of the elderly. All these reflect the extent of psychological and physical burden on the carers who are usually the female members in the family. There female carers are in need of social services and social support.

5. *Article 12: recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health... (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.*

5.1 Chi and Lubben (1989) conducted a cross-cultural study of the health practices for the elderly persons in the USA and Hong Kong. It was found that many health practices and social behaviour such as smoking, physical activities, drinking, stress and social support network, are significantly correlated with the incidence of hospitalization and the number of days in hospital. There are many other research findings (see Ell, 1984; Minkler, 1985; and Ho, 1989) which shows better health status is associated with a good social supportive network. If the Hong Kong policy-makers and the community themselves were aware of such importance and find ways to improve the health practice and social support network of the younger generation as well as the elderly population, it is likely that the aged would enjoy a better standard of physical and mental health.

5.2 It is important that the Government should not just pay lip service but actually putting resources into the implementation of primary health care services to promote both preventive and curative-medical services. Rehabilitation and hospice services are equally important to the elderly population which are currently under provided in Hong Kong. Very often, the waiting time for treatment is so long that many elderly people suffer a great deal and some do not live long enough to receive any treatment. It is the genuine demand of the community for the establishment of a patient-centred health services and the elderly are looking forward to a health service system which treat people with respect, courtesy, efficiency and cultural sensitivity.

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*PERSONS WITH DISABILITIES AND THE IMPLEMENTATION OF
THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND
CULTURAL RIGHTS IN HONG KONG*

by

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Persons with Disability and the Implementation of the International Covenant on Economic, Social and Cultural Rights in Hong Kong

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This paper will focus on the issue of equalization of opportunities that persons with disability should enjoy together with their fellow citizens in respect of the economic, social and cultural rights stipulated in the ICESCR. Specifically, I shall discuss issues in the areas of work, education, health care and cultural life, and with particular reference to the problems of access and discrimination. Whenever appropriate, cases that we have experienced will be given for illustration.

International Instruments

In March this year (1994), the General Assembly adopted the *Standard Rules on the Equalization of Opportunities for Persons with Disabilities* which was developed on the basis of the international experiences gained during the 1983-1992 United Nations Decade of Disabled Persons. The political and moral foundation for the Rules is built up on the International Bills of Human Rights, comprising of the *Universal Declaration of Human Rights*, the *International Covenants on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*, as well as the *World Programme of Action Concerning Disabled Persons*. The Rules elaborated the essences of the Declaration on the Rights of Mentally Retarded Persons (1971) and the Declaration on the Rights of Disabled Persons (1975).

Existing Policies and Provisions in Hong Kong

In theory, Hong Kong government has subscribed to the U.N. Programme concerning disabled persons by signing in February 1993 the "Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region" under the aegis of UN ESCAP. This commitment is backed by those policy initiatives and service provisions listed in the Green Paper on "Equal Opportunities and Full Participation: A Better Tomorrow for All" issued in March 1992. The government's overall policy objective, as stated in the Green Paper, should be--

To promote and provide such comprehensive and effective measures as are necessary for the prevention of disability, the development of the physical, mental and social capabilities of disabled persons, and the realization of a

physical and social environment conducive to meeting the goals of their full participation in social life and development, and of equalization of opportunities. (para. 3.4)

When proposing this policy objective, the Green Paper intended to be in line with the thinking of the Bills of Rights, and to make the future policies and services meeting both the requirements of human rights and the needs of disabled persons. (para.3.1) This human right concept was something relatively new to the disabled community in Hong Kong and was generally welcome by disabled persons and their families. Notwithstanding this high-sounding objective, disabled persons encounter quite a different situation in their daily living which is full of obstacles and barriers, no matter physical or social. The following are some of them.

Work

Let's us have a glance of some figures first:

- The unemployment rate of Hong Kong remained at below 2% from 1987 to 1990; a survey produced in 1986 showed that the unemployment rate of disabled persons might have been as high as 49%. (No other similar survey is conducted afterwards.)
- Every year from 1989 to 1993, there are always 2,000 to 2,800 persons with disabilities seeking jobs by registering with the Selective Placement Division of the Labour Department, and the placement rate (i.e. placement/registration) always under 51% (the lowest: 42.2% in 1991; the highest: 50.5% in 1992; average: 47%).
- Average monthly income of disabled employees is about \$3,000(??)
- Annual shortfall for sheltered workshop places for the more severely disabled persons would be around the region of 2000; for those 5,000 sheltered workers working in the existing workshops, the average daily income (1992/93) is \$14.6

It is clear that disabled people are in an unfavorable position in both open and sheltered employment in comparison with their fellow citizens. Factors contributing to such a situation are multiple which may include inadequate vocational training or re-training of the job seekers, limitation imposed on job performance by their disabilities, or physical limitation of Hong Kong's congested workplace, and the likes. All these may be true to some extent. However, the more important causes appear to me are those cultural and attitudinal factors inherent to the society that ignores individual and minority needs. Vocational training and job opportunities are given to "Mr. or Ms. Normals", same are the buildings of the workplaces and the public transport commuting people to and from work. Unless such barriers are removed by a fair set of rules of game which protect individual and minority rights, the physical barriers will stand there forever.

Education

Although the nine-years free education has been provided to school age children in Hong Kong since early 1970s, shortfall in school places for children with disabilities is still exist in the 1990s. (E.g., in 1992, lacking 461 special school places for the mentally handicapped pupils.) Given the sound conditions of the Treasury for so many years, the two decades' time gap is unreasonable and can only reflect the government's neglectful attitude towards children with disabilities.

Education opportunities outside special schools, say in higher forms of ordinary secondary schools and at the post-secondary level, are even more slim for students with disabilities and unproportional to their non-disabled counter-parts. It is mainly because that they are separated for so long that both the students and the schools in the mainstream are not prepared to accept students with special needs. Most of the school buildings are not accessible for wheelchair users, no sign interpreter or note-taker is there to assist students with hearing impairment, and blind students have to wait for weeks or months for their transcribed books or handouts. Modern technology and the affluent society of Hong Kong afford to overcome those learning difficulties caused by disabilities; but the policy of treating people with different needs by non-differential measures has deprived disabled students' equal educational opportunity that promised to all.

Health Care

In general, disabled persons in Hong Kong can enjoy a wide range of medical and health care services provided by the government funded Hospital Authority and the Department of Health. Nevertheless, there are cases that disabled persons are not given "the highest attainable standard of physical and mental health". For example, a person with Down's syndrome was not given the heart operation that he needed (?); a mentally disabled person was denied minor operation because he was regarded as being unable of giving consent to medical treatment.

Social and Cultural Life

There are still conventional misconceptions about disabilities and inveterate prejudice against disabled persons amongst some members of the public in Hong Kong. The incidents of the Laguna City and the Tung Tau Estate in 1993 were two extreme cases infringing the rights of disabled persons to living and learning in the community. Awareness-raising campaigns were usually conducted in an ad hoc manner and involve very little disabled persons in planning and decision-making for such campaigns.

Access to public buildings and public transport services, and access to information and communication in forms of braille, tape, large print, sign language and othewr appropriate technologies are important to disabled persons' participation in social and cultural activities, without which the rights will substantially deprived. At present, only

very limited number of buildings, mode of transport and information services provide access facilities to disabled persons, and the government has no intention to make access to public transport and information by disabled persons mandatory.

Discrimination

A recent case collection exercise conducted by the Joint Council for the Physically and Mentally Disabled Hong Kong showed that discrimination on the ground of disabilities was common in Hong Kong. During the first month (mid-August to mid-September) of case collection, we collected 68 discriminatory cases which could roughly be divided according to their natures (some cases representing more than one type of discrimination) :

i.	employment related	11 cases
ii.	denial of services (including a case where surcharge is imposed on disabled persons)	35 cases
iii.	attitudinal type	19 cases
iv.	harrasment	6 cases

A general observation from this case collection exercise is that: discriminatory acts happen to any person, in any time, anywhere and any situation. The following are major scopes of discrimination:

Employment unequal pay, long probation period, opportunities of promotion denied, interview denied, sacked on the ground of disability, harrasment in workplace etc. For example, a person with a history of mental illness was sacked by his employer after he was found to have such a medical history.

Denial of Service disabled persons refused bank services, purchase of insurance, taxi service, admission to mainstream ordinary schools, entrance to restaurant, shopping arcade and cinema etc. I remember that after the District Board polling this year, I was personally rejected to enter a restaurant in Chai Wan.

Attitudinal neighbours refused to use lifts with disabled persons together, restaurant customers refused to share a table with disabled persons etc.

Harrasment harrasment occurred when the prejudice was so serious that hurt people or when it was put into action, for example: a fast food shop staff required mentally handicapped customers to greet him loudly before selling food to them.

The 68 cases collected are mostly personal experience of disabled persons. There were only a few complaints about discriminatory actions which affected disabled persons or a certain group of disabled persons as a whole. Take an example, we did not receive many complaints about our public transport system in Hong Kong. Such an outcome shows us that understanding towards the concept of "discrimination" might not be commonly shared among the disabled community, which is also true among the able-bodied community.

It is easy to come to a conclusion that public education, both for disabled persons and the general public, should be enhanced. However, I believe that the emphasis should be changed from promotion of acceptance to enhancement of awareness of the RIGHTS of disabled persons. To achieve this, I believe that the enactment of an equal opportunities or anti-discrimination legislation is necessary. Such a legislation will on one hand promote the rights of disabled persons, and on the other hand, raise the awareness of both the disabled and able-bodied community towards the rights of disabled persons which are the same as any other citizens in Hong Kong.

MENTAL HEALTH ISSUES

by

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INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS SEMINAR

MENTAL HEALTH ISSUES

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Article 12 of the International Covenant on Economic, Cultural and Social Rights states:

'The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable physical and mental health'. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

the provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child.

the improvement of all aspects of environmental and industrial hygiene
the prevention, treatment and control of epidemic, endemic, occupational and other diseases

the creation of conditions which would assure to all medical service and medical attention in the event of sickness'.

Neither article 12 (despite its title), nor the discussion of matters relevant to it in the Second Periodic Report on Hong Kong, mention mental health issues in any direct way. Yet there are significant problems surrounding both the Mental Health Ordinance and the procedures for the treatment and care of people with a mental illness.

THE MENTAL HEALTH ORDINANCE

Following an incident in 1982, where a person with a history of schizophrenia went amuck and killed several family members as well as six children in a kindergarten, the government decided to revise drastically the Mental Health Ordinance of 1960. The revised version was implemented in 1989. Both are derived from corresponding legislation in the UK. In many ways, the revised ordinance is an improvement on the original version. It introduced the Mental Health Review Tribunal. It stopped the practice of permitting compulsory admission to psychiatric hospital without even having seen a doctor. At the same time, it introduced new compulsory powers, for instance guardianship, and conditional discharge for non-offender, non-compulsorily detained patients. However, there is no body empowered to monitor actions taken under the auspices of the Mental Health Ordinance that impinge of people's liberty.

Under Section 31 of the ordinance a patient may be detained in a psychiatric hospital against his will on the authorization of a district judge or magistrate supported by an application signed by a medical practitioner (who is not required to have any expertise in the treatment and diagnosis of mental illness). The patient has the right to ask to see the judge or magistrate (Section 31 (1b) (3) before being committed but nowhere in the ordinance is anyone authorized in the admission process instructed to inform the patient of his rights. The Social Welfare Department has issued an internal memo informing social workers authorized

under the ordinance that they need not inform the patient of this right.

The Mental Health Review Tribunal

The implementation of the Mental Health Review Tribunal has been a significant advance in the protection of compulsorily detained patients' rights. In brief, the tribunal is there to ensure that illegal or unnecessary detentions do not occur. It is empowered to discharge outright or conditionally, as well as make recommendations about the care and treatment of patients. The system has been in operation for almost 4 years. Those entitled to apply are anyone detained in a mental hospital (except under section 31), those detained under the Mental Health Ordinance in Siu Lam Psychiatric Centre, those detained in prison at Her Majesty's Pleasure (usually those who have been found unfit to plead), and those who are absent on trial leave or who wish to appeal against conditional discharge.

Problems:

1 - the patients appearing before the tribunal are entitled by law to see the medical and social reports that are prepared for the tribunal members by their medical officer and social worker. However, the reports are written in English and the vast majority of patients cannot understand them. No one is mandated in law to translate the reports. Thus the best patients can hope for is a brief verbal summary in Cantonese by a nurse. Thus the patient is deprived of access to the 'evidence' against him.

2 - The law permits patients to be represented (by a lawyer or other person) at the tribunal hearing. However, legal aid has not been granted. Again, patients are generally too poor to be able to afford to pay for legal advice. Thus a protection is law given but the means to carry it out is withheld by the government. It may well be that a lawyer is not the most appropriate person to represent a patient. A social worker trained in advocacy skills may be better, in which case a scheme should be devised and implemented that would make such a service available. Highly institutionalized, poorly educated patients, who have been trained for years that the best way to survive is not to answer back, are not best equipped to represent themselves at the tribunal hearing.

3 - The tribunal is empowered by law to make recommendations regarding the care and treatment of patients, even when they cannot recommend discharge. Such recommendations could involve a change in medication, change of ward, home leave, provision of spectacles or false teeth etc.. However, no system exists currently to ensure that such recommendations are acted on.

