

**HONG KONG EQUAL OPPORTUNITY LAW —  
LEGISLATIVE HISTORY ARCHIVE, 1993–1997**

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TUESDAY, DECEMBER 15, 1992

SEX DISCRIMINATION NOT SERIOUS IN HK

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A WORKING GROUP CHAIRED BY THE SECRETARY FOR EDUCATION AND MANPOWER HAS FOUND THAT SEX DISCRIMINATION IN EMPLOYMENT IS NOT A SERIOUS PROBLEM IN HONG KONG.

"AS THE LABOUR MARKET IS TIGHT AND THERE ARE FEW IMPEDIMENTS TO MOBILITY OF LABOUR, THERE IS LITTLE SCOPE FOR EMPLOYERS TO ADOPT DISCRIMINATORY EMPLOYMENT PRACTICES UNRELATED TO THE WORK CAPACITY OF EMPLOYEES", A GOVERNMENT SPOKESMAN SAID.

HE ALSO SAID STATISTICS SHOWED THAT WAGE DIFFERENTIALS BETWEEN MEN AND WOMEN HAD PROGRESSIVELY NARROWED AS A RESULT OF ECONOMIC PROGRESS AND IMPROVEMENT IN EDUCATION OPPORTUNITIES.

THE RATIO OF WOMEN'S MEDIAN INCOME TO MEN'S IS ABOUT 78 PER CENT, COMPARED WITH 69 PER CENT IN 1981.

THE CURRENT RATIO IS COMPARABLE TO THOSE IN WESTERN COUNTRIES, FOR EXAMPLE THE UNITED KINGDOM.

THE WORKING GROUP ALSO FOUND THAT ANTI-DISCRIMINATION LEGISLATION MAY OFFER AVENUES FOR REDRESS TO THOSE WHO HAVE SUFFERED DISCRIMINATION.

IT WOULD GIVE RISE TO RIGIDITIES IN EMPLOYMENT PRACTICES AND WOULD BE DIFFICULT TO ENFORCE.

NOTWITHSTANDING THESE FINDINGS, THE WORKING GROUP HAS RECOMMENDED THAT THE STATUS OF WOMEN IN SOCIETY SHOULD BE FURTHER EXPLORED THROUGH PUBLIC CONSULTATION ON A WIDE BASIS.

PENDING THE OUTCOME OF THE CONSULTATION, THE WORKING GROUP DOES NOT RECOMMEND THE EXTENSION OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) TO HONG KONG.

"THE EXTENSION OF CEDAW TO HONG KONG WOULD REQUIRE THE ENACTMENT OF MAJOR ANTI-DISCRIMINATION LEGISLATION IN HONG KONG, WHICH MAY GIVE RISE TO PROBLEMS IN THE EMPLOYMENT FIELD. ON THE OTHER HAND, THE BILL OF RIGHTS ORDINANCE HAS GONE A CONSIDERABLE WAY TOWARDS MEETING THE REQUIREMENTS OF CEDAW," THE SPOKESMAN SAID.

END/

Press Section  
OMELCO Secretariat

## FINDINGS OF WORKING GROUP ON SEX DISCRIMINATION IN EMPLOYMENT

### BACKGROUND

1. In March 1992, an Inter-departmental Working Group chaired by the Secretary for Education and Manpower was set up to ascertain the extent to which discrimination against women is a problem, to identify measures to tackle it and to advise whether the United Nations Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") should be extended to Hong Kong insofar as employment matters are concerned.
2. The Working Group comprised representatives from eight policy Branches and Departments, namely, the Education and Manpower Branch, Constitutional Affairs Branch, Health and Welfare Branch, Economic Services Branch, Civil Service Branch, City and New Territories Administration, Labour Department and Legal Department.
3. In May 1992, Legislative Councillors asked the Government to set up an advisory "women's commission" to provide a forum for addressing matters affecting women in Hong Kong. Since the proposal was related to the issues being studied by the Working Group, it was considered in the context of that study.
4. The Working Group met formally on seven occasions. In the process of its deliberations, it has consulted relevant academic studies and established dialogue with interested women's groups, and has examined a number of issues related to sex discrimination in employment. The main findings are set out below.

### MAIN FINDINGS

#### Differentials in Wages and Fringe Benefits

5. With the assistance of the Census and Statistics Department (C&SD), statistics have been gathered from various sources, including the 1981 and 1991 Population Censuses, to find out more about the extent of pay differentials in Hong Kong. The statistics show that the labour force participation rate of women (percentage of those in the labour force among the female population aged 15 and over) rose continuously from 45% in 1976 to 49.5% in 1991. Meanwhile, women's median earnings had risen from 62% of men's earnings in 1981 to 78% in 1991. The increase in female labour participation, sectoral shifts toward the service sectors and increased education are probably the main factors behind the narrowing of the wage differential. The current wage differential appears to be no worse than those in Western countries. For example, women's average hourly earning in the UK is 77% of men's.

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6. While relatively more women were engaged in clerical and secretarial jobs and as manufacturing operatives, more men were engaged in supervisory, professional and technical jobs. Nevertheless, the percentage of women engaged in supervisory, professional and technical jobs has increased considerably during the last decade. For example, the percentage of women employed as managers and administrators increased from 0.8% of the female working population in 1981 to 2.8% in 1991. The percentage of women professionals and associate professionals also increased from 6.7% to 18% in the same period.

7. There is some evidence of sex differentiation in the recruitment process, mainly manifested in job advertisements offering employment to men or women only. Some women's groups have cited individual cases of discrimination in fringe benefits and promotion prospects. The scale of sex discrimination is very difficult to ascertain since many factors including judgemental ones (e.g. differences in the distribution of male and female employment by occupation and industry, differences in qualifications, experience and productivity, etc.) could give rise to differences in treatment. Thus, it was considered that a sample survey would be unlikely to produce conclusive results.

2 8. The relatively narrow income differential between men and women, the small number of specific complaints made to Government about sex discrimination and the small proportion of female workers who perceived themselves as victims of discrimination in wages, fringe benefits and promotion opportunity in several surveys conducted within the last decade, all indicate that the problem is not serious in Hong Kong. As the labour market is tight and there are few impediments to mobility of labour, there is little scope for employers to adopt discriminatory employment practices unrelated to the work capacity of the employees.

#### Government Employment Policies

9. The Civil Service adopts a policy of equal treatment of male and female employees. A few departments, however, have traditionally not recruited women for certain grades. The departments concerned have agreed to change their recruitment policies and give equal opportunities to female applicants.

### Discriminatory and Sex-specific Legislation

10. Under the Bill of Rights (BOR) Ordinance, laws which discriminate against women are repealed. No BOR cases on sex discrimination have so far reached the courts. Given that it is unlikely that the courts will have the opportunity to identify discriminatory provisions, the Working Group has advised the Government to take the initiative to do so and to amend legislation that is clearly discriminatory within the meaning of the BOR. All policy Branches have been asked to review legislation under their purview to identify legislation which might discriminate on the basis of sex. Several provisions concerning civil service pensions arrangements have been identified as being discriminatory and amendment legislation has been introduced into the Legislative Council. A few other provisions are being studied. An example is a provision in the Marriage Ordinance which does not give the mother the right to give consent for the marriage of her children under the age of 21.

11. The Working Group has also reviewed legislation which is intended to protect women in industrial undertakings from working excessive overtime or engaging in underground work and dangerous trades. Different views have been expressed on the need for such legislation. Some employers and women's groups believe that some of these measures (like control on overtime) are out-dated and over-restrictive and should be removed. Some representatives of trade unions and women's groups, however, think that the protective measures are necessary and should be maintained. The Working Group believes that it would be prudent to maintain the status quo for the time being until trade union representatives are convinced that the removal of some of the protection is in the interest of women workers.

### Education and Vocational Training

12. Our educational and vocational training institutions have adopted a policy of equality for students of both sexes. Nevertheless, because of sex stereotyping and differences in aptitude, there has been male dominance in the science and engineering fields while women have been dominant in the arts and language subjects. Some women's groups have complained about sex stereotyping in textbooks and teaching materials. It has not been possible for the Working Group to examine the extent of such sex stereotyping. The Education Department has, however, already taken steps to alert, the Advisory Inspectorate and publishers to avoid unnecessary gender biases and sex stereotypes.

13. Some women's groups have drawn our attention to women's special need for retraining. Statistics show that a considerable number of women leave the workforce after marriage to cope with family commitments, especially raising

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children. Some of them may wish to re-enter the labour market by the time their children are going to school. Their skills may need to be updated in view of technological developments. It is recommended that this need should be taken into account in devising retraining programmes for displaced employees.

## SEX DISCRIMINATION LEGISLATION

### Overseas Experience

14. The Working Group has reviewed the practices and experience of a few Western countries (including the United Kingdom, Australia, and Canada) and several of our neighboring countries (including Japan, the Republic of Korea, the Philippines and Taiwan). While most of these countries have some form of equal pay or anti-discrimination legislation, their laws differ in scope and in operation.

15. In terms of scope, Western countries usually have sex discrimination legislation which covers not only the employment field but also other areas like advertising, provision of goods and services and access to credit. In Asia, Japan and Korea have laws dealing with equal employment opportunities and treatment generally while legislation in Taiwan, for example, is limited to providing for equal pay for the same job.

16. As for implementation, there are three general approaches which are not necessarily mutually exclusive -

- (a) a "soft" or "mediation-oriented" approach as exemplified by the Japanese Equal Employment Opportunity Law which only requires employers to "make efforts" to realize the principle of equality. There is no penalty for non-compliance and disputes are settled only through mediation;
- (b) a more adversarial approach which gives complainants the right to seek redress through courts or tribunals. Western countries (including the UK) have generally adopted this approach; and
- (c) a punitive approach which imposes penalties (imprisonment or fines) on employers who violate some important provisions like equal pay for equal work. This is usually a last resort when mediation fails. (Korea has such provisions.)

Arguments

17. The merits of sex discrimination legislation are said to be that -

- (a) while it cannot eliminate sex discrimination completely, it helps to change community attitudes for the better by setting standards of acceptable behaviour; and
- (b) it offers avenues for redress (through mediation and the right to seek compensation) to those who have suffered discrimination.

18. On the other hand, the arguments against the introduction of sex discrimination legislation in Hong Kong include the following -

- (a) such legislation is likely to involve a high degree of government intervention in the operation of the labour market and give rise to rigidities in employment practices. For example, employers would be under pressure to sacrifice certain remuneration principles such as individualised pay by performance and potential in order to avoid claims of sex discrimination. This could reduce the flexibility of the labour market and thus its capacity to meet the needs of a rapidly changing economic environment;
- (b) such legislation is difficult to enforce because objective evidence is not easily obtainable. Each dispute on promotion or pay differential would involve adducing evidence to show whether the relevant decision was attributable to gender or to other factors. The "other factors" are often subjective in nature (e.g. judgement on an individual's potential and aptitude); and
- (c) legislation would be unlikely to be effective unless there are resources for enforcement (e.g. separate machinery to resolve complaints). Expenditure of such resources would be justified if significant instances of sex discrimination could be identified. As noted in paragraph 8 above, this does not appear to be the case.

19. On balance, in view of the likely adverse impact of sex discrimination legislation on the economy and the difficulties and cost implications of enforcement, the Working Group has reservations about the introduction of anti-discrimination legislation.



## EXTENSION OF CEDAW TO HONG KONG

20. CEDAW obliges States Parties to take steps, including the enactment of legislation, to eliminate discrimination against women by public and private bodies and to ensure that women enjoy, on a basis of equality with men, a broad range of rights in most areas of social activity.

21. The extension of CEDAW would impose significant new obligations, especially in relation to the elimination of discrimination by private individuals and concerns. General anti-discrimination legislation applicable to the private sector would almost certainly be required in order to comply fully with the obligations. Since the introduction of such legislation is not recommended (paragraph 19 above), the Working Group concludes that CEDAW should not be extended to Hong Kong, at least for the time being.

## "WOMEN'S COMMISSION"

22. The main argument for setting up a "women's commission" is that it would provide a focus for addressing issues affecting women. Such a commission may however duplicate the work of existing advisory bodies in various functional areas. On balance, the Working Group suggests that a "women's commission" should only be established if the public generally favour the idea.

## PUBLIC CONSULTATION ON THE STATUS OF WOMEN

23. While issues relating to sex discrimination in employment have been explored in some detail, the broader question about the status of women in society has not been addressed. Since such issues as the extension of CEDAW to Hong Kong and the introduction of sex discrimination legislation will have significant implications for the community, the broadest possible public consultation is warranted. CEDAW and sex discrimination legislation are not the only way forward. The need for other measures such as education and publicity efforts to promote the concept of sex equality in schools and in the workplace should be further explored. The consultation exercise could guide the Government in deciding whether, and if so what, action is needed to ensure equal opportunities between men and women in society.

BACKGROUND NOTE ON THE IMPLICATIONS OF THE EXTENSION TO HONG KONG OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

This note sets out the major implications of the extension of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") to Hong Kong (copy at Annex A).

Background

2. CEDAW was adopted by the UN General Assembly in December 1979 and entered into force in September 1981. As of August 1992, 118 countries had become parties to CEDAW. These include the United Kingdom (in respect of her metropolitan territory and several of her dependent territories, but not including Hong Kong) and the People's Republic of China.

3. CEDAW obliges States Parties to take steps, including the enactment of legislation, to eliminate discrimination against women by public and private bodies and to ensure that women enjoy, on the basis of equality with men, a broad range of rights in most areas of social activity. The Convention combines guarantees of civil and political rights, and guarantees of economic, social and cultural rights in one instrument.

4. In signing CEDAW - in 1981 and ratifying it in 1986, the UK Government entered a large number of reservations covering matters including immigration, nationality, employment, social security, taxation, adoption and custody of children, etc. <sup>(copy at Annex B)</sup> China has made only one reservation relating to the arbitration of disputes.

Implications of Extension

5. Extension of CEDAW to Hong Kong would require the Government to take a number of major steps. The more important consequences are set out below:

- (a) Although in many areas CEDAW replicates existing international obligations under treaties already applicable to Hong Kong such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, its extension would impose significant new obligations, especially in relation to the elimination of discrimination by private individuals and concerns in areas such as employment (including equal pay), advertising, provision of goods and services, and access to credit. Legislation in these areas, along the lines of anti-discrimination legislation in other countries, including the United Kingdom, would almost certainly be required so that Hong Kong could implement the Convention faithfully.
- (b) It would be necessary to prepare a report for submission to the UN Committee on the Elimination of Discrimination Against Women within one year of the extension to Hong Kong of CEDAW. Subsequent reports would be required at four yearly intervals.
- (c) It would be necessary to establish Government machinery to co-ordinate the implementation of the Convention, to monitor the impact of Government policies on women and, in particular, to discharge the functions referred to in the previous sub-paragraphs.

6. In addition, if CEDAW were to be extended to Hong Kong, consideration would have to be given to the nature of the reservations which would be required in respect of Hong Kong. There is also a legal question as to whether the UK can now make additional reservations in respect of Hong Kong.

7. Since CEDAW, if applied, would confer new international rights and obligations on Hong Kong which would continue to apply after 1997, the Chinese Government would have to be consulted.

#### Sex Discrimination Legislation

8. The enactment in June 1991 of the Bill of Rights Ordinance (Cap. 383), which inter alia prohibits discriminatory practices against women in the public sector, has gone a considerable way towards meeting the requirements of CEDAW. Nevertheless, as mentioned in paragraph 5(a) above, equal pay legislation and, almost certainly, general sex discrimination legislation applicable to both the public and private sectors would have to be enacted to enable us to comply fully with the new obligations. To illustrate the likely extent and implications of such legislation, ~~a note on the operation of sex discrimination legislation in the United Kingdom is at Annex C.~~

9. Sex discrimination legislation would probably require an independent commission or a new office within the Labour Department to deal with complaints. There would also be increased demands on existing judicial resources.

Reservations and Declarations made by the United Kingdom  
regarding the Convention of the Elimination  
of All Forms of Discrimination Against Women

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*Upon signature*

"The Government of the United Kingdom of Great Britain and Northern Ireland declare that it is their intention to make certain reservations and declarations upon ratification of the Convention."

*Upon ratification*

A *On behalf of the United Kingdom of Great Britain and Northern Ireland.*

(a) The United Kingdom understands the main purpose of the Convention, in the light of the definition contained in Article 1, to be the reduction, in accordance with its terms, of discrimination against women, and does not therefore regard the Convention as imposing any requirement to repeal or modify any existing laws, regulations, customs or practices which provide for women to be treated more favourably than men, whether temporarily or in the longer term; the United Kingdom's undertakings under Article 4, paragraph 1, and other provisions of the Convention are to be construed accordingly.

(b) The United Kingdom reserves the right to regard the provisions of the Sex Discrimination Act 1975, the Employment Protection (Consolidation) Act 1978, the Employment Act 1980, the Sex Discrimination (Northern Ireland) Order 1976, the Industrial Relations (No. 2) (Northern Ireland) Order 1976, the Industrial Relations (Northern Ireland) Order 1982, the Equal Pay Act 1970 (as amended) and the Equal Pay Act (Northern Ireland) 1970 (as amended), including the exceptions and exemptions contained in any of these Acts and Orders, as constituting appropriate measures for the practical realisation of the objectives of the Convention in the social and economic circumstances of the United Kingdom, and to continue to apply these provisions accordingly; this reservation will apply equally to any future legislation which may modify or replace the above Acts and Orders on the understanding that the terms of such legislation will be compatible with the United Kingdom's obligations under the Convention.

(c) In the light of the definition contained in Article 1, the United Kingdom's ratification is subject to the understanding that none of its obligations under the Convention shall be treated as extending to the succession to, or possession and enjoyment of, the Throne, the peerage, titles of honour, social precedence or armorial bearings, or as extending to the affairs of religious denominations or orders or to the admission into or service in the Armed Forces of the Crown.

(d) The United Kingdom reserves the right to continue to apply such immigration legislation governing entry into, stay in, and departure from, the United Kingdom as it may deem necessary from time to time and, accordingly, its acceptance of Article 15 (4) and of the other provisions of the Convention is subject to the provisions of any such legislation as regards persons not at the time having the right under the law of the United Kingdom to enter and remain in the United Kingdom.

*Article 1:*

With reference to the provisions of the Sex Discrimination Act 1975 and other applicable legislation, the United Kingdom's acceptance of Article 1 is subject to the reservation that the phrase "irrespective of their marital status" shall not be taken to render discriminatory any difference of treatment accorded to single persons as against married persons, so long as there is equality of treatment as between married men and married women and as between single men and single women.

*Article 2:*

In the light of the substantial progress already achieved in the United Kingdom in promoting the progressive elimination of discrimination against women, the United Kingdom reserves the right, without prejudice to the other reservations made by the United Kingdom, to give effect to paragraphs (f) and (g) by keeping under review such of its laws and regulations as may still embody significant differences in treatment between men and women with a view to making changes to those laws and regulations when to do so would be compatible with essential and overriding considerations of economic policy; in relation to forms of discrimination more precisely prohibited by other provisions of the Convention, the obligations under this Article must (in the case of the United Kingdom) be read in conjunction with the other reservations and declarations made in respect of those provisions including the declarations and reservations of the United Kingdom contained in paragraphs (a) — (d) above.

With regard to paragraphs (f) and (g) of this Article the United Kingdom reserves the right to continue to apply its law relating to sexual offences and prostitution; this reservation will apply equally to any future law which may modify or replace it.

*Article 9*

The British Nationality Act 1981, which was brought into force with effect from January 1983, is based on principles which do not involve any discrimination against women within the meaning of Article 1 as regards acquisition, change or retention of their nationality or as regards the nationality of their children. The United Kingdom's acceptance of Article 9 shall not, however, be taken to invalidate the continuation of certain temporary or transitional provisions which will continue in force beyond that date.

The United Kingdom reserves the right to take such steps as may be necessary to comply with its obligations under Article 2 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Paris on 20 March 1952 and its obligations under paragraph 3 of Article 13 of the International Covenant on Economic, Social and Cultural Rights opened for signature at New York on 9 December 1966, on the extent that the said provisions preserve the freedom of parental choice in respect of the education of children; and reserves also the right not to take any measures which may conflict with its obligation under paragraph 4 of Article 13 of the said Covenant not to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject to the observation of certain principles and standards.

Moreover, the United Kingdom can only accept the obligations under paragraph (c) of Article 10 within the limits of the statutory powers of central Government, in the light of the fact that the teaching curriculum, the provision of textbooks and teaching methods are reserved for local control and are not subject to central Government direction, moreover, the acceptance of the objective of encouraging co-education is without prejudice to the right of the United Kingdom also to encourage other types of education.

#### Article 11

The United Kingdom interprets the "right to work" referred to in paragraph 1(a) as a reference to the "right to work" as defined in other human rights instruments to which the United Kingdom is a party, notably Article 6 of the International Covenant on Economic, Social and Cultural Rights of 19 December 1966.

The United Kingdom interprets paragraph 1 of Article 11, in the light of the provisions of paragraph 2 of Article 4, as not precluding prohibitions, restrictions or conditions on the employment of women in certain areas, or on the work done by them, where this is considered necessary or desirable to protect the health and safety of women or the human foetus, including such prohibitions, restrictions or conditions imposed in consequence of other international obligations of the United Kingdom; the United Kingdom declares that, in the event of a conflict between obligations under the present Convention and its obligations under the Convention concerning the employment of women on underground work in mines of all kinds (ILO Convention No. 45), the provisions of the last mentioned Convention shall prevail.

The United Kingdom reserves the right to apply all United Kingdom legislation and the rules of pension schemes affecting retirement pensions, survivors' benefits and other benefits in relation to death or retirement (including retirement on grounds of redundancy), whether or not derived from a Social Security scheme.

This reservation will apply equally to any future legislation which may modify or replace such legislation, or the rules of pension schemes, on the understanding that the terms of such legislation will be compatible with the United Kingdom's obligations under the Convention.

The United Kingdom reserves the right to apply the following provisions of United Kingdom legislation concerning the benefits specified.

(a) social security benefits for persons engaged in caring for a severely disabled person under section 37 of the Social Security Act 1975 and section 37 of the Social Security (Northern Ireland) Act 1975;

(b) increases of benefits for adult dependants under sections 44 to 47, 49 and 66 of the Social Security Act 1975 and under sections 44 to 47, 49 and 66 of the Social Security (Northern Ireland) Act 1975;

(c) retirement pensions and survivors' benefits under the Social Security Acts 1975 to 1982 and the Social Security (Northern Ireland) Acts 1975 to 1982;

(d) family income supplements under the Family Income Supplements Act 1970 and the Family Income Supplements Act (Northern Ireland) 1971.

This reservation will apply equally to any future legislation which may modify or replace any of the provisions specified in sub-paragraphs (a) to (d) above, on the understanding that the terms of such legislation will be compatible with the United Kingdom's obligations under the Convention.

The United Kingdom reserves the right to apply any non-discriminatory requirement for a qualifying period of employment or insurance for the application of the provisions contained in Article 11(2).

#### Article 13

The United Kingdom reserves the right, notwithstanding the obligations undertaken in Article 13 or any other relevant article of the Convention, to continue to apply the income tax and capital gains tax legislation which:

(i) deems, for income tax purposes the income of a married woman living with her husband in a year, or part of a year, of assessment to be her husband's income and not to be her income (subject to the right of the husband and the wife to elect jointly that the wife's earned income shall be charged to income tax as if she were a single woman with no other income); and

(ii) requires tax in respect of such income and of chargeable gains accruing to such a married woman to be assessed on her husband (subject to the right of either of them to apply for separate assessment) and consequently (if no such application is made) restricts to her husband the right to appeal against any such assessment and to be heard or to be represented at the hearing of any such appeal; and

(iii) entitles a man who has his wife living with him, or whose wife is wholly maintained by him, during the year of assessment to a deduction from his total income of an amount larger than that to which an individual in any other case is entitled and entitles an individual whose total income includes any earned income of his wife to have that deduction increased by the amount of that earned income or by an amount specified in the legislation whichever is the less.

#### Article 15

In relation to Article 15 paragraph 2, the United Kingdom understands the term "legal capacity" as referring merely to the existence of a separate and distinct legal personality.

In relation to Article 15 paragraph 3, the United Kingdom understands the intention of this provision to be that only those terms or elements of a contract or other private instrument which are discriminatory in the sense described are to be deemed null and void, but not necessarily the contract or instrument as a whole.

*Article 16*

As regards sub-paragraph 1(f) of Article 16 the United Kingdom does not regard the reference to the paramountcy of the interests of the children as being directly relevant to the elimination of discrimination against women, and declares in this connection that the legislation of the United Kingdom regulating adoption, while giving a principal position to the promotion of the children's welfare, does not give to the child's interests the same paramount place as in issues concerning custody over children.

The United Kingdom's acceptance of paragraph 1 of Article 16 shall not be treated as either limiting the freedom of a person to dispose of his property as he wishes or as giving a person a right to property the subject of such a limitation.

*B On behalf of the Isle of Man, the British Virgin Islands, the Falkland Islands, South Georgia and the South Sandwich Islands, and the Turks and Caicos Islands*

*[Same reservations as the one made on behalf of the United Kingdom under paragraphs A(a), (c), and (d) except that in the case of (d) it applies to the territories and their laws.]*

*Article 1*

*[Same reservation as the one made in respect of the United Kingdom except with regard to the absence of a reference to United Kingdom legislation.]*

*Article 2:*

*[Same reservation as the one made in respect of the United Kingdom except that reference is made to the laws of the territories, and not the laws of the United Kingdom.]*

*Article 9:*

*[Same reservation as the one made in respect of the United Kingdom.]*

*Article 11:*

*[Same reservation as those made in respect of the United Kingdom except that a reference is made to the laws of the territories, and not to the laws of the United Kingdom.]*

Also, as far as the territories are concerned, the specific benefits listed and which may be applied under the provisions of these territories' legislation are as follows:

- (a) social security benefits for persons engaged in caring for a severely disabled person;
- (b) increases of benefit for adult dependants;
- (c) retirement pensions and survivors' benefits;
- (d) family income supplements.

This reservation will apply equally to any future legislation which may modify or replace any of the provisions specified in sub-paragraphs (a) to (d) above, on the understanding that the terms of such legislation will be compatible with the United Kingdom's obligations under the Convention.

The United Kingdom reserves the right to apply any non-discriminatory requirement for a qualifying period of employment or insurance for the application of the provisions contained in Article 11(2).

*Article 13, 15 and 16*

*[Same reservations as those made on behalf of the United Kingdom.]*

OPERATION OF SEX DISCRIMINATION LEGISLATION  
IN THE UNITED KINGDOM

This note sets out the legislation and enforcement machinery concerning elimination of sex discrimination in the United Kingdom (U.K.).

**LEGISLATIVE PROVISIONS**

2. The major legislative provisions on elimination of discrimination against women in the U.K. are the Sex Discrimination Act, the Equal Pay Act and the Employment Protection (Consolidation) Act (which deals with unfair dismissal).

Sex Discrimination Act 1975 and 1986 Amendment

3. The Sex Discrimination Act (SDA) covers the following areas:

- (a) It makes discrimination between men and women, on grounds of sex or marriage, unlawful in employment, education, training and the provision of housing, goods, facilities and services.
- (b) It classifies discrimination into three types:
  - (i) direct discrimination - where a woman is treated less favourably than a man or vice versa, or a married person is treated less favourably than a single person.
  - (ii) indirect discrimination - where a



man or woman cannot comply with an unjustifiable requirement which on the face of it applies equally to men and women (or to married and single people), but in practice, can only be met by a smaller proportion of one sex (or by a smaller proportion of married people compared to single people).

(iii) victimisation of someone who has made a complaint under the Act.

4. The SDA aims to outlaw preferment of one sex over the other. It applies to all actual or potential employees, with a few exceptions (confined to such occupations as modelling or acting), and to trade unions, employers' associations, educational, training and qualifying bodies, advertisers and employment agencies. It also applies to persons working under a labour supply contract and those employed under a contract of service or of apprenticeship or a contract personally to execute any work or labour. The 1986 amendment of the Act was to bring the legislation in line with the European Community directive on equal treatment.

#### Equal Pay Act 1970 and 1984 Amendment.

5. The purpose of the Equal Pay Act (EPA) is to eliminate discrimination between men and women in pay and other terms of their contracts of employment such as piece-work, output and bonus payments, holidays and sick leave. Women are entitled to equal pay with men when doing work that is the same or broadly similar, or work which is of equal value. Equal pay for work of equal value is the core concept. A woman's work is rated as equivalent with that of men's work if her job and their jobs have been given an equal value in terms of the demand made on a worker under various headings in a job evaluation study.

6. The EPA applies to "payment" to the employee, including other conditions of employment such as hours, holidays and sick-pay though it excludes conditions related to or connected with "death or retirement". A qualification of six months' service is required. The act applies widely to employees, apprentices and those under "a contract personally to execute any work or labour".

#### Legislation on Unfair Dismissal

7. According to the Employment Protection (Consolidation) Act (EPCA) 1978, as amended by the Employment Acts 1980, 1982, 1988 and 1989, there are five reasons which can justify dismissal, namely:

- (a) misconduct;
- (b) inability to do the job (for whatever reason);
- (c) redundancy;
- (d) that continued employment would involve breaking of the law; and
- (e) some other substantial reason.

8. Employee will have a claim for unfair dismissal if the dismissal is due to sex discrimination.

#### **ADMINISTRATIVE SET-UP**

9. A number of agencies in the U.K. are involved in the administration of these various Acts, and the promotion of removal of discrimination against women, among which are the Equal Opportunities Commission, the Industrial Tribunals, the Employment Appeal Tribunal and the Advisory, Conciliation and Arbitration-Service.

Equal Opportunities Commission (EOC)

10. The EOC, established in 1975, consists of 8 to 15 commissioners in addition to its full-time staff. It has three main duties:

- (a) to work towards the elimination of discrimination;
- (b) to promote equality of opportunity; and
- (c) to keep under review the relevant legislation.

11. The EOC is empowered to issue Codes of Practice containing practical guidelines on elimination of discrimination and equality of opportunities. It is authorized to institute proceedings concerning discriminatory advertisements and instructions or pressure to discriminate. It may seek an injunction to restrain persistent discrimination. Inquiries and investigations into possible breaches of the SDA and the EPA may also be conducted. The Commission further gives assistance to aggrieved individuals and runs an Information Centre which is the national source of materials on all aspects of equality.

Industrial Tribunals

12. The Industrial Tribunals were established in 1964 to deal with a wide range of matters arising from a number of different legislative provisions including complaints of unfair dismissal, and complaints under the SPA and the EPA. Each tribunal consists of a legally qualified chairman and two lay members appointed from a panel. Normally one of the lay members will be nominated by an employers' organization and the other by a trade union. At hearings of industrial tribunals, a person may be represented by the person of his choice. Legal aid is not available before a tribunal although legal advice may be available if the applicant is qualified under the means test.

13. The industrial tribunals can award three remedies:

- (a) a declaration of rights;
- (b) compensation up to the limit applicable in compensatory awards for unfair dismissal; and
- (c) a recommendation for action by the employer to remove the discrimination.

Employment Appeal Tribunal (EAT)

14. The EAT was established in 1975. It consists of judges of the High Court and Court of Appeal and lay members drawn from a panel of persons having special knowledge or experience of industrial relations. The function of the EAT is to hear appeals on question of law from the industrial tribunals and to hear appeals. After hearing an appeal, the EAT can do anything that the industrial tribunals could have done or it may refer the case back for a re-hearing.

Advisory, Conciliation and Arbitration Service (ACAS)

15. The ACAS was established in 1974. It is not a judicial body and is independent of the government. It is managed by a Council consisting of a full-time chairman and nine other members after consultation with the representatives of the employers' organizations and the representatives of the trade unions.

16. The ACAS is charged with the general duty of promoting the improvement of industrial relations. Individuals or parties aggrieved on grounds of discrimination may approach the ACAS for assistance.

# GREEN PAPER ON EQUAL OPPORTUNITIES FOR WOMEN AND MEN



## **Green Paper on Equal Opportunities for Women and Men**

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## Chapter One : Introduction

1. It has been said that "women hold up half the sky." In Hong Kong, women make up just under half of the population (49%).

2. In 1991, 56.8% of the women in Hong Kong were in the 15-49 age group. Of those aged 15 and above, 59.8% were married, 49.5% were economically active and they made up 38% of our work force. Nearly 78% of all the women in Hong Kong have also received some form of education at primary level and above.<sup>1</sup>

3. With the changing demographic, economic and social trends in Hong Kong over the past decades, the status of women has undergone important changes. Years of sustained economic growth has generated an increase in the demand for labour. Improved social welfare programmes have enabled women to join the work force and to participate in community activities.

4. With greater opportunities to participate in different sectors of the economy, women have attained greater financial independence. The nine years of compulsory education introduced in 1978 has provided an opportunity for all members of the society including women to obtain the necessary knowledge and skills to enable them to succeed in their chosen areas of pursuit. This has also contributed to the rising status of women.

5. In recent years concern has been raised on how best to build on our past achievements so as to enhance the status of women. There have been calls for positive measures to ensure equal opportunities for women and men in the community and for the elimination of discrimination against women. On the other hand, some hold that not

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1 Hong Kong 1991 Population Census, Census and Statistics Department.

all differential treatment between women and men are necessarily discriminatory. If such differential treatment are to achieve a legitimate aim, they are not 'discriminatory' per se. In fact, some differential treatments are necessary to meet the different needs of women and men.

6. The status of women in society is ultimately determined by the perception and attitude of its members. To overcome the insidious effects of discrimination, it is necessary to raise public awareness of the issues involved, stimulate discussions and mobilize community support for the principle of equality. Publishing this Green Paper to consult the public on the need for action to promote equal opportunities for women and men is a good way to focus public attention on the subject.

7. This Green Paper examines the political, social and economic conditions in Hong Kong, categorises the services provided for women and surveys the opportunities available to them in different areas of activity. It also attempts to establish whether, in view of the opportunities available, women and men participate equally in all fields. Some possible measures to enhance equal opportunities are also set out to facilitate public deliberation.

8. Equal opportunity means that both women and men are given the same chances and choices to exercise their rights in all aspects of society. Nevertheless, equality between the two sexes does not depend on equal opportunities alone. Factors such as biological differences, individual preferences and most importantly, social pressures all have an impact.

9. The Government subscribes to the principle of equality between women and men. In ascertaining whether further action is required to foster equality between women and men in Hong Kong, it is

important that members of the community should express their views as to where action is needed to promote the status of women and what new initiatives would be effective, bearing in mind the implications any such measures may have on Hong Kong.

## Chapter Two : Political Participation and Community Involvement

### Political Participation

10. In Hong Kong, women enjoy the same rights to participate in public affairs as men do. One third of the non-official Members of the Executive Council are female.

11. The laws governing elections to the Legislative Council, Municipal Councils and the District Boards make no reference to the sex of the electors or the candidates. There is no barrier in law against women participating in political activities.

12. In 1988, 47.3% of the male and 43.1% of the female potential electors were registered as electors<sup>1</sup>. Female electors accounted for 46.3% of the total number of registered electors. In 1992, 54.7% of the male and 50.4% of the female potential electors were registered as electors. Female electors accounted for 47.1% of the registered electorate.

13. The voter turnout rates of electors in the recent Legislative Council, Municipal Council and District Board elections showed that there is no significant difference in the levels of participation of men and women in elections.

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<sup>1</sup> The estimated size of our potential electorate is 3.7 million. Based on the ratio of Hong Kong's female and male population, we estimate that of the 3.7 million potential electors, 1.8 million are female and 1.9 million are male.

1991 Elections : Voter Turnout Rates

	<u>Voter Turnout</u> *	
	<u>Female</u>	<u>Male</u>
District Boards	32.0%	32.9%
Municipal Councils	21.6%	24.6%
Legislative Council (Geographical Constituency)	39.1%	39.9%

\* Turnout as against the total number of registered female and male electors in contested constituencies.

A study on voting behaviour in the 1991 Legislative Council direct election commissioned by the Committee on the Promotion of Civic Education revealed several factors which influence voter registration, for example, gender, age, household income, political interest and sense of civic duty. Of these, the effect of gender was least significant. As for voter turnout, the study showed that gender came fifth out of six factors which had a positive effect on voter turnout.

14. It has been suggested that the educational attainment level of women, their financial ability, women's perception of their role in the family and the society all have some impact on the extent to which women participate in politics. However, an analysis of the voting behaviour in the 1991 Elections suggested that marital status, number of children in the family, and employment status of female voters did not have a significant statistical relationship to their voting behaviour. Education was found to be the most significant factor; the higher the level of education a woman receives, the higher is her propensity to vote.

15. In the three tiers of representative government in Hong Kong, the number of women involved has been low.

The Three Tiers of Representative Government

	<u>Candidates</u>		<u>Elected Members</u>		<u>Appointed Members</u>		<u>Representative Members</u>		<u>Ex-officio Members</u>	
	<u>Female</u>	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>	<u>Male</u>
1991 District Board Elections	50	423	25	249	18	122	N.A.	N.A.	N.A.	N.A.
1991 Urban Council Election	6	31	2	13	2	13	3	7	N.A.	N.A.
1991 Regional Council Election	2	22	0	12	1	11	0	9	0	3
1991 Legislative Council Election	7	87	2	37	5	13	N.A.	N.A.	0	3

In the 1991 District Board elections, only 9.1% of the elected District Board Members were female. As regards the appointed District Board Members, 12.9% were female. There was a similar pattern in the 1991 Municipal Council elections where only 7.4% of the elected Members and 11.1% of the appointed Members were female.

16. In the 1991 Legislative Council elections, 7.4% of the candidates for the functional and geographical constituency elections were female. Among the elected Members of the Legislative Council, 5.1% were female. As for the appointed Members, 27.8% of them were female.

17. Participation of women in politics in Hong Kong compares favourably to the rates in other countries. In England, for example, only 9% of the Members of Parliament and 6.3% of the Members of the

House of Lords are female. In the United States Congress, 11% of the House Representatives and 6% of the Senators are female. In Singapore, 2.5% of the Members of Parliament are female. In Japan, 2.3% of the Members of the House of Representatives and 14.6% of the Members of the House of Councillors are female.

### Community Involvement

18. There are ample opportunities for members of the public to take part in community activities. Women have equal access to these opportunities as men do and they are encouraged to participate actively in community building programmes.

19. There are at present 313 Government boards and committees, established for the purpose of giving advice to the Government on specific areas of activities. Of the 2,433 members of the public serving on these boards and committees, 370 or 15.2% are women. Members of these boards and committees are appointed for their specialist knowledge or experience, or on the basis of their record or interest in contributing to community service. Gender is not a factor in appointments to these boards and committees.

20. The Government's community building strategy is designed to promote social responsibility and a sense of belonging among residents through encouraging participation and involvement in local community activities. No distinction is drawn on the basis of sex. In 1993, 19% of the members serving on the Area Committees in the urban areas and 20% of those in the New Territories are female. In addition to the Area Committees, women are active in Mutual Aid Committees and in other voluntary work.

21. In 1980, the Yin Ngai Society was first set up. The purpose was to provide venues for housewives to get together to share their experience in dealing with difficult situations, exchange views and to help one another. The basic aim of Yin Ngai is to improve the quality of life for women by identifying problems in their personal or

family life and organising the appropriate services, support and guidance which would enable them to handle these problems better. The local Yin Ngai Societies organise recreational activities and promote neighbourliness to alleviate involuntary isolation. They also provide opportunities for women to develop their potentials and self-confidence through the experience of mutual aid.

22. Yin Ngai membership is opened to all women over 18 working or residing in the area served by a particular Yin Ngai Society. At present, there are 36 Yin Ngai Societies throughout the territory with over 7,000 members. No such organisation exists for men.

23. The number of female members of women groups in the Social Welfare Department's Group Work Unit has increased substantially in recent years. In 1992/93, a total of 96 women groups were formed, this represented an increase of 50% when compared to the number of women groups in 1987/88. The number of registered female members has also increased by 23.8% over the past five years.

#### **Women in Rural Elections**

24. The tradition and local customs of the New Territories villagers have been respected for many years. And this is reflected in the rural elections which are peculiar to the New Territories.

25. Rural elections are held to elect Village Representatives, Rural Committee Chairmen and key Heung Yee Kuk office-bearers.

26. The system of Village Representatives, or village elders in the olden days, has been in existence for a very long time. Village Representatives serve mainly as a bridge between Government and the villagers. As well respected local villagers themselves, Village Representatives help to resolve disputes between different parties in the village. Nowadays they also serve an important function of helping the Government to verify the indigenous status of villagers as and when required.



27. There are now approximately 690 villages in the New Territories with one to three Village Representatives for each village. Election of Village Representatives takes place whenever their term of office is about to expire or when a vacancy arises through resignation, death or upon demand by a majority of villagers. The procedures for the election of Village Representatives vary from village to village in accordance with local customs. For the majority of the villages in the New Territories, elections of Village Representatives are conducted on the basis of the "Head of Household" principle because a household, according to local traditions, is the basic unit of a village. In these cases, the Heads of Households constitute the electorate. Only a very small minority of villages do not adopt this principle and permit only adult males in the village to vote. About two-thirds of the 690 odd villages in the New Territories allow indigenous women to stand for election as Village Representatives. At present there is only one serving female Village Representative in the New Territories.

28. The next level of rural elections is the election of Rural Committee Chairmen. Groups of villages in the New Territories form themselves into Rural Committees. The Chairmen of Rural Committees are elected from amongst Village Representatives of the villages within the Rural Committee area in accordance with the constitutions of the respective Rural Committees. Some Rural Committees also include amongst their Members Kai Fong representatives, Mutual Aid Committee representatives and fishermen representatives, etc. There is no discrimination against women in the election of Rural Committee Chairmen under the constitutions of Rural Committees. At present all the Rural Committee Chairmen in the New Territories are male.

29. The 27 Rural Committees in the New Territories have a close relationship with the Heung Yee Kuk, which is Government's statutory advisory body on New Territories matters. The full Council of the Heung Yee Kuk comprises all Rural Committee Chairmen and Vice-chairmen; special and co-opted Councillors, and New Territories

Justices of the Peace. Elections of the Kuk are conducted in accordance with the provisions of the Heung Yee Kuk Ordinance (Cap. 1097). There is no discrimination against women in Heung Yee Kuk elections under existing statutory provisions. Out of the 143 serving Heung Yee Kuk Councillors, 4 are female.

## Chapter Three : Employment

### Participation in the Labour Force

30. Generally, women enjoy the same rights as men do to participate in the labour force and to take up the job of their choice. However, there are some protective legislation which limit, for example, the working hours, overtime and employment in shift work and prohibition of women from employment in underground work and dangerous trades. (Details of the legislative provisions are at Annex I).

31. Women comprised some 38% of the labour force in 1991. While the labour force participation rate for men has remained stable at around 80%, that for women has risen from 43.6% in 1976 to 49.5% in 1991. (Details at Annex II). The overall increase in the labour force participation rate reflects an increasing willingness among women to take up paid employment for whatever reasons and an expansion of employment opportunities for women.

32. The labour force participation rate of Hong Kong women is at a comparable level to those of neighbouring Asian countries such as Japan (50.1%), Singapore (50.3%) and the Republic of Korea (47%). It is in fact a world-wide phenomenon that labour force participation rate of women is lower than that of men.

33. Despite more women are joining the labour force, the participation rate for women is believed to have been affected by child-bearing and family roles as shown in the significantly lower rate of participation in the 30-39 age group (77.4% in the 25-29 age group as compared with 58% in the 30-39 age group in 1991.) In Japan, Singapore and Republic of Korea, the participation rates for women in the 25-29 age group is significantly lower when compared with those in the 20-24 age group. (Details at Annex III).

34. The unemployment rate for women in Hong Kong is generally lower than that for men. In 1991, the proportion of economically active women who were unemployed was 1.6% as opposed to 1.9% for men. This situation is similar to that in countries such as Republic of Korea, Singapore and the United Kingdom (Details at Annex IV).

**Employment Pattern**

35. The percentage of women engaged in supervisory, professional and technical jobs had increased considerably during the last decade. For example the proportion of managers and administrators held by females among all occupations had increased from 0.8% in 1981 to 2.8% in 1991; in the professionals and associate professionals category the proportion had increased from 6.7% to 14.9%.

**Proportion of All Female and Male Employees Participating in Selected Occupations \***

<u>Occupation</u>	<u>1981 Census</u>				<u>1991 Census</u>			
	<u>Female</u>	<u>No.</u>	<u>Male</u>	<u>No.</u>	<u>Female</u>	<u>No.</u>	<u>Male</u>	<u>No.</u>
Managers & Administrators	0.8%	6,592	2.5%	33,615	2.8%	26,394	5.8%	82,797
Professionals and Associate Professionals	6.7%	52,619	6.1%	81,391	14.9%	141,016	15.0%	215,140
Clerks <sup>1</sup>	19.6%	154,211	10.3%	137,560	30.6%	289,440	9.2%	132,241
Craft & Related Workers and Plant & Machine Operators and Assemblers	51.8%	407,973	55.0%	738,325	18.0%	170,648	37.2%	534,088

\* As there was a change in the classification of occupation between the 1981 and 1991 Population Census, the figures in this table give only a broad comparison.

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<sup>1</sup> Clerks include stenographers, secretaries and typists; bookkeeping, finance, shipping, filing and personnel clerks; cashiers and tellers; receptionists and information clerks.

36. Notwithstanding this trend, women still account for a smaller proportion of those occupying managerial and professional positions and tend to concentrate in certain occupations. In 1991, only 24.2% of the managers and administrators were women. On the other hand, 68.6% of the clerks were women. However, a similar situation also existed overseas. In the United Kingdom, women employees made up 81% of all employees in medical and health services and they accounted for 16% of the employees in mechanical engineering in 1991. In Japan, 58.1% of the clerical and related workers and 7.4% of the managers and officials were female. In Singapore, 74.7% of the clerical workers and 18.7% of the legislators, administrators and managers were female.

Distribution of Employees in Selected Occupations by Sex in 1991

<u>Occupation</u>	<u>Female (%)</u>	<u>Male (%)</u>
Managers & Administrators	24.2%	75.8%
Professionals	32.3%	67.7%
Associate Professionals	42.1%	57.9%
Clerks	68.6%	31.4%
Craft and Related Workers	11.6%	88.4%
Plant & Machine Operators and Assemblers	38.1%	61.9%

Wage Differentials

37. The ratio of median income<sup>2</sup> of female employees to that of

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2 Income refers to income from main employment, which is the total amount earned including salary or wage, bonus, commission, overtime, housing allowance, tips and other cash allowances. New year bonus/double pay is excluded. The median income is computed such that 50% of the working population excluding unpaid family workers had income above this figure and the other 50% had income below it.

male employees has narrowed over the last decade. Women's median income in relation to men's increased appreciably from 69% in 1981 to 77% in 1991. However, this ratio of median income varies with different age groups and occupations. For example, in 1991, the worst-off groups were those in the 45-49 age group and those engaged as plant and machine operators and assemblers. In both cases, women's median income was 58% of that of men. For those in managerial, administration and professional occupations, the median income of women was 83% of men.

Ratio of Median Income of Female Employees to Median Income of Male Employees by Selected Occupations in 1991

<u>Occupation</u>	<u>Ratio of Median Income</u>
Managers & Administrators	0.83
Professionals	0.83
Associate Professionals	0.94
Clerks	0.91
Craft and Related Workers	0.65
Plant & Machine Operators and Assemblers	0.58

Ratio of Median Income of Female Employees to Median Income of Male Employees by Age in 1991

<u>Age</u>	<u>Ratio of Median Income</u>
15-19	1.06
20-24	0.90
25-29	0.83
30-34	0.77
35-39	0.60
40-44	0.62
45-49	0.58
50-54	0.64
55-59	0.66
60 and over	0.67
Overall	0.77

38. According to an analysis based on the survey of wages, salaries and employee benefits conducted by the Census and Statistics Department (Annex V), wage differentials in many sectors and occupations have been narrowing over time.

39. The above figures indicate that men and women tend to participate to different degrees in different sectors of the economy and that on average, the income of women is lower than that of men in most occupational categories. This however does not necessarily imply that women are earning less for the same job as discussed in paragraph 45 below.

#### Equal opportunity to join the workforce

40. Notwithstanding the equal opportunity to be employed, there are claims that certain structural limitations have deterred women from participating actively in the economy or from taking up particular trades and occupations, thus resulting in the uneven distribution of labour participation rates and in occupational segregation. For example, it has been suggested that inadequate child care and creche facilities have left many women with little choice but to assume the role of home-maker and care-provider. These women are thus deprived of the opportunity to take up employment.

#### Equal opportunity to be employed

41. As mentioned in paragraph 30 above, there is no statutory prohibition, apart from the protective legislation which restrict the employment of women. The proportion of women employed in a particular enterprise would very much depend on the nature of the job, the number of female applicants, their qualifications and the employment policy of the employer. The statistics mentioned in paragraph 36 above indicate that women employees tend to concentrate in certain occupations.

42. It has been argued that there is discrimination against women in job advertisements : the preference for male or female

candidates is very often specified in job advertisements. It has also been claimed that employers tend to reject female job applicants in certain occupations and positions, thus resulting in occupational segregation. It is recognised that there could be a degree of role bias in society, whereby certain long standing norms and values concerning women have carried through to hiring practices, thus affecting the number of women participating in certain occupations. Some of these biases could be manifested in job advertisements. Apart from influencing employers' choice of candidates, gender role bias could also indirectly affect women's choice of jobs.

### Government Employment Practices

43. The Civil Service now adopts a policy of equal treatment of male and female employees. There are no restrictions on the recruitment of female candidates. In the past, however, female candidates were not considered suitable to take up positions in a few grades in the Civil Service. This policy has been changed following a review conducted in 1992. The recruitment practices in the relevant Government Departments have been revised to give equal opportunities to all applicants. In the case of Fire Services Department, because of the resources required to provide separate facilities for female employees, the Department will consider female applicants for Station Officers first before expanding this arrangement to include applicants for Firemen and Ambulancemen posts.

44. Despite the policy of equal recruitment opportunities for women, there is still a degree of occupational segregation within the Civil Service. For example 25% of the architects, 25% of the analyst programmers but 100% of the personal secretaries are female. This indicates that equal recruitment opportunities aside, the factors which affect recruitment in the private sector (paragraph 41 above) also apply to the public sector.



Equal opportunity to receive wages, fringe benefits and promotion

45. There is no equal pay legislation in Hong Kong. The statistics quoted in paragraph 37 above indicate that in most economic sectors, women earn less than men. A number of variables can explain this pay differential -

- (a) differences in specific job requirements;
- (b) differences in physical or other capabilities;
- (c) differences in education attainment; and
- (d) differences in length of service and experience.

Some of these factors may result in differences in productivity, and hence in pay, between women and men. The personal circumstances of each employee and judgemental factors have made it difficult to state categorically whether conscious discrimination against women has resulted in gender related pay differentials. Very often, remuneration is determined by a combination of factors which vary with circumstances. Any analysis of these variables is further complicated by a lack of systematic pay scales in most of the small businesses in Hong Kong. The prevailing wage rates in these businesses are a result of the interplay of the economic forces of supply and demand.

46. The level of fringe benefits for individual employees is determined by employers. It has been alleged that female employees sometimes do not enjoy the same level of benefits as their male counterparts. Little research has been conducted on this subject.

47. Promotion criteria are set by employers and these criteria vary from industry to industry. Personal experience, ability, academic attainment and suitability for the job are all factors for consideration. Some have highlighted the concentration of men in supervisory and managerial posts as an indication of the fact that women are deprived of promotional opportunities. Again it is difficult to prove whether this phenomenon is due to gender specific

considerations or other reasons. It is difficult to verify or quantify the actual impact and prevalence of these attitudinal factors.

48. Economic growth in the past decade, nevertheless, appears to play an important role in promoting gender equality in employment. The increasing demand for labour has opened new opportunities for women to participate in the workforce: there are increased opportunities for women to take up employment, women also diversify into different occupations. These result in an healthy increase in the number of female managers, administrators and professionals. Compared with other countries, the extent of income differentials between the two sexes in Hong Kong is not great. Indeed, the ratio of female to male earnings in Hong Kong is comparable to those in western countries. For example, in 1991, the income of female employees in the UK was 78% of that of their male counterparts. The tight labour market in Hong Kong has also left little scope for employers to adopt discriminatory employment practices.

#### Equal Pay Legislation

49. It has been suggested that the introduction of equal pay legislation would be one way of ensuring equal opportunities and promoting equality in employment. It has also been argued that if gender is indeed not a factor which employers take into consideration in determining wage rates, equal pay legislation would not adversely affect employers.

50. Many western and neighbouring countries have introduced some form of equal pay/anti-discrimination legislation, although the laws differ in operation. There are three general approaches:

- (a) a "soft" or "mediation-oriented" approach which only requires employers to make efforts to realise the principle of equality. There is no penalty for non-compliance and disputes are settled through mediation;

- (b) a more adversarial approach which seeks redress through courts or tribunals; and
- (c) a punitive approach which imposes penalties on employers who violate certain important provisions like equal pay for equal work.

51. To facilitate the implementation and enforcement of equal pay legislation, many of these overseas countries have established professional bodies to handle disputes. The effectiveness of equal pay legislation in tackling sex discrimination in employment depends on the approach adopted.

52. There is no law governing equal pay in Hong Kong. The institution of equal pay legislation would be seen as the community's recognition of and support for the principle of equality between the two sexes. Apart from its educational value, it actually stipulates that employers should refrain from adopting discriminatory practices. It would provide a yardstick for assessing the extent of sex discrimination in employment. By introducing a statutory requirement on employers and at the same time providing employees an avenue for complaints, equal pay legislation would enable those who have suffered from discrimination to seek redress, thus reflecting the extent of sex discrimination in employment.

53. On the other hand, equal pay legislation could also have less welcome implications. Equal pay legislation and its associated regulatory framework would entail a certain degree of government intervention in the operation of individual employers and the labour market. This could induce rigidities into what has been a highly competitive and self-adjusting market. To meet the statutory requirements, employers might be required to develop a formal system of recruitment and promotion procedures. The size of the business establishments in Hong Kong is relatively small<sup>3</sup>. These

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3 Of the 259,659 business establishments in the fourth quarter of 1991, 84.8% engaged less than 10 persons.

establishments may find it onerous and costly to comply with the legislation. Furthermore employers may feel under pressure to sacrifice certain remuneration principles such as bonuses for individual outstanding employees in order to avoid claims of sex discrimination. Employers may need to engage extra personnel staff to ensure that all hiring and promotion policies and procedures are in compliance with the equal pay legislation.

54. Equal pay legislation could also be difficult to enforce because objective evidence may not be easily obtainable. Except in blatant discrimination, it is difficult to prove that employers intentionally discriminate. Any disputes on promotion or pay differentials would involve the need to prove whether the decision is attributed to gender or to other factors. Drawing reference from other countries, a separate organisation may be necessary to enforce the legislation effectively and to settle disputes. This could have substantial resource implications. Depending on the legislative approach Hong Kong adopts, complaints that remain unresolved by the enforcement agency could be referred to the courts for settlement, thus putting further pressure on judicial resources.

## Chapter Four : Education

55. The aim of the education policy in Hong Kong is to provide every child with the best possible education from which he or she is capable of benefiting, at a cost that parents and the community can afford. The current emphasis is on improving the quality of education. Nine years of free and compulsory education are available to children of both sexes. Women and men have the same opportunity to receive the education of their choice according to their ability.

56. The general education level of the population of Hong Kong had improved significantly from 1981 to 1991. Analysed by gender, the educational attainment for women had been improving at a quicker pace than men.

### Proportion of population between 15-59 which has attained secondary or higher education

<u>Year</u>	<u>Female</u>	<u>Male</u>
1981	50.0%	59.8%
1991	67.6%	74.3%

Despite the improvements, in 1991, 8% of the women aged 15-59 had no schooling or only received kindergarten education while the parallel figure for men was 3.6%.

Number of Persons Studying Full-time in Matriculation and Tertiary Courses in 1991 \*

	<u>Male</u>	<u>Female</u>	<u>Ratio of Female to Male Students</u>
Matriculation	17 366	17 944	1.03
Tertiary (non-degree course)	20 232	19 035	0.94
Tertiary (degree course)	15 802	11 708	0.74
Total	53 400	48 687	0.91

\* In 1991 the ratio of female to male population in the 17-21 age bracket was 0.93.

57. Hong Kong's higher education and vocational training institutions have adopted a policy of equality for students of both sexes. The admission criteria for academic courses are based on academic achievements; and those for training centre courses offered by the Vocational Training Council are based on an acceptable level of education and the right aptitude. The qualifications for admission are the same for women and men.

58. Recent statistics on the number of full-time students enrolled in the universities by discipline by sex gender reveal that there has been a male dominance in the engineering and science fields while females have a higher presence in the arts and language subjects.

Number of Students at Undergraduate Level in Selected Faculties in the Three Universities as at 31.12.1992

<u>University of Hong Kong</u>	<u>Female to Male Student Ratio</u>
Arts	4.30
Engineering	0.10
Law	1.32
Medicine	0.32
Science	0.67
Social Sciences	1.54
<u>Chinese University of Hong Kong</u>	
Arts	3.45
Business Administration	1.44
Engineering	0.11
Medicine	0.60
Science	0.49
Social Sciences	2.07
<u>Hong Kong University of Science and Technology</u>	
Business & Management	1.35
Engineering	0.13
Science	0.35

59. Given that male and female students have equal opportunities to receive education, the choice of subjects largely reflects the preference of students. Social norms could influence personal choice. Traditionally some subjects are not considered appropriate for the female or male students. The obvious examples are mechanical engineering and secretarial training. Social norms could be difficult

to change. Nevertheless, career guidance could help to encourage non-traditional choices and raise awareness amongst students that they are free to choose courses on the basis of merit or personal interest, rather than on the basis of gender stereotyping.

60. It has been claimed that gender stereotyping in textbooks and teaching materials have affected the outlook of both teachers and students. Stereotyping influences teachers' approach in handling students and in giving advice to students on their choice of academic or career pursuits. Students under the influence of gender bias materials in text books could also develop gender bias attitudes and may choose fields of studies which they consider to be socially more acceptable.

61. The Education Department is conscious of the need not to condition children to gender-biased aspirations within the education system and has adopted a policy of strict equality for students of both sexes. Schools are encouraged to offer all subjects in the curriculum to both female and male students.

62. In subjects like social sciences, liberal studies and in civic education and sex education, issues such as sex roles, the responsibility of males and females, equality of the sexes etc., are incorporated into the teaching materials with a view to fostering a willingness to accept members of the opposite sex as equals in social, economic and political affairs.

63. In colleges of education, the question of gender stereotypes is also discussed to ensure that student-teachers and in-service teachers are aware of the need to maintain a balanced view. Furthermore, textbook reviewers are encouraged to pay special attention to the content of text books to avoid prejudices and concepts which connote sex discrimination.

64. The higher number of male students attaining tertiary education and the concentration of female students in certain educational fields reflect, to a certain extent, social expectations



and the perception of particular gender roles. Overcoming these attitudinal obstacles would require continuing public education to raise the awareness of equal opportunities among both women and men and to remove gender role bias.

## **Chapter Five : Health Care and Social Welfare**

### **Health Care**

65. Women and men enjoy equal access to health care services generally and special care has been taken to ensure that the special needs of female patients are adequately catered for.

66. Hong Kong's population of over 5.8 million is provided with a comprehensive range of medical and health services rendered by the Hospital Authority and the Department of Health. The life expectancy at birth in 1991 was 80.6 and 75.1 for female and male respectively. In 1991, the leading causes of death were essentially similar in ranking for both sexes.

### **Hospital Services**

67. The Hospital Authority provides a comprehensive range of medical treatment and rehabilitation services to patients through its hospitals and specialist clinics.

68. Medical services such as internal medicine, surgery, radiotherapy and emergency services are targetted at both sexes. Nevertheless, some services and programmes are specially designed to cater for the needs of females. These include obstetric and gynaecology services. In 1992, 120,877 female patients were treated by obstetric and gynaecological specialists in public hospitals and 450,181 were treated at 20 specialists out-patient clinics. In 1992, it was estimated that 51% of the patients staying in hospitals under the Hospital Authority were female.

### **Health Services**

69. The Department of Health enhances the health of the Hong Kong community through the provision of promotive, preventive, curative and rehabilitative services. The services provided are

designed to meet the health needs of the various target groups who may be exposed to diseases and health hazards which are specific to them.

70. To cater for the special needs of women, a range of promotive and preventive health services are available to women of child bearing age and children through the Family Health Services. In 1992, 46 maternal and child health centres in Hong Kong provided special programmes and treatment for females. The main objective of the maternal health service is to educate expectant mothers about child birth. Through the provision of antenatal and post-natal services they are given advice on health care and child care. In 1992, there were 160,845 attendances for antenatal services and 19,450 attendances for post-natal services at outpatient clinics operated by the Department of Health. The corresponding figures for the Hospital Authority were 276,158 and 22,107 respectively.

71. Family Planning Services provide advice on and prescriptions for contraceptives, annual check-ups including cervical smears as well as counselling on infertility. In 1992, there were 394,197 attendances for family planning services. As a further development of these services, the first well-woman clinic will be opened in early 1994. This will provide primary health care, including gynaecological examinations and screening, to women aged 45 and above. Another two well-woman clinics will come into operation in the next five years.