4 - The tribunal has jurisdiction over patients compulsorily detained in hospital but not over those who are in hospital in a voluntary capacity. However, voluntary in this sense still involves a great deal of formality. Patients have to sign a form requesting permission to be admitted. But more significantly, they have to apply in writing to the Medical Superintendent giving seven days notice of their intention to discharge themselves. If the superintendent wishes, the patient can then be compulsorily detained and prevented from leaving the hospital. In reverse order, the patient can be deprived of his right to have his case heard by the tribunal by having the section under which he is detained altered from compulsory to 'voluntary'. Even if he is only a voluntary patient for a few days before the hospital

re-commits him as a compulsory patient, it will be another year before he can apply to the tribunal. Procedures should be introduced to ensure that, at the very least, once a patient has applied to the tribunal for a hearing, his status cannot be changed.

5 - There is a need for an orientation process for tribunal members. There are significant individual differences between the tribunal members' attitudes and knowledge to mental health matters, knowledge of mental health law, experience in legal decisions and the tribunal rules and procedures.

6 - Most fundamentally, the tribunal is there to discharge patients. The information that follows is based on research I have been carrying out. The overall discharge rate since the tribunal started is low, at around 7 per cent of patients appearing before it. This compares with rates of between 14 and 40 percent for the various tribunals in the UK. (Peay, 1989) It could be argued that 93 per cent of patients appearing before the tribunal are impossible to discharge but the issue is likely to be that simple. Also, the tribunal is more cautious than both the medical officer's and social worker's recommendations. Thirteen per cent of medical officers recommend discharge, while twenty six per cent of social workers do so. There needs to be a public debate about this kind of information and a consideration of the factors leading to such a low discharge rate (for instance, the lack of community facilities for those with no family support). Such feedback ought to lead to changes at the policy level.

THE PROCEDURES FOR THE TREATMENT AND CARE OF PEOPLE WITH A MENTAL ILLNESS

The situation in Hong Kong ensures that people who need treatment can get it at a very affordable price but what is offered tends to emphasize dealing with large numbers very speedily, rather than giving a quality service. Thus, anyone who needs psychiatric medication in Hong Kong has access to it if they so choose. But forms of psycho-social treatments are rare, family's receive little support (despite doing most of the work of caring) and facilities for supporting people in the community, even by the government's own standards, are inadequate.

Problems

There is no crisis intervention service for emergency admissions. Most importantly, there is no medical domiciliary service. It is considered the family's responsibility to ensure that a relapsing patient attends a clinic. If the patient refuses to do so, there is no possibility of a doctor 'reaching out' to him in his own home. The only alternative is for the family to call the police and request their assistance in getting the patient to a hospital or clinic. This places a great deal of power in the hands of the police in an area in which they are not trained and have no skill. In effect, they make the decision as to whether or not the patient is mentally ill. It is also not in the best interests of the patient, where a policy of early domiciliary intervention might avoid such drastic measures. The government argues that an emergency domiciliary service is too costly and that they do not have enough resources. A different deployment of staff, for instance by giving nurses a greater professional role in the care and maintenance of long term patients in the community, might free up doctors for more essential and challenging tasks.

2 - The Hong Kong service is profoundly bed centred. The average length of stay for a psychiatric patient is 222 days. (Hospital Authority Annual Report, 1993) This is far too long, approximately seven months, although it is not clear whether it includes only acutely ill patients or long term patients as well. It is probably also a reflection of the lack of community oriented support facilities. For instance, the planning ration of day hospital places in Hong Kong is six times less than that in the UK. Although it is technically true that discharged patients have a social worker to offer them support, this is so in name only. Medical social workers' caseloads may theoretically be several hundreds. Under such circumstances, they are able to give only cursory attention to the most desperate situations. Thus there is little aftercare work carried out to support discharged patients. The NGOs working in this area have been calling for funding for an aftercare worker to work with people discharged from halfway houses. As yet, despite government's eventual admission that such a role is required, funding has not been made available.

3 - Following the incident mentioned earlier, when a relapsing patient killed six kindergarten students, the government implemented a policy of trying to identify patients who had a propensity for violence. This is an understandable reaction but is almost impossible to do. Research indicates that the best predictor of violence is a past history of violence. In the absence of such previous behaviour, prediction is not much better than guess work. Nonetheless, the Report of the Working Group on Ex-mental Patients With a History of Criminal Violence of Assessed Disposition to Violence recommended that within the target group of patients with an assessed disposition to violence there was a group who required special care in assessment, who were called the sub-target group. Such people are given the sub-target label after assessment by a medical officer, who is usually not trained or qualified in psychiatry, which is then ratified by a senior medical officer. Such patients do not have to have a record of criminal behaviour or a history of violent behaviour. In theory, to be thought capable of either is sufficient for the label to be applied. Ever after, they are treated differently in terms of discharge, aftercare arrangements and so on. The very existence of the label means that most residential institutions outside of the hospital will not consider them for admission. At the moment, the label 'sub-target' is virtually one for life as there is no effective, official mechanism for removing it. Therefore it constitutes a major handicap to the affected patients and a significant restriction on civil liberties.

CONCLUSIONS

Why is any of this important? Many people are afraid of the mentally ill and mental illness and think that the best thing that could happen is that they should be locked up for ever. But the mentally ill have rights too, the same as any of the rest of us. In addition, the line between those who are thought normal and those who are not is not very wide. Mental illness does not respect status or position and affects many families. Thus, although we seek to separate ourselves from these people who seem to be so different from us, in reality our selves or our family members may become sufferers.

Secondly, many would argue that in terms of South East Asia, Hong

Kong's law and provisions in the area of the mentally ill are already among the best, if not the best. This does not seem to me to be the correct comparison and such thinking only encourages complacency when there are still so many problems. Given Hong Kong's wealth, we should be trying to achieve the best possible, not accepting the view that what we have is acceptable because it happens to be somewhat better than our immediate neighbours.

Thirdly, psychiatric abuses for political or other reasons are well documented in various countries in the world. To protect ourselves, we need proper laws and procedures to be in place within the next three years to ensure that systems work as equitably and openly as possible with the minimum opportunity for abuse.

RECOMMENDATIONS

1 - To establish a body to monitor actions taken under the auspices of the Mental Health Ordinance (to include the operation of the mental health tribunal)

2 - To provide legal aid for patients appearing before the tribunal

3 - To establish an advocacy service for patients appearing before the tribunal

4 - To ensure that tribunal reports are written in Chinese, or that patients are provided with Chinese translations

5 - To designate someone to be responsible for informing patients

6 - To review the process of labelling a patient 'sub-target' with all the negative consequences and to establish a procedure whereby such a label must be regularly reviewed and may be removed

7 - To implement a crisis intervention service that includes medical domiciliary visits

8 - To put much more emphasis on the treatment and care of psychiatric patients outside an in-patient environment, so that they may be effectively treated within their own homes and communities and without the stigmatizing effects of lengthy hospital admission.

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FAMILY ISSUES

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Family Issues

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The Family

Families are the building blocks for society that provide an intimate environment for individual growth and development. The Pope sees the family as "the source of peace between individuals and between peoples of the world". In fact, family can both be a source of energy and a source of strain.

Families in Hong Kong are being bombarded by rapid changes in social infrastructure due to the economic and political transitions. Domestic violence, incest, extra-marital relationships and concubines in China, divorce and separation, discrimination and adjustment difficulties for new immigrant families, families on welfare, care of the frail and elderly, ... are emerging symptoms of family breakdown. The actual extent of incest, child and wife abuse in Hong Kong is not known. Owing to the large numbers of reported injury or homicide within the family, there is a growing concern about the use of violence in the family. There is no programme to teach us how to handle anger and hostility. Women, children and the elderly are likely to become victims in case of outbreaks of temper and aggression. Needs of these vulnerable families are not being adequately addressed under the present social welfare system.

Individuals and Families at Risk

Youth suicide attracted a lot of attention and publicity. However, in 92/93, more than 800 people killed themselves and the suicide rate per 100,000 population increases steadily with age. Five out of every 1,000 persons above the age of 70 kill themselves in a year. It seems that old and chronically ill patients seldom seek help and some resort to killing themselves. The public seems not to care. It is essential for planners to develop a well informed and rational strategy in the identification of individuals and families at risk so that appropriate services and intervention can be planned.

Number of Deaths from Suicide Per 100,000 Population

Age\Year	1988	1989	1990	1991
10-24	4.71	4.28	4.88	4.67
25-39	9.68	10.30	13.02	13.78
40-54	10.45	11.20	11.74	15.06
55-69	21.90	20.20	19.72	21.60
70+	40.73	44.32	45.99	51.05

(Source: The Samaritan Befrienders Hong Kong Annual Report 1991:24)

Families break down because of divorce, desertion, imprisonment as well as death due to accidents and industrial injury. Chronic illness, mental problems, physical disabilities and drug addiction make family life stressful. Marital disputes, communication problems, run-away children and domestic violence are destructive to family cohesion. Special services must be designed to better serve bereaved spouse, single parents, teenage mothers, survivors of sexual abuse, victims of rape and violence, children in divorced families, chronic patients and families living on Public Assistance.

Death of a spouse or divorce are among the most traumatic events in life. According to the 1991 Census, there are 53,485 persons who are divorced or separated (8,869 between 35-39, 8,513 between 40-44). There are no services for persons who have undergone the trauma of divorce and separation, or for children of divorced or separated parents.

Unfortunately, there are increasing numbers of divorce petitions in Hong Kong every year. Marital disputes usually continue after the divorce decrees in the form of fights over custody, maintenance and visitation rights. Children often feel as though they are being torn between the parents. They may suffer from severe resentment, frustration and experience a great sense of loss. All parties concerned suffer. If the divorce experience is not properly handled, the trauma may result in long-term personality or behavioral problems, or precipitate mental health symptoms.

Divorce Statistics 1983-1992

	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992
Petitions filed#	3734	4764	5047	5339	5747	5893	6275	6767	7287	8067
Divorce decrees	2857	4086	4313	4257	5055	5098	5507	5551	6295	5650

Figures include defended cases

(Source: Hong Kong Annual Digest of Statistics, 1993, p.20)

The Family Court in Hong Kong is under-developed and there is no mandatory mediation service which the couple have to go through. Emotional help should be offered so that the divorcees and their children can take the experience positively and continue to lead a meaningful life. With mediation, about 30% of the couples may drop their divorce petition, more than half of the couples develop constructive ways of coping with their anger, frustrations and resolved the divorce arrangements to mutual satisfaction. The government should review the existing Family Court system and implement divorce mediation procedures immediately.

According to the 1991 Census, there are a total of 258,974 persons who are widowed (35,785 between 60-64, 173,840 are 65 or above). There is a growing number of never married persons (325,619) who are above the age of 30. These persons who suffer bereavement, the widowed persons, and single person elderly are not being served by any existing services. Community centres and family life education teams should provide services to these single or widowed adults.

Risks of Split Families

There is a growing concern among social workers in family counselling services on the issue of working with extra-marital relationships and the tensions in 'split families'. There is no reliable statistics on the number of split families in Hong Kong. Taking into account the number of persons who work in China regularly (64,200 Hong Kong residents worked in China during mid 1992, i.e. 2.8% of the overall labour force) and those who get married in China (General Household Survey, Special Topic Report No.X, p.3), Yeung estimated that there are one hundred and fifty thousand split families in Hong Kong, i.e. 9.4% of the total households (Yeung, 1993). As this phenomenon affects almost one-tenth of the households, more attention should be given to the needs of split families.

There are increasing number of middle-aged male Hong Kong residents who resort to finding a marriage partner in China. The age difference between the husband and wife is often wide. This one-family-two-homes arrangement with frequent commuting between the two cities is actually quite stressful. As they do not have time together, the husband-wife and parent-child relationships are usually weak.

There were 270,000 applications for a 'not-married' certificate between 1982-1992. About 240,000 of them reported their intention to get married in China. The wives and children have to wait for a long time before they will be permitted to move to Hong Kong for family reunion. Some families have to wait for more than 15 years if they live in places with a long waiting list. Assuming half of these wives and children are still in China, the Hong Kong Government will have to plan for the provision of schools and other social welfare facilities in 1997, when the 200,000 children of Hong Kong permanent residents flock into Hong Kong, as they become 'entitled persons' under the Basic Law. To put 200,000 children in school, we shall have to build 200 more schools. How can we do it in 3 years time? When they come to Hong Kong as new immigrants, they may encounter difficulties in adjustment. Newly united families may find it hard to adjust to one another. The government should be prepared for this massive population influx and special services for new immigrants should be set up.

Professor Nelson Chow proposed in 1992 that if we can increase the number of single entrance permits to 200 per day, Hong Kong will be able to take in 60,000 a year. That means, by 1997, all these children would have been able to settle in Hong Kong and integrate into society (Chow, 1992). The planning of educational, social, recreational, health, housing and other facilities should be adjusted accordingly to ensure a smooth transition to 1997 in welcoming entitled persons to settle in Hong Kong. Housing, clinics, schools, social centres and new immigrant services should be planned according to the possible geographical location of settlement of these new migrants for family reunion. Unfortunately, the quota was only marginally increased in 1994 to 105 everyday. The issue of new immigrants will not be manageable if the government do not plan actively now.

Services for new comers, a multi-cultural dimension to welfare

New immigrants have to reside in Hong Kong for more than 7 years before they can apply for permanent residency. There are 134,701 (2.4%) persons who have resided in Hong Kong for less than 1 year, 349,406 (6.3%) between 1-3 years, and 321,342 (5.8%) between 4-6

years according the 1991 census (Summary Tables, p.42). A large number of these new immigrants or migrant workers are from China or other S.E. Asian countries. They constitute 13% of the total Hong Kong population and the government is turning a blind-eye to their needs. There is no multi-cultural office in the Hong Kong Government and there is also no immigrant service responsible for orientation and helping new migrants to adjust to the local community.

There is a strong anti-immigrant and migrant worker sentiment among the local population and the Hong Kong Government has done too little in the past to promote a society of mutual respect for other cultures, ethnicity, religion, and race. Such public discrimination on the under-privileged reflect a strong sense of insecurity among the population. There is little tolerance for differences and 'outsiders'. The multi-cultural dimension of social welfare services is being neglected. The Health and Welfare Branch should consider introducing a multi-cultural dimension to service delivery.

There are children and youth centres, social centres for the elderly in geographic communities of 30,000 population, and community centre facilities for 100,000 population. There are no services for the large number of Filipino (64,658), Indian/Pakistani (14,329) and Thai (11,787) residents who are likely to be working in low paid jobs in Hong Kong (Main Tables, 1991 Census Report, p.66-67). Proportionally, personnel of group work units in community centres should be deployed to work with these populations. Cultural and language interpreters will be necessary to protect the best interest of consumers in health and welfare services.

New immigrants from mainland China are being discriminated against. Most of them are not used to the cosmopolitan Hong Kong, especially the extensive use of English in business communication. Their academic and professional qualifications are not being recognised. They are usually engaged in low-income jobs that no one else will take on, in construction sites and manufacturing industries. Language is a problem for a large number of them as they are likely to speak Putonghua or their native dialect instead of Cantonese. The International Social Service is organizing Cantonese classes for immigrants from China but they can only serve a very small number of new immigrants.

It will be helpful if community organizers who speak the dialect of new immigrants are employed to serve the new immigrants and migrant workers. According to the 1991 Census, there are 48,029 Chinese whose place of domicile is not Hong Kong (Main Table, 1991 Census Report, p.66). They may be visitors and migrant workers. The rights of these migrant workers should be adequately protected by labour legislation.

Dependency ratio and implications for family support

According to the population projection, the proportion of children is going to decrease while proportion of elderly persons is going to increase. The change in demand for medical and welfare services is going to be considerable.

Distribution of population by age group and median age 1986-2006

Age group	1986 (base)		1991		1996		2001		2006	
	Number	%	Number	%	Number	%	Number	%	Number	%
0-14	1,272	23	1,229	21	1,208	20	1,143	18	1,069	16
15-64	3,828	69	4,077	70	4,279	70	4,471	70	4,649	71
65 & over	424	8	534	9	648	10	748	12	809	13
Median age	29		32		35		37		40	

Dependency ratio 1986-2006

Dependency ratio	1986	1991	1996	2001	2006
Youthful #	322	301	282	256	230
Elderly *	111	131	151	167	174
Overall @	443	432	434	423	404

No. of youths aged under 15 per 1,000 population aged 15-64.

* No. of persons aged 65 and over per 1,000 persons aged 15-64.

@ No. of persons aged under 15 and 65 and over per 1,000 persons aged 15-64.

The increase in the number of elderly will have significant implications for the provision of social security, old age allowance, welfare, health and medical expenses. The disease pattern of elderly persons is changing to chronic illness which requires prolonged medical treatment, rehabilitation and home care. The physical and emotional stress on family care-giver, usually women, will be enormous. There are no services for these care-givers of family members with mental illness, mental retardation, chronic illness and physical disability.

By the year 2020, the median age of the population may be between 50-60. The burden on the welfare, medical and health services will not be manageable if services are planned only 5 years ahead. A longer term perspective has to be developed in order that the demographic progression can be adequately addressed in advance.

Community Care, Self-Care and Family Care

On policy, the government often stresses the traditional virtues of filial piety and home care among Chinese families and is reluctant to provide community care services. The Hong Kong Council of Social Service conducted a study on the 'Role of the Family in Community Care' in 1992-1994 and found that "community care" equals "family care", and "family care" equals "women's care". Women in the family are taking on the burden of providing care to children and the chronically ill in the family. With the reduction in the average household

size from 3.9 to 3.4 in the last decade, and the high female labour participation rate of 46.2%, one can appreciate how difficult it can be to find someone to take care of the disadvantaged in the family. Owing to the diminishing capacity of the family to care for its members, elderly and disabled persons are particularly vulnerable when they lose the ability to take care of themselves. Formal service delivery should be designed to supplement family care and for those who do not have a family. Creative approaches such as neighbourhood networking, home-help and domiciliary rehabilitation services should be given top priority in service development in order to provide support for family care for the elderly, sick and disabled persons at home.

Elderly persons and disabled persons are the main consumers of home help services. The most popular services are meal delivery and personal care services. The following tables describe the reasons for requesting home help service and the type of services rendered.

Percentage Distribution of Home Help Service by Reasons for Help by Type of Clients (1/91-12/91)

Reasons / Clients	Elderly Persons	Disabled Persons	Social/ Family Needs	Total
Sudden Illness of Family Members / Care Giver	1.5	4.6	9.3	2.6
Death of Family Member / Care Giver	0.3	0.3	4.2	0.6
Hospitalization / Confinement of Family Member / Care Giver	0.9	2.8	6.5	1.6
Desertion of Parents / Family Members	0.6	2.2	5.6	1.2
Loss and/or Inadequate Self-care Ability	96.0	88.6	55.6	92.2
Others	0.6	1.5	17.8	2.0
Total no. of Reasons	2293	325	214	2827
%	100.0	100	100	100

(Source: Extracts from Clientele Information System 1989-1992, Hong Kong Council of Social Service).

Percentage Distribution of Home Help Service by Type of Client
(1/91-12/91)

Type of Home Help Service Rendered / Type of Client	Elderly Persons	Disabled Persons	Social / Family Needs	Total
Personal Care	14.5	14.5	4.4	8.3
General Physical Exercise	1.0	0.9	0.5	0.6
Household Cleaning	24.7	19.2	24.0	14.6
Child Care	--	0.3	7.8	0.4
Laundry Service	18.4	13.5	8.8	10.4
Delivery / Purchase of Daily Necessities	6.9	9.4	13.2	4.1
Escort Service	34.4	56.6	41.7	22.8
Visiting	0.2	--	--	0.1
Meal Delivery	65.3	42.8	46.6	37.2
Preparing of Meals	1.6	0.9	8.3	1.2
Others	0.6	0.3	--	0.3
Total No. of Services Rendered *	3746	504	317	4567

* Multiple services may be given to any client and therefore the percentage is more than 100%. The figures stand for the total number of services given rather than number of clients receiving service.

(Source: Extracts from Clientele Information System 1989-1992, Hong Kong Council of Social Service).

Women as Care Givers and Service Consumers

The burden of care and nurture falls mainly on the woman in the family. Life becomes particularly stressful if there is a chronic patient, a frail elderly person, a mentally handicapped child or a mentally ill family member at home. Women sometimes feel guilty for not being able to satisfy all the demands of home care while feeling inadequate in knowledge of specialised care and exhausted by the physical labour and emotional strain. Respite services, temporary residential care for disabled persons, training and support for home care-givers are essential to make it possible for elderly or disabled persons to stay at home.

Percentage Distribution of Family Counselling / Casework Service by Main Problems by Sex 1990-1991

Main Problems / Year / Sex	3/90			12/90			12/91		
	M	F	Total	M	F	Total	M	F	Total
Children & Young Persons	26.8	12.2	16.2	26.2	11.7	15.6	27.8	13.6	17.4
Family	43.0	68.7	61.8	42.7	68.0	61.3	42.9	68.3	61.4
Health	21.2	13.8	15.8	22.6	15.2	17.1	20.6	13.2	15.2
Financial	8.9	5.2	6.2	8.0	4.9	5.7	8.7	5.0	6.0
Others	0.0	0.0	0.0	0.3	0.2	0.2	0.0	0.0	0.0
Total	2141	5749	7890	2395	6490	8885	2588	7207	9795
%	27.1	72.9	100.0	27.0	73.0	100.0	26.4	73.6	100.0

(Source: Extracts from Clientele Information System 1989-1992, Hong Kong Council of Social Service)

Women are the key consumers of family services. Men are more reluctant to seek help for relationship problems and are generally not willing to take part in family enrichment programmes. The men approach family services for health and financial reasons while women for relationship and home management difficulties.

If women can be adequately mobilized in strengthening community support for each another, they can be a valuable asset in life enrichment programmes and the prevention of family disasters. Pilot projects such as the Hong Kong Women's Centre and Women's Development Project in Shaukiwan are not funded by the government. More policy recognition and effort must be invested in the welfare needs of women and in developing specific working approaches to cater for their needs.

Family and Child Care Services

SWD and NGOs are providing families with family service centres, family life education, home help services, child care services, foster care, small group homes, protection of juveniles, teenage or unwanted pregnancy and battered women through sheltered housing.

Strategies to help families in trouble should also extend beyond the Social Welfare Department. An obvious example is the case of housing for divorced women and their children, battered wives and abused children. It was a major improvement when the Housing Department designated conditional tenancies in public housing estates for divorced couples or victims of domestic violence.

Another example is children with special needs, such as the 20,000 children living on Public Assistance. Children and youth centres as well as family service units can join hands with the Social Security Units to provide services that will help these children through the most difficult and critical times.

Government Action

The Director of Social Welfare, Mr. Ian Strachan, has urged the public to take the family seriously and has proposed the expansion of various types of family services to support families in 1993. These include family activity and resource centres, increased numbers of family life education officers; improved child care facilities, increased family aide workers and home helpers to support families at risk, as well as improved quality of counselling in family service units and the Child Protective Service Unit, increased temporary residential care for children and the expansion of clinical psychologist services.

Unfortunately, there is no regular funding for innovations, new initiatives, research and programme evaluation. Much more research and more pilot projects should be encouraged in order to keep abreast of the changing needs of society. New approaches such as mutual help groups and self-help organizations, social networking, neighbours as home-helpers, care-giver support should be further developed and tested as these can be cost-effective ways of bringing about change and helping people to help themselves.

The Social Welfare Department agreed to reduce the caseload of family service workers from 70 to 65, with the eventual goal of reducing the caseload to a more manageable level of 50. Besides counselling services, practical help is also needed. The Social Welfare Department introduced a category of 'family aide' workers and promised to provide each family service centre with one ward attendant to help families with practical training on home care, home budgeting and cooking.

Despite the considerable expansion (an additional 12 home-help teams in 93-94), the number of home-help teams still falls short of the demand by 35 teams. Doctors regret that they have to admit sick persons into the hospital because these patients have no one to take care of them at home. The efficiency of home-help teams can greatly be enhanced if a case-manager can be added to each team. A degree level social worker can serve as the case-manager, community educator, health promoter and coordinator of volunteers.

The following Table shows that there are significant shortfalls for clinical psychologists, day nursery places, medical social workers, and home-help teams. These shortfalls are already calculated on the basis of low service planning standards. The service planning standards should be improved and the shortfall be rectified. The Social Welfare Department does not have estimates of demands for services such as family aide worker, foster care, small group home, children's home and occasional child care centre. Without such estimates, long-term planning will be hampered.

Planned provision and shortfall for family services

Type of Service (Planning ratio) / planned provision	provision as at 31.3.1993	Demand/ provision/ shortfall	projected 1993/94
Family casework service (1 Family service centre to 150,000 population) (1 social worker to 70 cases)	Cases (32,993) 430 Social workers	Demand (social workers) Provision Shortfall	(34,700 cases) 496 439 57
Family Life Education (1:50,000 population)	59 Social Workers	Demand Provision Shortfall	77 67 10
Medical Social Workers (general beds 90:1, beds for mentally ill 140:1, psychiatric OPD cases 250:1, TB OPD cases 400:1, General Clinic cases 250:1)	250 Social workers under SWD	Demand Provision Shortfall	505 283 222
Home Help (1 team to handle 60- 70 cases at any time and 120 cases per annum)	72 Teams	Demand Provision Shortfall	119 84 35
Family Aide (1 ward attendant to each FSC)	4 Ward attendants	Provision	20
Clinical Psychological Service (1 Clinical psychologist : 1,356 family counselling cases)	13 clinical psychologi st	Demand Provision Shortfall	51 17 34
Day nursery (100 places : 20,000 population)	21,303 places	Demand Provision Shortfall	28,842 22,703 6,139
Foster care	320 places	Provision	480
Small group home (1 Home: 8 children)	23 homes	Provision	47
Children's home	1,828 places	Provision	1,828
Occasional child care centre	76 units	Provision	76

(Source: Social Welfare Development Five Year Plan Review 1993, 1994, p.21-22, 115-116)

Social Security and the Family

Totally Inconsistent Policy on Income Protection

There is a severe discrimination of families in financial hardship under the existing social security system. While the Old Age Pension Scheme proposed to offer \$2,300 per month to all elderly persons in Hong Kong irrespective of their income, the Social Welfare Department is only giving \$1,180 to children and \$965 to their mothers, who take care of the children. This amount can hardly be sufficient to meet the needs of growing children for food and clothing. Paradoxically, if the children are put under foster care or into a children's home instead, the Social Welfare Department would pay \$4,000 to \$6,000 a month to maintain the children in care. Proposals to improve social security for the poor were rejected by the government and token improvements were being proposed in the October 1994 Governor Speech. Disability Allowances have not been revised for many years. Why should welfare recipients be discriminated against? The following situation illustrates the detrimental effects of the low level of assistance on children. Poverty, after all, is not their fault.