### **Social Welfare**

72. Hong Kong has a highly developed system of social welfare services and social security. There is in place a safety net for the needy and the disadvantaged. In addition, a range of preventive, developmental and support services and remedial services are available. No distinction is made between men and women in terms of their access to social welfare services and social security benefits. As more and more women are now joining the workforce, the provision of welfare services takes into account the changing roles of women.

### Social Security

73. Social security in Hong Kong provides for the basic and particular needs of those individual families in the community who are in need of financial or material assistance. No distinction is made between female and male applicants and equal opportunities to social security entitlements are available to both sexes. Of the 107,840 social security recipients in 1992, about 52% are female.

### Child Care Services

74. Government's welfare policies identify the family as the most important element in society. However, in a rapidly changing society, with over a million women and 1.74 million men in the labour force in 1991, day care facilities for young children are a high priority category of the provision of family welfare services.

75. The Child Care Centres Ordinance provides for registration, control and inspection of child care centres to ensure an acceptable standard of service. Generally, child care centres are classified into creches, catering for those from birth to 2 years for day or residential care; nurseries, for children from 2 to 6 years old for half day or full day care; playgroups; and special child care centres for handicapped children from 2 to 6.

76. In 1992, a total of 35 398 places were provided by the 333 child care centres run by the Government and non-Government agencies. The take up rates of Government and subvented centres have generally been over 90%. With the prevalence of nuclear families and an increasing number of mothers in employment, there is an increase in the demand for day care facilities for children. To maximise the use of available resources, more flexible child care arrangements are being introduced, including occasional child care services, extended nursery hours and work-based child care centres. At present, 225 occasional child care places are provided in 75 child care centres.

77. Through the Fee Assistance Scheme, low income families with a social need are helped to meet the cost of day care for children. Families which are unable to provide adequate care for their children during the day as a result of parents going out to work, or single parent families or families with an aged or disabled member who need special care will be eligible to receive assistance. Fee assistance paid amounted to \$77.45 million in 1992/93. Women in many instances are the main beneficiaries of this assistance scheme.

### **Domestic Violence**

78. Protection under the law is given to battered spouses under the Domestic Violence Ordinance. Domestic violence cases are treated carefully and sensitively by the Police. In 1992, there were 191 victims in reported battered spouse cases with 83.8% of these victims being women.

79. Two shelters operate round the clock to provide temporary accommodation for battered wives and women in need. The Wai On Home for Women is run by the Social Welfare Department and the Harmony House is operated by a subvented non-Government organisation. Together they provide 80 places for needy women and young girls. Both shelters receive direct applications and referrals from the Police, hospital staff and social workers. In 1992, 364 cases were handled involving a total of 721 women and children who took temporary refuge in the two shelters.

### **Assistance Towards Housing**

80. In order to meet the urgent need for separate housing for separated or divorced couples, the grant of a conditional tenancy in public housing estate is available to the aggrieved party with dependent children under the compassionate rehousing scheme. In 1992, 104 cases were approved and 98% of them were granted to female applicants.

### Family Services

81. Family Service Centres operated by the Social Welfare Department provide counselling to assist families and individuals to understand and deal with problems of interpersonal relationship, the care of the young, the sick and the disabled. In 1992, the Family Service Centres handled a total of 23,611 cases involving counselling services. There are no statistics on the number of female clients involved in counselling services. However, a vast majority of cases involve females : marital conflicts, battered spouses, behaviour problems of girls and young women, unmarried mothers, victims of indecent assault and widows with dependent children.

82. One very important part of welfare services is family life education. Care has been taken so that materials used in family life education programmes do not contain gender role stereotyping. Family life education focuses on the importance of husbands and wives working together to maintain a happy family.

83. The Family Life Education Resource Centre has a collection of family material on themes of marital relationship, parenting, understanding of the roles and responsibilities of different members in the family. In respect of marital relationship, emphasis is placed on the importance of mutual respect, mutual care and concern between husbands and wives. The sharing of duties and responsibilities in home management is also stressed. The information is updated periodically to ensure that it is relevant and consistent with contemporary concepts and values. A booklet on "Modern Fathers' Roles" is being produced to encourage fathers to share the responsibilities and duties in the family. It emphasizes the equal importance of father and mother in taking care of children and providing emotional support to members of the family.

### Services for Offenders

84. In general, similar services are provided to female and male

offenders. There is, however, an anomaly in the Probation of Offenders Ordinance and Community Services Order Ordinance which provide that the Probation Officer under whose supervision a woman or girl is placed shall be a woman. In the light of the Bill of Rights Ordinance, considerations are being given to whether such discriminatory provisions should be removed.

### Other Welfare Services

85. A wide range of other welfare services are also provided to young people, the disabled and the elderly. Women and men have equal access to these services.

86. Services for children and youth are provided for those between 6 and 24, and the overall objective is to assist young people to become mature, responsible and contributing members of society. Children and youth services are delivered mainly through children and youth centres, outreaching social workers and school social workers. A number of uniformed organisations also provide related services.

87. For disabled persons, a variety of day and residential rehabilitation services are provided. These include education and training centres for disabled children, day activity training centres, sheltered workshops and employment services for the vocational rehabilitation of disabled adults; various types of residential facilities for disabled children and adults; and social and recreational centres for persons with various types of disabilities.

88. Services for the elderly include day and residential services. Services include multi-service centres for the elderly, social centres, day care centres, homes for the elderly and care and attention homes. In 1992, some 70% of the residents in Government run/subvented institutions were female.

## **Chapter Six : Private, Family and Financial Matters**

### **Nationality**

89. In Hong Kong, the nationality transmitted to spouses in mixed marriages is governed by the British Nationality Act which extends to all British dependent territories. The relevant provisions in the Act are applicable to both sexes. Essentially, the British Nationality Act 1981 provides for women and men not of British nationality to acquire the status of British citizen or British Dependent Territory citizen.

90. The British Nationality Act 1981 does not make any distinction between women and men of British nationality married to a spouse of non-British nationality in transmitting the status of British citizen or British Dependent Territory citizen to her or his children. The provisions on transmitting citizenship to children are applicable to both the mother and the father.

### **Matrimonial Matters**

91. In general, women and men are entitled to the same rights under family and matrimonial law. Nevertheless, it appears that some differential treatment are stipulated in certain statutes. However in commenting upon identical guarantee under the International Covenant on Civil and Political Rights, the United Nations Human Rights Committee stated that not all differences in treatment amount to discrimination if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.

92. The Affiliation Proceedings Ordinance provides differential treatment of the mothers and fathers of illegitimate children. For



example, a single woman can commence affiliation proceedings against the father of the illegitimate children. The same right is not available to a man. Similarly, affiliation orders can only be made against the father of illegitimate children and there is no parallel provisions in respect of the mother of illegitimate children.

93. The Separation and Maintenance Orders Ordinance stipulates different grounds on which married women and men may apply for separation and maintenance orders. Conviction of assaulting the wife and desertion, for example, are grounds on which the wife can apply for the relevant court orders. Such grounds are not applicable to the husband. Furthermore, under the Ordinance, only the husband is liable to make payments for the maintenance of his wife and children.

94. Consideration is being given to whether the above differential treatment for women and men should be removed notwithstanding the differential treatments as stipulated in paragraphs 92 and 93 favour rather than discriminate against women.

### **Consent for Marriages**

95. The giving of consent for marriages is governed by the Marriage Ordinance. Under Section 14 of the Ordinance, the father's consent is required for the marriage of a person of or over 16 years and under 21 years of age. The mother's consent is only sought when the father is either dead or insane. The Government is taking action to amend this discriminatory provision : legislative amendments are being drawn up whereby the consent for marriage can be given by either the mother or the father of the under-aged person.

### **Adoption**

96. The Adoption Ordinance provides different treatment for females and males. Women receive more favourable treatment than men. Under the Ordinance, an adoption order shall not be made in respect of

an infant who is a female in favour of a sole applicant who is male unless the court is satisfied that there are special circumstances which justify the making of such an adoption order. Furthermore, under the Ordinance, the Director of Social Welfare is empowered to supervise female adoptees until 21 years of age, he is not given the same authority to supervise male adoptees.

97. The Adoption Ordinance has been reviewed to ensure that it is consistent with the Bill of Rights Ordinance. Legislative amendments will be procured to remove the differential treatment of females and males under this Ordinance.

#### **Right to Financial Services**

98. In Hong Kong, there are no bars on women's rights to bank loans, mortgages or other forms of credit. Although there is no statutory requirement, it is understood that financial institutions do not adopt discriminatory policies against women in the provision of financial services. In processing applications for financial services, financial institutions may take into account a number of factors relevant to the applicant but gender by itself would not be of significance.

#### **Public Housing**

99. Under the current housing policy of the Housing Authority, women enjoy equal opportunity in public housing entitlement. All applications are made on a household basis. The allocation of public housing to applicants is always based on their housing need, the gender of the applicant is not a factor for consideration. Whether the head of household is the wife or the husband is solely a matter of choice of the household.

#### **Succession to Land**

100. Matters concerning succession are generally governed by the

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Wills Ordinance, the Intestates' Estates Ordinance and the Deceased's Family Maintenance Ordinance. These laws apply to all Hong Kong residents irrespective of their gender and social origin.

101. In relation to inheritance of land, however, there are certain customs and traditions observed by the indigenous population in the New Territories that lay down rules for succession along the male line only. The New Territories Ordinance makes no specific mention of gender, but provides that the court shall have power to recognize and enforce Chinese customs and customary right in relation to land in the New Territories. There are provisions in the New Territories Ordinance which enable landowners, if they so wish, to seek an exemption of land from application of that law or to avoid the effect of customary law by making will. However, as the Ordinance now stands, owners of buildings in multi-ownership will have to join together to apply for exemption. As for the making of wills, the Ordinance stipulates that a grant of probate has to be obtained in 3 months' time. These requirements are generally difficult to comply with.

102. The Government is now in the process of reviewing this aspect of the New Territories Ordinance relating to the inheritance of land.

### **Small House Entitlement**

103. The Government's policy of respecting the traditional customs and practices of the New Territories indigenous community is also reflected in its small house policy.

104. The aim of the policy is to address the housing needs of indigenous villagers and their families and to improve the sanitary conditions in rural areas in general. Under the policy, an indigenous villager who is inadequately housed may apply for permission to erect for himself and his family, during his lifetime, a small house within his own village provided that he must comply with the stipulated requirements.

105. A small house is a building in the New Territories exempted from the provisions of the Buildings Ordinance but governed by the Buildings (Application to the N.T.) Ordinance. In essence, a small house is exempted from the need to submit building plans to the Buildings Ordinance Office for approval. An indigenous villager in this context is taken to be a male person at least 18 years old who is descended through the male line from a resident in 1898 of a recognised village.

## **Chapter Seven : The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

106. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted by the United Nations in 1979 and entered into force in 1981. CEDAW obliges States Parties to take steps to eliminate unlawful discrimination against women by public and private bodies and to ensure that women enjoy, on the basis of equality with men, a broad range of rights in most areas of social activity. The Convention combines guarantees of civil, political, economic, social and cultural rights in one instrument. A complete text of CEDAW is at Annex VI. Some regard CEDAW as an instrument of social change. As of January 1993, there were 120 States Parties to the Convention. These include the United Kingdom (not covering Hong Kong), and the People's Republic of China. The countries which are not party to CEDAW include the United States of America and Singapore.

### **Obligations under CEDAW**

107. The Convention imposes a wide range of obligations on States Parties. Some of the obligations require the States Parties to take quite specific actions, while others provide them with a considerable degree of latitude in selecting the appropriate means of eliminating discrimination.

108. The Convention recognises that the elimination of discrimination may only be possible over time and does not require all forms of discrimination to be eliminated overnight. However, it requires that a State Party shall take immediate steps to identify existing discrimination and to formulate concrete strategies which will bring about its elimination. It also provides that States Parties shall adopt 'appropriate' legislative and other measures to prohibit all forms of discrimination against women, and to modify or abolish existing laws, customs and practices which constitute

discrimination. It is not entirely clear what constitutes 'appropriate' measures : immediate abolition of some discriminatory laws and practices might be possible and hence regarded as appropriate.

109. CEDAW imposes a wide range of obligations on State Parties. Indeed, it provides that the States Parties shall undertake appropriate measures to -

- Eliminate discrimination against women by any person, organisation or enterprise; and to ensure, through competent national tribunals or other public institutions, the effective protection of women against any act of discrimination.
- Ensure the full development and advancement of women.
- Modify social and cultural patterns so as to eliminate prejudices and discriminatory customs or other practices; and to ensure that family education recognises the common responsibility of men and women in the family.
- Suppress all forms of traffic in women and exploitation of prostitution of women.
- Eliminate discrimination against women in political and public life.
- Ensure that women, on equal terms with men, have the opportunity to represent their Governments at the international level.
- Grant women equal rights with men to acquire, change or retain their nationality and equal rights with respect to the nationality of their children.
- Ensure that women enjoy equal rights with men in education.



- Eliminate discrimination against women in employment in order to ensure equal rights to work, the same employment opportunities, the free choice of profession and the right to equal remuneration in respect of work of equal value.
- Eliminate discrimination against women in health care in order to ensure that women have equal access to health care services and to ensure that women have access to appropriate services in connection with pregnancy, confinement and the post-natal period.
- Ensure the application of the Convention to women in rural areas and to ensure that women participate in and benefit from rural development.
- Accord to women equality with men before the law.
- Eliminate discrimination in all matters relating to marriage and family relations.

110. States Parties are required to submit periodic reports to the Secretary-General of the United Nations for consideration by the Committee on the Elimination of Discrimination Against Women. The reports should cover legislative, judicial, administrative or other measures which States Parties have adopted to give effect to the provisions of the Convention as well as any difficulties encountered in the implementation of the Convention.

### Reservations

111. CEDAW allows States Parties to enter reservations at the time of ratification or accession provided that these are not incompatible with the object and purpose of the Convention. For example, the British Government has entered an extensive series of reservations, statements and interpretative declarations to clarify its position in relation to CEDAW. These cover matters such as

immigration, nationality, employment, social security, etc. A full list of the reservations entered into by the United Kingdom is at Annex VII. States Parties are nevertheless encouraged by the Committee on Elimination of Discrimination Against Women to keep reservations made under review and to amend or withdraw them as and when appropriate.

#### Measures Taken by some States Parties to Implement the Convention

112. The measures adopted by States Parties to implement the Convention would help to illustrate the obligations expected of them. These include legislative and non-legislative measures.

113. The non-legislative measures adopted come in numerous different forms, for example, the revision of the education curriculum and government administrative guidelines to remove gender role-stereotyping, promotion of career guidance for female students, expansion of vocational training and job development for women, expansion of child care facilities and nation-wide promotional campaigns through the mass media, and organising conferences and public meetings to raise public awareness of the issue.

114. Apart from the non-legislative measures, many of the States Parties have enacted some form of anti-sex discrimination and equal pay legislation. However, their laws differ widely in scope and in operation. In terms of scope, Western countries have extensive anti-sex discrimination legislation which cover not only the employment field but also other areas such as education, training, the disposal and management of properties, advertising, and provision of goods and services. In Asia, Japan and Korea, for example, have laws dealing with equal employment opportunities in general.

115. To facilitate the implementation of their respective anti-sex discrimination legislation, most of the State Parties have established special bodies to promote matters relating to women and to handle disputes. In Western countries, these usually take the form

of commissions which may perform a number of functions, including rendering advice, mediation, arbitration, and providing legal assistance to complainants.

116. In the United Kingdom, for example, the Sex Discrimination Act was enacted in 1975 and an Equal Opportunities Commission was set up. The Commission is an independent statutory body funded by the Government with a membership of 15. Its main duties are to work towards the elimination of discrimination and to promote equality of opportunities between men and women generally. The work of the Commission is not confined to discrimination in employment. It covers a wide range of areas including advertising, provision of services, social security and health services. The Commission is given broad powers to issue Codes of Practice, to review legislation, to institute proceedings and seek injunctions. It is also the principal source of information and advice for the general public on legislation relating to women.

117. In Australia, the Sex Discrimination Act was enacted in 1984 and women matters are dealt with at two different levels. At the national, government level, the Office of the Status of Women is attached to the Department of the Prime Minister and Cabinet and advises the Prime Minister on the development of policies relating to the status of women. The Office of the Status of Women initiates and administers policies and programmes designed to raise the status of women and is involved in consultation with women organizations. It also provides relevant information to women. At the non-government level, a National Women's Consultative Council, representing national women's organisations, is appointed by the Australian Government to ascertain women's views on particular issues, provide information to women's organisations and the general public community and bring to the attention of the relevant ministers matters of concern to women in the community.

118. In Japan, a Bureau of Women's Affairs is established under the Labour Ministry. The Equal Opportunity Law enacted in 1985 stipulates equal treatment in recruitment, assignment and promotion as

goals to be attained. Equal Opportunity Mediation Commissions are also established to resolve labour-management disputes.

119. Since CEDAW is an all embracing document, the obligations upon States Parties are naturally wide ranging. Faithful implementation of the Convention would require, inter alia, anti-sex discrimination or equal pay legislation to eliminate discrimination by private individuals in areas such as employment, advertising and provision of goods and services; and also an organisation to oversee their implementation. The impact of these measures on our society and on the priorities of resource allocation would need to be taken into account in considering whether CEDAW should be extended to Hong Kong (see also paragraphs 148 - 152 in Chapter 8).

## Chapter Eight : Measures to Enhance Equal Opportunities in Hong Kong

120. As documented in the previous Chapters of this Green Paper, in Hong Kong, women enjoy the same opportunities as men do in most instances. Although there are equal opportunities, equality between women and men is still some distance away. As discussed in Chapter 1, equal opportunities is a prerequisite to equality but it is not the only contributing factor.

121. While it is beyond our ability to change biological differences or engineer personal choices, it has long been Government's policy to promote equal opportunities for men and women and to foster equality between the sexes. Some recent examples of the measures adopted by the Government are outlined in the following paragraphs.

### Taxation

122. In 1989, amendments were made to the Inland Revenue Ordinance to provide for separate taxation for married women. Hitherto, married couples were required under the law to joint taxation. The Inland Revenue (Amendment) Ordinance 1989 provides that husbands and wives would be individually responsible for all aspects of their personal taxation affairs. Provided that they are not assessable at the standard rate, working husbands and wives each receives a basic allowance.

### Changes in Family Law

123. Amendments to two pieces of legislation passed earlier this year have the effect of removing differential treatment between women and men in family matters. They are the Parent and Child Ordinance 1993 and the Protection of Women and Juveniles (Amendment) Ordinance 1993.

124. The Parent and Child Ordinance implements recommendations made by the Law Reform Commission regarding 'illegitimacy'. The illegitimate child was previously disadvantaged by the law in, for example, succession matters. Unlike a legitimate child, he could not succeed to his father's estate on the father's death intestate. The Ordinance aims to ensure that an illegitimate child is, so far as is practicable, treated by the law in the same way as a legitimate child.

125. The Parent and Child Ordinance removes a provision in the Guardianship of Minors Ordinance. Also, under the Guardianship of Minors Ordinance, the child's welfare was normally the paramount consideration by the court in custody proceedings, but in the case of an illegitimate child, the court had to take account of the mother's superior claim to custody rather than the child's welfare. With the Parent and Child Ordinance, the mother of an illegitimate child no longer has a superior claim to custody and the father of an illegitimate child is now entitled to the same rights as the mother.

126. The Protection of Women and Juveniles (Amendment) Ordinance provides for all remaining references to special protection for women to be removed, so that the Ordinance will apply equally to male as well as female children and juveniles. Accordingly, the Ordinance will be retitled as the Protection of Children and Juveniles Ordinance. The new provisions will take effect in November, 1993.

### **Service Improvements**

127. Strengthening the existing services available to women in some instances would relieve them of their traditional duties and enable them to fully utilise the opportunities available to them. Improvements in other areas, like, protection against domestic violence, would only contribute to the well being of women. The latter concern is not within the scope of the Green Paper because it is not of direct relevance to the subject of equal opportunities and equality.

128. It has been suggested that strengthening child care facilities would provide women with the choice of participating actively in economic life. The current planning ratio for aided day nursery is 100 places for every 20,000 general population. There are plans to increase the provision by 1,400 places per annum between 1993/94 and 1996/97. The provision of day creche places will also be expanded by 1,220 places by 1996/97. To step up the provision of more child care facilities may relieve some of the traditional duties of women. Nevertheless, according to existing welfare policy, the primary responsibility of taking care of children still rests with parents. Family continues to be the most vital unit in society in which physical care, mutual support and emotional security are provided to foster the development of children into healthy and responsible members of the community.

129. It is not uncommon for working women to leave the labour force temporarily to take care of their family. To enable these home-makers to rejoin the labour force, the Employees Retraining Programmes provide a wide range of retraining courses. These include specific job-related skill training, orientation programmes in job search and interpersonal skills and on-the-job training. These courses are organised on a full time and part-time basis to meet the special needs of trainees.

130. In recent years, restructuring of Hong Kong's economy has resulted in a gradual shift in employment from the manufacturing sector to the service sector. Female workers who have been the major manpower component in key manufacturing industries such as clothing and textiles are affected in the process. The Employees Retraining Programmes help employees of declining industries to seek alternative employment. From July 1992 to May 1993, over 70% of the trainees were women.

### Measures to enhance Equal Opportunities

131. Apart from the initiatives taken to enhance equal opportunities, consideration may be given to other possible measures. Since these measures each carries with it particular implications, they should be examined in greater detail. Such possible measures are set out in the following paragraphs.

#### Public Education

132. As discussed in Chapter Three, social norms and values concerning women could have affected the recruitment practices adopted by employers, which have in turn partly contributed to the wage differentials and occupational segregation between women and men. In these instances, public education on the role of women, the opportunities to participate and the freedom of choice could be an effective means to raise awareness and cultivate a balanced attitude towards the role of women.

133. Education could be promoted on two fronts : it could, for example, be conducted in schools through both the formal and the informal curricula. A more vigilant review to remove gender-stereotypes in text books would be useful in ensuring that students receive the positive message of equality between the two sexes and their respective roles. For the public at large, public education may take the form of civic education programmes, publicity and promotion campaigns.

134. The Committee on the Promotion of Civic Education has established a Human Rights Sub-committee in 1992 to promote human rights education. Since women's rights are an integral part of human rights, some projects sponsored by the Committee are focussed on women's rights. They help to promote public awareness of the status of women and the importance of furthering equality between the sexes. Further public education, in particular through programmes and activities at the district level, would be one way of advancing public awareness on these issues.



135. To be effective, public education should also be targetted at specific groups, such as employers, to remind them to discount the gender factor from their recruitment policies. To this end, the Labour Department has in fact initiated a number of publicity activities. A pamphlet on "Equal Opportunity in Employment" has been published and is being distributed to the public. The message of equal opportunity in employment is being disseminated to top and middle management through the Labour Department's regular labour relations promotional activities. Officers of the Local Employment Service also advise employers to remove the gender specification on job vacancies in recruiting employees through its service.

136. The mass media which exert considerable influence on the public over their attitudes and values could also have a positive role to play in promoting awareness of equal opportunities. Promoting a balanced image of women and removing gender role stereotyping in the programmes and publications produced by the mass media would help to rectify some of the gender role biases in the community. It is only through raising the awareness of equal opportunities that there could be genuine freedom of choice. Since the media would respond positively to consumer demands, public persuasion would be an effective means of convincing the mass media of the need to remove gender role stereotyping. Consideration could also be given to establishing a public relations and media committee to promote the principle of equality between women and men.

### Charter for Women

137. Promoting the well-being of women is a multi-faceted matter. Many parties, both within and outside Government, are involved. While it is recognised that positive action, for example, legislation may help to promote equal opportunities, community endorsement of the principle of equality between the sexes would also have a significant value. Consideration could therefore be given to developing a Charter for Women. The Charter could set out the principle of equality of

the sexes, rights, entitlements and interests of women. In recognising and proclaiming the principles of equality, the Charter could provide a reference for members of the public as well as the Government to work together to promote the status of women.

138. The Charter may, for example, cover the following -

- (a) Principle of equality between women and men;
- (b) Rights of women to equal opportunities in -
  - The political process, in voting and standing for elections,
  - Society including community participation, health care, social welfare and security, education and inheritance,
  - Economic life, including employment;
- (c) Objectives of and principles for the provision of services to women, including the need to take into account the special needs of women;
- (d) The protection of women against violence, sexual abuse and harassment;
- (e) The elimination of traditional male and female stereotypes; and
- (f) The promotion of a balanced image of the role of male and female in family and in society.

The Charter could be promulgated through public declarations of support.

139. Developing a Charter for Women would serve a number of purposes. The process of formulating the Charter would facilitate and promote discussions, among the members of the community, on the situation, needs and problems of women and foster a deeper understanding of such matters. The Charter would set out certain basic principles which should be observed when dealing with women, and would be an important educational tool. It would be useful in helping to remove gender role bias and further the principle of equality. Last but not least, the promulgation of the Charter would also reflect the commitment of society to promote equal opportunities.

140. However, a Charter for Women has its limitations. Being a document which is not legally binding, the implementation of the principles and objectives in the Charter would very much depend on the voluntary efforts of members of the community. The principles spelt out in the Charter may also be regarded as abstract and vague by some.

#### Legislative Control

141. In many Western countries, some forms of equal pay or anti-discrimination legislation has been put in place to promote equal opportunities within the legal framework.

142. It has been suggested that the introduction of legislation would be an effective means to further equal opportunities and safeguarding equality between women and men in Hong Kong.

143. The legislative provisions regarding the protection of women in employment have been described in Chapter Three above. Some employers are of the view that the differential treatment for women and men in, for example, the number of working hours of women engaged in industrial undertakings, should be relaxed. However, the Labour Department has received occasional complaints concerning breaches of these provisions. The complainants are, in many instances, women workers. This indicates that a considerable number of women workers regard the differential treatment as desirable and necessary.

144. The implications relating to the introduction of equal pay legislation have been set out in Chapter Three above (paragraphs 49 to 54). In short, the introduction of equal pay legislation would offer an avenue for redress for aggrieved female employees. It would also have an important education value, ensuring that employers put the principle of equal pay for equal value of work into practice. Equal pay legislation would help to focus public attention on the importance of the status of women by setting standards of acceptable behaviour.

145. Nevertheless, any legislative measure would inevitably involve a certain degree of Government intervention in the labour market and the management strategies of individual business establishments. Additional costs would be incurred to develop a recruitment and promotion system compatible with the statutory requirements. Legislation could have enforcement difficulties. As in many western countries, a new organisation would be required to enforce the law. The resource implications, including those for the Judiciary arising from the need to settle disputes, cannot be ascertained at this stage.

146. The scope of legislation to preserve equal opportunities for women and men would not necessarily be confined to equal pay legislation. Apart from employment practices, anti-sex discrimination legislation which apply to individual citizens may also cover areas such as education, training, disposal and management of properties, advertising, leisure and social life. The implications of introducing this type of extensive anti-sex discrimination legislation are basically similar to those set out in paragraphs 144 and 145 above, but the magnitude of the impact would be much greater to the extent of affecting all aspects of life in society. An enforcement agency with wide powers would also be required to oversee the implementation of the anti-sex discrimination legislation.

147. Enforcement difficulties and resource implications would not, by themselves, be good reasons to avoid introducing legislative measures, particularly if it is clear that legislation would be effective in ensuring equal opportunities and equality. In some

cases, improvements could be attributed to the introduction of legislation. For example, in Japan, with the enactment of the Equal Employment Opportunity Law in 1986, advertisements that specify 'male applicants only' are not as common as before. In the United Kingdom, the significant narrowing of pay differentials between women and men's average hourly earnings can be attributed to the 1970 Equal Pay Act. On the other hand, it is observed that legislation is not entirely satisfactory in the elimination of discriminatory practices other than direct blatant abuses. The fact that wage differentials and occupation segregation still exist in societies with equal pay legislation such as the United Kingdom and Australia casts doubts on the effectiveness of legislative controls. A major limitation of legislation is that it cannot tackle attitudinal factors : legislation by itself cannot change social norms and values. The resource and other implications of introducing legislation must be carefully weighed against the extent to which legislation can promote equality between women and men.

#### **Extension of CEDAW to Hong Kong**

148. Although the United Kingdom is a State Party to CEDAW, the Convention has not been extended to Hong Kong. In most areas, CEDAW replicates existing international obligations under treaties which are already applicable to Hong Kong, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights. With the enactment in June 1991 of the Bill of Rights Ordinance, which prohibits discriminatory practices in the public sector, Hong Kong should have no difficulties in meeting the requirements of CEDAW, at least as far as the public sector is concerned. The effect of the Bill of Rights Ordinance, together with the provisions of Article VII(3) of the Letters Patent, is to ensure that Hong Kong laws are not inconsistent with the ICCPR as applied to Hong Kong, and by extension, not discriminatory against women.

149. In practical terms also, Hong Kong should be well-positioned to meet the aims of CEDAW. Women enjoy the same opportunities as men do in health, social services, education and community participation. However, as apparent from Chapter 7 (paragraphs 109 and 110), the extension of CEDAW to Hong Kong would impose wide ranging obligations. These would include new obligations in relation to the elimination of discrimination in the private sector. Since the Bill of Rights Ordinance does not apply to the conduct of relationships between private citizens, and there is no legislation in Hong Kong prohibiting sex discrimination by private individuals and organisations, anti-sex discrimination or equal pay legislation which apply to both the public and the private sectors would almost certainly be required if CEDAW was to be extended to Hong Kong. The implications of introducing such legislation have been discussed in paragraphs 144 to 147 of this Chapter.

150. The extension of CEDAW would also require the establishment of a machinery to co-ordinate the implementation of the Convention and possibly to deal with complaints under the new legislation and other associated matters. (See paragraphs 161 and 162 below)

151. Since CEDAW, if applied to Hong Kong, would confer new international rights and obligations affecting Hong Kong which would continue to apply after 1997, consultations with the Chinese Government would be necessary.

152. To a large extent, the extension of CEDAW and the introduction of anti-sex discrimination legislation should only be pursued if the community views it in a positive light that such action would be effective and justifiable having regard to the overall impact on the society and the resource implications.

#### **A Women's Commission**

153. To foster equality between the sexes and to provide a focal point to address matters of concern for women, it has been suggested that a women's commission should be established in Hong Kong. Careful

consideration would need to be given to the status and functions of such a body. In this regard, a number of suggestions have been put forward.

#### **(A) A Research Oriented Commission**

154. At present, there are very few research institutes on women issues. A research oriented body, be it an independent agent or attached to a tertiary educational institute or a Government agency, could act as a focal point, pooling experts on women studies and other interested parties together. It could help to establish a repository of studies in women issues.

155. The studies and researches would be of important educational value. By publicising its findings and recommendations, a research oriented women's commission would help to raise public awareness of contemporary women issues and foster their understanding of matters of concern to women. The information gathered would certainly facilitate the planning and provision of services for women.