Madam Wong was a migrant from Thailand when she married a resident of Hong Kong and moved to Hong Kong. She has no friends and relatives in Hong Kong. She could not speak the dialect and adjustment to Hong Kong was very difficult. Her husband died three years ago in an accident. After the death of Mr. Wong, Madam Wong and her three children had to live on Public Assistance. Each of them was given about \$600 a month at that time. She found it hard to swallow the hostile manner of her Social Security Office worker and felt very sorry for herself for not being able to work, and for the death of her husband. Two years later, Madam Wong developed a cancer of the colon. Her children were then aged 14, 11 and 8. As an adult, she receives the lowest level of allowance among all types of CSSA recipients.

The eldest daughter had been doing very well in school before her father died. Since his death, she had to abstain from all extra-curricula activities and social contacts with her classmates as the Public Assistance did not provide her with pocket money to spend. From then onwards, she was often very quiet and unwilling to make friends and developed a very low self-image. She wanted to go to a school camp in the summer which would cost her \$200, a sum that the mother cannot spare. The Social Security Office said that school camp is not essential spending and therefore no provision was granted.

As growing teenagers, all of the three children were hungry most of the time, and the mother was very frustrated for not being able to provide them with more food. She resorted to force the children to go to bed very early so that they won't ask for more food in the evening. The second son often fought with his classmates whenever they teased him for having no father and being welfare dependent. The youngest daughter was very attached to the father. She developed conversion symptoms after the father died and could not speak for two years, until she received counselling service from a voluntary agency.

Madam Wong had to lock the children and herself in the room during Chinese

New Year and major festivals as they cannot afford to go out, not even to give red packets to neighbours. Moon-cakes were absolutely out of the question. In the summer months, transportation allowances were cut, which made participation in summer programmes more unaffordable.

Madam Wong had a relapse and the cancer had spread to the liver in May 1994. She is now very worried about the custody of her three children when she dies. She fears that her children may have to live in different children's home under the guardianship of the Director of Social Welfare.

Detrimentially Low Level of Assistance to Children

The self-esteem, relationship with parents and sense of community involvement were significantly lower among children on welfare when compared with children living in temporary housing areas (Chan & Wong, 1993). Low self-image and the lack of a sense of community can easily precipitate anti-social or socially destructive behaviour. With the present level of provision, the government is consciously depriving these 20,000 disadvantaged children of normal growth and a happy childhood. The harm done to their personality and self-confidence cannot be undone easily. While the government is spending millions of dollars in summer programmes and crime prevention in order to inculcate a sense of commitment to society among young persons, money would be well spent to provide these 20,000 children on welfare with an adequate level of provision so that they can become responsible citizens of tomorrow.

Families which have undergone traumatic events, such as the death of the bread-winner, ill health, disability, divorce or separation, are those who seek help from the Social Security Offices, but they are not provided with timely support and counselling. It is obvious that the Social Security Offices are well-positioned as a base for social workers to reach out to the most dis-advantaged individuals and families. Social workers should be added to social security offices so that these families can be given appropriate service besides cash assistance and to create an environment conducive to normal growth for the children on welfare.

Nature of Case of CSSA

Two-thirds of the cases on CSSA are elderly persons. The numbers will be significantly reduced when the Old Age Pension Scheme is implemented. The second largest category of recipients is those who are suffering from ill health or disability. A higher payment will not attract more people as they need to be medically certified ill or disabled to the extent that it affects their ability to work. The existing criteria of disability is also very harsh. It is unlikely that people would disable themselves in order to gain access to the CSSA Scheme.

Owing to the marriage of Hong Kong male resident with Chinese women, there are increasing number of wife battering among these families which resulted in separation and divorce. The new immigrant women with dependent children have to rely on public welfare for a living. The number of single-parent families on CSSA increased quite rapidly in recent years. With the increasing number of family reunion cases, there is a high likelihood that the number of families of single-parent with dependent children will increase. Cash assistance together with social service support will be essential to help them out of the stressful or even

traumatic situations.

Type of CSSA Cases

Public Assistance Cases/ Number (Percentages)	31.3.1983	31.3.1987	31.3.1993	31.3.1994
Old age	33,910 (66.1)	42,135 (66.5)	53,397 (65.1)	61,026 (64.2)
Temporary disability / ill health	6,962 (13.6)	7,438 (11.7)	8,889 (10.9)	10,072 (10.6)
Mentally ill	1,166 (2.3)	2,628 (4.2)	4,913 (6.0)	5,687 (6.3)
Single parent family	2,287 *(4.5)	3,762 (5.9)	4,897 (6.0)	6,134 (6.5)
Unemployed	985 (1.9)	1,877 (3.0)	2,957 (3.6)	3,876 (4.1)
Physically disabled	1,120 (2.2)	1,262 (2.0)	2,079 (2.5)	2,644 (2.8)
Low earnings	1,655 (3.2)	1,268 (2.0)	1,007 (1.2)	1,407 (1.5)
Blind	768 (1.5)	710 (1.1)	840 (1.0)	946 (1.0)
Deaf	124 (0.2)	138 (0.2)	219 (0.3)	338 (0.3)
Others	2,290 (4.5)	2,148 (3.4)	2,777 (3.4)	2,974 (3.1)
Total	51,267 (100)	63,366 (100)	81,975 (100)	95,104 (100)

* Figures before April 1985 cover only widow(er) with dependent children cases while those from April 1985 onwards are extended to include the deserted, separated or divorced parents with dependent children, which were previously classified under "Others".

(Source: Hong Kong Social and Economic Trends 1982-1993, 1993, p.92; Hong Kong Monthly Digest of Statistics, April 1994, p.99)

Officials of the Health and Welfare Branch have pointed out that an increased level of assistance can be harmful to the work incentive and create welfare dependency. It is a plain fact that very few people will choose to live on welfare if they can manage to earn an income. The percentage of Public Assistance cases due to low income was actually decreased in the past ten years.

Owing to the import of labour and economic transformation away from manufacturing industry, the number of available jobs for the working class actually declined. In 1992, there were 23,600 displaced workers due to businesses closing down or employers moving operations to China (General Household Survey, Special Topic Report No.X, p.18), but only a very small portion of these displaced workers have applied for Public Assistance. Unemployment will not automatically entitle a person to CSSA. All of them have to register with the Labour Department for a month and have to accept all job offers if they have working capacity. So it is absolutely out of the question that improving the level of CSSA will reduce work incentive. The government should facilitate job creation and job training to help those middle-aged and lowly educated displaced workers, instead of keeping the level of CSSA to a bare minimum to deter new applicants.

Without adequate political will and commitment to protect the living standards of the poor, the government has turned a blind eye to the suffering of children and families on welfare. The harm done to the self-esteem and confidence of the children will be permanent. The government officials involved should be held responsible for turning out incompetent and anti-social citizens of tomorrow.

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SITUATION OF FOREIGN DOMESTIC HELPERS IN HONG KONG

by

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SITUATION OF FOREIGN DOMESTIC HELPERS IN HONG KONG

MS REMY BORLONGAN¹

I INTRODUCTION

Hong Kong has been one of the major destinations of migrant workers in the region. For the last two decades, there was a rapid increase in in-migration of workers from the Philippines, Thailand, India, Indonesia, Sri Lanka, and Nepal. While the majority of the foreign workers are employed as domestic workers, there are also those who work in factories, shops and other skilled and semi-skilled jobs.

Based on the immigration reports, Hong Kong is presently hosting 148,500 this year, a 19.7% increase from last year's figure. According to the research conducted by some migrant concerned groups, the increase from 1993 to 1994 is identified as follows: Filipinos from 100,000 to 120,000; Thais from 8,000 to 12,000; Indonesians from 7,370 to 10,000; Indians from 2,500 to 5,000; Sri Lankans from 1,000 to 2,000 and Nepalese from 150 to 500. Ninety percent (90%) of these domestic helpers are women.

More and more Asians have been driven to foreign lands for much needed employment. These phenomena of labour migration can be observed in various countries in differing degrees. It can be seen that the newly industrialising countries like Korea, Malaysia, Taiwan etc. have opened their doors to migrant labours to fill up the need of its fast economic growth rate. On the other hand, the "less developed" countries in South and Southeast Asia have continuously supported the labour out flow to stabilize its labour imbalance and at the same time collect dollar remittances to fuel its own economic growth. To date, the Philippines is the world's largest exporter and supplier of cheap labour and domestic helpers.

II THEIR SITUATION

FDHs reveals an important role in the fast-changing world economy, particularly Asian economies. The massive exportation of FDHs was seen not only as a means of addressing the country's unemployment and underemployment problem but also as the country's source of debt-payment to IMF-WB through remittances or dollar earnings, duties imposed on goods being sent home, taxes etc. FDHs' contribution, by becoming the top foreign exchange earners of their countries, could no longer be undermined.

FDHs spend a lot of money to be able to secure a job overseas. Huge amounts of money is being exhausted to pay to various fees such as medical, passport, and other pre-

¹ Asian Domestic Workers Union

departure requirements. Aside from paying the recruitment agencies, they have also to pay considerable amounts of money as video "appearance" fees for the prospective employers to "screen" them. During the "waiting" period, FDHs -- being remote from the city -- also have to spend for transportation and board and lodging. They also need to pay for training fees to learn Cantonese as well as how to operate modern appliances like washing machine, vacuum cleaner, microwave, etc.

With the above-mentioned expenses their hard-earned savings are not enough. They are forced to sell or mortgage their properties, i.e. land, house, buffalo, jewellery, etc. And if these are still not enough, they resort to borrowing money at exorbitant interest rates. Without further resources to go on, they even sign blank papers that, more often than not, are being used against them.

For most FDHs, decisions to leave home and work abroad would mean personal sacrifices and separation from their families. They are forced to leave their country because they could not get jobs back home, they could not send their children to school and they could not feed and support their family. They took a chance of leaving the dis/comforts and in/security of their home and community to serve foreign masters with the hope of living a more decent life and not the nightmare of suffering from racial discrimination and occupying the lowest social rung of the host family/country through long working hours with less salary, socio-cultural estrangement, frustration with the legal systems and total isolation from the living environment. All these factors further contribute to the uncertainty of life being faced by FDHs' behaviour. Finding it hard to accept the reality of being a domestic helper, particularly if they are treated badly, they become prone to depression and self-pity.

Socio-cultural and psychological problems existed as a result of employer-employee relations. In addition to this, FDHs do not enjoy the promotion and protection of their rights and welfare from their country government.

III WHAT IS BEING DONE?

While groups and associations exists especially among Filipinos, they usually deal mainly with socio-cultural program for members. To protect themselves, FDHs in Hong Kong organised themselves with the establishment of the Asian Domestic Workers Union (ADWU). During the past 5 years, ADWU involved itself in pressing demands on working conditions of FDHs, lobbied to Governor's House, LegCo, Hong Kong government, country governments, and established a good relationship with other NGOs as well as with the media. ADWU, in coordination with various domestic helpers group, also organises education training and activities for the upliftment of the domestic helpers plight. It also provides counselling and temporary shelter for the displaced FDHs.

We would like to share with you some of the activities done by ADWU from 1990-1994:

- 1) Campaigned and lobbied for the:
 - immediate abolition of the 2 week rule
 - increase of salary from 3,200 to 3,750 (approved)
 - reduction of long working hours from 16 to 8 hours
 - blacklisting of employers proven to violate Hong Kong law
 - setting-up of a policy committee representing domestic workers
 - anti-discrimination law on Equal Opportunities
 - combatting of violence against migrant workers
 - International Labour Day (1993, 1994)
 - death cases of domestic helpers and other victims of maltreatment

- 2) Supported various country issues, to wit:
 - Kader victims in Thailand (1993)
 - Mt Pinatubo victims in Philippines (1992)
 - Nepal national issues

- 3) Various Concerns:
 - ADWU is aware of the on-going debate to liberalise the importation of labour to Hong Kong and the unified position of local trade unions. ADWU's stand, together with the FDHs here in Hong Kong, is the promotion and protection of their rights.
 - FDHs in Hong Kong see the emerging conflict between the local and imported labour. ADWU has to conduct a dialogue with workers, unions and federations on broader issues and struggle against forces that seek to exploit cheap labour. Issues have to be broadened to include those which promote the division of workers.
 - Poverty pushes FDHs to seek employment abroad, faced with so many problems, the value of united action in protecting and promoting the rights and welfare must not be overlooked.
 - We know that FDHs is only a part of a much larger issue related to economic disparity between Hong Kong and China and its Asian neighbours.

- 4) Some of the few cases encountered by ADWU.
 - There were many complaints regarding treatment by the police. They have different ways of investigating, like forcing domestic helper to accept or tell false statements or telling them to go back home because "they are only rubbish in Hong Kong".

- Domestic violence is very rampant among domestic helpers. This includes rape, verbal abuse as well as physical, emotional, and psychological injuries. It has become a trend that even if the employers' business is on the low side, the blame is being passed on to the domestic helpers.
- Many death cases are not being fully investigated. It always appears that the causes of these deaths are "suicide".

IV How has Hong Kong fared in terms of protecting and promoting the economic, social and cultural rights of FDHs?