#### **(B) An Advisory Body**

156. A women's commission could be set up as an advisory body to provide a reference point for all parties concerned. It could render advice on existing and proposed new legislation to ensure that they carry a women's perspective. It could review services provided to women and make recommendations on improvements. It could also act as a facilitator in collecting women's views on issues affecting the community and channelling them to the appropriate bodies.

157. It is expected that the work of an advisory commission would touch on a wide range of Government and non-Government activities. Careful consideration would need to be given on how such a women's commission would interface with the present comprehensive network of

advisory boards and committees which render advice to the Government on a wide range of subjects affecting all members of the community. A women's commission which is purely advisory in nature may duplicate the work of these advisory boards and committees. For the women's commission to perform a meaningful role, a well defined work portfolio would be needed.

**(C) An independent Complaints Office**

158. Assuming that Hong Kong has reached a stage where there is general agreement in the introduction of anti-sex discrimination or equal pay legislation, a women's commission could be set up to oversee the implementation of these laws.

159. A complaints office could be entrusted with the power to investigate into complaints and where necessary, settle disputes by acting as the mediator. In addition, it could draw up codes of practices in the light of the legislative provisions, and publicise the statutory requirements and promote the principle of equal opportunities.

160. In discharging its duties, in particular those related to the settlement of disputes, it is likely that the complaints office would require wide investigatory powers and substantial judicial support irrespective whether it is of a government set-up or an independent body.

**(D) A CEDAW-linked commission**

161. In most countries which are party to CEDAW, a 'women's commission' type of establishment is set up to coordinate the implementation of the Convention or to monitor the enforcement of anti-discrimination legislation. The mode of existence of such agencies varies. Some are established as statutory independent



bodies, others are part of the Government machinery. The Equal Opportunities Commission in the United Kingdom, for example, endeavours to eliminate discrimination and promote equality of opportunity. In South Korea, a Committee for Women's Policies has been set up with the Prime Minister as the Chairperson. The Committee examines women's problems and plays a coordinating role between government departments on matters relating to women.

162. Should CEDAW be extended to Hong Kong and if anti-discrimination legislation were to be introduced, a women's commission could be set up to oversee the implementation of the various provisions of the Convention and be entrusted with the enforcement of the legislation. But with wide executive and possibly extensive investigatory powers, a CEDAW-linked commission would require substantial executive support and would be likely to develop into an elaborate set-up.

163. A women's commission, irrespective of its status and terms of reference or operation, would require executive support in order to function effectively. It is difficult to estimate the extent of financial and staffing implications of such a commission at this stage. As a reference, the Equal Opportunities Commission in the United Kingdom which is vested with wide executive powers has an establishment of 168 full time staff and with a budget of nearly UK£5 million in 1991/92. The Commission's operating costs are mostly subsidised by the British Government.

164. Government maintains an open mind on the way to enhance equal opportunities between women and men. The measures described above invariably carry policy and financial implications. For any of them to be implemented successfully, it is essential that they should have the support of the community.

Chapter Nine : Invitation of Public Comments

165. Any measure the Government adopts to further promote equal opportunities between women and men in Hong Kong would have wide implications on the community, it is therefore imperative that the public should express their views on this fundamental issue.

166. Members of the public who wish to comment on the Green Paper and the issues raised therein are invited to write to -

The City and New Territories Administration  
31st Floor, Southorn Centre,  
130 Hennessy Road,  
Wanchai, Hong Kong.

by 31 December 1993.

Protective Legislation for Women Employed in Industrial Undertakings

<u>Legislation</u>	<u>Protective Measures</u>	<u>Remarks</u>
1. Construction Site (Safety Regulations)		
- Regulation 46(1)	No woman or young person is permitted to clean any dangerous parts of any machinery or plant in the construction site while the machinery or plant is in motion by the aid of any mechanical power.	
2. Factories and Industrial Undertakings (F & IU) Ordinance		
- Section 7(1)(b)	The Commissioner for Labour may, by regulation, require industrial undertakings to keep registers of women and young persons employed in industrial undertakings.	

3. F & IU Regulations

- Regulation 25(1)

No woman or young person shall be permitted to clean any dangerous parts of the machinery, in a notifiable workplace while the machinery is in motion by the aid of any mechanical power.

F & IU Regulations  
Regulation 25(2)

No woman or young person shall be permitted to clean any mill-gearing while such mill-gearing is in motion for the purpose of propelling any part of the machinery in a notifiable workplace.

4. Women & Young Persons  
(Industry) Regulations

- Regulation 4

Prohibition of employment on underground work or in other I.U.s involving a tunnelling operation.

- Regulation 5

Prohibition of employment in any dangerous trade.

"Dangerous trade" has the meaning assigned to it in the F & IU Ordinance.

- Regulation 6  
Not to be required to carry any load which is unreasonably heavy having regard to their age and physical development.  
Limit of "load" not specified in law.
- Regulation 7  
Requirement to provide sitting facilities to those women whose work is done standing.  
The facilities should be sufficient to enable them to take advantage of any opportunities for resting which may occur in the course of their employment.
- Regulation 8  
Control on working hours.
  - (a) 8 hours per day and 48 hours per week except in shorter week work schemes.
  - (b) 96 hours per fortnight in shorter week work schemes.
  - (c) Period of employment (work plus rest intervals) not to exceed 10 hours.
  - (d) Prohibited to work between 11:00 p.m. and 6:00 a.m.
  - (e) At least half hours' rest after 5 hours' work.

- Regulation 9
  - Requirement to fix working hours.
    - (a) A notice of permissible hours of work should be completed.
    - (b) Working hours in the notice should not be changed more often than once in every 3 months.
  
- Regulation 10
  - Control on overtime work.
    - (a) 2 hours per day.
    - (b) 200 hours per year.
  
- Regulation 11
  - Control on employment on shift work.
    - (a) Prior approval of the scheme by the Commissioner is required.
    - (b) The shift work should be carried on in a building approved in writing by the Commissioner.
    - (c) A suitable rest room to be approved by the Commissioner should be provided.

- Regulation 13  
Prohibition to work during interval for meal or rest.  
Interval for meal and rest as fixed in the notice of permissible hours of work.
- Regulation 14  
Prohibition to work on weekly rest day.  
Rest day should be specified in the notice of permissible hours of work or workers' register.
- Regulation 16  
Requirement to maintain register showing such particulars which may assist the Commissioner to ascertain whether or not the relevant provisions have been compiled with.  
Keeping of the register is not required if all the workers rest on the same day.

Labour Force Participation Rates by Age by Sex \*

		1976	1981	1986	1991
Age Group					
15-19	Male	43.0	45.2	37.9	35.2
	Female	47.2	42.6	33.6	28.6
20-24	Male	87.8	90.9	88.3	84.8
	Female	71.8	79.7	83.7	82.9
25-29	Male	97.2	98.1	97.3	96.0
	Female	50.8	62.1	70.8	77.4
30-34	Male	98.6	98.5	97.9	96.9
	Female	41.9	50.1	57.4	59.5
35-39	Male	98.6	98.8	97.7	97.0
	Female	41.7	52.9	57.0	56.1
40-44	Male	98.3	98.5	97.6	96.8
	Female	44.0	54.0	59.5	58.1
45-49	Male	97.1	97.6	96.2	95.2
	Female	41.1	49.6	54.8	55.5
50-54	Male	92.7	94.3	92.1	90.7
	Female	38.0	43.9	43.7	43.0
55-59	Male	82.7	84.5	80.4	78.3
	Female	34.0	37.8	34.3	29.3
60-64	Male	65.5	67.5	59.2	56.3
	Female	28.8	31.4	25.9	19.2
65 and over	Male	34.5	35.5	29.7	22.6
	Female	12.4	15.0	12.1	7.5
Overall	Male	80.6	82.5	80.9	78.7
	Female	43.6	49.5	51.2	49.5

\* All figures are population census/by-census figures



- Regulation 13                    Prohibition to work during interval for meal or rest.                    Interval for meal and rest as fixed in the notice of permissible hours of work.
  
- Regulation 14                    Prohibition to work on weekly rest day.                    Rest day should be specified in the notice of permissible hours of work or workers' register.
  
- Regulation 16                    Requirement to maintain register showing such particulars which may assist the Commissioner to ascertain whether or not the relevant provisions have been compiled with.                    Keeping of the register is not required if all the workers rest on the same day.

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	Female	47.2	42.6	33.6	28.6
20-24	Male	87.8	90.9	88.3	84.8
	Female	71.8	79.7	83.7	82.9
25-29	Male	97.2	98.1	97.3	96.0
	Female	50.8	62.1	70.8	77.4
30-34	Male	98.6	98.5	97.9	96.9
	Female	41.9	50.1	57.4	59.5
35-39	Male	98.6	98.8	97.7	97.0
	Female	41.7	52.9	57.0	56.1
40-44	Male	98.3	98.5	97.6	96.8
	Female	44.0	54.0	59.5	58.1
45-49	Male	97.1	97.6	96.2	95.2
	Female	41.1	49.6	54.8	55.5
50-54	Male	92.7	94.3	92.1	90.7
	Female	38.0	43.9	43.7	43.0
55-59	Male	82.7	84.5	80.4	78.3
	Female	34.0	37.8	34.3	29.3
60-64	Male	65.5	67.5	59.2	56.3
	Female	28.8	31.4	25.9	19.2
65 and over	Male	34.5	35.5	29.7	22.6
	Female	12.4	15.0	12.1	7.5
Overall	Male	80.6	82.5	80.9	78.7
	Female	43.6	49.5	51.2	49.5

\* All figures are population census/by-census figures

Labour Force Participation Rates by Sex by Age in Selected Asian Countries in 1991 (Unit : %)

<u>Country</u>	<u>Sex</u>	<u>Age</u>										
		<u>15-19</u>	<u>20-24</u>	<u>25-29</u>	<u>30-34</u>	<u>35-39</u>	<u>40-44</u>	<u>45-49</u>	<u>50-54</u>	<u>55-59</u>	<u>60-64</u>	<u>65+</u>
Japan	Male	19.1	72.8	96.1	97.4	97.9	97.9	97.4	96.3	93.2	74.2	38.0
	Female	17.8	75.6	63.2	52.9	62.1	70.4	72.1	66.5	55.5	40.7	16.6
Korea Republic of	Male	11.0	59.6	92.0	97.0	97.3	96.3	94.6	91.4	84.7	67.6	40.9
	Female	18.9	65.9	42.9	49.5	59.0	60.4	62.0	60.0	54.5	43.2	18.8
Singapore	Male	31.1	83.1	97.0	98.7	99.1	98.4	96.5	92.5	71.0	60 and over	
	Female	29.8	82.6	75.6	61.9	56.0	54.2	46.2	34.1	21.2	30.3	6.8

Caution : The statistics can only be construed as rough indicators of the magnitude of differences among different countries under comparison. Any differences in definition of terms, coverage, data collection and estimation methods in different countries may render the data not fully comparable.

Source : Annual Report, the Ministry of Labour, Singapore.  
Year Book of Labour Statistics, 1992, International Labour Office, Geneva.  
Japan Labour Bulletin, March 1, 1993, the Japan Institute of Labour.

Unemployment Rate by Sex in 1991

<u>Country/Territory</u>	<u>Female(%)</u>	<u>Male(%)</u>
Hong Kong*	1.6	1.9
U.K.†	4.6	10.7
U.S.A.†	6.3	6.9
Republic of Korea*	2.0	2.5
Singapore*	1.8	2.0

The statistics are rough indicators of the magnitude of differences among different countries/territories under comparison.

Source : Year Book of Labour Statistics, 1992, International Labour Office, Geneva.

\* The unemployed population of Hong Kong, Republic of Korea and Singapore refers to persons aged 15 and over.

† The unemployed population of U.K. and U.S.A. refers to persons aged 16 and over.

Wage Differentials by Selected Sectors and  
Major Occupation Groups

	<u>Wage Differential (%)<sup>+</sup></u>		
	<u>Sep 82</u>	<u>Sep 87</u>	<u>Sep 91</u>
<u>Manufacturing</u>			
Supervisory & technical workers	29	29	23
Clerical & secretarial workers	12	11	6
Miscellaneous non-production workers	30	35	43
Craftsmen	43	39	32
Operatives	18	22	31
<u>Wholesale</u>			
Clerical & secretarial workers	8	-2	1
<u>Retail</u>			
Supervisory & technical workers	8	43	8
Clerical & secretarial workers	-3	-8	0
Miscellaneous non-production workers	22	19	24
<u>Hotel</u>			
Supervisory & technical workers	-9	-7	-7
Clerical & secretarial workers	-2	-2	-4
Service workers	15	4	8
Miscellaneous non-production workers	*	12	*
<u>Chinese restaurants</u>			
Supervisory & technical workers	26	12	21
Clerical & secretarial workers	10	12	6
Service workers	48	48	56
Miscellaneous non-production workers	6	6	0
<u>Import/export trade</u>			
Supervisory & technical workers	16	37	16
Clerical & secretarial workers	13	7	9
Miscellaneous non-production workers	20	38	8
<u>Transport services</u>			
Supervisory & technical workers	-3	-5	11
Clerical & secretarial workers	-4	-2	-3
Service workers	-5	-4	16
Miscellaneous non-production workers	28	27	20
<u>Business services</u>			
Supervisory & technical workers	17	8	6
Clerical & secretarial workers	4	-2	-6
Miscellaneous non-production workers	21	19	26
<u>Construction</u>			
Labourer	24	23	20

Notes : Occupations and sectors in which male or female workers are a small minority have generally not been selected.

(+) Wage differential

$$= \frac{\text{average wage/salary of male employees} - \text{average wage/salary of female employees}}{\text{average wage/salary of female employees}}$$

(\*) Not available.

Sources : Surveys of Wages, Salaries and Employee Benefits,  
C & SD  
Construction Wage Statistics, C & SD

**Convention on the Elimination of All Forms of Discrimination  
against Women**

*The States Parties to the present Convention,*

*Noting* that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

*Noting* that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

*Noting* that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

*Considering* the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

*Noting also* the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

*Concerned,* however, that despite these various instruments extensive discrimination against women continues to exist,

*Recalling* that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

*Concerned* that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

*Convinced* that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

*Emphasising* that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

*Affirming* that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realisation of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,



*Convinced* that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

*Bearing in mind* the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

*Aware* that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

*Determined* to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

*Have agreed* on the following :

## PART I

### *Article 1*

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

*Article 2*

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake :

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

*Article 3*

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

*Article 4*

1. Adoption by States Parties of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

*Article 5*

States Parties shall take all appropriate measures :

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of

the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

*Article 6*

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

*Article 7*

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right :

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

*Article 8*

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organisations.

*Article 9*

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

*Article 10*

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women :

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organisation of programmes for girls and women who have left school prematurely;

(g) The same opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

#### *Article 11*

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular :

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures :

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

#### *Article 12*

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

#### *Article 13*

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular :

(a) The right to family benefits;



(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

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(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

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(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

#### *Article 14*

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right :

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counselling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, *inter alia*, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

#### PART IV

##### *Article 15*

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

*Article 16*

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women :

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

## PART V

### *Article 17*

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all

persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

*Article 18*

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect :

(a) Within one year after the entry into force for the State concerned;

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

*Article 19*

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

*Article 20*

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.



*Article 21*

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

*Article 22*

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

*Article 23*

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained :

- (a) In the legislation of a State Party; or

(b) In any other international convention, treaty or agreement in force for that State.

*Article 24*

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

*Article 25*

1. The present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.

3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

*Article 26*

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

*Article 27*

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

*Article 28*

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

*Article 29*

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the

organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

#### *Article 30*

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

**Reservations and Declarations made by the United Kingdom regarding the Convention on the Elimination of All Forms of Discrimination against Women**

*Upon signature :*

"The Government of the United Kingdom of Great Britain and Northern Ireland declare that it is their intention to make certain reservations and declarations upon ratification of the Convention."

*Upon ratification :*

*A. On behalf of the United Kingdom of Great Britain and Northern Ireland :*

(a) The United Kingdom understands the main purpose of the Convention, in the light of the definition contained in article 1, to be the reduction, in accordance with its terms, of discrimination against women, and does not therefore regard the Convention as imposing any requirement to repeal or modify any existing laws, regulations, customs or practices which provide for women to be treated more favourably than men, whether temporarily or in the longer term; the United Kingdom's undertakings under article 4, paragraph 1, and other provisions of the Convention are to be construed accordingly.

(b) The United Kingdom reserves the right to regard the provisions of the Sex Discrimination Act 1975, the Employment Protection (Consolidation) Act 1978, the Employment Act 1980, the Sex Discrimination (Northern Ireland) Order 1976, the Industrial Relations (No. 2)(Northern Ireland) Order 1976, the Industrial Relations (Northern Ireland) Order 1982, the Equal Pay Act 1970 (as amended) and the Equal Pay Act (Northern Ireland) 1970 (as amended), including the exceptions and exemptions contained in

any of these Acts and Orders, as constituting appropriate measures for the practical realization of the objectives of the Convention in the social and economic circumstances of the United Kingdom, and to continue to apply these provisions accordingly; this reservation will apply equally to any future legislation which may modify or replace the above Acts and Orders on the understanding that the terms of such legislation will be compatible with the United Kingdom's obligations under the Convention.

(c) In the light of the definition contained in article 1, the United Kingdom's ratification is subject to the understanding that none of its obligations under the Convention shall be treated as extending to the succession to, or possession and enjoyment of, the Throne, the peerage, titles of honour, social precedence or armorial bearings, or as extending to the affairs of religious denominations or orders or to the admission into or service in the Armed Forces of the Crown.

(d) The United Kingdom reserves the right to continue to apply such immigration legislation governing entry into, stay in, and departure from, the United Kingdom as it may deem necessary from time to time and, accordingly, its acceptance of article 15(4) and of the other provisions of the Convention is subject to the provisions of any such legislation as regards persons not at the time having the right under the law of the United Kingdom to enter and remain in the United Kingdom.

#### *Article 1*

With reference to the provisions of the Sex Discrimination Act 1975 and other applicable legislation, the United Kingdom's acceptance

of article 1 is subject to the reservation that the phrase "irrespective of their marital status" shall not be taken to render discriminatory any difference of treatment accorded to single persons as against married persons, so long as there is equality of treatment as between married men and married women and as between single men and single women.

### *Article 2*

In the light of the substantial progress already achieved in the United Kingdom in promoting the progressive elimination of discrimination against women, the United Kingdom reserves the right, without prejudice to the other reservations made by the United Kingdom, to give effect to paragraphs (f) and (g) by keeping under review such of its laws and regulations as may still embody significant differences in treatment between men and women with a view to making changes to those laws and regulations when to do so would be compatible with essential and over-riding considerations of economic policy. In relation to forms of discrimination more precisely prohibited by other provisions of the Convention, the obligations under this article must (in the case of the United Kingdom) be read in conjunction with the other reservations and declarations made in respect of those provisions including the declarations and reservations of the United Kingdom contained in paragraphs (a) to (d) above.

With regard to paragraphs (f) and (g) of this article the United Kingdom reserves the right to continue to apply its law relating to sexual offences and prostitution; this reservation will apply equally to any future law which may modify or replace it.

### *Article 9*

The British Nationality Act 1981, which was brought into force with effect from January 1983, is based on principles which do not

allow of any discrimination against women within the meaning of article 1 as regards acquisition, change or retention of their nationality or as regards the nationality of their children. The United Kingdom's acceptance of article 9 shall not, however, be taken to invalidate the continuation of certain temporary or transitional provisions which will continue in force beyond that date.

The United Kingdom reserves the right to take such steps as may be necessary to comply with its obligations under article 2 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Paris on 20 March 1952 and its obligations under article 13, paragraph 3, of the International Covenant on Economic, Social and Cultural Rights opened for signature at New York on 16 December 1966, to the extent that the said provisions preserve the freedom of parental choice in respect of the education of children; and reserves also the right not to take any measures which may conflict with its obligation under article 13, paragraph 4, of the said Covenant not to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject to the observation of certain principles and standards.

Moreover, the United Kingdom can only accept the obligations under article 10, paragraph (c), within the limits of the statutory powers of central Government, in the light of the fact that the teaching curriculum, the provision of text-books and teaching methods are reserved for local control and are not subject to central Government direction; moreover, the acceptance of the objective of encouraging co-education is without prejudice to the right of the United Kingdom also to encourage other types of education.

#### *Article 11*

The United Kingdom interprets the "right to work" referred to in paragraph 1(a) as a reference to the "right to work" as defined in



other human rights instruments to which the United Kingdom is a party, notably article 6 of the International Covenant on Economic, Social and Cultural Rights of 16 December 1966.

The United Kingdom interprets article 11, paragraph 1, in the light of the provision of article 4, paragraph 2, as not precluding prohibitions, restrictions or conditions on the employment of women in certain areas, or on the work done by them, where this is considered necessary or desirable to protect the health and safety of women or the human foetus, including such prohibitions, restrictions or conditions imposed in consequence of other international obligations of the United Kingdom; the United Kingdom declares that, in the event of a conflict between obligations under the present Convention and its obligations under the Convention concerning the Employment of Women on Underground Work in Mines of all Kinds (ILO Convention No. 45), the provisions of the last mentioned Convention shall prevail.

The United Kingdom reserves the right to apply all United Kingdom legislation and the rules of pension schemes affecting retirement pensions, survivors' benefits and other benefits in relation to death or retirement (including retirement on grounds of redundancy), whether or not derived from a Social Security scheme.

This reservation will apply equally to any future legislation which may modify or replace such legislation, or the rules of pension schemes, on the understanding that the terms of such legislation will be compatible with the United Kingdom's obligations under the Convention.

The United Kingdom reserves the right to apply the following provisions of United Kingdom legislation concerning the benefits specified :-

- (a) Social Security benefits for persons engaged in caring for a severely disabled person under section 37 of the Social Security Act 1975 and section 37 of the Social Security (Northern Ireland) Act 1975;

(b) increases of benefits for adult dependants under sections 44 to 47, 49 and 66 of the Social Security Act 1975 and under Sections 44 to 47, 49 and 66 of the Social Security (Northern Ireland) Act 1975;

(c) retirement pensions and survivors' benefits under the Social Security Acts 1975 to 1982 and the Social Security (Northern Ireland) Acts 1975 to 1982;

(d) family income supplements under the Family Income Supplements Act 1970 and the Family Income Supplements Act (Northern Ireland) 1971.

This reservation will apply equally to any future legislation which may modify or replace any of the provisions specified in subparagraphs (a) to (d) above, on the understanding that the terms of such legislation will be compatible with the United Kingdom's obligations under the Convention.

The United Kingdom reserves the right to apply any non-discriminatory requirement for a qualifying period of employment or insurance for the application of the provisions contained in article 11(2).

### *Article 13*

The United Kingdom reserves the right, notwithstanding the obligations undertaken in article 13, or any other relevant article of the Convention, to continue to apply the income tax and capital gains tax legislation which :

- (i) deems for income tax purposes the income of a married woman living with her husband in a year, or part of a year, of assessment to be her husband's income and not to be her

income (subject to the right of the husband and the wife to elect jointly that the wife's earned income shall be charged to income tax as if she were a single woman with no other income); and

(ii) requires tax in respect of such income and of chargeable gains accruing to such a married woman to be assessed on her husband (subject to the right of either of them to apply for separate assessment) and consequently (if no such application is made) restricts to her husband the right to appeal against any such assessment and to be heard or to be represented at the hearing of any such appeal; and

(iii) entitles a man who has his wife living with him, or whose wife is wholly maintained by him, during the year of assessment to a deduction from his total income of an amount larger than that to which an individual in any other case is entitled and entitles an individual whose total income includes any earned income of his wife to have that deduction increased by the amount of that earned income or by an amount specified in the legislation whichever is the less.

#### *Article 15*

In relation to article 15, paragraph 2, the United Kingdom understands the term "legal capacity" as referring merely to the existence of a separate and distinct legal personality.

In relation to article 15, paragraph 3, the United Kingdom understands the intention of this provision to be that only those terms or elements of a contract or other private instrument which are discriminatory in the sense described are to be deemed null and void, but not necessarily the contract or instrument as a whole.

*Article 16*

As regards article 16, paragraph 1(f), the United Kingdom does not regard the reference to the paramountcy of the interests of the children as being directly relevant to the elimination of discrimination against women, and declares in this connection that the legislation of the United Kingdom regulating adoption, while giving a principal position to the promotion of the children's welfare, does not give to the child's interests the same paramount place as in issues concerning custody over children.

The United Kingdom's acceptance of article 16, paragraph 1, shall not be treated as either limiting the freedom of a person to dispose of his property as he wishes or as giving a person a right to property the subject of such a limitation.

B. On behalf of the Isle of Man, the British Virgin Islands, the Falkland Islands, South Georgia and the South Sandwich Islands, and the Turks and Caicos Islands :

[Same reservations as those made on behalf of the United Kingdom under paragraph A(a), (c), and (d) except that in the case of (d) it applies to the territories and their laws.]

*Article 1*

[Same reservation as that made in respect of the United Kingdom except with regard to the absence of a reference to United Kingdom legislation.]

*Article 2*

[Same reservations as those made in respect of the United Kingdom except that reference is made to the laws of the territories, and not the laws of the United Kingdom.]

*Article 9*

[Same reservations as those made in respect of the United Kingdom.]

*Article 11*

[Same reservations as those made in respect of the United Kingdom except that a reference is made to the laws of the territories, and not to the laws of the United Kingdom.]

Also, as far as the territories are concerned, the specific benefits listed and which may be applied under the provisions of these territories' legislation are as follows :

- (a) Social Security benefits for persons engaged in caring for a severely disabled person;
- (b) increases of benefit for adult dependants;
- (c) retirement pensions and survivors' benefits;
- (d) family income supplements.

This reservation will apply equally to any future legislation which may modify or replace any of the provisions specified in subparagraphs (a) to (d) above, on the understanding that the terms of such legislation will be compatible with the United Kingdom's obligations under the Convention.

The United Kingdom reserves the right to apply any non-discriminatory requirement for a qualifying period of employment or insurance for the application of the provisions contained in article 11(2).

*Articles 13, 15 and 16*

[Same reservations as those made on behalf of the United Kingdom.]

To Anna Wu  
From Adam Mayes  
Date 25/10/93

Re. the Standing Orders on moving a private members' bill with financial implications:

Jonathan Daw drew our attention to S.O. 42(1), which requires a Member in charge of a bill with financial implications (under S.O. 23) to show the Governor's recommendation before the bill moves to second reading. However, as Gary Huie (Christine Loh's office) pointed out to me, S.O. 39(2) appears possibly to block a bill with financial implications from reaching first reading.

S.O. 39 governs notice to the Clerk of a Member's intention to introduce a bill. Under 39(1), the Member forwards to the Clerk a copy of the bill, the explanatory memorandum, and the Law Draftsman's certificate.

For S.O. 23 bills, however, S.O. 39(2) requires that the materials submitted to the Clerk also include "a certificate signed by the Chief Secretary stating that the Governor's recommendation will be signified to the bill on second reading."

Arguably, then, the Clerk can't present the bill to the Council for first reading without the Chief Secretary's certificate. The duties of the Clerk in presenting a bill, set out in S.O. 40, make no reference to the Chief Secretary's certificate; but then they make no reference to the Law Draftsman's certificate either.

Cletus Lau (Clerk to Legco) is unsure how to interpret S.O. 39(2) and will seek advice from Counsel to Legco (i.e. the Law Draftsman).

## PRESS RELEASE

To News Editors  
2 November, 1993

The Honourable Ms. Anna Wu plans this Session to introduce two Private Members' Bills into the Legislative Council. The proposed Bills seek to set up a Human Rights Commission for Hong Kong and to make illegal various forms of invidious discrimination. The target date for the introduction of the two Bills is April, 1994

The proposed Anti-Discrimination Bill forbids both public authorities and private persons from discriminating against people on a range of invidious grounds, including sex, race, and physical or mental disability.

The Human Rights Commission Bill sets up an independent body focussed on advancing human rights in Hong Kong. The Human Rights Commission would carry out investigations of human rights complaints, and would assist the parties to resolve complaints informally wherever possible. For serious complaints that resist conciliation, adjudication and appeal to the courts of Hong Kong would be provided in the Bill. The Human Rights Commission would also carry out public education and research about human rights in Hong Kong.

In preparation for the introduction of the Private Members' Bills, the Office of Anna Wu will issue a consultative paper to explain in greater detail the need for and the implications of the proposed legislation. The target date for publication is February, 1994.

Public comments about the proposed legislation are welcome. The public may also send in copies of submissions made to the Government in response to the Green Paper on Equal Opportunities for Women and Men. Comments may be sent to: The Office of Anna Wu, Legislative Councillor, Rm. 415 Central Government Offices (West Wing), Ice House Street, Hong Kong.

The team working on the legislation and consultative paper includes the Honourable Anna Wu; Andrew Byrnes, Lecturer in Law at the University of Hong Kong; Carole Petersen, Lecturer in Law at the University of Hong Kong's School of Professional and Continuing Education, and Eric Chow and Adam Mayes, in the Legco Office of Anna Wu

For any queries, please contact Eric Chow at 537-2466 or Adam Mayes at 537-2467



## 新聞稿

致：編輯

立法局議員胡紅玉計劃於本立法年度提出兩條私人法案，法案將為香港設立人權委員會及將社會的各種歧視列為不合法。法案預計在明年四月提交立法局。

計劃中的反歧視法將禁止政府機構及市民以各種理由，其中包括性別、種族、身體或精神上的缺陷，歧視別人。

至於人權委員會草案則會設立一個獨立的組織去改善香港的人權狀況。人權委員會將調查有關侵犯人權的投訴，亦會在可行情況下非正式地調解有關糾紛。至於那些較嚴重而未能調解的投訴，法案會設立仲裁及向法院上訴的機制。此外，人權委員會亦會負起教育市民及研究香港人權問題的責任。

為籌備這條私人法案，立法局議員胡紅玉辦事處將預備一份諮詢文件，詳細解釋社會對此草案的需求及其含意。此文件預計在九四年二月公佈。

歡迎公眾人士就計劃中的法案提出意見。此外，曾就男女平等機會綠皮書提出的意見之副本，亦可一併郵遞至香港雪廠街中區政府合署西座四一五室立法局議員胡紅玉辦事處。

籌備此草案及諮詢文件的小組包括，立法局議員胡紅玉、香港大學法律系講師 ANDREW BYRNES、香港大學專業進修學院法律講師 CAROLE PETERSEN，以及胡紅玉助理周樂寧和 ADAM MAYES。

如有任何疑問，請與周樂寧（537-2466）或 ADAM MAYES（537-2467）聯絡。

一九九三年十一月二日

To Anna Wu  
From Adam Mayes  
Date 29/11/93

Re avoiding SO23 financial implications in the anti-discrimination bill

After looking at U.K. practice and talking with Jonathan Daw, three main points emerge.

1. Although creating a new administrative apparatus would clearly be subject to SO23, adding new offenses, causes of action, penalties, etc. for consideration in the *existing* court system almost certainly does *not* give rise to an SO23 "charge" on public money
2. Using *any other existing* enforcement mechanism (e.g. labour tribunals, legal aid) may imply an SO23 charge because additional expenditure may arguably be needed -- e.g. creation of additional posts, supplementary training, etc.
3. For these intermediate cases, deciding whether SO23 applies is essentially a *political and not a legal matter* from the outset; there is little or no room for legal maneuver without negotiating first with the administration.

Expenditure arising from new executive duties or departments constitutes the clearest example of a "charge" under parliamentary practice in the U.K. (see attached extract's from May's Parliamentary Practice). Expenditure under existing statutory authority is not treated as a charge, however; the creation of new offenses to be heard in the courts is an example. Expenditure which results from an extension of the purposes of existing statutory authority also constitutes a charge.

Several possible enforcement mechanisms for anti-discrimination law -- e.g. the labour tribunals, the labour department's conciliation service, or legal aid -- appear to have an ambiguous status under these tests. Each involves existing statutory authority, but adding anti-discrimination duties might amount to an extension of purpose and would certainly give rise to some level of additional administrative expenditure. The determination would be made by the President, with reference to U.K. practice (SO69); the President looks to the Law Draftsman for legal counsel.

According to Jonathan Daw, however, this determination is likely to be treated less as a legal technicality than as a policy matter, in which the administration's attitude carries more weight than legal counsel's advice. The administration's receptiveness to the bill is key, because Treasury can spin out a case for financial implications (for additional postings, training and administrative expenses, etc.) as needed. I had thought it might be possible to move the bill by providing enforcement mechanisms in principle, but leaving for later negotiation any additional funding needed to make the law effective; it seems, however, that mutually acceptable enforcement mechanisms need to be negotiated with the administration before the bill can be moved at all.

Two additional points.

4. Jonathan Daw suggested that the only certain way to evade SO23 was by means of a clause explicitly suspending the operation of suspect provisions until funding is separately approved for the purpose by Legco. This plays into the administration's hands, however, because private members clearly cannot initiate such funding proposals.
5. Suspension of Standing Orders is not an option here because SO23 tracks Royal Instructions XXIV ("every ordinance, vote, resolution, or question, the object or effect of which may be to dispose of or charge any part of Our revenue arising within the Colony, shall be proposed by the Governor, unless the proposal of the same shall have been expressly allowed or directed by him")

Anna Wu  
c/o 17/F & 18/F  
Nine Queen's Road Central  
Hong Kong  
Fax: 845 2504 Tel: 843 7353

Our Ref. EOB/AW/2

17th December 1993

Mr. Michael Suen, JP  
Secretary for Home Affairs  
City and New Territories Administration  
31st Floor  
Southern Centre  
130 Hennessy Road  
Wanchai  
Hong Kong

Dear Mr. Suen,

This letter, together with the enclosed paper entitled "Anti-discrimination Legislation for Hong Kong: A Proposal" is submitted in response to the invitation for public comments at page 56 of the "Green Paper on Equal Opportunities for Women and Men".

We believe that sex discrimination is a serious problem in Hong Kong and that legislation should be enacted to prohibit sex discrimination in the private as well as the public sector.

However, as explained more fully in the enclosed paper, we also support the enactment of broad anti-discrimination legislation, which would prohibit discrimination not only on the basis of sex, but also on a wide range of grounds, including race, age, religious and political conviction, sexuality, and physical and mental impairment.

While the enclosed paper is thus not restricted to the issue of sex discrimination, it is directly relevant to it and to a number of the questions posed in the Green Paper. For example:

Section II of our paper provides examples of discrimination, including sex discrimination.

Section III discusses international treaties to which Hong Kong is a party and which we believe obligate Hong Kong to enact anti-discrimination legislation.

...../2

Mr. Michael Suen JP  
11th December 1993  
Page 5

Section IV explains why the existing Hong Kong Bill of Rights Ordinance is inadequate.

Section V provides an outline of the legislation that we propose, including suggested fields of application (such as employment) and provision for exemptions.

Section VI proposes two alternative enforcement schemes, the preferred option being an independent Human Rights Commission.

Finally, Section VII of the paper answers arguments that are often made against the introduction of anti-discrimination legislation and offers reasons why such legislation can be good for Hong Kong businesses and for the economy in general.

We would like to add that while our proposal envisages the enactment of comprehensive anti-discrimination legislation, we would full support any legislation to prohibit sex discrimination, providing that it was reasonably comprehensive in coverage and provided effective enforcement and remedies. We also strongly urge government to include in such legislation a prohibition of sexual harassment. This is an important area of women's rights and it is unfortunate that it was not addressed in the Green Paper.

Finally, we ask that this letter and the enclosed paper be given careful consideration and that it be included in any report on or collection of the results of the public consultation on the Green Paper.

Yours sincerely,

ANNA WU  
and for  
ANDREW BYRNES  
CAROLE PETERSEN  
ADAM MAYES  
ERIC CHOW

布政司署  
政務科  
香港灣仔  
軒尼詩道一百三十號  
修頓中心  
三十一樓



GOVERNMENT SECRETARIAT  
HOME AFFAIRS BRANCH  
31ST FLOOR SOUTHERN CENTRE  
130 HENNESSY ROAD  
WAN CHAI  
HONG KONG

本署檔號 OUR REF CNTA/YD/12/4  
來函檔號 YOUR REF EOB/AW/2 & EOB/AW/3  
電 話 TEL NO 835 1373  
圖文傳真 FAXLINE 834 7649

23 December 1993

The Office of Anna Wu,  
Legislative Councillor  
Room 415, C.G.O. (West Wing),  
Ice House Street,  
Hong Kong

Dear Ms. Wu,

**Green Paper on Equal Opportunities for Women and Men**

Thank you for your letter of 17.12.93 and your comments on the Green Paper. We will analyse the comments carefully and take them into account in deciding the way forward.

Mr. Michael Suen has asked me to thank you for sending him your position paper on Anti-discrimination Legislation in Hong Kong. We look forward to receiving your draft legislation in January 1994.

Merry Christmas!

Yours sincerely,

*Susie Ho*

(Miss Susie Ho)  
for Secretary for Home Affairs

SH/ll

**PRESS RELEASE on anti-discrimination and human rights legislation  
presented by Legislative Councillor Anna Wu  
27 March, 1994**

**Contacts:**

**Anna Wu: 843-7353 (o) 817-0034 (h)**

**Consultants: Andrew Byrnes: 859-2942 (o) 817-9322 (h)**

**Carole Petersen: 857-2636 (o) 818-9124 (h)**

**Legco Assts: Eric Chow: 537-2466 (o) pager 1128635 (a/c 8939)**

**Adam Mayes: 537-2467 (o) pager 1128028 (a/c 1325)**

Legislative Councillor Anna Wu plans to introduce two bills to the Legislative Council aimed at fighting discrimination and promoting human rights in Hong Kong.

"Social justice requires that we respect the dignity of the person, and this means that every individual should have an equal measure of protection before the law and an equal measure of opportunity to participate in the political, social and cultural life of Hong Kong," according to Ms. Wu. "This legislation is intended to provide measures -- now missing from our laws -- that protect and promote equal opportunities for everyone."

The Equal Opportunities Bill will make unlawful discriminatory practices in a broad range of areas; the Human Rights and Equal Opportunities Commission Bill proposes to establish a commission and tribunal to enforce the new measures and to conciliate complaints regarding both discrimination and human rights violations.

The second bill establishing the Human Rights and Equal Opportunities Commission will require the approval of Governor Chris Patten before it can be introduced to the legislature because of its financial implications.

The Equal Opportunities Bill (EOB) will make it unlawful for both public and private parties to discriminate against people on a range of grounds including physical or mental disabilities, age, sex, sexual preference or marital status. The areas in which discrimination may occur would include employment and access to accommodation, services and

facilities. The bill does not impose quotas or special measures, sometimes known as affirmative action, that favour disadvantaged groups in obtaining equal access, most commonly to jobs

The EOB fills a major gap left by the government's Bill of Rights Ordinance (BORO) which prohibits discrimination only by public authorities. The original BORO draft submitted by the government to the public for consultation included prohibitions against discrimination in the private sector but was dropped because, according to the government, discriminatory practices involving private parties would best be handled by separate legislation. The proposed EOB also addresses Hong Kong's obligation to enact equal opportunities legislation under a number of international treaties applicable to the territory.

The second proposed bill, the Human Rights and Equal Opportunities Commission (HREOC) -- which requires Governor Patten's approval -- will establish a commission and a tribunal. The commission will have broad functions, including educating the public, reviewing current and proposed legislation and most importantly, conciliating complaints about discriminatory practices brought either by the government or private parties. If conciliation fails, the complaint could be referred to the proposed tribunal, which would again attempt conciliation; failing that, the tribunal could order compensation or other remedies. Either party could then appeal on a point of law to the Court of Appeal.

The HREOC bill, however, emphasizes conciliation as the way to resolve complaints. This process is recognised as being less costly and less adversarial than traditional court proceedings and as a method suited to Hong Kong society.

**For more information, the press kit includes:**

- A proposal giving an overview of the legislation and its goals
- The two Bills
- Summaries of the Bills
- Information sheets dealing with various aspects of discrimination
- Biographical sketches of the consultants and contributors to the project

# MEMBERS OF LEGISLATIVE COUNCIL

立法局議員

ANNA WU

胡紅玉

Our Ref: EOB/AW/12

Date: 27th March 1994

Dear Friends,

Social justice requires that we respect the dignity of the person, and this means that every individual should have an equal measure of protection before the law and an equal measure of opportunity to participate in the political, social and cultural life of Hong Kong.

This proposal describes why equal opportunities legislation is needed in Hong Kong. The Bill will make it unlawful to discriminate against persons on a range of grounds, including, for example, sex, race, age, marital status, physical or mental disability.

This proposal also envisages the setting up of a Human Rights and Equal Opportunities Commission and an Equal Opportunities Tribunal that will promote and protect equal opportunities and human rights. The Commission will facilitate conciliation and settlement of disputes and the Tribunal will ultimately provide adjudication for those disputes that resist conciliation.

In the information kit, the following are enclosed:

- A proposal for the Equal Opportunities Bill and the Human Rights and Equal Opportunities Commission Bill,
- Summaries of the two bills,
- Information sheets dealing with various aspects of discrimination,
- A description of the consultants and contributors to the project, and
- A response slip.

The Bills are available on request.

/2



EOB/AW/12  
27th March 1994  
Page 2

It is hoped that the consultation documents will generate wide discussion and support. Please direct your comments, questions or suggestions to the following office by **15th May 1994**:

The Office of Anna Wu, Legislative Councillor,  
Rm.415, Central Government Offices (West Wing),  
Ice House Street,  
Hong Kong.  
Tel: 537 2466  
Fax: 530 2018

Yours sincerely,



Anna Wu

/pk  
Encl.

RESPONSE SLIP

To: The Office of Anna Wu, Legislative Councillor  
Rm.415, Central Government Offices (West Wing),  
Ice House Street, Hong Kong.  
Tel: 537 2466  
Fax: 530 2018

Please tick as appropriate.

I am/We are generally in favour of your proposal for Equal Opportunities Legislation and a Human Rights Commission for Hong Kong.

AND/OR

I am/We are in favour/not in favour of the following aspects of your proposal for Equal Opportunities Legislation and a Human Rights Commission for Hong Kong:

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

AND/OR

Our detailed comments are annexed.

I/We agree/do not agree to the publication of our response.

From: \_\_\_\_\_

Signature and Name of Party: \_\_\_\_\_

Contact Address: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Date: \_\_\_\_\_

## **Contributors to the Equal Opportunities Bill and the Human Rights Commission and Equal Opportunities Bill**

**Anna Wu** is a lawyer and a Legislative Councillor. A senior partner in the solicitors' firm of Robert Wang & Co., she was appointed to Hong Kong's legislature in January 1993. She is Vice-Chairman of the Consumer Council and a member of the Council for the Aids Trust Fund.

She was previously a member of the Central Policy Unit, Social Welfare Advisory Committee and the Government Steering Committee to establish a patent system for Hong Kong. She served as President of the Asian Patent Attorney's Association (Hong Kong Group), and then as Vice-President for the Asian region. A former Council Member of the Law Society of Hong Kong, Ms. Wu received her Bachelor of Law degree and the Post Graduate Certificate in Law from the University of Hong Kong.

### **Consultants:**

**Andrew Byrnes** is a member of the Law Faculty at the University of Hong Kong. A graduate of the Australian National University and Harvard and Columbia Law Schools, he worked for the Australian Attorney General's Department and the Australian Federal Human Rights Commission. He was also a consultant with the Hong Kong Attorney General's Chambers during the drafting of the Hong Kong Bill of Rights.

**Carole Petersen** is a lecturer in law in the School of Professional and Continuing Education, the University of Hong Kong. A graduate of the University of Chicago and Harvard Law School, she was a lawyer in the United States before coming to Hong Kong in 1989. Ms. Petersen writes on women and the law and has researched women and customary law in the New Territories.

### **The Legco staff members of Anna Wu's office:**

**Eric Chow**, Legislative Assistant, follows Legco proceedings and prepares position papers as well as liaising with other legislators' offices and the Hong Kong press. He graduated from the University of Wisconsin-Madison in Economics and Political Science and is currently enrolled part-time in the Masters programme in Public Administration at the University of Hong Kong.

**Adam Mayes**, Legislative Assistant, has done extensive research for the Equal Opportunities Bill and the Human Rights and Equal Opportunities Commission Bill as well as focusing on the rights of women in the New Territories. A graduate of Yale University and the University of California-Berkeley Law School, he also received a Masters in Asian Studies at Berkeley. He came to Hong Kong in 1993 to join the Legco office of Anna Wu.

**Nancy Langston**, Research Assistant, worked in Korea, China and Hong Kong as a journalist and editor mostly for news organisations including *The Economist*, the BBC and *The Far Eastern Economic Review*. She graduated from Georgetown University and is currently on leave from Tulane Law School.

# EQUAL OPPORTUNITIES LEGISLATION AND A HUMAN RIGHTS COMMISSION FOR HONG KONG:

## A PROPOSAL

### I. INTRODUCTION

1. There are compelling reasons for introducing equal opportunities legislation in Hong Kong and establishing a mechanism to promote human rights and equal opportunities. Two bills are proposed to remedy this situation: the Equal Opportunities Bill 1994 and the Human Rights and Equal Opportunities Commission Bill 1994.

2. This paper argues that comprehensive equal opportunities legislation is desirable as a matter of maintaining social justice and human rights and meeting international obligations, and that it can have many tangible benefits for the people of Hong Kong.

3. The equal opportunities legislation proposes to make it unlawful for public authorities and private persons to discriminate against people on a range of grounds, including, for example, sex, race, age, marital status, physical or mental disability. The legislation would provide protection against and remedies for discrimination in areas such as employment, access to credit, accommodation and facilities, and public programmes administration.

4. The proposed equal opportunities legislation does not seek radical or unduly burdensome changes. Thus, for example, it does not require employers to hire a minimum percentage of employees from groups that have traditionally suffered discrimination (sometimes referred to as "quotas"). Nor does the legislation require (or prohibit) special measures to ensure that persons from such groups enjoy equal opportunities (sometimes

referred to as "affirmative action") Rather, the proposed legislation would simply make it unlawful to engage in discrimination and would establish procedures for the processing of complaints and the granting of appropriate remedies.

5 The best option for the implementation and enforcement of the equal opportunities legislation is through an independent Human Rights and Equal Opportunities Commission, which would attempt to conciliate and bring about a settlement of complaints. Only when conciliation fails would the case progress further to adjudication by an Equal Opportunities Tribunal or the courts. However, in the absence of such a Human Rights and Equal Opportunities Commission, the proposed legislation can be enforced through existing tribunals and courts.

6. Although merely enacting laws does not eradicate discrimination in society, the law plays an important and indispensable role in helping to achieve that goal. While the proposed equal opportunities legislation has an effective procedure for dealing with allegations of discrimination, it also calls for a much broader campaign of education and public consultation to minimize discrimination.

7. In this time of transition, it is imperative that Hong Kong people stand together and take the initiative to develop its own law and policies in the important area of human rights which has not been adequately addressed by the existing colonial Government. This proposal is one way that Hong Kong people can show support for each other and for the principle that all residents of Hong Kong, regardless of their relative wealth or power, have a right to be treated with dignity and fairness

## **II. WHY DOES HONG KONG NEED EQUAL OPPORTUNITIES LEGISLATION?**

8 Hong Kong needs equal opportunities legislation because discrimination is a significant problem in this society. Any fair-minded observer who listens to the experiences of

disadvantaged people in the territory can only reach the conclusion that discrimination exists and is a serious problem. Sexist job advertisements, sexual harassment, threatened violence against facilities for handicapped children, the inaccessibility of facilities for physically disabled persons and discrimination faced by those with HIV/AIDS are just some of the more visible manifestations of a widespread pattern of discrimination.

9. There may be those who will argue that we should not legislate against discrimination unless it is known exactly how much discrimination exists in Hong Kong. This is not a helpful or realistic position to take. Discrimination, like many social evils (including child abuse, environmental pollution and triad activity) is very difficult to measure with any precision. However, this does not mean that the problem is not serious or that it should be ignored. Can one imagine not legislating against child abuse because the incidence of abuse was unknown? Indeed, the absence of legislation only makes it more difficult to measure the extent of discrimination as victims presently have no basis to register official complaints.

10. Moreover, there is significant evidence that discrimination causes real hardship in Hong Kong and that it is not disappearing on its own. For example, there can be no question that women in the New Territories suffer financially and politically from sexual discrimination. Often this is the result of the enforcement of customary practices that have been abolished in other Chinese societies -- and which probably would have been reformed here as well had they not been "frozen in time" by colonial ordinances.

11. For example, women in the New Territories are ineligible to apply for the indigenous residents' "small house" entitlement and are still prohibited from inheriting most land in the New Territories. Moreover, in one-third of the villages in the New Territories, they are not even permitted to stand for election as Village Representative. Their right to vote in these elections is also curtailed. Some villages permit only males to vote, while others permit only the head of household to vote, effectively excluding most women.

12. The area of employment provides many examples of unfair discriminatory

practices. The classified section of any Hong Kong newspaper has advertisements seeking applicants of a particular sex and age. These advertisements regularly seek male-only applicants for managerial and professional positions and female-only applicants for low-paid clerical positions. Moreover, government statistics demonstrate that even when men and women are employed in precisely the same positions, women are, on average, paid significantly less than their male counterparts for exactly the same hours of work. Presently there are no laws against employment policies which discriminate on the basis of sex. Employers are also free to discriminate on the basis of race, religion or age. In addition to causing hardship to the victims, such discrimination also hurts the Hong Kong economy, for it discourages those who are denied equal opportunities from working hard and achieving their best. It may also mean that employers fail to employ the person most qualified for a particular job.

13. **Threatened violence against opening community facilities for handicapped children is another example of the need for equal opportunities legislation.** The mentally disabled are members of our community and are entitled to basic human dignity, access to services and the opportunity to lead a fulfilling life -- just like other members of society. But the absence of laws against discrimination leaves them vulnerable to prejudice, cruelty and a simple lack of respect. The physically disabled, the elderly and those with HIV/AIDS are similarly vulnerable. This is particularly true of individuals who, as the result of increased emigration from Hong Kong, find themselves without the protection of an extended family.

14. There have also been many reports of racial discrimination in Hong Kong. In some cases this takes the form of unjustifiably less favourable terms for "local" employees. (The term "local" is often interpreted to mean those who are not from Hong Kong but are ethnically Chinese.) In other cases, the discrimination is against non-Chinese groups (such as Indians and Filipinos) who have for many years played a very important and positive role in the Hong Kong economy.

15 Indeed, even the Hong Kong government, which should be sensitive to the importance of treating all citizens equally, sometimes fails to uphold this principle. For example, the Labour Department recently posted advertisements for clerical positions in government departments which specified age limitations (such as: "20-35", "20-30" and even "17-24"). Such discrimination is particularly harmful to women, as they are more likely than men to leave the labour market temporarily to bear children. When they return, they face these advertisements (which are also very prevalent in the private sector). Yet, clearly, there is no reason why women in their 30s, 40s and 50s should be prohibited from applying for these positions.

16. While the examples given above focus on groups in society who have traditionally suffered discrimination, it is important to recognize that equal opportunities legislation is for everyone. Any person who is a victim of a discriminatory decision or policy (whether at the hands of government or the private sector) will be able to seek justice and fairness under the legislation proposed here. Currently, they have little or no recourse to the law.

17. This proposal seeks to address indirect as well as direct discrimination. The concept of direct discrimination (or disparate treatment discrimination) covers cases in which a prohibited ground of discrimination (such as sex or race) is the explicit or conscious basis for a decision that disadvantages a person. An advertisement for a manager which specifies that a company is seeking a male between the age of 25 and 30 is an example of direct discrimination. The concept of indirect discrimination (or disparate impact discrimination), on the other hand, covers cases in which an apparently neutral criterion is applied in selecting people for a job or benefit, but the practical effect of applying that criterion is to exclude a disproportionately large section of a protected group and the criterion cannot be justified as necessary or reasonable in the context. Common examples of this type of criterion are weight or height requirements which are not necessary for the job in question but which tend to exclude disproportionately women or persons of particular races, or ostensibly sex-neutral age



requirements (mentioned earlier) which particularly affect women.

18. Discrimination can also include those policies which have the effect of limiting the opportunities for members of disadvantaged groups to participate equally in all aspects of life. For example, people who are confined to wheelchairs face considerable obstacles if they wish to move about in public places and buildings in Hong Kong. The architectural and urban planning practices which permit the design of public spaces and buildings with difficult access fail to address the hardships such designs cause to disabled people. In many cases it would be possible (and affordable if done at the planning stage) to design buildings that are far more accessible for the disabled. The failure to do so is a form of structural discrimination which needs to be addressed at the level of policy, planning approval and the education of professionals -- as well as through laws. Although equal opportunities legislation cannot eliminate all types of structural discrimination, it can address some. It also has the very important effect of raising awareness of the issues.

### **III. INTERNATIONAL DIMENSIONS OF OBLIGATIONS TO ERADICATE DISCRIMINATION AND TO ENACT EQUAL OPPORTUNITIES LEGISLATION**

19. The introduction of equal opportunities legislation is fully justified by the goals of individual and social justice and by the direct benefits such legislation will bring to the Hong Kong community. However, it is also important to note that various international obligations applicable to Hong Kong also appear to require the territory to enact equal opportunities legislation in specific areas.

20. Under a number of international treaties applicable to Hong Kong, the United Kingdom has assumed obligations to take effective steps to eradicate discrimination of various sorts and to provide effective remedies under Hong Kong law for discrimination. In some cases, the desirability of legislation or even its necessity is made clear in the treaty, or in the practice of the supervisory bodies established by the treaty. A good faith interpretation of

those treaties compels the conclusion that there must be legislation making discrimination unlawful and providing for effective and adequate remedies

21. The main treaties of relevance are the International Convention on the Elimination of All Forms of Racial Discrimination (applicable to Hong Kong since 1969), the International Covenant on Civil and Political Rights (applicable since 1976) and the International Covenant on Economic, Social and Cultural Rights (also applicable since 1976). Detailed legislation covering both public and private racial discrimination is required by the Racial Discrimination Convention, while more general legislation covering both public and private discrimination on the grounds of race, sex and impairment among others is required by the two International Covenants. The failure to enact such legislation in the face of continuing discrimination in these areas (almost 18 years after the Covenants entered into force for Hong Kong) constitutes a failure to carry out the obligations accepted under those treaties by the United Kingdom and Hong Kong governments.

#### **IV. WHY IS THE BILL OF RIGHTS NOT SUFFICIENT?**

22. The Hong Kong Bill of Rights Ordinance contains broad guarantees against discrimination but only in a limited context. Article 1 prohibits discrimination with regard to the enjoyment of the rights protected by the Bill of Rights itself, and Article 22 provides a more general guarantee of equality before and equal protection of the law.

23. However, the effect of these provisions is limited by section 7 of the Bill of Rights Ordinance, which states that the Hong Kong Bill of Rights Ordinance binds only the Government and public authorities (and persons acting on their behalf). Thus the Bill of Rights cannot be used to remedy discrimination by private parties, such as private employers.

24. Section 7 of the Hong Kong Bill of Rights Ordinance has also been interpreted by the Court of Appeal to prevent application of the Bill of Rights to any dispute between private parties, even where one of the parties is relying upon legislation which the other party alleges

violates the Bill of Rights<sup>1</sup>. Thus, specific equal opportunities legislation is necessary not only to prevent discriminatory acts by private parties, but also to reform discriminatory legislation affecting private relationships and transactions.

25. The original draft of the proposed Hong Kong Bill of Rights Ordinance was not so limited. The draft circulated for public comment was expressed to bind persons, public and private. However, final changes made shortly before the Bill was enacted amended section 7, restricting the Bill's application to government and public authorities. Interestingly, one of the chief arguments made in favour of so limiting the scope of the Bill of Rights was that issues like discrimination in the private sector would be better dealt with by specific legislation than by the general provisions of the Bill of Rights. And there was at least an implied promise that once the Bill of Rights was enacted, the Hong Kong government would give serious consideration to legislation prohibiting discrimination in the public and private sectors. Unfortunately, the government has not done so. The time has now come to enact such legislation and thereby fulfill the promise of the proposed Bill of Rights as originally presented to the people of Hong Kong.

26. Finally, even where the Bill of Rights can be applied to remedy discrimination (such as where the government is alleged to have discriminated against a person or group), the generality of its provisions and the need to enforce it through time-consuming and expensive litigation in the courts discourages many people from seeking such a remedy. Specific equal opportunities legislation will be more effective for at least two reasons. First, it will be more detailed than the Bill of Rights, less open to interpretation by courts and therefore easier to

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<sup>1</sup> Tam Hing-ye v Wu Tai-wai, (1991) 1 HKPLR 261, [1992] 1 HKLR 185. The effect of Tam Hing-ye is that pre-existing legislation can be held to have been repealed by the Bill of Rights only when the Government seeks to rely upon it. Anomalously, however, the same legislation remains in force when relied upon by private citizens. See HKLR at 189. The Court of Appeal acknowledged that the inevitable result of its interpretation is that the Bill of Rights fails to comply with the intention expressed in its preamble: "to provide for the incorporation into the law of Hong Kong of provisions of the International Covenant on Civil and Political Rights." Ibid.

enforce. People will know their rights and obligations, and will feel confident in seeking a remedy if their rights are violated. Secondly, the proposal provides (as a preferred alternative) for enforcement and mediation of complaints through a Human Rights and Equal Opportunities Commission. This procedure will be more accessible to the average person than the court procedures presently available under the Bill of Rights Ordinance.

## V. OUTLINE OF PROPOSED LEGISLATION

27. The Equal Opportunities Bill 1994 would make it unlawful for public authorities or private persons to discriminate on the basis of specified grounds in a wide range of activities. Discrimination is defined by the Bill to include direct and indirect discrimination. However, discrimination as defined in the Bill will not make it unlawful to treat someone differently on one of the "prohibited grounds" where such treatment can be shown to be reasonable. Nor will it be discriminatory to use neutral or merit-based criteria that are reasonable and justified under the circumstances. Thus, for example, merit-based competition for jobs and admission to universities will not be prohibited.

28. The Bill would make it unlawful to discriminate on the following grounds:

- race, national or ethnic origin
- sex, marital status or pregnancy
- family responsibility or family status
- religious or political affiliation or conviction
- age
- physical or intellectual impairment
- sexuality
- union membership or activities
- spent convictions

- association with a person identified by reference to one of the above attributes

29. The Bill will make it unlawful to discriminate on the above grounds in the following areas (subject to limitations in the case of some of the grounds):

- employment, including discrimination against applicants for employment, commission agents, contract workers and by partnerships and employment agencies
- the granting of professional licences
- the administration of public programmes
- education
- access to goods, services or facilities, or to places and vehicles
- accommodation
- disposal or sale of land
- clubs.

30. The Bill will cover direct and indirect discrimination on the above grounds.

31. Harassment is a form of discrimination. For instance, sexual harassment in employment makes employees of one sex, generally women, subject to less favourable working conditions than colleagues of the opposite sex and deprives them of fair employment and promotion opportunities. The Bill will make sexual and racial harassment and harassment on the ground of disability and sexuality unlawful in employment, education and the provision of services, accommodation and other areas.

32. Vilification, a public act that incites hatred, serious contempt or severe ridicule toward a particular person or group of persons because of their race, sexuality or disability, is also made unlawful under the Bill. Like the law of defamation, the proposed law is not intended to restrain freedom of speech. It does, however, recognize that in exercising this fundamental right, a person must pay due respect to the rights of others, in this case, the right to be free from discrimination

33. The Bill will specifically address the political rights of New Territories indigenous women by prohibiting certain customary practices that have prevented women from participating fully in rural elections (The Heung Yee Kuk has recently proposed to enfranchise New Territories indigenous women for these elections and it is hoped that the Kuk's proposal will be fully implemented) However, because of the complexity of the legal regime for New Territories, other problems of customary discrimination against women (including inheritance rights) require separate legislation. If these problems are not remedied by the New Territories Land (Exemption) Bill now under consideration in the Legislative Council, they will be addressed in a separate Private Member's Bill.

34. The Bill is not intended to intrude unnecessarily and excessively into one's private life or economic activities. Under each category of discrimination, as well as in each area of activity covered by the Bill, there are exceptions which take into account changes that would incur undue hardship or practices that are apparently "discriminatory" but are, in fact, reasonable. Provisions will also be made for temporary exemptions from the operation of the Bill (to be granted in cases where the legislature or the Human Rights and Equal Opportunities Commission is persuaded that an exemption is necessary).

35. With only a few exceptions, engaging in discrimination contrary to the provisions of this Bill will be a civil wrong, not a criminal offence. The preferred model of enforcement of these obligations will be by means of a conciliation and settlement procedure administered by a Human Rights and Equal Opportunities Commission, with the possibility of adjudication by an Equal Opportunities Tribunal if a dispute cannot be settled. The other alternative is to provide for enforcement through the courts by way of ordinary civil action, with some relaxation of procedural and costs rules applicable in civil proceedings. For instance, the Bill will give the courts greater flexibility in admitting evidence that may not be admissible under the rules of evidence, and will also make each party (plaintiff and defendant) responsible for their own legal costs.

36. Where the Tribunal or Court is satisfied that a person has discriminated against another person in contravention of the legislation, the Tribunal or Court may make an order which it considers just and appropriate. For example, the Tribunal or Court may:

- (a) order the defendant pay the complainant damages for any loss or damage suffered by reason of the defendant's conduct;
- (b) make an order enjoining the defendant from continuing or repeating any conduct rendered unlawful by the legislation;
- (c) order the defendant to perform any reasonable act or course of conduct to redress any loss or damage suffered by the plaintiff;
- (d) order the defendant to employ, to re-employ or to promote the plaintiff;
- (e) make an order declaring void in whole or part and either *ab initio* or from such other time as is specified in the order any contract or agreement made in contravention of the legislation.