Not bad really, in fact, I believe that Hong Kong is better off in this regard compared to other countries in the region.

For instance, the government's adoption of a standard employment contract which clearly sets out the rights, privileges and obligations of foreign maids and their employers. This move goes a long way towards eliminating disputes over salaries, days off and other legal entitlements of FDHs.

The Labour Ordinance, Immigration Ordinance, related legislation and various regulations adequately safeguard migrant workers' rights and privileges under Hong Kong laws.

But I must stress that a lot more needs to be done as there is much room for improving the plight of FDHs.

Let me enumerate some of the outstanding issues or problems confronting FDHs in Hong Kong today which have yet to be resolved:

1. The two-week rule which forces FDHs to leave Hong Kong if they fail to find jobs two weeks after the termination of their employment contracts is a big burden to FDHs. We would like to see a formal announcement from the government for a review of this policy, its relaxation or its revocation if they see fit.
2. The Labour Department and the Philippine Consulate need to take more effective and sustained actions to stop dishonest employment agencies from victimising FDHs looking for jobs for themselves or their relatives in the Philippines and other countries.
3. Since last year, there has been a spate of alleged suicides of FDHs. While most appeared genuine suicide cases, others appear questionable. A case in point is that of Haidi Juperatum who allegedly took her own life by strangling herself with clothes hanger and drinking dettol only three days after she arrived in Hong Kong. We are strongly urging the Hong Kong police to be more thorough in their investigations and not jump quickly to conclusions on probable cause (or causes) of death. We believe that migrant workers are entitled to the same rights and privileges under the law as local people.

4. FDHs are grateful for the government's grant of several abandoned schools for use of foreign maids during their Sunday off. But on any given Sunday, up to 100,000 FDHs spend their Sunday off. It is thus clear as daylight that a handful of recreational centres will barely help to allow migrant workers to pursue their social and cultural activities. Sad to say, the government initiative is late and minuscule to address a huge problem of overcrowding of FDHs in Central on Sundays. For Hong Kong to meaningfully promote the social and cultural rights of FDHs, it should provide more venues for them to pursue these activities rather than turning a blind eye on scores of FDHs who converge in various locations in the territory. The Philippine and other concerned consulates should also be tapped for help, not merely moral support.

5. And lastly, there have been media reports of maids from China possibly coming to Hong Kong after 1997. While it is the prerogative of the Hong Kong government to adopt whatever labour policy it chooses or to change existing laws, migrant workers like us will be better off if we are told early of any possible change in current policies. We realise that our stay in Hong Kong all depends on the wishes of the host government and employers who need our services. But we hope the government will be courteous enough to tell us as early as possible if change in labour policy is being considered so that migrant workers like us can adequately prepare for anything that will affect our status here. We have contributed to Hong Kong society in our own ways and I believe that we deserve some courtesy in return.

Thank you for listening. I, Remy Borlongan, representing Foreign Domestic Helpers in Hong Kong. Good afternoon to everybody.

CHILDREN

by

DR PATRICIA IP

HONG KONG COMMITTEE ON CHILDREN'S RIGHTS;

AGAINST CHILD ABUSE

Children

DR PATRICIA IP¹

This presentation is not meant to be comprehensive covering all the economic, social and cultural rights of children. There have been discussions before and there will be discussions to follow that cover many aspects of these rights. I will talk about two areas only, namely the right of children for protection and assistance in article 10, and the right of the child to enjoy the highest attainable standard of physical and mental health in article 12.

It is true as stated in the Second Periodic Report in respect of Hong Kong that we do have a Department of Health that attends to primary health care and a Hospital Authority for hospital-based treatment, numerous services for children like Family Service Centres and a Child Protective Service Unit, and many laws that cover child protection.

With improvements in our economy, housing and sanitation, our infant mortality rate of 4.7/1000 live births in 1993¹ is one of the lowest in the world. Birth rate has declined from 19/1000 population in 1972 to 12 in 1992 while life expectancy increased from 67.7 years for males and 75.4 years for females to 74.8 and 80.5 respectively over the same period². We may not be struggling with the PPE spiral, ie poverty, population growth and environmental stress in the same way as many developing countries, but we are not immune to problems brought about by industrialization and urbanization.

Right of the child to protection and assistance

Hong Kong is a changing society. The average household size is coming down with an increase in nuclear families. Divorce rates are rising. There are more single parent and reconstituted families. Families moving to new towns leave behind the support of relatives and friends. Parents have to travel long distances to work. The closeness of China to Hong Kong and her economic growth lures many husbands to work even further away across the border, leaving their wives to be the sole carer of their offsprings. At times, both parents may be away leaving young children, or slightly older ones in charge of their younger siblings, either at home or on the streets. With more women at work, Hong Kong couples delegate their child care to relatives or childminders both locally or in China to the point that

¹ Chairperson, Hong Kong Committee on Children's Rights (under the auspices of Against Child Abuse)

they become weekend parents or only see their children during festivities. All these family stresses, strains on parent-child bonding, and higher expectations because of smaller families, create an environment for child abuse and neglect.

We do have many services for our children. In a five year review of a hundred child abuse cases presenting at my hospital, just over half of them are known to some agencies e.g. family services units, school social workers, or medical personnel, but problems within the family are often seen in isolation as financial, housing, or marital problems rather than problems that may affect every member of the family, especially the children who are the most vulnerable. When each worker has an unrealistic case load, is it surprising that he/she prefers to hear or see there are no problems rather than to be sensitive to the needs of each individual family member?

We have guidelines for handling child abuse and a Child Protective Service Unit for some ten years. Yet we can still be spending more time debating the definition of child abuse at case conferences than working out the child's welfare plan. The community and even professionals still tolerate a fair amount of corporal punishment. The lack of intent to harm can be given more weight than the actual harm done to the child. Psychological abuse is even more difficult as the child is unlikely to be able to describe the abuse nor is evidence easily seen. Reports of sexual abuse are on the rise from 2% of abuse cases 4 years ago to 14% last year³ yet we are ill-equipped at coping with the acute management not to mention the follow-up treatment of victims and perpetrators.

Decisions about the child's discharge plan can be a nightmare. Deficiencies in placement alternatives can result in children going back to an at risk environment prematurely. Children with behavioral and learning problems are particularly difficult to place. On the other hand because of the foreseeable responsibility in supervising a child in an at risk environment, to play safe, a child may be removed from his family.

Preserving and strengthening the family unit is an accepted principle but how much is done to prevent the need for care is debatable. We have examples of parents abandoning handicapped children in hospitals⁴ and we wonder why. What assistance can we offer to parents who do care for their children with special needs at home? In particular is there an atmosphere of acceptance or discrimination against children with disabilities in our community?

A family setting is preferred when children need substitute care, especially for young ones yet 20% of our children in care are infants in institutions⁵. Have we done enough in the

recruitment, training and support of foster carers? Once in care there appears to be no uniform requirement of a care plan and a system of review as to the on-going needs of the child, effectiveness of measures towards family reunion and period of stay.

Hong Kong has a multitude of laws relating to children developed over the years but not a comprehensive set of child ordinance based on the principle of the best interests of the child appropriate for present day needs, laws that state the minimum standard of care, support, education and protection to children expected of their carers and the consequences of violating these laws.

Independent representation of the child is particularly important when he is in difficult circumstances, whether he is in conflict with the law, a subject of a custody battle, a victim of abuse or a child for adoption. This service is theoretically available but often not called upon, or if called upon, the person may lack the experience and training in child development and communication with children essential for effective representation.

Right of the child to physical and mental health

Malnutrition is no longer common in Hong Kong. Due to the lack of exercise and a changing eating habit, obesity is on the rise. These few days we have heard that 10 to 13% of our children are overweight⁶. Problems like heart disease, high blood pressure and diabetes are likely to follow.

The benefits of breastfeeding to the physical and emotional health of the baby, benefits to the mother, the family and the environment are well-established. Yet the breastfeeding rate in Hong Kong is sadly low. The ever-breastfeeding rate at discharge from our postnatal wards is only 31% this year⁷. The World Health Assembly has in May this year adopted a resolution to end low cost supplies and donation of breastmilk substitutes throughout the healthcare system. Many developing countries have already put this into practice but currently all public hospitals in Hong Kong rely heavily on donations from milk powder companies. Is the government far-sighted enough to invest in a healthier future for our babies?

Infectious diseases are under control. The immunization rate is over 90% amongst school children for the major infectious diseases⁸, but with the mobility of our young population going to China and coming back to live there is always a risk of incomplete immunization. For twenty years we had no major problems from measles. In 1988 we had an epidemic of over 3000 children⁹. Presumably the number of un-immunized children had built up.

Injury and poisoning have replaced infection as the leading cause of death of our children over the age of one year¹⁰ yet there is no injury surveillance programme and hence no systematic preventive programme. In Shatin, it may be bicycle injuries over holidays; in temporary housing estates, it may be children with head injuries falling off cocklofts; in villages, it may be children drowning in uncovered ponds. New legislations like the Toys & Children's Product Safety Ordinance is a step forward but it does not require products to be tested before sale but rather, relies on investigations of complaints after their use.

The problem of supervision of children is unresolved. In 1991 there was a Consultation Paper on Measures to Prevent Children from being left unattended at home. With an emphasis on punishment rather than the educational aspects of legislation, the conclusion was against legislation but to rely more on education and supportive services. Last year 14 children died while unattended¹¹. These are only the fatal cases. Different surveys found that between 7¹² to 42%¹³ of children are left unattended at home for some period of time. Apart from the physical safety, the psychological impact on the child's development can be immense. Many of our parents still see their primary responsibility as the provision of food, clothing, shelter and schooling only.

Services like Occasional Child Care has its role but we have yet to see a good review of its effectiveness. I understand the usage rate varies between centres. Much depends on the amount of publicity, the location of the centre and the attitude and skill of the staff in coping with young children for a short time to whom they are total strangers. There is an age limit of 2 to 6 years. We need services for those both younger and older. Unless the service is user friendly to both children and their parents, the purpose of setting up such a service is defeated and parents will continue with their risk-taking behaviour. Well-run after school care programmes are in short supply and facilities like work-based childcare centres are a rarity.

It is unfortunate that our Department of Health is independent of our Hospital Authority. Health care from primary health through to hospital care and community based rehabilitation should be a continuum.

The Department of Health has a Comprehensive Observation Scheme in the MCHCs for many years but there has not been a review of its cost effectiveness. MCHC could, for example, take on a more active supportive and educational role in outreaching at risk families.

Health education is currently the responsibility of many agencies apart from the Central Health Education Unit of the Department of Health. The syllabus on health education

for primary schools were developed in 1980. There needs to be better inter-agency co-operation and planning so that the education is appropriate for the needs of our children today.

The standard of medical care in Hong Kong hospitals is comparable to many developed countries but the emotional care of children in hospitals lacks behind. The Hospital Authority is publicizing the Patient's Charter but is much more cautious with the Charter for Children in Hospital. Although many hospitals have liberalized parental visiting hours, due to a lack of facilities for parents, children are sometimes discharged against medical advice because parents find accompanying their children in hospital an ordeal. Play services in hospitals is a relatively new phenomenon.

As acute medical care improves children with chronic illnesses and physical and mental disabilities are becoming important concerns. Their care spans many disciplines from medical, social, educational to rehabilitative services. Currently there is much to be desired in the co-ordination of these services.

When physical illnesses are being attended to, our children show a rise in psychosomatic disorders, smoking, eating disorders, drug and substance abuse, teenage pregnancies, violence against each other and themselves. Yet adolescent care which again needs a multidisciplinary approach is still in its infancy.

Conclusion

The government report has failed to document the stresses facing our children, the consequences of these stresses, the effectiveness or otherwise of existing measures in dealing with them, and what more needs to be done. Children by nature of their immaturity is more vulnerable and need special attention and protection. As they are also growing and developing, they cannot wait. The latest edition of *The State of the World's Children*¹⁴ reports that 86 governments had drawn national programmes of action and 56 are in their final drafting stage covering 90% of the world's children. Hong Kong has yet to have a Child Policy nor a programme of action which states where we are, where we want to be; what we want to do and what we can do within our resources. In fact, also what resources we are prepared to invest for a better future.

Throughout our review of the state of our children, we are hampered by the lack of information. It is almost like what we do not know does not exist and hence no action is required. On the other hand it is so much more logical to act on reliable data.

Although we have a multitude of services, we need co-ordination and communication to avoid duplications and gaps. We should not be overwhelmed by service provision so that we cannot stop and evaluate our programmes.

Remedial services have their urgency but if prevention is neglected, we will always be struggling with remedial care. Preventive programmes and early intervention programmes have to be emphasized with clearly defined goals yet flexible enough to respond to new morbidities and technologies.

Training and education of all professionals in contact with children regarding the specific needs of children is essential. They have to learn to communicate with children and hear their views.

An African proverb says "the world is not left to us by our parents. It is lent to us by our children". This may prompt us to look at our responsibilities in a new light.

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EDUCATION

by

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Hong Kong And The Implementation Of The International Covenant On Economic, Social And Cultural Rights

Education

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1. General remarks

The overall tone of the government report regarding Articles 12-14 (on education) is a very defensive one. Effectively, the reader is told that every goal regarding education, as laid out in the Covenant, has already been reached. As a result, one cannot envisage any room for further improvement along prescribed lines, despite the invitation, in the "Revised Guidelines Regarding the Form and Contents of Reports", to present difficulties and failures. I see this as a very limiting stance indeed.