37. In addition, the Bill will also create certain criminal offences. These are: publication of an advertisement indicating an intention to perform an unlawful act, serious vilification (but only if it involves a threat of physical harm) and obstruction of the work of the Human Rights and Equal Opportunities Commission in carrying out its functions under the Bill. Further details on the enforcement of the Bill are provided in Section VI below.

38. The legislation does not require employers or other institutions to employ or include any minimum percentage of persons from groups that have traditionally suffered discrimination. The legislation also does not require (or prohibit) special measures which are intended to ensure that persons from such groups have equal opportunities to those enjoyed by others.

## **VI. IMPLEMENTATION AND ENFORCEMENT PROCEDURES**

### **Option One: A Human Rights and Equal Opportunities Commission**

39 The ideal mechanism for dealing with allegations of discrimination (other than

cases in which the validity of legislation may be at issue) would be a procedure that seeks to bring about an amicable agreement between the parties that respects the human rights involved. Under the proposed Human Rights and Equal Opportunities Commission Bill, complaints of discrimination will be required to be lodged with an independent Human Rights and Equal Opportunities Commission (similar to commissions established in countries such as Australia and Canada), which will be responsible for investigating the complaint and attempting conciliation between the parties. If it is not possible to conciliate a complaint, the matter will be referred to a specialist Equal Opportunities Tribunal for adjudication, with an appeal on questions of law to the higher courts.

40. The advantages of this procedure rather than going through the ordinary courts are many. The more informal procedure and congenial environment are more conducive to resolving discrimination claims. Litigation in the courts (even if one is successful) is expensive and time-consuming, and takes place in a formal adversarial environment.

41. The functions of the Human Rights and Equal Opportunities Commission would go well beyond processing complaints. The effective implementation of human rights guarantees in Hong Kong requires this independent Commission to undertake a broad range of functions including education, research, community liaison, review of government programmes, existing and proposed legislation and advice to government. The Commission would also have the power to initiate proceedings in certain circumstances and to intervene, by leave of the Tribunal or Court, in proceedings in which important human rights issues are being considered.

#### **Option Two: the Existing Court and Tribunal System**

42. While less ideal than a specialist Commission and Tribunal, the existing courts and tribunals are capable of enforcing proposed equal opportunities legislation. Most civil complaints under the legislation would be filed in the District Court, with an appeal on questions of law to the Court of Appeal. The legislation might also be applied by other courts



and tribunals. For example, the criminal offences mentioned above would be prosecuted in the magistracies. The Labour Tribunal might also apply the legislation, where relevant, to disputes between employers and employees.

43. It is also important to note that the very presence of equal opportunities legislation and effective enforcement mechanisms will tend to deter many discriminatory actions and policies. It will also encourage the settlement of many complaints of discrimination without the need to resort to court proceedings. For example, if an employee who is treated unfairly complains to his or her employer, the complaint may be taken much more seriously if the employee can point to legislation prohibiting discrimination. The problem can then more likely be resolved internally through mediation, education and changes in company policies. However, in order to achieve meaningful mediation of such complaints, effective enforcement must be available as a last resort.

44. While legislation cannot eradicate all discrimination and discriminatory attitudes, it will constitute an important statement by and to the people of Hong Kong. It will demonstrate that Hong Kong recognizes and seeks to achieve the values of fairness, equal opportunity and tolerance. Public affirmation of these values can help to change the expectations and attitudes that create discrimination in the first place. The enactment of the Bill of Rights was an important first step in this direction. This legislation is the next step toward building a more just and fair society.

## **VII. COMMON CONCERNS REGARDING EQUAL OPPORTUNITIES LEGISLATION**

45. Some argue that Hong Kong should avoid legislating against "private behaviour". But if, in exercising one's freedom, one's "private behaviour" is infringing upon the rights of others, that behaviour should not be absolutely free from legislative control. Smoking, though harmful to health, is understandably a private behaviour. The reason Hong Kong has

legislation prohibiting smoking in some public places is because we accept that private behaviour should not receive absolute protection at the expense of the rights of others (to enjoy good health). It is precisely for the same reason that Hong Kong should have equal opportunities legislation: to safeguard the right of every individual to enjoy equal opportunity.

46. Some also suggest that before resorting to legislation, more efforts should be devoted to public education. While public education is an essential component in correcting the attitudes and behaviour of society, there are certain social wrongs (including discrimination) that could not possibly be corrected merely through public education. Laws prohibiting littering, smoking in some public places or making noise after midnight are good examples that show the need for legislation in addition to public education to effectively correct certain social wrongs. Laws have been enacted to reduce personal injuries, such as the requirements to wear seat belts and safety helmets. Laws were also enacted over two decades ago to prohibit concubinage to enhance the status of women in Hong Kong.

47. People sometimes ask whether equal opportunities legislation would constitute a departure from Hong Kong's "free market" economy and whether it could make Hong Kong less competitive in world markets.

48. It must be stressed that the proposed legislation would not prevent an employer from employing the person who is most qualified for the job. The proposed legislation does not require employers to hire a minimum percentage of persons from groups that are traditionally disadvantaged (sometimes referred to as "quotas") or to take special steps to employ such persons (sometimes referred to as "affirmative action"). The only requirement is that the employer must not penalize applicants or employees for personal characteristics that are not rationally related to job performance

49. Of course, there are certain situations in which personal characteristics are relevant to the job, and the legislation makes provisions for this. For example, it would not be unlawful under the legislation to specify the sex of an employee where the job involves personal care or

the attendance of bathroom facilities. Nor would the legislation prohibit religious institutions from employing only those with the appropriate affiliation for jobs involving religious duties.

50. Businesses may also be exempt from certain provisions of the law where it can be demonstrated that compliance would cause undue hardship. Such undue hardship exemptions are likely to be of greatest relevance to small businesses. It is sometimes argued that the large number of small businesses (defined as those employing less than 10 employees) in Hong Kong makes equal opportunities legislation inappropriate here. However, it should be noted that in terms of the total percentage of the labour force, large companies are actually much more significant: as of June 1993, only 32% of the Hong Kong work force were employed by small businesses. Thus, even if certain exemptions apply to small businesses, the majority of workers would enjoy the full benefits of the legislation.

51. It is also important to note that Hong Kong has already departed from the pure "free market" model, as it has substantial legislation regulating the private sector economy. For example, the Employment Ordinance contains numerous provisions regulating employers' treatment of employees, including provisions prohibiting discrimination against trade union members and women employees who take maternity leave. Hong Kong also has laws against child labour, laws against the employment of illegal aliens, laws against unsafe working conditions and laws against selling unsafe products.

52. These existing laws all constitute a departure from the "free market" and many of them raise production costs. But Hong Kong would never consider returning to a world in which employers were free to expose workers to blatantly unsafe working conditions, to employ young children or to market unsafe products. The fact that complete "de-regulation" of employers might lower their production costs and make them more competitive would not outweigh the now well established principles of decent treatment of employees, protection of children and safe products for society as a whole.

53. It is now widely accepted that there are certain social costs inherent in a modern

economy that must be reflected in the cost of production and thus eventually shared by society as a whole. Thus producers are already required by law to adopt pollution control measures which help to provide a cleaner environment. Similarly, employers are required by existing law to provide certain maternity leave benefits. Such laws benefit not only women, but society as a whole, as they help to ensure that women can fulfill what has become the "double burden" of many women -- bearing the next generation while also contributing significantly to our growing economy. Equal opportunities legislation should also be viewed in the broader light of benefitting not only members of groups that have suffered discrimination, but also Hong Kong society as a whole.

54. It should also be stressed that while equal opportunities laws are fairly new to Hong Kong, they have been adopted in many other jurisdictions around the world and there is no evidence to show that they have caused any decrease in productivity or economic growth.

55. Indeed, by reducing the negative consequences of discrimination, the proposed legislation can actually improve productivity. For example, discriminatory advertisements discourage women workers from developing their full potential. Discrimination also discourages female students from studying in fields traditionally reserved for men and from excelling in their studies, knowing that the majority of the jobs open to them are clerical and do not require exceptional results. Eliminating discrimination encourages members of society to receive more education and training, thereby enhancing human capital, a precious resource for any modern economy

56. Unequal pay and promotion opportunities also make employees bitter and less productive. Such discriminatory treatment may even lead some employees to quit their jobs, increasing the recruitment and training costs associated with high rates of employee turnover - a frequent problem for Hong Kong employers. In contrast, laws which promote equal opportunities encourage employees to work hard and achieve their best. These laws also encourage employers to institute policies and training seminars that teach supervisors to treat

their staff with dignity and equality. This creates a less stressful work environment, reduces staff turnover and increases productivity.

57. Sexual harassment (and the failure of employers to address it) can also greatly reduce productivity. It clearly creates unhappy relationships within the company. Moreover, the strain upon the victim will often impair the quality of his or her work. Victims are also more likely to be absent from work (in an effort to avoid contact with the perpetrator) or to quit their jobs. The financial losses as a result of lower productivity, absenteeism and higher turnover are substantial. The financial and emotional burdens of the victims will have to be borne by their family members as well. Sexual harassment can even cause illness in the victim. Tolerating sexual harassment is very costly not only to the victims, but also to employers and society as a whole.

58. Equal opportunities laws and policies also encourage women who have left the labour market to bear children to retrain and return to the work force. Similarly, laws which make it easier for physically handicapped persons to move about and to obtain employment allow them to become more productive and financially independent. This enlarges our labour force and helps to relieve the acute labour shortage which has adversely affected our economy. Thus, the net effect of equal opportunities legislation could be an increase in the value of Hong Kong's human capital, which would only benefit the economy.

## CONCLUSION

59. A final question that may be raised is why introduce broad legislation covering several types of discrimination rather than addressing each category with separate legislation. It is true that a law that addresses only one type of discrimination, such as sex or race, would be easier to enact. However, the total resources required to enact several such laws would likely exceed those required to enact one comprehensive law.

60. More importantly, however, is the fact that a broadly based bill encourages all of

us to consider not only the interests of our own particular group, but also the interests and situations of the wide variety of people that make up our society. Comprehensive equal opportunities legislation is much like a contract between the many different people and groups of Hong Kong. Through this "contract" we express our willingness to treat fairly and equally those persons who are different from us -- in exchange for the assurance that we too will be protected should we become the victims of discrimination. Indeed, even those who have not suffered discrimination in the past, may someday find that they too can benefit from this legislation and will be grateful to have its protection.

61. Interested individuals and groups are urged to consider this proposal seriously, and to direct any comments, questions or suggestions to the following office by 15th May, 1994:

The Office of Anna Wu, Legislative Councillor  
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HUMAN RIGHTS AND EQUAL OPPORTUNITIES COMMISSION BILL 1994  
SUMMARY OF THE STRUCTURE AND FUNCTIONS  
OF THE COMMISSION AND THE TRIBUNAL

## INTRODUCTION

The Human Rights and Equal Opportunities Commission Bill ("the Bill") establishes an independent public body, the Human Rights and Equal Opportunities Commission ("the Commission"), charged with the promotion and development of internationally-recognised human rights in Hong Kong. The Bill also establishes a specialist branch of the judiciary, the Equal Opportunities Tribunal ("the Tribunal"), to provide (where attempts at conciliation have been unsuccessful) an efficient and effective tribunal for the adjudication of legal rights created by local human rights legislation.

### **The human rights guarantees with which the Commission would be concerned**

The functions of the Commission are defined by reference to major international human rights instruments and to local legislation by which certain of these instruments have been given direct effect in Hong Kong. The Tribunal will have power to adjudicate claims under such local legislation.

Eleven international human rights instruments are specifically referred to in the Bill. The texts of the instruments will be appended to the Bill in full as Schedules I-XI. The eleven instruments ("the scheduled instruments") are:

- I. *International Covenant on Civil and Political Rights*  
(adopted by the UN General Assembly 1966; entered into force 1976; ratified by UK and extended to Hong Kong 1976);
- II. *International Covenant on Economic, Social and Cultural Rights*  
(adopted by the UN General Assembly 1966; entered into force 1976; ratified by UK and extended to Hong Kong 1976);
- III. *International Convention on the Elimination of All Forms of Racial Discrimination*  
(adopted by the UN General Assembly 1965; entered into force 1969; ratified by UK and extended to Hong Kong 1969; ratified by PRC 1981);
- IV. *Convention on the Elimination of All Forms of Discrimination Against Women*  
(adopted by the UN General Assembly 1979; entered into force 1981; ratified by UK 1986; ratified by PRC 1981);
- V. *Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment*  
(adopted by the UN General Assembly 1984; entered into force 1987; ratified by UK 1988 and extended to Hong Kong 1992; ratified by PRC 1988);
- VI. *Convention on the Rights of the Child*  
(adopted by the UN General Assembly 1989; entered into force 1990; ratified by UK 1992; ratified by PRC 1992);
- VII. *Convention concerning Freedom of Association and Protection of the Right to Organise (ILO No. 87)*  
(adopted by the ILO General Conference 1948; entered into force 1950; ratified by UK and extended to Hong Kong);
- VIII. *Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (ILO No. 98)*  
(adopted by the ILO General Conference 1949; entered into force 1951; ratified by UK

and extended to Hong Kong);

- LX. *Declaration on the Rights of Mentally Retarded Persons* (proclaimed by the UN General Assembly 1971);
- X. *Declaration on the Rights of Disabled Persons* (proclaimed by the UN General Assembly 1975); and
- XI. *Declaration on the Elimination of Violence Against Women* (proclaimed by the UN General Assembly 1993).

Both the Commission and the Tribunal also exercise functions with reference to –

- the *Hong Kong Bill of Rights Ordinance* (Cap. 383) ("the Bill of Rights"), which enacts provisions of the *International Covenant on Civil and Political Rights* as part of the law of Hong Kong; and
- the *Equal Opportunities Bill*, which makes unlawful various forms of discrimination and gives effect to a number of the scheduled instruments.

The Bill also gives the Attorney General the power to declare other international instruments as relating to human rights and freedoms for purposes of the Bill. Such instruments would then join the scheduled instruments as terms of reference for the Commission, permitting the Commission to investigate complaints that the rights guaranteed by those instruments have not been observed.

#### **Composition of the Commission and the Tribunal**

**The Commission** is composed of a part-time Chairperson and five full-time Commissioners:

- the **Human Rights Commissioner**,
- **Race Discrimination Commissioner**,
- **Sex Discrimination Commissioner**,
- **Disability Discrimination Commissioner**, and
- **Children's Commissioner**.

Both the Chairperson and the Human Rights Commissioner must have legal qualifications; the other Commissioners may have legal or other expertise relevant to their duties. The Human Rights Commissioner is in charge of the ordinary operations of the Commission, while meetings of the Commission as a whole may be called as necessary by the Chairperson. The special areas of responsibility of the other Commissioners are indicated by their titles.

All members of the Commission are appointed by the Governor subject to confirmation by the Legislative Council. Commission members' terms of appointment may be for up to five years, with the possibility of reappointment. The Commission is within the jurisdiction of COMAC and of ICAC.

**The Tribunal** consists of a President and two or more other Members, appointed by the Governor for terms of up to five years with the possibility of reappointment. The President must be a legal practitioner of at least seven years standing, while other Members may have legal or other expertise relevant to their duties.

The Tribunal sits as a panel of three, comprising the President and two members. The President may direct that additional panels be constituted as necessary, each consisting of a Presiding Officer and two Members. Presiding Officers may be either District Judges serving *ex officio*, or legally qualified Members appointed as Presiding Officers by the Governor. Decisions of the Tribunal are by majority of those on the panel, except that matters of law, procedure or the admissibility of evidence are determined by the President or Presiding Officer.



## THE ROLE OF THE COMMISSION IN PROMOTING HUMAN RIGHTS

The Commission has a number of functions, including:

- an educational and promotional function;
- a research and advisory function, directed to Government, the Legislature, and the public;
- a dispute resolution function, which assumes particular significance for local legislation such as the Bill of Rights and the Equal Opportunities Bill; and
- certain other functions relating to the Bill of Rights and the Equal Opportunities Bill, including the commencement of certain proceedings and the consideration of limited exemptions from the Equal Opportunities Bill.

### **Educational and promotional function**

This is a central and indispensable role of the Commission. The Commission has the task of disseminating information about the human rights guarantees in the Bill of Rights, the Equal Opportunities Bill, and the scheduled instruments, and of promoting respect for the observance of these human rights in Hong Kong.

The Bill authorizes a wide variety of educational and promotional activities and leaves the Commission to decide how best to allocate its resources in the prevailing circumstances. Some possible activities include the preparation of materials for schools and the organisation of seminars for public officials or for groups in the private sector.

The Commission may also work in consultation with affected sectors of the community to develop guidelines or codes of conduct. These would assist different groups within the community to abide by and adapt to, for example, the detailed anti-discrimination provisions of the Equal Opportunities Bill.

Like comparable bodies administering human rights legislation in other jurisdictions, the Commission can be expected by these and other means to play an important preventive or proactive role in working with institutions to bring about systemic change.

### **Research and advisory functions**

In addition to the research necessary to develop educational programmes, the Commission has a number of research and advisory functions relating to law- and policy-making. On its own initiative or at the request of the Attorney-General, the Commission may prepare a report for submission to the Attorney-General (and, if the Commission wishes, for publication) on laws that should be made or actions taken by the Government, on matters relating to the Bill of Rights, the Equal Opportunities Bill, or the scheduled instruments.

Such reports might take the form of broad-ranging reviews of social policy areas in light of human rights standards, accompanied by comprehensive recommendations for government action, or more focused (and swiftly produced) reports and papers articulating particular human rights and their embodiment in specific laws and practices. Thus, the Commission might choose to focus its efforts over a period of a year or more on the production of a major report on press freedom, for example, or on immigration policy. Alternatively, the Commission might prefer to prepare a series of shorter reports on issues such as prison rules, the *sub judice* rule and restraints on press coverage of legal proceedings, or the problem of community resistance to rehabilitation centers for the mentally disabled.

The Commission may also examine existing laws, or proposed laws when a request to do so is made by the Attorney-General, by the President of the Legislative Council or by any 500 persons living in Hong Kong. If the Commission finds that an existing or proposed law is or would be inconsistent with the scheduled instruments, the Bill of Rights or the Equal Opportunities Bill, the Commission's report will include recommendations on appropriate amendments to the

proposed law. Reports containing such recommendations must be tabled in the Legislative Council within a month of receipt by the President or the Attorney-General, after which time the Commission may, if it wishes, publish the report as well.

The Commission may similarly examine international instruments that have not yet been extended or applied to Hong Kong, and report to the Attorney General (with the option of publication) on the compatibility of such instruments with local law and practice, and with existing international human rights obligations.

As well as preparing reports for Government and for publication in Hong Kong, the Commission may on its own initiative provide information to the international supervisory bodies associated with many of the scheduled instruments, such as the UN Human Rights Committee that oversees the *International Covenant on Civil and Political Rights*. In particular, the Attorney-General is required to forward to the Commission a draft of each report prepared periodically for such bodies by the Government; comments made by the Commission must be included as a separate section of the final report.

Finally, the Commission may, by leave of the court, intervene in any proceedings relating to human rights. This enables the Commission to assist the courts in interpreting and developing human rights in Hong Kong in light of the growing body of relevant, comparative and international jurisprudence.

#### **Resolution of complaints relating to the scheduled instruments**

The Commission may inquire into specific acts or practices which appear inconsistent with human rights standards, and may endeavour by conciliation to achieve a settlement of such matters. The Commission may open an inquiry into an alleged contravention of standards set out in the scheduled instruments on its own initiative, at the request of the Attorney-General, or in response to a written complaint from any other person.

In the course of such an inquiry, the Commission is empowered to summon persons to give evidence under oath or affirmation, and to compel the production of documents. (The Commission must, however, accept as authoritative a certificate provided by the Attorney-General as to certain matters, disclosure of which would be contrary to the public interest on grounds specified in the Bill.) The Commission may also order that evidence or documents produced not be published, or that the anonymity of a person giving evidence be preserved, in light of considerations such as personal privacy, employment security, the protection of public safety, etc. At any time during the inquiry, the Commission may endeavor to conciliate the matter among the relevant parties if it feels a settlement would be appropriate.

At the conclusion of an inquiry, the Commission notifies the complainant and the subject of the complaint of the Commission's findings. If the Commission finds the act or practice was indeed in contravention of any human right, the Commission may make recommendations on prevention, compensation and other remedial issues. If the matter has not been successfully conciliated, the Commission also submits its findings and recommendations to the Attorney-General, along with an account of any action taken to implement the Commission's recommendations by the person found in contravention.

#### **Resolution of complaints relating to the Bill of Rights or the Equal Opportunities Bill**

Much of the Commission's work may be expected to concern complaints relating to the specific, enforceable rights delineated by the Bill of Rights and the Equal Opportunities Bill. Such complaints may be brought by any aggrieved person or persons, or on their behalf by any other person, group or association which the Commission considers has a sufficient interest in the matter. Provision is also made in the Bill for representative complaints.

Complaints relating to the Bill of Rights and the Equal Opportunities Bill are referred for

investigation and conciliation to the Commissioner in whose area of expertise the complaint falls. The Commissioner carries out an investigation of the complaint to ascertain the facts, and may compel the production of information. Unless the investigating officer determines that the complaint is manifestly without substance, the Commissioner then attempts to mediate the complaint, and may call the parties together for a compulsory conference for conciliation. Parties are not ordinarily represented by counsel, and nothing said or done in conciliation conferences may be used in subsequent proceedings or reports.

The Commissioner may dismiss the complaint at any time if it appears to the Commissioner that the act or practice complained of is not unlawful or that it took place over a year before, or if the complaint is withdrawn, or appears to be frivolous or lacking in substance. A complainant may appeal a dismissal to the Chairperson or (if the dismissal was on a point of law) to the Tribunal.

If conciliation is unsuccessful – or if the Commissioner considers it appropriate at any stage to do so – the Commissioner refers the complaint to the Tribunal for adjudication. The Commission, at a complainant's request, will provide representation to a complainant in appearing before the Tribunal. If the Commissioner considers it appropriate, the Commission is empowered to provide financial assistance to a complainant, both before the Tribunal and on appeal and possibly including provision for legal representation on appeal.

In general, the powers and procedures of the Tribunal are those of the District Court. The Tribunal may formulate its own procedural rules, however, and may, in accordance with equity, good conscience and the substantial merits of the case, dispense with technicalities and legal forms and inform itself on any relevant matter without strict application of the rules of evidence. The Tribunal may thus conduct its hearings comparatively informally, and it may readily take account of, for example, statistical evidence relating to indirect discrimination. Even at this stage, the Tribunal may also adjourn hearings at any time to enable the parties to negotiate a settlement of the matter.

Upon reaching a decision, the Tribunal has the power to make any order which it considers just and appropriate in the circumstances. Such orders may include, for example, the reinstatement or promotion of a complainant; the payment of compensatory, punitive or exemplary damages; or a declaration that a law or part of a law is repealed for inconsistency with the Bill of Rights or the Equal Opportunities Bill. Damage awards are not subject to the cap applicable in the District Courts. Each party will ordinarily pay that party's own costs, although the Tribunal may award costs in unusual circumstances.

An appeal from a decision of the Tribunal may be made on a point of law to the Court of Appeal.

#### **Other functions relating to the Bill of Rights or the Equal Opportunities Bill**

The Commission may initiate proceedings in its own name, in the Tribunal or any other court of competent jurisdiction, in certain circumstances:

- If it appears to the Commission that an act which is unlawful under the Bill of Rights or the Equal Opportunities Bill may have been done by the Government, by a public authority, or by a person exercising a power conferred by law or executive prerogative; or
- If it appears to the Commission that a legislative provision or rule of the common law is inconsistent with, or has been repealed by, the Bill of Rights, the Equal Opportunities Bill, or Article VII(3) of the Hong Kong Letters Patent (which entrenches the *International Covenant on Civil and Political Rights* as part of the law of Hong Kong).

On application by an affected person or persons, the Commission is also empowered to

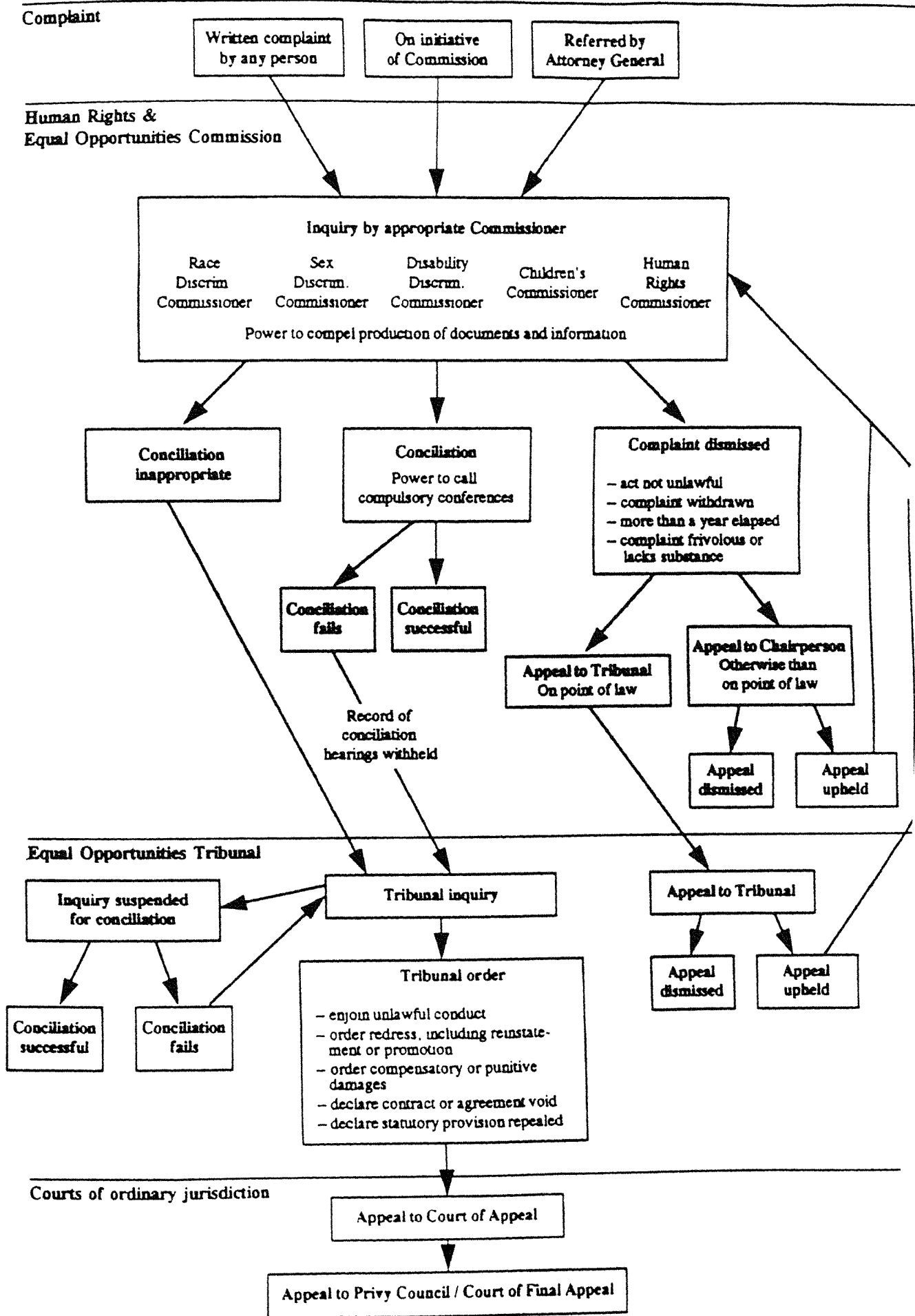
grant an exemption to the applicant from specified provisions of the Equal Opportunities Bill for a specified (but renewable) term. Other interested parties may make submissions to the Commission during consideration of such an exemption. If aggrieved by the Commission's decision, an applicant or such other parties as have made submissions may appeal to the Tribunal.

#### **THE JURISDICTION OF OTHER BODIES TO ENTERTAIN HUMAN RIGHTS COMPLAINTS**

The Bill amends the Equal Opportunities Bill with the effect that the complaint procedures outlined above provide the sole route for claims alleging that an act or practice is unlawful under the Equal Opportunities Bill. Otherwise, however, the jurisdiction of the Tribunal (by way of reference from the Commission) does not exclude the jurisdiction of other courts and tribunals to continue to adjudicate legally enforceable human rights.

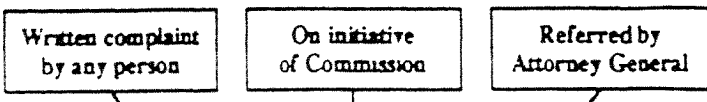
In cases in which criminal or civil proceedings are brought against a person, the defendant remains able, for example, to invoke the guarantees of the Bill of Rights as part of any defence. Similarly, in judicial review proceedings, an action impugning the legality of administrative acts may be based on an argument as to the interpretation and impact of the Bill of Rights. In any case involving reliance on statutory authority, an argument may be made that the relevant statutory provisions have been repealed by the Bill of Rights or the Equal Opportunities Bill. In cases such as these, which involve human rights issues, the Commission may request leave of the court to intervene in the proceedings.