The report adopts a very narrow definition of educational goals, namely, the provision of education in terms of sheer quantity. Without appreciating the deeper implications of the goals carried in the relevant article in the Covenant, the government report is no more than a superficial reporting of figures regarding *formal* educational provision. The *substantive* educational outcome is therefore not known.

Furthermore, only *aggregate* figures of provision are offered, and no breakdown of figures along major structural lines, such as gender and income groups is presented. This renders the report meaningless with regard to the important issue of equity.

2. The issue of rights and equity

Paragraph 1 of Article 13 specifies very clearly the goals of education, agreed upon by the State Parties to the present Covenant. One of these is, to quote, that "education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms". Clearly, the issue of human rights and equity is a central one. This is further exemplified by the "Revised Guidelines", which, among other things, asks for reports on gender distribution of education at various levels, and the availability of equal access and anti-discriminatory measures.

Unfortunately, in the government's report, this issue of rights and equity is not addressed at all. Discussions about gender inequity, in particular, are conspicuously absent.

- 2.1 *Discriminatory messages in School textbooks and other publications* Studies in recent years have shown that school textbooks used in local primary and secondary schools are heavily discriminatory towards women and girls (Fu, 1994; Au, 1993; Yau-Lai and Luk, 1988). Apart from the relative invisibility of women in school textbooks, there is also a much narrower delimitation of their personality traits, their occupational, societal and familial roles. Notwithstanding such findings, however, the government has failed to take any positive step to systematically review textbooks for their biases with regard to gender, and then to attempt to remove such biases. This lack of positive intervention contributes to the perpetuation of gender stereotyping in our daily pedagogical processes.

Not only does the government fail to ensure that textbooks are free from gender biases, but that it actively involves in the design and dissemination of sexist materials itself. In the summer of 1994, posters publicizing the issue of industrial safety, distributed by the Government Information Services, actually send across extremely sexist messages by depicting women in all sorts of seductive or half-seductive postures in work settings. Despite repeated protests from local women's groups and academics, the government refuses to withdraw these posters. Needless to say, such a stance on its part could only perpetuate the cultural obstacles to the development of self-respecting womanhood.

- 2.2 *Gender Segregation in Education* It is true that enrollment figures in secondary and tertiary institutions have been rising steadily in the recent decades. However, the true picture of gender segregation is hidden behind these aggregate enrollment figures.

In Hong Kong, streaming between the Arts and Sciences subjects comes early, at about the age of 14 to 15, with students in the Sciences stream more favoured in their options in higher education and post-secondary vocational education. Gender ratios for selected subjects from both streams show that boys are disproportionately represented in the Sciences stream, while there is a much higher percentage of girls in the Arts stream. Moreover, the trend of boys "avoiding" the less popular Arts subjects has exacerbated in recent years. (See Table One)

Table One: Gender Ratios* For Subjects Taken in the School-Leaving Examination (The Hong Kong Certificate of Education Examination), 1976-1992

	1976	1982	1986	1992
History	0.65	0.49	0.48	0.47
Chinese Literature	0.91	0.61	0.52	0.41
Geography	0.97	0.64	0.57	0.54
Physics	3.35	2.85	2.52	2.09
Chemistry	2.82	2.63	2.38	1.98
Additional Mathematics	3.41	2.83	2.40	1.95

* Number of male candidates for every female candidate

Similarly, in the universities, enrollment in the sciences and technology fields are predominantly male, while women concentrate in the Arts and education fields. Thus gender segregation in fields of studies continues despite the fact that the enrollment of women in universities is getting nearer the 50% mark. (It was 42.3% in 1990) Table Two shows the percentages of women undergraduates in selected areas in the University of Hong Kong, the oldest of the three local universities.

Table Two: Percentage of Women Undergraduates in Various Fields of Study in The University of Hong Kong, 1971-1990

	1971	1976	1981	1986	1990
Arts	48.0	70.8	65.3	67.6	79.6
Education	n.a.	n.a.	n.a.	n.a.	90.5
Engineering	2.2	0.8	2.4	1.4	6.2
Science	19.3	16.9	22.2	10.2	26.3
Social Science	34.2	49.5	42.3	48.1	52.5

Sources: *Vice-Chancellor's Report*, University of Hong Kong, relevant years

In vocational education, it is also clear that young women are concentrated in the secretarial and clerical branches (so-called "commercial" field), while young men are offered much wider options, in the various technical areas. (See Table Three)

Table Three Percentage of Women Students in Full-time Secondary Level Technical / Vocational (Including Commercial) Education, 1972-1990

	Technical / Vocational	Commercial	Overall
1972	24.0	99.5	31.7
1976	22.2	98.3	28.1
1982	28.9	95.5	32.6
1986	30.9	95.3	33.9
1990	34.2	93.3	36.8

Source *Education Department Annual Summary*, relevant years

2.3 *Sexual Harassment in Educational Institutions* Schools and tertiary education institutions have not addressed the issue of sexual harassment, thus making the learning environment prone to all kinds of limitations and hazards for girls and women. By not acknowledging the problem of sexual harassment and not working specifically to prevent and eliminate such incidence, these institutions fail to guarantee the development of women as full-fledged citizens who are equally worthwhile as their male counterparts.

2.4 *"Gender-sensitivity" in education* So far, the government has not taken any positive step to promote "gender-sensitivity" in education planning, curriculum design, textbook writing, and teacher training. One suspects that it would take a very long time before government would be made aware of such a need. This is seen in the reluctance, on its part, to publish statistics in education for which gender comparisons are possible. This is also seen in the sexist materials which the government continues to churn out on its own part, in the posters mentioned above, as well as in government-sponsored education TV.

"Gender-sensitive" education not only recognizes the importance of gender equity at various levels of education, but also the urgency of the re-establishment of gender symmetry in social relations, in schools as well as in the wider society. More specifically, such a kind of education would enable not only girls and young women to enter high-status masculine fields, but also boys and young men to acquire virtues conventionally seen as "feminine" and

therefore of lower status. (Staberg, 1994) Given the deeply-seated nature of gender bias and the importance of education for any possible change, the government should commit itself to a clearly-scheduled programme directed at achieving a truly gender-sensitive education at all levels.

3. The issue of teaching in the mother tongue

The long-standing controversy over language teaching and the medium of teaching has not been resolved, and the government has not shown any real commitment to resolve it. In this predominantly Chinese society, English remains the most commonly used medium of teaching in secondary schools and tertiary institutions, though it remains a foreign language to most students and their families. The problem is, of course, complicated by the fact that Hong Kong is a major international commercial and financial centre on the one hand, and by the return to PRC sovereignty in 1997 on the other. The language situation is made even more complicated by the rapid emergence of spoken (and to some extent, written) Cantonese as a major "signifier" of local culture and identity.

For the past ten years, the government has not done anything to improve language teaching (Chinese and English) in local schools. Its recent "remedy" of streaming academically more able secondary school students into the English stream, and "encouraging" less able students to be taught in the Chinese stream, is a farce. Instead of convincing parents (who prefer English education) of the efficacy of their children being taught in their own language, such an elitist system of streaming only perpetuates the myth of the worth of learning in a foreign language. A truly effective way is, in my opinion, to drastically strengthen the resources of language teaching (*both* Chinese and English), to re-accustom teachers through intensive programmes to teaching in their own language, and to sponsor massive re-writing of textbooks and other teaching materials in Chinese.

At the present moment, resources for language teachers are scarce, and institutional and professional support is flimsy. Worse still, too much reliance has been put on foreign "experts" who are not well acquainted with local situation and needs. Unfortunately, with the support of government, these experts not only influence the teaching of English (the most important foreign language for students), but also that of Chinese itself. Hence, in the teaching of Chinese, the native language of most of the children, obsolete methods used in the teaching of English (as a foreign language) are applied. Needless to say, this creates unnecessary confusion and inefficiencies.

4. Neglect of local, grassroots initiatives in education

The problem concerning language teaching and the medium of teaching is part of a much wider issue, namely, the heavily bureaucratic, top-down style in education planning and implementation (Morris, 1992).

We have seen the heavy reliance on "foreign experts" at the expense of local, front-line initiatives in the language problem at the sponsorship of government. Similarly, in curriculum design, education policy-making, and in the everyday teaching and learning processes, very little room is left for the initiative of practitioners, i.e., the teachers. It is true that teachers' pay is not low in Hong Kong, but it must be remembered too that their duties are also notoriously heavy. Very often, they are required to do a lot of extra administrative and clerical duties without adequate support, nor a comfortable working environment (many teachers still work at small desks in cramped staffrooms). As a result, they are too over-worked to be able to carry out teaching that takes sufficient account of student needs, not to mention innovative teaching and self-improvement. Drastic measures must be taken to encourage, in a real way, teacher development and professionalism.

Of course, another major reason for the stifling of local and front-line initiatives is the anachronistic structure in schools, whereby power rests disproportionately on school heads and boards. A recent government initiative, the School Management Initiative, purportedly tries to tackle this problem through the establishment of clearer lines of authority and relevant committees at every level of school decision-making. However, little change could be envisaged if teachers continue to be over-burdened by daily duties, and if their job security and career remains at the discretion of the individual school authorities. Ultimately, the professionalism of teachers must be greatly strengthened, in order that the strong, bureaucratic leverage that government and school boards in the areas of employment and the setting of the conditions of work, can be suitably balanced.

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WOMEN

by

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SUBMISSION
OF
HONG KONG WOMEN'S ORGANIZATIONS
TO THE
UNITED NATIONS COMMITTEE ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS
ON THE
UNITED KINGDOM'S SECOND PERIODIC REPORT ON
HONG KONG REGARDING ARTICLES 10-15 OF THE
INTERNATIONAL CONVENTION ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The Women's Organizations work to promote the women's rights in Hong Kong through education and action. They are:

The Hong Kong Council of Women
Concern Group on Single Parents
Harmony House
Hong Kong Women Workers' Association
Association for the Advancement of Feminism

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INTRODUCTION:

The Women Organizations are taking this opportunity to present to the United Nations Committee on Economic, Social and Cultural Rights (the "Committee") the views of Hong Kong women on the United Kingdom's Second Periodic Report on Hong Kong (the "Report"), which Report covers Articles 10-15 of the International Covenant on Economic, Social and Cultural Rights (the "ICESCR"). The Women's Organizations find it necessary to make this Submission as neither the United Kingdom nor the Hong Kong government has made any attempt to solicit the views and opinions of any members of the public.

As a result, the Report reflects the government's views, which are not necessarily the views of the Hong Kong people. The Report merely recites the few formal steps that the Hong Kong government has taken in conformance with the requirements of the ICESCR. It does not contain the full picture, as even Hong Kong's Legislative Council as acknowledged in its Submission to the Committee. Our Submission is intended to give the Committee a more fully-rounded and detailed view of the situation of women in Hong Kong, especially in those areas where the government has failed to comply with the spirit and intent of the ICESCR.

The facts referred to in this Submission have been gathered primarily from the experiences of the Women's Organizations, either through their work-related contacts with women and their problems or through their relationships with other Hong Kong women's organizations.

ARTICLE 10(1), FAMILY, MOTHERS AND CHILDREN:

The 'Family' and Institutional Bias

1. Male-centered definition of the 'family unit.' The Women's Organizations are greatly concerned with the government's (unspoken) view that the 'family unit' consists of a working father, non-working (or working only for 'extra' money) wife and dependent children. The Report reflects this bias when it reduces female-headed households to the status of 'vulnerable groups' (Report10(B)(3)) and treats them as a distinct category of persons with 'special' and difficult problems rather than as simply another type of family with its own particular needs. This is not to say that female-headed households in Hong Kong are not vulnerable; they are vulnerable partly due to the government's unwillingness to treat them as 'family units.'

The government uses the pejorative "unmarried mothers" which is the term traditionally used to express society's disapproval of women who attempt to raise children without a husband. It reflects two

unstated assumptions about women and the 'family unit': 1. Divorced mothers or never-married mothers are simply mothers; they are not members of family units. Female-headed households are seen as somehow incomplete. 2. By not mentioning 'unmarried fathers,' the government assumes that all single-parent households are inevitably headed by a woman. (According to the March 1991 Census, 66.8% of all single-parent families with children under 18 were female-headed and 33.2% were male-headed.)

2. The government's 'objective' is to preserve the male-headed 'family unit.' When the Report states that the "overall objectives of family welfare services are to preserve and strengthen the family as a unit," it means the traditional male-headed family unit. The government's objective is to prevent the creation of female-headed households rather than to support families, whether composed of a mother and father or only a mother or only a father. This male-centered view of the family deeply influences government policy at every level and results in discrimination against, and rejection of the needs of, female-headed households. Government policy is permeated with the underlying theme of 'maintain the male-headed family unit' at all costs.

Divorce discouraged. The institutional bias against divorce is evident in the manner in which almost all government social workers actively discourage women from seeking divorces. Men and women have the same legal right to divorce. The main difficulties facing women (especially working class and poor women) who wish to divorce are not legal, they are financial. (E.g., see section 19.) When women divorce, they become especially dependent upon financial assistance from the government during the first difficult years after divorce as they make the transition from dependence to independence. They rely on the expertise of social workers for information and advice.