**Human Rights & Equal Opportunities Commission Bill.**  
**Procedure for complaints relating to the Bill of Rights or the Equal Opportunities Bill**

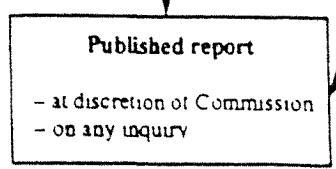
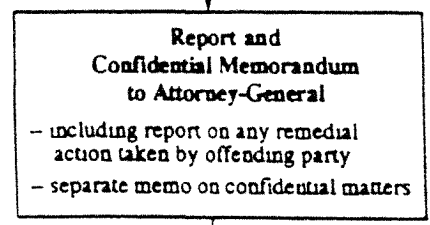
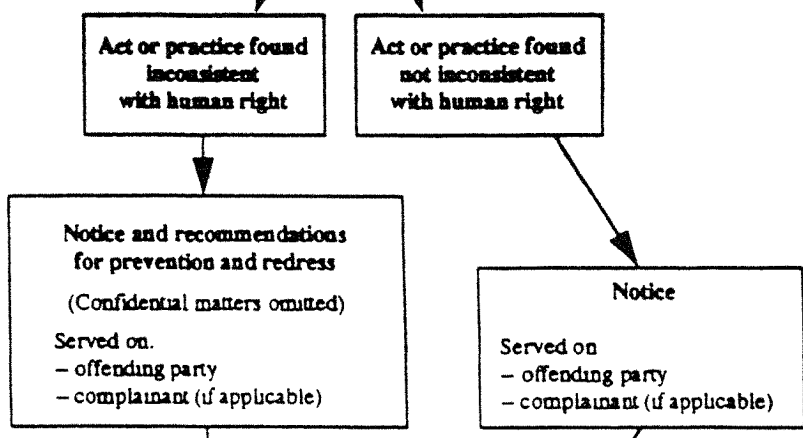
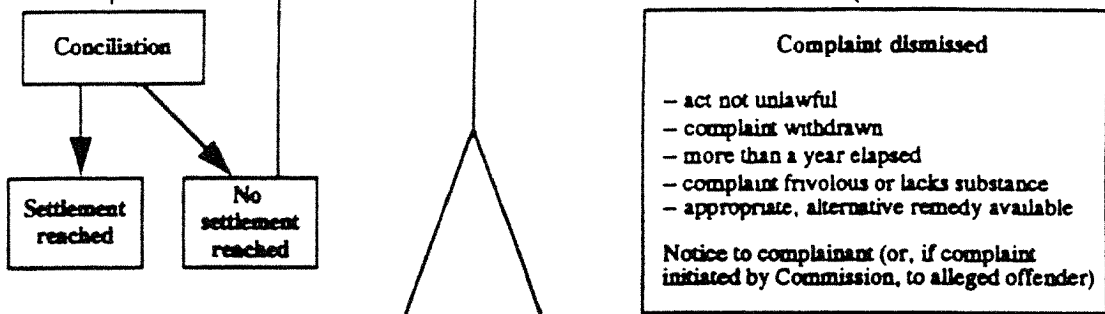
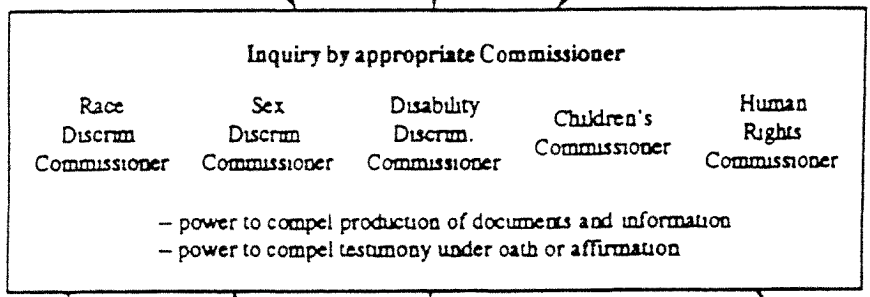


**Procedure for complaints relating to the scheduled instruments**

**Complaint**



**Human Rights & Equal Opportunities Commission**



EQUAL OPPORTUNITIES BILL 1994  
SUMMARY OF THE PURPOSE AND STRUCTURE OF THE BILL

The purpose of the Equal Opportunities Bill is to provide legal protection against discrimination on a wide variety of grounds, such as sex, race, religious and political beliefs, and disability. In general terms, discrimination is any practice that makes distinctions between individuals or groups so as to disadvantage some and to advantage others. The bill prohibits discrimination in employment, education, accommodation, and several other important areas of life. In so doing, the Bill gives effect to many obligations applicable to Hong Kong under international conventions, including the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of Racial Discrimination, and the International Covenant on Civil and Political Rights.

The Equal Opportunities Bill does not require "quotas" of any kind and neither mandates nor prohibits "affirmative action," (measures to assist traditionally disadvantaged groups to enjoy equal opportunities). Thus the proposed law does not restrict merit-based competition for jobs and for places in educational institutions. On the contrary, by providing legal remedies for discrimination on grounds not related to merit, the Bill enhances fair and open competition by all members of society on the basis of merit.

## OVERVIEW OF THE BILL

### Prohibited Grounds of Discrimination

The Bill contains nine Parts (Parts II through X), each of which addresses a particular ground of discrimination. The prohibited grounds of discrimination are:

- sex, marital status and pregnancy (Part II);
- family responsibility (Part III);
- sexuality (Part IV);
- race, national or ethnic origin (Part V);
- disability (Part VI);
- religious or political conviction (Part VII);
- age (Part VIII);
- "spent" criminal conviction (Part IX); and
- union membership or activities (Part X).

Examples of discrimination on the various prohibited grounds appear below, in the summaries of these Parts.

**Direct discrimination:** Each Part commences by defining discrimination on the relevant ground. In general, the definition provides that a person (the discriminator) discriminates against another person (the aggrieved person) if, on the basis of the prohibited ground, the discriminator treats the aggrieved person less favourably than the discriminator treats or would treat other persons in circumstances that are the same or not materially different.

This may include discrimination on the ground of a characteristic that pertains generally to or is generally imputed to persons of the relevant group.

*Example 1: A woman applies for a job. She is rejected for the position because, although she is otherwise qualified, the employer believes she will eventually leave the company to have children and raise a family. The employer's rejection may constitute discrimination*

*on the ground of characteristics -- child-bearing potential, and the desire to be a full-time homemaker -- generally pertaining to or imputed to persons of a particular sex (women), and would be unlawful under the Bill<sup>1</sup>*

Indirect discrimination Discrimination may also be indirect. A requirement may be indirectly discriminatory if, although applied generally, it tends disproportionately to disfavour persons of the relevant group. If an aggrieved person does not or cannot comply with a requirement which has such a disproportionate impact, the burden falls on the discriminator to show that the requirement is in fact reasonable under the circumstances.

*Example 2: A company operates a training program for its junior management. As a matter of company policy, eligibility to participate in the program is restricted to employees who have completed five years of continuous service without extended leave. The majority of employees who take extended leave do so for the purpose of maternity leave. Unless there are good, non-discriminatory reasons for the policy, the exclusion of employees who have taken extended leave amounts to indirect discrimination on the ground of pregnancy, and should be amended to permit such employees -- or at least those who have taken maternity leave -- to participate in the program.*

### **Areas of Coverage**

The areas within which discrimination on these grounds is prohibited can be divided into three general categories: (1) discrimination in work; (2) discrimination in other areas; and (3) discrimination involving harassment or vilification.

(1) Discrimination in work: In each of Parts II through X, the Bill covers discrimination by:

- employers, against applicants and employees;
- principals, against commission agents, and against contract workers;
- partnerships (of 6 or more persons), in the admission or treatment of partners;
- professional and trade organisations, against members or potential members;
- qualifying bodies (bodies that confer qualification to practise a profession or business);  
and
- employment agencies.

(2) Discrimination in other areas: Each of Parts II through X addresses discrimination in the following additional areas:

- educational authorities' admission and treatment of students;
- access to and use of places and vehicles;
- provision of goods, services and facilities,
- provision of accommodation;
- dispositions of land other than by will or gift;
- admission and treatment of members by clubs (meaning associations of 30 or more persons, which serve liquor on their own premises);
- requests for information, such as on application forms, in connection with any of the other areas covered; and
- administration of laws and government programs

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<sup>1</sup>Examples are adapted from cases arising under similar laws in other jurisdictions and are meant to be illustrative. The result in cases arising in Hong Kong will depend on the particular interpretations of law adopted by the Hong Kong courts, as well as on the fact situations presented.



Certain Parts also address other areas of protection, reflecting the special concerns of particular persons or groups affected by those Parts – unreasonable age or disability discrimination in superannuation schemes, for example, or the exclusion of women from certain political processes. Such provisions are noted in the summaries of Parts II through X below where appropriate. The summaries include examples of discrimination in many of the areas covered.

(3) Discrimination involving harassment or vilification: Certain Parts of the Bill address discrimination in the forms of harassment and vilification. Sexual harassment is made unlawful, as well as harassment and vilification on the grounds of race, sexuality and disability.

Harassment: Generally, harassment is unlawful when the victim suffers any disadvantage for objecting to the harassment, or reasonably believes objection would result in disadvantage. Harassment which creates a hostile and intimidating work environment for the victim is also made unlawful. More detail on what constitutes harassment on each ground appears where appropriate below.

Vilification: Vilification means a public act inciting hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on a prohibited ground. Fair reports of public acts and other privileged and "good faith" communications are exempt. Vilification may constitute a criminal offence where it includes a threat of physical harm or incites others to threaten physical harm.

### **Exemptions and Limitations**

The Bill recognises that not all differential treatment on one of the prohibited grounds is invidious, and that the degree of regulation provided is not appropriate in certain areas of life. The Bill therefore sets out a number of exemptions and limitations. The general aim of these exemptions is to ensure that the prohibitions on discrimination apply only to unjustifiable distinctions, and that other rights are respected, such as the right to exercise religious beliefs and the right to privacy.

Some exemptions apply to all provisions within a particular Part, and are grouped together at the end of the relevant Part. An exemption that applies only to a specific provision is set forth in that provision. The following are some types of exemptions that appear frequently in the Bill.

Genuine occupational qualification: Discrimination is not unlawful in connection with certain jobs for which the otherwise prohibited ground is a genuine occupational qualification. Such qualifications generally relate to questions of authenticity (for example, a theatre company may cast an actor of a particular race to play a character of that race) or decency (for example, a fitness centre may exclude women from employment as attendants in a men's locker room).

Bona fide benefits: Discrimination is not unlawful in connection with benefits provided in good faith for certain persons or groups, such as discounts for children or the aged, or special leave arrangements for employees with children.

Accommodation by charitable bodies: Nothing in the Bill prohibits a charitable organisation from providing accommodation for a particular class of persons.

Domestic duties/Accommodation in the home: If a person or a person's close relatives reside on the premises, arrangements made to accommodate others on the same premises are exempt, so long as accommodation is provided to no more than 3 others. Similarly, provisions in each Part exempt a person's selection of employees or contract workers to perform domestic duties in that person's own home. These exemptions recognise the right to privacy and autonomy in one's own home.

Measures to meet special needs to achieve equality Several provisions recognise that certain persons and groups have special needs and permit appropriate arrangements to meet them. Examples would be educational facilities available exclusively to the visually-impaired, or shelters for battered women. Similarly, certain provisions permit the taking of positive steps (such as voluntary affirmative action programs) to secure the advancement of persons or groups who have been previously discriminated against.

General exemptions: A few general exemptions apply to the entire Bill. These are grouped together in Part XII and include the following:

- Gifts to charities may lawfully discriminate in identifying a class of persons eligible to receive charitable benefits (Clause 223).
- Voluntary bodies may lawfully discriminate in admission to membership and in the provision of benefits, facilities or services to members. (Clause 224) This exemption, however, does *not* apply to clubs as defined (associations of 30 or more persons, which serve liquor on their own premises), to bodies established by law, or to associations with profit-making activities or which provide finance to members.
- Religious bodies may lawfully discriminate in connection with the performance of religious duties, and in the training, appointment, etc. of persons to perform such duties (Clause 225). They are also exempted from the provisions in each Part concerning accommodation. Similarly, religious schools may discriminate in good faith in employment and educational matters to avoid injury to the religious susceptibilities of adherents of the religion (Clauses 226).
- Establishments providing housing for the aged and ancillary services may lawfully restrict admission to any class of applicants except classes defined in terms of disability, and may discriminate on any ground except age in the provision of benefits, facilities or services to those admitted (Clause 227).

#### **Interpretive and Miscellaneous Provisions**

Part I of the Bill defines important terms and sets forth certain principles of interpretation. In particular, the Bill should be interpreted with regard to the fact that one of its principal purposes is to give effect to international obligations applicable to Hong Kong (Clause 7).

The Bill repeals, to the extent of inconsistency with the Bill, any pre-existing Ordinance that requires a person to do an act that is unlawful under the Bill (Clause 8). The Bill also amends the Hong Kong Bill of Rights Ordinance to clarify and ensure that the Bill of Rights applies to all legislation not expressly exempted, including legislation which affects only private persons (Clause 9). This remedies an important shortcoming in the Bill of Rights Ordinance as presently interpreted by Hong Kong courts.<sup>2</sup>

Certain technical matters, such as vicarious liability, are addressed in Part XIV.

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<sup>2</sup>Clause 9 is intended to reverse the effect of the Court of Appeal's interpretation of the Bill of Rights Ordinance in Tam Hing-ye v Wu Tai-wai, (1991) 1 HKPLR 261, [1992] 1 HKLR 185. The effect of Tam Hing-ye is that pre-existing legislation can be held to have been repealed by the Bill of Rights only when the Government seeks to rely upon it. Anomalously, however, the same legislation remains in force when relied upon by private citizens. See HKLR at 189. The Court of Appeal acknowledged that the inevitable result of its interpretation is that the Bill of Rights fails to comply with the intention expressed in its preamble: "to provide for the incorporation into the law of Hong Kong of provisions of the International Covenant on Civil and Political Rights." Ibid

### Implementation and Enforcement<sup>3</sup>

Discriminatory acts or practices made unlawful by the Bill are "civil wrongs" (Clause 228) triable in the District Court (Clause 229). The Court may disregard the ordinary rules of evidence to inform itself on any matter as it sees fit (by taking account, for example, of statistical evidence concerning a claim of indirect discrimination) (Clause 232). Pending determination, the Court may make interim orders to preserve the status quo and the rights of the parties (Clause 230).

If the Court is satisfied that a person has unlawfully discriminated against another, it may make an order which it considers just and appropriate in the circumstances (Clause 231). For example, the Court may:

- order that the defendant pay to the plaintiff damages in compensation for any loss or damage suffered, or punitive and exemplary damages;
- make an order enjoining the defendant from continuing or repeating any unlawful conduct;
- order the defendant to perform any reasonable act or course of conduct to redress a plaintiff's loss or damage;
- order the defendant to employ, re-employ or to promote the plaintiff;
- make an order declaring void in whole or in part and from such time as is specified any unlawful contract or agreement; or
- find that all or part of a pre-existing statute has been repealed.

In order to facilitate access to the courts and to assure affordable and effective remedies, each party to litigation will ordinarily bear that party's own costs (Clause 234). The Court may, however, award costs as it thinks fit if it is of the opinion that exceptional circumstances justify doing so. Such circumstances include actions or claims which are frivolous or vexatious, allegations made in bad faith, or unnecessary and deliberate delay or prolongation of the hearings.

**Victimization:** In connection with enforcement, the Bill also makes victimization unlawful (Clause 221). Victimization consists of subjecting (or threatening to subject) a person to any detriment because of that person's past or planned allegations, assertions of rights, or assistance to a Court in connection with the Bill or proceedings under the Bill.

### Criminal Offences

While the principal effect of the Bill is to define certain discriminatory acts and practices as "civil wrongs," the Bill also defines certain criminal offences.

**Serious vilification:** As mentioned above, serious vilification -- involving a threat of or an incitement to physical harm -- on the grounds of sexuality, race or disability is made an offence punishable by a \$10,000 fine (Clauses 85, 110, and 140).

**Advertisements:** An advertisement which indicates an intention to do an act made unlawful by the Bill will constitute a criminal offence punishable by a fine of \$30,000 for a first offence and

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<sup>3</sup>The enforcement mechanism described is established by the Equal Opportunities Bill standing alone. The preferred method of implementation, however, would be established by the Human Rights and Equal Opportunities Commission Bill, which would substantially amend the enforcement provisions of the Equal Opportunities Bill.

Under the Human Rights and Equal Opportunities Commission Bill, complaints of discrimination would first be referred to the Commission for conciliation. Legal proceedings would follow only if a settlement cannot be reached, and would be conducted in a specialist Equal Opportunities Tribunal, with appeal on points of law to the Court of Appeal

\$100,000 for a subsequent offence (Clause 222). For example, a job advertisement that specifies that a position is open to women under 40 would be an offence if, in the circumstances, such hiring restrictions amount to unlawful sex and age discrimination. Advertisements include any notice, sign, label, circular or other matter which conveys a message, written or otherwise. Any person may initiate a prosecution under this clause (subject to supervision by the Attorney General, who may take over the prosecution).

The remainder of this document summarizes, by category of discrimination, the effect of the legislation and the important exemptions and limitations.

## **PART II – DISCRIMINATION ON THE GROUND OF SEX, MARITAL STATUS AND PREGNANCY**

Clauses 11, 12 and 13 define direct and indirect discrimination on the grounds of sex, marital status, and pregnancy respectively. Discrimination is prohibited in work (Clauses 14-20) and in the other standard areas (Clauses 21-28).

***Example 3:** A man calls an employment agency to enquire about a clerical job advertised by the agency. Without asking about his experience or qualifications, an agency employee tells him that the agency's client specifically requested women for the job and declines to refer the man to the potential employer. The agency's refusal to refer the applicant appears to amount to discrimination against him on the ground of his sex, as would the client employer's instructions.*

***Example 4:** As part of a company retrenchment, four married women are retrenched from a factory while five other workers, all single women, are retained. As a matter of policy, the company seeks to retrench people with other means of support. The retrenchment decision appears to be based on an imputed characteristic of married women: that, if they lose their jobs, they have access to their working husbands' incomes. The retrenchment of the married women may constitute discrimination against them on the ground of their marital status.*

Other provisions include:

Eligibility to participate in elections and public affairs: Clause 29 prohibits discrimination on the basis of sex or marital status in determining who may vote for, stand for election for, or be appointed to public offices or bodies, including statutory advisory bodies. This Clause specifically prohibits certain practices in the New Territories by which women are prevented from participating fully in rural elections, either directly (by excluding women from eligibility to vote) or indirectly (for example, by restricting eligibility to "heads of households", almost all of whom are male).

Discrimination involving sexual harassment: Sexual harassment is made unlawful in employment (Clause 30), education (Clause 31), and in the provision of accommodation (Clause 32) or goods and services (Clause 33). Unwelcome sexual advances or conduct constitute unlawful sexual harassment where the person harassed has good reason to believe that refusing or objecting to the conduct will cause the person to be disadvantaged in the relevant activity. Such conduct may take the form of statements of a sexual nature concerning the victim. In employment, conduct of a sexual nature that creates a hostile work environment for the victim also constitutes harassment (Clause 30(3)(b)). In a home in which a domestic helper is employed, it is unlawful for a resident, whether or not the employer, to harass the domestic helper (Clause 30(1)(d)).

***Example 5:** The manager to whom an executive secretary has been assigned continually inquires about her private life, makes remarks about her dress and appearance and touches her or puts his arm around her during conversations. When she objects to his "flirting".*

he ridicules her characterisation of his behaviour and suggests that the relationship between a manager and his secretary needs to be more than a simply professional one. Subsequently, in the context of her annual performance appraisal, he voices his annoyance at not being able to have a more "casual" relationship with her. The manager's behaviour may constitute sexual conduct, and may amount to sexual harassment if the secretary reasonably believes that her performance appraisals will suffer if she continues to object.

Example 6: A woman employee in a transport company is moved to a new section and promoted to a supervisory position. She finds that her male subordinates make continual deprecatory remarks about her as a woman and women in general; resist acknowledging her authority as supervisor; give her misleading information about established procedures in her new job; undermine her authority with outside business contacts; and post obscene materials on notice boards in the vicinity of her work area, sometimes with her name written on them. The subordinates' behaviour may constitute sexual harassment, as their unfavourable treatment of the supervisor is grounded on her sex and creates a hostile and intimidating work environment for her.

## Exemptions to Part II

### Work:

- Discrimination on the ground of sex is lawful where sex is a genuine occupational qualification. Examples include dramatic roles; jobs involving personal bodily contact, such as clothes fitting; jobs involving access to private areas such as restrooms or dressing rooms; and jobs that require the employee to live on employer-provided premises where it is not reasonable to expect the employer to provide sleeping accommodation for members of both sexes (Clause 34).
- Discrimination on the ground of sex is lawful in connection with an employee or contract worker who provides care for a child in the child's home (Clause 40(1)). In such cases, discrimination on the ground of marital status is also permitted if it is intended that the spouse of the care-giver also be employed (Clause 40(2)).
- Discrimination on the ground of marital status is not unlawful in relation to a job that is one of two jobs to be held by a married couple (Clause 36).

Education: Educational institutions enrolling solely students of one sex are exempt from any obligation to admit students of the other sex (Clause 21(3)).

### Accommodation:

- An employer or principal is exempt with respect to accommodation if existing accommodation is already occupied by persons of one sex, and it would be unreasonable to expect the employer to provide separate sleeping quarters for an applicant of the opposite sex (Clause 24(3)(d)). Employers may lawfully provide accommodation of different standards where the standard is determined according to the number of persons in the household of the employee (Clause 39(1)).
- Single-sex student housing is exempt (Clause 39(2)).

Clubs: If, taking account of the circumstances, it is impracticable for a club to provide a benefit for the use of men and women simultaneously or to the same extent, the club may provide equivalent benefits separately or apportion the benefit fairly and reasonably (Clause 26 (3), (4)).

Superannuation and insurance Nothing in Part II prohibits discrimination on the ground of

sex or marital status in the terms of superannuation or provident fund schemes, this provision may, however, be repealed by subsequent regulations (Clause 41(1)-(3)). With regard to the terms of annuities and insurance policies, discrimination on the basis of sex is lawful if reasonable and based upon actuarial or other relevant data (Clause 41(4)).

Sports Where reasonable, members of one sex may be excluded from competitive sporting activities (not, however, from coaching, umpiring or administration of such activities) (Clause 42).

New Territories land: Nothing in Part II affects Chinese customary law in relation to New Territories land (except, if relevant, Clause 29 concerning elections and public affairs). Because of the complexity of the legal regime for land in the New Territories, the associated problems of discrimination against women require separate legislation. Action on these problems is now deferred pending the outcome of the New Territories Land (Exemption) Bill.

Measures to meet special needs/to achieve equality: Nothing in Part II prohibits services that by their nature can only be provided to members of one sex (Clause 37). In particular, rights or privileges relating to pregnancy and childbirth remain lawful even though granted to women exclusively (Clause 35). Clause 38 generally exempts measures designed to achieve equality or to meet special needs of pregnant women or persons of a particular sex or marital status.

### **PART III – DISCRIMINATION ON THE GROUND OF FAMILY RESPONSIBILITY OR FAMILY STATUS**

Clause 44 defines direct and indirect discrimination on the grounds of family responsibility or family status. Discrimination is prohibited in work (Clauses 45-51) and in the other standard areas (Clauses 52-59).

*Example 7: During a job interview, an employer asks an applicant, a single parent, a series of questions about his family, such as: "How will your family life be affected by the long hours? What arrangements would you make over school holidays? If you received a phone call at work from your child's school saying your child has a temperature, what would you do?" The applicant is confused and unsettled by these questions. The employer would not have asked these questions of a person who was not a parent, and may have discriminated against the applicant on the ground of his family responsibilities both by requesting different information from him than from a non-parent and, in so doing, by treating his application less favourably than one from a non-parent.*

#### **Exemptions to Part III:**

Work: Employers may lawfully restrict the employment of relatives of their own or others' employees where there is a significant likelihood of collusion with resulting damage to the business (Clause 62).

Accommodation: Employers may lawfully provide accommodation of different standards where the standard is determined according to the number of persons in the household of the employee (Clause 69).

Bona fide benefits: The Bill permits employers and educational institutions to afford persons of a particular family status or responsibility special benefits in connection with that status (Clauses 45(4) and 52(3)). Examples include parental leave arrangements, or preferential housing arrangements for students with dependents.

Measures to meet special needs/to achieve equality: Measures to meet the special needs of persons of a particular family status or responsibility are exempt (Clause 60).

## **PART IV – DISCRIMINATION ON THE GROUND OF SEXUALITY OR SEXUAL PREFERENCE**

Clause 63 defines direct and indirect discrimination on the ground of sexuality. Discrimination is prohibited in work (Clauses 64-70) and in the other standard areas (Clauses 71-78). Other provisions include:

*Example 8: Two men attempting to check into a hotel are refused accommodation by the hotel clerk, who makes reference to "indecent activities". The hotel's denial of accommodation appears to be grounded on an imputation of homosexuality and may constitute discrimination on the ground of sexuality.*

**Discrimination involving harassment on the ground of sexuality:** Threats, abuse, insults or taunts on the ground of sexuality constitute unlawful harassment when the victim suffers any disadvantage for objecting, or reasonably believes objection would result in disadvantage. Harassment is prohibited in employment (Clause 79), education (Clause 80) and the provision of accommodation (Clause 81) and goods and services (Clause 82). Harassment in employment also includes conduct that creates a hostile work environment for the victim on the ground of the victim's sexuality (Clause 79(3)(b)).

**Vilification on the ground of sexuality:** It is unlawful for a person by a public act to incite hatred towards, serious contempt for or severe ridicule of a person or group on the ground of sexuality (Clause 84). Fair reports of public acts and other privileged and "good faith" communications are exempt. Vilification may constitute a criminal offence where it includes a threat of or incitement to physical harm (Clause 85).

### **Exemptions to Part IV**

**Measures to meet special needs:** Measures to meet the special needs of persons of a particular sexuality are exempt (Clause 86).

## **PART V – DISCRIMINATION ON THE BASIS OF RACE, NATIONAL OR ETHNIC ORIGIN**

The term "race" is defined to include colour, descent, ethnic or national origin, or nationality (Clause 3). Clause 87 defines direct and indirect discrimination on the grounds of race. Acts which segregate persons on the basis of their race constitute discrimination (Clause 87(1)(f), (2)(e)). Discrimination is prohibited in work (Clauses 88-94) and in the other standard areas (Clauses 95-102).

*Example 9: A landlord shows an apartment to a prospective renter looking for accommodation for himself and two friends. Both the landlord and the prospective tenant are Chinese. When the prospective renter tells the landlord that his friends are Indian, the landlord explains that she would be happy to rent to him alone, but that she won't rent to his friends. The landlord's apparent refusal to consider accommodating Indians constitutes discrimination on the ground of race.*

Other provisions include:

**Discrimination involving harassment on the ground of race:** Threats, abuse, insults or taunts on the grounds of race constitute unlawful harassment when the victim suffers any disadvantage for objecting, or reasonably believes objection would result in disadvantage. Harassment is prohibited in employment (Clause 103), education (Clause 104) and the provision of accommodation (Clause 105) and goods and services (Clause 106). Harassment in employment

also includes conduct that creates a racially hostile work environment for the victim (Clause 103(3)(b)).

*Example 10:* An employee suffers repeated incidents of racist abuse and insults about his Vietnamese ancestry by two co-workers on a certain shift. The employee complains to management, but no action is taken. The employee begins taking frequent sick leaves to avoid sharing his harassers' shift, and the quality of his work suffers under the stress of the continuing harassment. Because of the employee's abuse of sick leave and the declining quality of his work, management dismisses him. The two co-workers' conduct creates a racially hostile working environment for the employee and constitutes racial harassment. The employer may be vicariously liable for this harassment, and if so may additionally have discriminated against the employee on the ground of race by dismissing him for performance problems created by racial harassment on the job.

**Vilification on the ground of race:** It is unlawful for a person by a public act to incite hatred towards, serious contempt for, or severe ridicule of, a person or group on the ground of race (Clause 109). Fair reports of public acts and other privileged and "good faith" communications are exempt. Vilification may constitute a criminal offence where it includes a threat of or incitement to physical harm (Clause 110).

### Exemptions to Part V

**Genuine occupational qualification:** Discrimination in work is exempt where race is a genuine occupational qualification (Clause 111). These include dramatic and artistic roles which demand authenticity, and employment in services for or to promote the welfare of a particular race.

**Clubs:** A club formed to benefit persons of a particular race is exempt, provided the club does not discriminate between members of the relevant race (ethnicity, nationality, etc.) by colour. For example, a club formed to benefit Australians may give preferential treatment to Australians, but not to White Australians only (Clause 100(3), (4)).

**Measures to meet special needs/to achieve equality:** Measures intended to achieve equality for or meet special needs of members of a particular race are exempt (Clause 112).

## PART VI – DISCRIMINATION ON THE GROUND OF DISABILITY

The term "disability" is defined to include any physical or mental impairment, as well as the presence of disease-causing organisms such as HIV (Clause 3). Past, potential or imputed disabilities are also covered. Clause 113 defines direct and indirect discrimination on the grounds of disability. Part VI also covers discrimination on the ground that a person is accompanied by a guide dog or similar trained animal (Clause 114); by a therapeutic device such as a wheelchair or neck brace (Clause 115); or by an interpreter or assistant such as a reader for the blind (Clause 116).

Discrimination is prohibited in work (Clauses 117-123) and in the other standard areas (Clauses 124-130, 132).

*Example 11:* An employee sustains neck and lower-back injuries in a work-related car accident. A rehabilitation plan devised by his doctor requires physiotherapy and a special exercise program, as well as an initial reduction in the hours he works and certain changes to his duties. When he returns to work, his supervisor indicates that he views the employee's injuries and claims to special treatment with suspicion. The supervisor subsequently delays or denies minor workplace adjustments needed to accommodate the employee's injuries and assigns the employee duties inappropriate under the rehabilitation



*plan. The supervisor's failure to make reasonable accommodation for the employee's injuries disadvantages the employee in work and may constitute discrimination on the ground of disability.*

Other provisions include:

**Sports:** Discrimination in the area of sport is prohibited (Clause 131). Exemptions apply if a person is not reasonably capable of performing the activity, or if an activity is restricted to persons with a particular disability only.

**Building approvals:** Public authorities shall not grant building or renovation approvals unless satisfied that reasonable access will be provided for persons with a disability, taking into account the degree of hardship imposed on the person seeking approval (Clause 133). Private residences of 5 or fewer units are exempt.

**Discrimination involving harassment on the ground of disability:** Threats, abuse, insults or taunts on the grounds of disability constitute unlawful harassment when the victim suffers any disadvantage for objecting, or reasonably believes objection would result in disadvantage. Harassment is prohibited in employment (Clause 133A), education (Clause 133B) and the provision of accommodation (Clause 133C) and goods, services and facilities (Clause 133D). Harassment in employment includes conduct that creates a hostile work environment for the victim on the ground of the victim's disability (Clause 133A(3)(b)). Harassment also includes interference with the provision of goods, services or facilities to a person on ground of that person's disability (Clause 133D(3)).

*Example 12: An adult man with Down's syndrome joins the line for service at a fast food restaurant. Two other customers taunt and insult him and push him out of the line, and a brief shoving match ensues. The manager intervenes and orders the man with Down's syndrome to leave. The two customers' behaviour likely amounts to interference with the provision of services and constitutes harassment on the ground of disability. The manager's ejection of the disabled disputant, but not the others, may also constitute discrimination on the ground of disability.*

**Vilification on the ground of disability:** It is unlawful for a person by a public act to incite hatred towards, serious contempt for, or severe ridicule of, a person or group on the ground of disability (Clause 139). Fair reports of public acts and other privileged and "good faith" communications are exempt. Vilification may constitute a criminal offence where it includes a threat of or incitement to physical harm (Clause 140).