Unfortunately, women have reported that government social workers often fail to inform them of all the forms of public assistance that is available for women in their situation. Or, they may tell women about the low level of public assistance for the purpose of discouraging them from divorcing. As a result, many women do return to unhappy or abusive marriages because they do not believe they have any viable alternatives. It is apparent from the experiences of many women with whom the Women's Organizations have come in contact that government social workers believe it is their duty to protect the male-centered view of the 'family unit.'

3. The bias towards male-headed households is evident in the government's treatment of battered women. The government's report does not disclose that women are not being adequately protected from violence

in the family. Hong Kong has two battered women's shelters - one operated by the Social Welfare Department and one by a not-for-profit (Harmony House, which is one of the Women's Organizations making this Submission). Altogether, they have 80 beds for women and their children, who can stay for a maximum of three months. Both centers turn away women in desperate need of safe housing as they simply do not have enough space. (The government recently announced its intention to open a third center with 40 beds.)

Temporary assistance for non-divorcing victims needed. Many of the women do not want to divorce. They prefer to separate temporarily from their husbands in the hope that their husbands will change over time. After 3 months in one of the centers, they must move out. Unfortunately, the government does not have any temporary housing for these women. If they are unemployed housewives without money, the only way they can obtain emergency government housing is if they are in the process of divorcing. Thus, there is a gap in the government's policy to keep families together that leads women to choose between a safe place to live and divorce or returning to a dangerous situation and marriage.

Problem underreported. Statistics do not accurately reflect the extent of the problem of battered women as most victims do not report beatings to the police. Also, it appears that even when women do go to the police, the police encourage them to return home without making a formal complaint. There is no formal procedure for the police to follow in handling domestic violence cases.

More public awareness and education needed. The government has only recently made any attempt to educate the police and social workers on this issue. At present, only some constables and inspectors are given any training about the problem despite the fact that constables are the ones who will respond to calls for police help. Much more needs to be done to educate the police and social workers, and also doctors and lawyers who come into contact with battered women, about how to handle domestic violence situations and to understand that the maintenance of a nuclear family is not always in the best interests of the family members or society.

Also, there is a need for counselling children. Without some sort of government assistance, mothers are left to handle the emotional and psychological problems of their children alone. A public education campaign would also help those who come into contact with victims to have more sympathy and understanding. More needs to be done also to coordinate the services as, at present, women must travel from one government office to another and repeat their stories over and over again

to different officials and social workers in order to qualify for each type of benefit.

Positive role of social workers and government encouraged. The Women's Organizations believe that social workers and governmental authorities can make a positive contribution to the stability of the traditional family. As long as social workers, counselors and other governmental officials (such as the police) make all options known to the women and do not attempt to coerce or pressure them into returning to their husbands against their will, then we support their efforts. The role of counselors should be to help the entire family, including husbands, to solve their problems. For example, instead of simply telling battered women to return home, an attempt should be made to work with the husband to prevent his continuing behavior. This would require a change in the government's 'hands off' policy regarding family disputes and its unwarranted respect for the authority of husbands over their wives.

Inadequate and Discriminatory 'Family' Services

4. Comprehensive Social Security Assistance payments barely meet the day-to-day expenses of a female-headed household. The institutional bias against women becoming independent can be seen in the inadequate levels of support available for single mothers. Forty-two percent (or 65,000 cases) of all assistance recipients are single parents and the other fifty-eight percent are the elderly, disabled, and unemployed. Since over 66% of single parents are women and women are more likely to find it difficult to work, the problems discussed in this section mainly affect single mothers.

Single parents are lumped together with other persons having different financial needs, such as fewer or no children, but they are paid the same as other recipients. The formula used to determine the size of the assistance payment does not allow any amount for child-care expenses. For example, a mother of two small children can be reimbursed by the government for her transportation expenses to see a doctor, but not for the transportation expenses for her children.

Difficult and dangerous choices. Women who have no or inadequate alternative means of support often make difficult and dangerous choices. For example, battered women who cannot receive adequate levels of government assistance usually remain with battering male partners. The low level of payments has even forced some single mothers into prostitution in a desperate attempt to support themselves and their children. Single mothers without adequate financial assistance and access to safe, affordable childcare are often faced with no alternative but to leave their children alone while they work. Alternatively, they may

decide not to work at all and go on public assistance, especially if one of their children becomes ill as employers are unwilling to permit workers to take leave.

Refund of assistance payments demanded. Single women who are able to go back to work may be required to refund part of their assistance payments. Many ex-husbands who are required to pay a living allowance for their children fail to pay. The mothers with custody are then forced to depend upon government assistance until they can arrange childcare and find a job. Once they find a job, some women have reported that the Social Welfare Department has demanded that they repay the amount of the living allowance that their husbands should have paid them while they received the assistance. The Social Welfare Department demanded these women either to sue their ex-husbands for the back payments or the government itself would sue the women.

In those cases, the Social Welfare Department unilaterally converted the assistance payments made in the past into a 'loan' and told the women that they must sign a contract to repay the 'loan.' When one woman refused to sign, she was told that she could never again apply for assistance. Another woman's social worker called her at work threatening to tell her employer. She was so afraid of losing her job that she signed the 'loan' contract. At no time during the application procedure for the original assistance were these women ever told about that they might have to repay part of the assistance grant.

5. Access to childcare funds through the Fee Assistance Scheme (Report 10(A)(1) and (E)(12)) is denied to the 'working poor,' which especially harms poor working women. This Scheme provides fees for childcare to people who have substandard living conditions. One must be extremely poor to qualify. Thus, the 'working poor' who earn enough to have a better than substandard living conditions do not qualify and must pay the full cost of childcare. This, of course, affects families as a whole but it has a unique effect upon women. The average cost of daycare at government-supported institutions is HK\$1200 per month for full days. The costs are much greater at private day care centers. The average salary of an ordinary female laborer is around HK\$4000 (US\$517) per month (which is barely enough to support one person in one of the world's most expensive cities). On these salaries, women do not qualify for assistance under the Scheme and they also cannot afford childcare.

Too few childcare facilities. Further, there are not enough spaces available to meet the growing demand. In 1988, the population of children aged between 0-6 was 570,000. Yet, there were only 29,788 places in childcare centers and another 225,000 children in kindergartens that operate only for half days. The situation remains the same today.

Mothers sacrifice jobs to take care of children. Thus, mothers, married or single, and not fathers, will stay home for at least two reasons: (1) Women's salaries are lower than men's, which means that the proportion of a woman's salary that would be consumed by childcare payments is much higher than the proportion of a man's salary; and (2) the social pressure on women to sacrifice their ambitions for the sake of the 'family unit' is great. Single mothers who feel they have no alternative but to stay home are then forced onto the public assistance rolls. In fact, single mothers are often encouraged by social workers to stay home on public assistance for just this reason - unaffordable childcare.

Lack of childcare prevents retraining. Lack of childcare facilities also makes it difficult or impossible for single and married mothers to participate in job retraining programs. In fact, women under 30 apparently cannot participate, which means that any woman (or man) under 30 who needs training to be employable cannot receive the benefits of this government-funded scheme at an age when she or he is the most likely to be, and to need to be, employed. Because employers openly discriminate against women over 30, even those with retraining, and because retraining is only available after 30, older women will have little chance of using the newly-acquired skills. This also means that woman under 30 who want to leave their abusive husbands will be ineligible for training and more likely to feel that they have no choice other than to remain married. If they cannot become financially self-sufficient, how can they possibly leave home?

(At present, there is no legislation prohibiting age discrimination and the government has, thus far, refused to agree to introduce legislation prohibiting it. At a recent meeting the Women's Organizations (with other women's organizations) had with the government, the Secretary of Home Affairs stated that he did not believe that age discrimination was a specifically 'women's' problem. We disagree. The Hong Kong newspapers are full of help wanted ads specifying sex and age requirements. The majority of ads for unskilled or semi-skilled female workers set a maximum age of 30 or 35.)

6. The government-run experimental after-school projects were a success but the government stopped all funding nonetheless. From January 1990 until August 1993, the government ran five experimental afterschool projects. During that time, there were 357 primary school children participating in this half-day program. (Most Hong Kong primary schools are only half-day.) One hundred twenty-seven or 35.6% of the total number enrolled were from single families. As of the March 1991 census there were 34,538 single parents with school-age children in Hong Kong. Thus, the percentage of single parent children using this experimental

afterschool care was disproportionate when compared to the percentage of such children in the society in general.

The demand for this service was quite high and the services provided a vital link in keeping single parents on the work force. The logical response would have been for the government to expand the program to other areas. Instead, the government closed all the programs. Now, these single parents, and other low-income parents, have to pay about \$1000 a month for afterschool care or else quit work and go onto public assistance.

7. Home Help Service cannot respond to urgent and immediate needs of single mothers. (Report 10(B)(3)). This service is given to the elderly, sick, and disabled. Single mothers can obtain assistance when, for example, they are sick and unable to care for their children. Unfortunately, even in emergency situations, the Service is unable to respond quickly enough to meet the urgent needs of single mothers. The processing time for applications for assistance is so long that in emergencies approval may arrive long after the crisis has passed. For example, one woman in Tai Po who was too ill to cook for her children was told it would take a week before she could even be interviewed.

Single working mothers have been told that they cannot receive the Service in non-emergency situations but single working fathers can. In one case, a mother who requested that the Service provide subsidized meals for her children at lunch time so she could work full-time was rejected. The explanation given was that the Service will only provide such help for single fathers; single mothers are supposed to stay home and look after their children! In fact, single fathers have a median salary 25% higher than single mothers (\$6221 vs. \$4650)¹ and so, if anything, are more able to pay privately for such services.

8. Family Counselling virtually nonexistent. (Report 10(B)(3)). The caseload for family caseworkers is 70:1, which means that caseworkers must exercise a form of triage management and deal with easy-to-solve cases first. Female-headed households are often stigmatized as 'problem families' who create difficult-to-solve problems for caseworkers and so many caseworkers are unwilling to give them any priority.

9. Family Aid Services is completely understaffed. (Report 10(A)(1)(d) and 10(B)(3)). The concept of assisting people at home to manage their problems is fine; however, there are only approximately 38 Family Aid workers to serve a population of 6 million. Until the government shows a real commitment by providing more funds so that

¹ 1991 Hong Kong Census

there are actually enough counselors to serve the people in need, only a few select people in Hong Kong will ever be able to use the service.

10. Family Life Education is also nonexistent as well as biased towards the male dominated 'family unit.' The Report (10(B)(3)) proclaims that Hong Kong has a 'comprehensive programme of family life education' "to preserve and strengthen the family." It fails to disclose that there is only about ONE worker to serve every 100,000 people and that the 'education' is essentially a means to promote middle-class, heterosexual, male-dominated families. The programme has little to offer to most Hong Kong people who are not middle-class, and has nothing to offer to anyone who is not heterosexual or within the perfect male-headed 'family unit.'

ARTICLE 10(2), MATERNITY PROTECTION GROSSLY INADEQUATE:

11. Pregnant workers are routinely fired and employers rarely or only lightly penalized. Very few women benefit from the maternity protection provisions in the Employment Ordinance because the law does not contain any incentive for employers to obey it.

[A] survey published in 1987 found that there was a high level of ignorance among pregnant workers concerning the detail of the maternity provisions. The survey also provides evidence which suggests that some employers do not comply fully with the legislation. For example, only 44 per cent of pregnant women in the sample entitled to maternity pay received it promptly, with over a fifth having to wait for up to a month after they had returned to work to be paid. In almost a half of cases, what was paid appeared to fall short of the full statutory entitlement. ²

Thus, most employers fail to comply with the law and most women receive no or less-than-mandated maternity pay. Many others are fired for being pregnant and then forced to bring a complaint before the Labour Tribunal. A complaint takes about one year to process. This means that during pregnancy, childbirth and after delivery when expenses are high, pregnant women have NO income. Furthermore, it appears that the government does not step in to help in the form of 'adequate social security benefits' (other than public hospital access) as is required by the ICESCR (Art. 10(2)).

² Kevin Williams, *An Introduction to Hong Kong Employment Law* 93 (1990) (citation omitted).

Women who win their cases before the Labour Tribunal can only recover a 'penalty' consisting of seven days' wages and any maternity pay otherwise due them. The maximum maternity pay is 2/3 pay for 10 weeks. Given that working class women make so little anyway, the maximum amount an employer would have to pay is about HK\$11,000 (US\$1423) (based on HK\$4000 month). Employers may also be required to pay a moderate fine to the government. The Ordinance does not even require that employers reinstate wrongly dismissed workers. Consequently, Hong Kong employers routinely fire pregnant women and replace them with young, unmarried women (at lower wages) whom they will later fire when they become pregnant. The fines and payments are so inadequate that they constitute nothing more than another small cost of doing business.

12. The weakness of the maternity provisions contributes to women's unemployment. The worst aspect of this cycle of hiring young, unmarried women and firing older pregnant women is that the older women may never again find a job. As discussed previously, Hong Kong employers are notorious for rejecting women over 30, especially those who have children. The rate of unemployment among working class women over 30 is actually quite high and is not adequately reflected in the labor statistics collected by the government as those statistics do not record the numbers of women who have simply given up looking for work.

13. The maternity provisions in the Employment Ordinance permit employers to discriminate against women with more than two children. Lastly, according to the Ordinance, women on maternity leave can receive 10 weeks of paid leave only if they have worked for a 40-week period prior to leave and have two or fewer children. In other words, the law actually permits employers to discriminate against women on the basis of how many children they have. This is nothing more than a government supported effort to establish a coercive punitive birth control policy. It attacks women's reproductive freedom under the guise of protective legislation.

ARTICLE 10(3), SPECIAL MEASURES TO PROTECT CHILDREN

14. The government's protective legislation should protect all children, not just girls, unless some reasonable, non-biased justification is shown. The Report (10(E)(16)) refers to the dutiable commodities (Liquor) Regulations which prevent girls (but not boys) between the ages of 15 and 17 "from working in premises licensed to sell liquor" (except during daylight if approved by the authorities). Presumably, the government's intention is to protect females from some harm it perceives to be likely to exist or occur in liquor stores. Logically, however, if the working conditions are so dangerous, then the government should ban liquor store employment of girls and boys under 18 . Unless it can be

shown that there exists some special harm to girls, but not to boys, then the discriminatory provision should be repealed.

ARTICLE 11(1), ADEQUATE STANDARD OF LIVING AND HOUSING

15. The standard of living for single mothers and elderly women is much lower than for men in the same situation. Hong Kong has an international reputation for having a high standard of living. References to average incomes are deceptive, however, as the exceedingly high salaries of the top income earners inflate the average. According to the Government Statistics Department General Household Survey for January March 1994, 60.17% of all salaried individuals earn under HK\$10,000 (US\$1293) a month. Rents in Hong Kong are among the highest, if not the highest, in the world. Furthermore, as pointed out above, women's salaries are amongst the lowest of the low and single mothers (unlike single fathers) find it extremely difficult to find employment. Single mothers are often forced to turn to public assistance for survival. These women are even worse off than the working poor as they are barely able to make ends meet.

Elderly women are also more likely to be financially disadvantaged than men due to their having remained at home to raise the children. They have little or no savings and depend upon their children and the government for support. A recent study has shown that 23% of elderly women do not have enough money to live on compared with 15% of elderly men.³ The same study also discloses that adult children provide less financial support and assistance to their mothers than to their fathers. However, the government has yet to recognize the comparative disadvantage of being female and elderly in Hong Kong.

16. Adequate Housing is Beyond the Grasp of Elderly Women and Single Mothers . The price of housing in Hong Kong is amongst the highest, if not the highest, in the world. A 400-square foot, unfinished, rough concrete apartment in an outlying district can cost US\$50,000-100,000. The average working class family of four lives on between US\$1000-1300 per month, with rent consuming approximately 1/3-1/2 of that amount. Government-subsidized housing can take up to 10-15 years to obtain and even that housing is too expensive for single mothers to afford, even if they do have a job.

Compassionate rehousing may come too late to meet needs of growing children. Thus, elderly women and single mothers must to depend upon the availability of government-sponsored public housing estates, otherwise known as 'compassionate rehousing.' This housing is intended

³ "Elderly leading 'miserable' lives," Eastern Express at 7, col. 1 (Sept. 19, 1994).

for all those who are not self-sufficient and in urgent need of housing. There are many people in Hong Kong on the waiting list for such housing, including thousands who have been living in temporary barracks-style housing for years. The wait can take years. Single mothers must wait in line, along with other whose needs were less urgent (and obviously some more urgent), for housing. The scheme does not recognize any special needs of women and their growing children who must prove some other reason for new housing than simply being single parent families living in cramped quarters. This has resulted in many battered women being forced to return to live with battering husbands or boyfriends because they have no other place to live. There are also stories of children who have run away from home because the conditions were so bad.

17. The Conditional Grant of Tenancy Scheme, which is available for divorcing women, appears to be applied arbitrarily. The Scheme is intended to provide emergency housing to people in extreme need, including divorcing women. However, the number of units available under the Scheme is too low to provide housing to all those in need and the income ceiling is extremely low, which disqualifies many of the working poor (of which women are the poorest). As a result, many of the women the Scheme should have been intended to benefit have been unable to obtain such emergency housing.

Divorcing women must prove that they (1) have custody of the children, (2) are extremely poor and (3) in 'urgent' need of housing. Social workers determine the meaning of "urgent" which results in the decisions being made based upon the social workers' personal views. For example, a typical situation would be a woman with two children who has left her husband and is living in one room of an apartment that she shares with 3 or 4 other tenants. No one has any privacy as the bathroom and kitchen must be shared with other tenants. The children have no quiet place to study. Depending upon which social worker the woman sees, such a woman may be granted housing and she may not. The government should set some concrete guidelines for the social workers that recognize the need for more than simply a roof over people's heads.

18. There is no law forbidding private landlords from discriminating against, or harassing, single mothers. Most landlords are unwilling to rent to single mothers because they believe these women are greater risks than other tenants. There are reports of landlords that do rent to single mothers who sexually harass the women who they obviously perceive as vulnerable prey. Most harassing landlords simply try to coerce sex for rent, which means that no crime has been committed under Hong Kong law.

In one (not untypical) case, a Ms. Wong, a single mother who earns about \$5500 a month as a clerk, pays about \$2500 for room rent every month. Two tenants and the landlord sexually abused her so she tried to move. However, when the rental agent who found her a new flat discovered that Ms. Wong was divorced, she told her to tell the landlord that she is a widow because the landlord will not rent his flat to divorced women.

The women are afraid to do anything about the harassment, abuse or discrimination, and rarely report it to the police, because their landlords could retaliate and nothing much could be done to protect them.

19. Free Legal Advice and Legal Aid Assistance woefully inadequate. Legal advice is available but it can take a very long time before one can actually see a lawyer. Applicants for legal aid must meet a means test which looks only at income and not expenditures. This means that there is no consideration of the unique situation of single parents whose per capita expenses are much higher than those of two-income families or families with non-working mothers.

There are two forms of legal aid - one is free and the other is partly subsidized, based on the financial situation of the applicant. Those qualifying for the subsidized form must pay a deposit before they can get legal representation. The amount of this deposit is more than many women can pay, which often forces women wanting to divorce or divorced women needing to collect unpaid maintenance from their ex-husbands to have to save money for several years before they can file for divorce or sue their ex-husbands. At the same time they are saving money, the women are usually the sole providers for their themselves and their children.

REFUGEES AND ASYLUM SEEKERS

by

MS PAM BAKER

REFUGEE CONCERN

REFUGEES AND ASYLUM SEEKERS

PAM BAKER¹

If the organisers were hoping to send you all home, those of you have lasted this long, with a spring in your step and a smile in your heart, they should not have put me on last.

I am asked to speak on refugees and asylum seekers and their economic, social and cultural rights - but it might be more appropriate simply to ask for two minutes silence, because, in Hong Kong now, they have none. We only have Vietnamese who fall into this category officially, although there are occasional Chinese, Burmese, even Pakistani asylum seekers in the territory. By a quirk of history, geography and world politics, we have legislation covering a process for Vietnamese asylum seekers, but no others.

But let me give you a very simple potted history of the Vietnamese boat people in Hong Kong.

When they first began to arrive in Hong Kong in the '70s and early '80s they were accepted as refugees from a repressive regime, with international approval of that status.

Their right to work, as enshrined in Article 6 (1), was respected. Education for their dependent children was arranged, as prescribed under Article 13. The culture of Vietnam and of the Chinese not being so very different, the Vietnamese were able to continue their cultural life without difficulty, in conformity with Article 15.

Hong Kong, a territory built upon refugees, was well endowed for such an influx. There was plenty of employment in a burgeoning economy, many of the newcomers were of Chinese origin themselves and quickly picked up Cantonese. They were prepared to take low paid jobs and to work hard, as so many hundreds of thousands of Chinese from the mainland had done before them. Accommodation was, as ever in Hong Kong, a problem. But in due course the refugees were either resettled in third countries, or absorbed into the community and integrated into the economic life of the colony and today you would be hard put to identify them, apart from a few hundred souls still in a refugee camp in Pillar Point, who have fallen through the cracks. Before 1982 the Vietnamese do not appear to have inspired resentment in the local population. Their rights as refugees were respected. This period does

¹ Refugee Concern

Hong Kong great credit, and should not be forgotten.

The rot set in, understandably, when the influx did not slow down. In the summer of 1982 arriving boat people, while still recognised as refugees, were detained in camps. This policy change was intended to have a deterrent effect and it was possible to retain international approval, if reluctant in some quarters, because the tide of opinion was beginning to turn against great migrations, and because the resettlement countries were beginning to slow down their intake rates. It was also a time in Hong Kong's domestic affairs when the influx from China was becoming overwhelming, and the touch base policy for immigrants from China was dumped in that year. You can see the logic. The beginnings of compassion fatigue became apparent.

About this time the Hong Kong Government embarked upon its most successful propaganda campaign ever. It was put about that the Vietnamese are criminals, not to be trusted, having been shipped out of Vietnam by their own Government as undesirable elements. There are many otherwise rational, intelligent and educated people, who have firmly believed this to be true over the past ten years or so. As is obligatory for any successful propaganda, there were grains of truth in it. No doubt the Vietnamese were glad to be rid of some people they did not want, and no doubt some criminal elements from Vietnam did find it convenient to embark for Hong Kong. Nevertheless, the vast majority of the Vietnamese boat people are just that, people. In the detention centres today there are poets and peasants, doctors and mechanics, artists and fishermen. Just ordinary people like you and me.

The great success of the propaganda campaign was that the Government contrived to persuade itself as well as the community, that they had stumbled upon a universal truth, namely that the Vietnamese are liars and criminals. The result of this has been that the people of Hong Kong, and equally the expatriates who live here, are utterly and irretrievably prejudiced against a population within their midst who are as diverse in their tendencies and attitudes as any other bunch of people.

Following up that success, and ignoring the fact that the deterrence which was supposed to have resulted from detention of the refugees had not materialised, the Hong Kong Government decided in 1988, June 16th, that no Vietnamese was a refugee unless he could prove that he was. Other countries of first asylum followed suit. The policy was implemented hurriedly, and without due care and consideration for the disposal of those asylum seekers who were found not to be refugees. This has led to prolonged arbitrary detention, now

extending for more than six years.

Apart from this abrogation of the rule of law, sanctioned by legislation, this change of policy inevitably led to the loss of certain rights under the I.C.E.S.C.R. The asylum seekers could not work, despite Hong Kong's labour shortage at the time. The United Kingdom had of course made an exemption as to Article 6 for particular regions and territories, but the terms of that exemption were included in order to safeguard the territory's workers' employment opportunities. It can be argued that in a territory where there is virtually full employment there can be no excuse for refusing certain residents the right to work. Hong Kong can no longer lay claim to being a developing country, in order to seek an exemption under Article 2 (3) concerning the economic rights of non-nationals.

The families in the detention centres were afforded no protection by the State, and indeed the Government Social Welfare Department has resolutely refused to have anything whatever to do with the boat people. They refused even to accept that the Vietnamese could adopt a child within the camps. They would not assist, as they do in every other adoption which takes place in the territory.

Those who work in the detention centres have watched the disintegration of the family structure under the regimented conditions of the camps. Father is no longer an authority figure, as he was in Vietnam, and indeed for the teenagers that role is more likely to be taken by a gang leader who has the support of the guards. Mother is no longer the provider of home and sustenance; that, such as it is, is taken over by the authorities.

As to education, those children who go home to Vietnam, one of the poorest countries in the world, are actually behind their peers in the Vietnamese schools. Such education as there has been in the detention centres is being whittled away. Last week I found that four children, aged 9 to 11, have been without education of any kind for over a year - because they are Chinese! The education of the children, who form one third of the population of the detention centres, has been in the hands of N.G.O.s under the control of U.N.H.C.R., and since last year that august body has set about dismantling such services as had been provided, lest any services should be encouraging the boat people to remain in the camps.

That is how Hong Kong has failed to implement the economic, social and cultural rights of the asylum seekers. There are also a small number of refugees in our midst, awaiting resettlement. There are Articles of the 1951 Convention on the Status of Refugees which should be upholding the rights of these refugees, but Hong Kong has not had that Convention extended to it.

However the rights of those who have been found to be refugees under the screening policy as enshrined in the Convention under discussion today are being ignored. Once they are found to be refugees they ought to be allowed to work, to go to school and to choose where they live. There are refugee children here for whom no schooling is made available. Their parents are not allowed to work, no doubt under the exception reserved for Hong Kong. They may be here for many months, particularly if their resettlement is to be in Britain, our sovereign State. There appears to be no valid reason why they cannot take up employment and relieve Hong Kong of the necessity to support them. They are also under curfew from the time they are found to be refugees until they leave for resettlement. They cannot go out till ten in the morning and they must be back by 7 at night.

The loss of these people's rights and the cheerful acceptance of this by the population bodes no good for any other unpopular group who may be perceived in future to be surplus to requirements. Trade unionists perhaps, might find themselves out of a job in order to 'safeguard employment opportunities of the workers of the territory' under the exemption. Children who do not speak Cantonese might not be able to go to school. Those who dissent from the view of the sovereign power could well find that their liberty is taken from them, arbitrarily and without redress. The sovereign power could easily use the legislation we have put in place to do so, with very minor amendments.

What Hong Kong has to consider is the precedent for ourselves that has been established by the treatment of these asylum seekers and refugees. Arbitrary detention of innocent people is a breach of the rule of law. Once the barrier has been broken, it is easy to break it again. Hong Kong has yet to appreciate that today it is the hated and despised Vietnamese who are so locked up, tomorrow it could be Hong Kong people, for any of a number of reasons.

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