## **Exemptions to Part VI**

**Unjustifiable hardship:** In most areas, discrimination on the ground of disability is not unlawful if special services or facilities would be required to provide equal opportunity, and such services or facilities would in the circumstances impose an unjustifiable hardship on the discriminator

**Work:** Discrimination on the ground of a person's disability in connection with work is not unlawful if, taking account of all reasonably relevant factors, the person would be unable to carry out the inherent requirements of the position or profession.

**Education:** Schools established solely for students with a particular disability may lawfully restrict admissions to persons with that disability only (Clause 124(3)).

**Superannuation and insurance:** Nothing in Part VI prohibits discrimination on the ground of disability in the availability or terms of superannuation or provident fund schemes, annuities, or

insurance policies, if the discrimination is reasonably based upon actuarial or other relevant data (Clause 142).

Infectious diseases Discrimination on grounds of an infectious disease is lawful if reasonably necessary to protect public health (Clause 143). This exemption does not apply to discrimination against a person merely because the person is HIV-positive or has Acquired Immune Deficiency Syndrome.

Telecommunications: A temporary exemption of three years applies to payphones that are inaccessible to persons with disabilities (Clause 144)

Measures to meet special needs/to achieve equality: Measures intended to achieve equality for or meet special needs of persons with disabilities are exempt (Clause 141).

## **PART VII – DISCRIMINATION ON THE GROUND OF RELIGIOUS OR POLITICAL CONVICTION**

Clause 145 defines direct and indirect discrimination on the ground of religious or political conviction. Discrimination is prohibited in work (Clauses 146-152) and in the other standard areas (Clauses 153-160). The Bill also makes it unlawful for an employer or principal to refuse employees or contract workers permission to carry out recognised religious practices during working hours if such practices are reasonable in the circumstances of the employment (Clauses 146(3) and 148(2)).

***Example 13:** An employer requires front-room employees (whose duties include dealing with customers) to wear a uniform, including a cap, for appearance rather than hygiene or safety reasons. An orthodox Sikh employee is promoted to a front-room position and requests permission to wear a turban instead of the standard cap for religious reasons. The employer refuses and transfers the employee back to the storeroom. By conditioning promotion on a willingness to wear headgear which is religiously unacceptable to the employee, the employer may be indirectly discriminating against the employee on the ground of religious conviction.*

### **Exemptions to Part VII**

Private educational authorities and religious bodies may lawfully discriminate on ground of religious or political conviction in hiring persons to perform duties involving religious observances or practices (Clause 161(1)). Discrimination on the basis of political conviction or activities is also lawful in connection with hiring persons to work for a political party, an electoral staff, or other similar work (Clause 161(2)).

## **PART VIII – DISCRIMINATION ON THE GROUND OF AGE**

Clause 162 defines direct and indirect discrimination on the ground of age. Discrimination is prohibited in work (Clauses 163-169) and in the other standard areas (Clauses 170-175, 177, and 179).

***Example 14:** An employer places a newspaper advertisement describing a sales position available open to a "young" person, "preferably 25 to 30". The advertisement appears to indicate an intent to discriminate in the firm's hiring arrangements. Such discrimination may be unlawful under the Bill, and if so both the firm and the newspaper could be found criminally liable in a prosecution initiated by the Attorney General or by any other person.*

Other provisions include:

Sports: Excluding a person from sporting activities on the ground of age is unlawful unless the person is not reasonably capable of participating, or the activity is a competitive one between members of particular age groups (Clause 176). No exemption applies to coaching, refereeing or administration.

Superannuation schemes and provident funds: Discrimination on the basis of age is unlawful in connection with superannuation schemes and provident funds, except where necessary to comply with or obtain a benefit under any other law, or if reasonable having regard to actuarial or other relevant data (Clause 178).

### **Exemptions to Part VIII**

#### **Work:**

- Genuine occupational qualification: Discrimination in work is exempt where age is a genuine occupational qualification (Clause 184). These include dramatic and artistic roles which demand authenticity, and employment in services for or to promote the welfare of a particular age group.
- Retirement: Voluntary phased-in retirement schemes are exempt. A temporary exemption of two years applies to mandatory retirement schemes (Clause 181).

Education: Mature age admission schemes are exempt from the provision concerning education (Clause 170(4)).

Land: Residential complexes intended for a particular age group are exempt from the provision concerning dispositions of land (Clause 174(2)(b)).

Clubs: The provisions on age discrimination in clubs do not apply to clubs formed to benefit members of a particular age group (Clause 175(3)(a)). Any club may lawfully retain age categories of membership (Clause 175(3)(b)).

Bona fide benefits: Benefits or concessions may lawfully be offered to particular age groups in connection with accommodation, clubs and access to places, vehicles, goods, services and facilities (Clauses 171(2), 172(2), 173(3)(d), and 175(3)(b)(ii)).

Insurance: Nothing in Part VIII prohibits discrimination on the ground of age in the availability or terms of annuities or insurance policies if the discrimination is reasonably based upon actuarial or other relevant data (Clause 185).

Contracts with minors: A person may lawfully refuse to enter into any contract with a minor where such contract would be unenforceable at common law (Clause 182).

Health and safety considerations: Nothing in Part VIII applies to terms and conditions relating to employment, access to places, vehicles, goods, services or facilities, which are justified by reasonable health and safety considerations (Clause 180).

Measures to meet special needs/to achieve equality: Measures intended to achieve equality for or meet special needs of persons of a particular age are exempt (Clause 183).

### **PART IX – DISCRIMINATION ON THE GROUND OF SPENT CONVICTION**

Clause 186 defines direct and indirect discrimination on the ground of a spent criminal conviction. A person has a spent conviction if the person has been convicted of at most one offence, was not sentenced to death, imprisonment or a fine exceeding \$5,000, and has had a "clean record" for at least three years (Clause 187). Discrimination is prohibited in work (Clauses

188-193) and in the other standard areas (Clauses 194-201)

Part IX extends the protection against discrimination afforded by the Rehabilitation of Offenders Ordinance (Cap 297), and is subject to that Ordinance (Clause 202).

#### **PART X – DISCRIMINATION ON THE GROUND OF TRADE UNION MEMBERSHIP OR ACTIVITIES**

Clause 203 defines direct and indirect discrimination on the ground of membership or non-membership of a trade union ("membership status"). Discrimination is prohibited in work (Clauses 204, 207-212) and in the other standard areas (Clauses 213-220).

In addition, certain rights of employees to participate in union activities are protected (Clause 205), and offers of employment that forbid membership in or association with members of trade unions are made unlawful (Clause 206). These Clauses create civil liability for anti-union practices which are now covered by rarely invoked criminal provisions in the Employment Ordinance (Cap. 57). Neither Clause, however, limits the possibility of criminal prosecution under the parallel sections of the Employment Ordinance (ss. 21B, 21C).

*Equal Opportunities Bill*

**Overview**

***What does discrimination mean?***

Discrimination means treating someone unfairly or adversely without a good reason because they happen to belong to a particular social group, for example, women, divorcees, the disabled, American Chinese, Filipinos, Catholics, communists, union members, children, gays, etc.

Many people have prejudices against, or negative views of, groups of people who are different; these feelings can easily lead to discrimination against those people.

***Why does Hong Kong need this Bill?***

Hong Kong needs the Equal Opportunities Bill because discrimination is a significant problem in our society: sexist job advertisements, sexual harassment, threatened violence against facilities for children suffering Down's Syndrome, "local" employees receiving less favourable terms than expatriates, the inaccessibility of buildings and public transport for the physically disabled, firing of active union members, schools refusing to admit children with AIDS, etc.

There is little legislation prohibiting discrimination. The Bill of Rights Ordinance contains certain provisions in this regard but the provisions are not specific and therefore are difficult to enforce. The Bill of Rights Ordinance binds only the Government and public authorities, meaning that it does not cover discrimination by private parties, such as employers in the private sector.

***The objects of the Bill***

The legislation proposes to make a number of types of discrimination unlawful to help give everyone in Hong Kong an equal opportunity or a "fair go". The Bill does not require (but it does allow) the government or the private sector to give special privileges or favourable treatment to those suffering discrimination; it is merely seeking to give everyone a fair chance. And the Bill has no intention of putting unnecessary restrictions on apparently "discriminatory" practices that are, in fact, reasonable.

***What types of discrimination are made unlawful under the proposed legislation?***

**Sex Discrimination** - where you are treated unfairly or harassed because you are a woman not a man, or because you are a man not a woman. Sexual harassment is a form of sex discrimination, as is disfavoursing a woman because she is pregnant.

- Marital Status Discrimination** - where you are treated unfairly because of your particular marital status; for example, because you are single, or married, or divorced, or living with someone in a de facto relationship (i.e. as though married).
- Family Responsibility or Family Status Discrimination** - where you are treated unfairly because you are responsible for the care of another person, say your mother-in-law, your child, or because you are a relative of a particular person.
- Sexuality Discrimination** - where you are treated unfairly or harassed because of your sexual preference, say because you are gay/lesbian, or someone thinks you are gay/lesbian.
- Race Discrimination** - where you are treated unfairly or harassed because of your race, colour, ethnic background or nationality; for example because you are Chinese, or White, or Indian, or because you have Australian nationality, or because you are from Shanghai.
- Disability Discrimination** - where you are treated unfairly or harassed because you have either a physical disability, a physical illness, an injury that has affected your body's structure or functioning, or an intellectual disability, a brain disorder or malfunction. This includes those with physical handicaps, epilepsy, AIDS, Down's Syndrome and the ex-mentally ill.
- Religious and Political Conviction Discrimination** - where you are treated unfairly because of your religious or political beliefs; for example, because you are a Catholic, or a Protestant, or a Buddhist, or an atheist, or because you are politically "left" or "right", or a democrat, a conservative or a communist.
- Age Discrimination** - where you are treated unfairly because you are of a certain age; for example, because you are under 18, or over 30, or over 55.
- Union Membership Discrimination** - where you are treated unfairly because you are a union member, or you are involved in union activities; or because you are not a union member.
- Spent Conviction Discrimination** - where you are treated unfairly because of a prior criminal conviction, which is fairly minor (i.e. not sentenced to imprisonment or to a fine exceeding \$50,000) and where 3 years has elapsed without another conviction.

*These types of discrimination are against the proposed law if they happen in one of the following places or circumstances:*

- Employment** - this includes everything to do with work - from applying for a job, to terms of employment, to promotion, to leaving a job, to getting a professional qualification, to being invited to become a partner.
- Education** - this includes everything to do with schools, colleges and universities - from getting admitted, to being awarded a scholarship, to being expelled, to what happens in schools.
- Access to places and vehicles** - this includes public buildings and public transport, like the MTR, the KCR, ferries, buses.....
- Provision of goods, services and facilities** - this includes buying goods or getting services from, for instance, banks, lawyers, government departments, doctors, pubs, entertainment places, shops.....
- Accommodation** - this includes everything to do with renting (or purchasing) flats, houses, hotel rooms and commercial premises.
- Land** - this includes the sale or disposal of a property.
- Registered clubs** - this includes becoming a member of a club, entering a club and enjoying services provided by a club.
- Government programmes** - this includes government programmes and policies in areas such as housing, social welfare, taxation, education, employment, transport.....

***Both "direct" and "indirect" discrimination is unlawful under the Bill***

**Direct Discrimination** means treatment that is obviously unfair or unequal to a particular group of people. For example, if an employer won't hire someone just because she is a woman, this is likely to be direct sex discrimination unless the employer can show good reason why a woman is not suitable for the position.

**Indirect Discrimination** means a requirement (or rule) that is the same for everyone but the effect or result of which is unequal. For example, an employer who says that the company needs a person over 180 cm tall to do a job is likely to end up discriminating against women. This is because they are less likely than men to be this height. Unless the employer can show good reason why the job needs someone 180 cm tall, or why it could not easily be adapted to suit people who aren't that tall, a woman could claim indirect sex discrimination

***Harassment on the grounds of sex, sexuality, race and disability is also unlawful under the proposed law***

**Sexual harassment** is when someone, or a group of people, behave in a sexual manner towards you when you don't want them to. It includes, for instance, asking for sexual favours, or engaging in sexual jokes, sexual or physical contact like touching, kissing. The harasser could be your boss, your supervisor, your colleagues, your teacher, your professor, your landlord or your doctor. Harassment on the ground of sexuality, race and disability is also unlawful under the proposed law. This is where a person is threatened, abused, insulted or taunted, because of any of these characteristics, and he/she is or would be disadvantaged in objecting to these.

***"Vilification" on the grounds of race, sexuality, disability is also unlawful under the proposed law***

**Vilification** means an act that incites hatred, serious contempt or severe ridicule toward a particular person or group of persons because of their race, or because of their sexual preference, or because of their disability. The act or action must happen publicly, not in private. This includes for instance, public speaking, writing, broadcasting or playing recorded materials to the public or displaying of clothing, signs, flags. However, cases like fair reporting of a public act, or a public act for academic or artistic purposes are lawful under this Bill. Vilification is a complex concept. If you want more information about it, please contact Anna Wu's Office and/or look at the Information Sheet on *Vilification*.

***There are exceptions to cater for the legitimate rights and interests of individuals and the society, such as:***

**Genuine occupational qualifications** - this includes where the duties of a position require a person of a particular sex, race or age, for instance, if the duties involve dramatic

performance, entering a female lavatory or fitting of clothing for women, then employment can be restricted to women.

**Measures to achieve equality or to meet special needs** - this includes, for example, giving preferential treatment to the disabled in employment (say, recruitment and promotion), providing concessionary fares for children and senior citizens, establishing schools for the blind, clinics for women, providing maternity leave for pregnant employees and special leave for working mothers.

**Accommodation** - this includes a religious, charitable or voluntary body providing accommodation solely for persons of a particular sex, or marital status, or race, or religious conviction or age, etc. And if you are leasing out part of your home (say, one of the rooms), your choice of tenants would not be restrained by the Bill.

**Employment** - this means if you are hiring a domestic helper to work in your home, you are free to choose a helper of a particular sex, race, sexuality, religious belief or age, etc. However, once hired, he/she enjoys the same protection as everyone else under this Bill regarding, for instance, terms of employment and sexual harassment.

**Disposal of a property by will or by way of gift**

**Measures that impose undue hardship** - this means a person is not required to hire a disabled person or making alterations to the premises to provide access for a disabled person if doing so would involve unreasonable changes to premises or job requirements.

**Religious bodies, religious hospitals and schools** - this includes ordination of priests, acts done for religious purposes that conform to the doctrines of that religion, employment in a religious hospital or private school where duties of the work involve participation in religious observances or practices (such as conducting prayer sessions).

**Charities and voluntary bodies** - charities may choose whomever they wish to receive their charitable benefits. This also includes non-profit making voluntary bodies in admitting members as well as providing benefits and services to members. These can be provided exclusively for men, married couples, Chinese, Buddhists, democrats or persons over 60, etc.

**This is of course not a comprehensive list of exceptions, please contact Anna Wu's Office and/or refer to other Information Sheet for more information.**



*Equal Opportunities Bill*

**Sex , Marital Status or Pregnancy Discrimination  
and Sexual Harassment**

*Sex discrimination and marital status discrimination under the proposed legislation is:*

- where you are treated unfairly or adversely because of your sex, that is, because you are a woman not a man, or because you are a man not a woman, or
- where you are treated unfairly because of your particular marital status, for example, because you are single, or married, or divorced, or widowed, or living with someone in a de facto relationship (i.e. as though married).
- where a rule or a policy (including recruitment criteria), that applies to everyone, in fact disadvantages your sex more than the opposite sex and it's not reasonable; for instance, requiring applicants of 180 cm tall for the post of manager may disadvantage women, or
- where a rule or a policy (including recruitment criteria), that applies to everyone, in fact disadvantages persons of your marital status more than others and it's not reasonable, or
- where you are sexually harassed - this includes such things as unwanted sexual contact, sexually offensive gestures, and unwanted sexual suggestions, and it is unlawful in employment, education, accommodation and provision of goods, services and facilities. (For more information, please contact Anna Wu's Office and/or look at the Information Sheet on *Sexual Harassment*), or
- where you are treated unfairly or adversely because you are pregnant.

*Sex discrimination and marital status discrimination is unlawful under the proposed legislation in:*

**Employment** - this includes everything to do with work - from applying for a job, to terms of employment, to promotion, to leaving a job, to getting a professional qualification, to being invited to become a partner

**Education** - this includes everything to do with schools, colleges and universities - from getting admitted, to being awarded a scholarship, to being expelled, to what happens in schools.

**Access to places and vehicles** - this includes public buildings and public transport, like the MTR, the KCR, ferries, buses

**Provision of goods, services and facilities** - this includes buying goods or getting services from, for instance, banks, lawyers, government departments, doctors, pubs, entertainment places, shops

**Accommodation** - this includes everything to do with renting (or purchasing) flats, houses, hotel rooms and commercial premises

**Land** - this includes the sale or disposal of a property

**Registered clubs** - this includes becoming a member of a club, entering a club and enjoying services provided by a club

**Government programmes** - this includes government programmes and policies in areas such as housing, social welfare, taxation, education, employment, transport.....

*Not all differential treatments are unlawful, there are exceptions where "discrimination" is lawful*

**Genuine occupational qualifications** - this includes where the duties of a position require a person of a particular sex; for instance, if the duties involve dramatic performance, entering a female lavatory, fitting of clothing for women, searches of women's bodies, then employment can be restricted to women.

**Employment** - this means if you are hiring a domestic helper or someone to take care of your children in your home, you are free to choose a helper of a particular sex. However, once hired, he/she enjoys the same protection as everyone else under this Bill regarding, for instance, terms of employment, sexual harassment.

**Single sex schools** - boys' schools can continue admitting only boys and girls' schools can continue admitting only girls.

**Pregnancy or childbirth** - it remains lawful to provide rights, privileges or benefits in connection with pregnancy, such as maternity leave, exclusively for women.

**Measures to achieve equality or to meet special needs** - this includes, for example, establishing clinics for women, providing arrangements to promote the welfare of widows, divorcees or pregnant women, etc.

**Accommodation** - this includes a religious, charitable or voluntary body providing accommodation solely for persons of a particular sex or marital status. And if you are leasing out part of your home (say, one of the rooms), your choice of tenants would not be restrained by the Bill.

**Disposal of a property by will or by way of gift**

**Measures that impose undue hardship** - this means no changes would be required if, for example, employment of women would impose undue hardship by requiring separate sleeping accommodation.

**Religious bodies, religious schools** - this includes ordination of priests, meaning that the Catholic Church may ordain only an unmarried man as Father; acts done for religious purposes that conform to the doctrines of that religion; and employment in a religious educational institution for the sake of adherence to its doctrines.

**Charities and voluntary bodies** - charities may choose whomever they wish to receive their charitable benefits. This also includes non-profit making voluntary bodies in admitting members as well as providing benefits and services to members. These can be provided exclusively for men, married couples or singles for example.

**This is not a comprehensive list of exceptions, please contact Anna Wu's Office for more information.**

*Equal Opportunities Bill*

**Family Responsibility or Family Status Discrimination**

*Family responsibility or family status discrimination under the proposed legislation is:*

- where you are treated unfairly or adversely because of your family responsibility, say you need to breastfeed your baby or you are responsible for the care of your mother-in-law, your disabled brother or your child, or
- where you are treated unfairly or adversely because you are a relative of a particular person (say a prisoner, a union activist, a government official or a politician), or because you are a particular relative (say you are daughter-in-law), or
- where a rule or a policy (including recruitment criteria), that applies to everyone, in fact disadvantages your family responsibility or family status more than others and it's not reasonable; for instance, a monthly bonus awarded only to employees with a perfect attendance record is likely to disadvantage employees with family responsibility.

*Family responsibility or family status discrimination is unlawful under the proposed legislation in:*

**Employment** - this includes everything to do with work - from applying for a job, to terms of employment, to promotion, to leaving a job, to getting a professional qualification, to being invited to become a partner.

**Education** - this includes everything to do with schools, colleges and universities - from getting admitted, to being awarded a scholarship, to being expelled, to what happens in schools.

**Access to places and vehicles** - this includes public buildings and public transport, like the MTR, the KCR, ferries, buses.....

**Provision of goods, services and facilities** - this includes buying goods or getting services from, for instance, banks, lawyers, government departments, doctors, pubs, entertainment places, shops .

**Accommodation** - this includes everything to do with renting (or purchasing) flats, houses, hotel rooms and commercial premises.

**Land** - this includes the sale or disposal of a property.

**Registered clubs** - this includes becoming a member of a club, entering a club and enjoying services provided by a club

**Government programmes** - this includes government programmes and policies in areas such as housing, social welfare, taxation, education, employment, transport.....

*Not all differential treatments are unlawful, there are exceptions where "discrimination" is lawful*

**Employment** - an employer may refuse to employ a person who is a relative of an employee in the company or of an employee of another company, if such employment is likely cause damage to the business. And if you are hiring a domestic helper to work in your home, you are free to choose a helper with regard to family status or to family responsibility. However, once hired, he/she enjoys the same protection as everyone else under this Bill regarding, for instance, terms of employment.

**Bona fide benefits** - an employer or an educational institutions may provide special benefits with regard to a person's family status, for example, preferential housing arrangements for students with children.

**Accommodation** - this includes accommodation provided by a religious body, or provided by a charitable or voluntary body solely for persons of a particular family status. And if you are leasing out part of your home (say, one of the rooms), your choice of tenants would not be restrained by the Bill.

**Disposal of a property by will or by way of gift**

**Measures intended to meet special needs** - this includes providing special leave only for employees with family responsibility; for example, to take care of children.

**Religious bodies, religious schools** - this includes ordination of priests, acts done for religious purposes that conform to the doctrines of that religion, and employment in a religious educational institution for the sake of adherence to its doctrines.

**Charities and voluntary bodies** - charities may choose whomever they wish to receive their charitable benefits. This also includes non-profit making voluntary bodies in admitting members as well as providing benefits and services to members. These can be provided exclusively for mothers-in-law for example.

**This is not a comprehensive list of exceptions, please contact Anna Wu's Office for more information.**

*Equal Opportunities Bill*

**Sexuality Discrimination**

***Sexuality discrimination under the proposed legislation is:***

- where you are treated unfairly or adversely because of your sexual preference, say because you are gay/lesbian, or someone thinks you are gay/lesbian, or
- where a rule or a policy (including recruitment criteria), that applies to everyone, in fact disadvantages persons of your sexual preference more than others and it's not reasonable; for instance, employment of a manager looking for applicants with a family is likely to disadvantage gays/lesbians.

***Sexuality discrimination is unlawful under the proposed legislation in:***

**Employment** - this includes everything to do with work - from applying for a job, to terms of employment, to promotion, to leaving a job, to getting a professional qualification, to being invited to become a partner.

**Education** - this includes everything to do with schools, colleges and universities - from getting admitted, to being awarded a scholarship, to being expelled, to what happens in schools.

**Access to places and vehicles** - this includes public buildings and public transport, like the MTR, the KCR, ferries, buses.....

**Provision of goods, services and facilities** - this includes buying goods or getting services from, for instance, banks, lawyers, government departments, doctors, pubs, entertainment places, shops...

**Accommodation** - this includes everything to do with renting (or purchasing) flats, houses, hotel rooms and commercial premises.

**Land** - this includes the sale or disposal of a property.

**Registered clubs** - this includes becoming a member of a club, entering a club and enjoying services provided by a club.

**Government programmes** - this includes government programmes and policies in areas such as housing, social welfare, taxation, education, employment, transport.....

***Harassment and vilification on the ground of sexuality is also unlawful***

**Harassment** is unlawful in employment, education, accommodation and the provision of goods, services and facilities. Harassment is where a person is threatened, abused, insulted or taunted, because of his/her sexual preference, and he/she is or would be disadvantaged in objecting to these

**Vilification** means a public act that incites hatred, serious contempt or severe ridicule toward a particular person or group of persons because of their sexual preference. This includes for instance, public speaking, writing, broadcasting or playing recorded materials to the public or displaying of clothing, signs, flags. However, cases like fair reporting of a public act, or

a public act for academic, artistic purposes are lawful under this Bill. Vilification is a complex concept. Please contact Anna Wu's Office and/or look at the Information Sheet on *Vilification* for more information.

*Not all differential treatments are unlawful, there are exceptions where "discrimination" is lawful*

**Accommodation** - this includes accommodation provided by a religious body. And if you are leasing out part of your home (say, one of the rooms), your choice of tenants would not be restrained by the Bill.

**Employment** - this means if you are hiring a domestic helper to work in your home, you are free to choose a helper of a particular sexuality. However, once hired, he/she enjoys the same protection as everyone else under this Bill regarding, for instance, terms of employment.

**Disposal of a property by will or by way of gift**

**Measures intended to meet special needs** - this includes providing special training to medical staff or social workers to enhance their understanding on the needs of homosexuals and funding civic education to promote public understanding.

**Religious bodies, religious schools** - this includes ordination of priests, acts done for religious purposes that conform to the doctrines of that religion, and employment in a religious educational institution for the sake of adherence to its doctrines. For instance, Christian teachings that condemn gays, or a religious group's refusal to employ gays may be lawful under the proposed law.

**Charities and voluntary bodies** - charities may choose whomever they wish to receive their charitable benefits. This also includes non-profit making voluntary bodies in admitting members as well as providing benefits and services to members. These can be provided exclusively for non-gays for example.

**This is not a comprehensive list of exceptions, please contact Anna Wu's Office for more information.**

## Equal Opportunities Bill

### Race Discrimination

#### ***Race discrimination under the proposed legislation is:***

- where you are treated unfairly or adversely because of
  - your race, because you are Chinese, or Indian, or Filipino, or German, or English,
  - your colour, say because you are Black, or White, or darker in colour,
  - your ethnic background because you are from Shanghai, or from Taiwan, or from Sichuan,
  - your nationality, for example, because you have Australian, or Canadian, or Japanese nationality, or because you are American Chinese, or
- where a rule or a policy (including recruitment criteria), that applies to everyone, in fact disadvantages your race more than other races and it's not reasonable; for instance, requiring applicants for a post as technician to speak accentless Cantonese is likely to disadvantage persons from Shanghai.

#### ***Race discrimination is unlawful under the proposed legislation in:***

**Employment** - this includes everything to do with work - from applying for a job, to terms of employment, to promotion, to leaving a job, to getting a professional qualification, to being invited to become a partner.

**Education** - this includes everything to do with schools, colleges and universities - from getting admitted, to being awarded a scholarship, to being expelled, to what happens in schools.

**Access to places and vehicles** - this includes public buildings and public transport, like the MTR, the KCR, ferries, buses.....

**Provision of goods, services and facilities** - this includes buying goods or getting services from, for instance, banks, lawyers, government departments, doctors, pubs, entertainment places, shops.....

**Accommodation** - this includes everything to do with renting (or purchasing) flats, houses, hotel rooms and commercial premises.

**Land** - this includes the sale or disposal of a property.

**Registered clubs** - this includes becoming a member of a club, entering a club and enjoying services provided by a club.

**Government programmes** - this includes government programmes and policies in areas such as housing, social welfare, taxation, education, employment, transport.....

#### ***Harassment and vilification on the ground of disability is also unlawful***

**Harassment** is unlawful in employment, education, accommodation and the provision of goods, services and facilities. Harassment is where a person is threatened, abused, insulted or

taunted, because of his/her race, and he/she is or would be disadvantaged in objecting to these.

**Vilification** means a public act that incites hatred, serious contempt or severe ridicule toward a particular person or group of persons because of their race. This includes for instance, public speaking, writing, broadcasting or playing recorded materials to the public or displaying of clothing, signs, flags. However, cases like fair reporting of a public act, or a public act for academic, artistic purposes are lawful under this Bill. Vilification is a complex concept. Please contact Anna Wu's Office and/or look at the Information Sheet on *Vilification* for more information.

*Not all differential treatments are unlawful, there are exceptions where "discrimination" is lawful*

**Genuine occupational qualification** - this includes, for instance, employing only persons of a particular race in circumstances where the work involves dramatic performance, being an artist's or photographic model, or where such employment is more effective to provide services for persons of a particular race in order to promote their welfare.

**Employment** - this means if you are hiring a domestic helper to work in your home, you are free to choose a helper of a particular race. However, once hired, he/she enjoys the same protection as everyone else under this Bill regarding, for instance, terms of employment.

**Accommodation** - this includes accommodation provided by a religious body, or provided by a charitable or voluntary body solely for persons of a particular race. And if you are leasing out part of your home (say, one of the rooms), your choice of tenants would not be restrained by the Bill.

**Measures intended to achieve equality or to meet special needs** - this includes giving preferential treatment to persons of a particular race in employment (say, recruitment and promotion) in order to promote equality.

**Disposal of a property by will or by way of gift**

**Registered clubs** - this means it is lawful under this Bill for a club to provide benefits for persons of a specified race, for instance, American, but NOT based on colour, that means it cannot be solely for White, or White American.

**Religious bodies, religious schools** - this includes ordination of priests, acts done for religious purposes that conform to the doctrines of that religion; for instance, Jewish synagogues may refuse to admit non-Jews, and employment in a religious educational institution for the sake of adherence to its doctrines.

**Charities and voluntary bodies** - charities may choose whomever they wish to receive their charitable benefits. This also includes non-profit making voluntary bodies in admitting members as well as providing benefits and services to members. These can be provided exclusively for Chinese, Americans, Whites or persons from Shanghai for example.

**This is not a comprehensive list of exceptions, please contact Anna Wu's Office for more information.**



*Equal Opportunities Bill*

**Disability Discrimination**

***Disability discrimination under the proposed legislation is:***

- where you are treated unfairly or adversely because you have a physical disability, a physical illness, an injury that has affected your body's structure or functioning. This includes those with physical handicaps, epilepsy, chronic illnesses, HIV/AIDS, or
- where you are treated unfairly or adversely because you have an intellectual disability, a brain disorder or malfunction. This includes the mentally retarded, the ex-mentally ill, those with Down's Syndrome, or
- where a rule or a policy (including recruitment criteria), that applies to everyone, in fact disadvantages your disability more than others and it's not reasonable.

***Disability discrimination is unlawful under the proposed legislation in:***

**Employment** - this includes everything to do with work - from applying for a job, to terms of employment, to promotion, to leaving a job, to getting a professional qualification, to being invited to become a partner.

**Education** - this includes everything to do with schools, colleges and universities - from getting admitted, to being awarded a scholarship, to being expelled, to what happens in schools.

**Access to places and vehicles** - this includes public buildings and public transport, like the MTR, the KCR, ferries, buses.....

**Provision of goods, services and facilities** - this includes buying goods or getting services from, for instance, banks, lawyers, government departments, doctors, pubs, entertainment places, shops.....

**Accommodation** - this includes everything to do with renting (or purchasing) flats, houses, hotel rooms and commercial premises.

**Land** - this includes the sale or disposal of a property.

**Registered clubs** - this includes becoming a member of a club, entering a club and enjoying services provided by a club

**Government programmes** - this includes government programmes and policies in areas such as housing, social welfare, taxation, education, employment, transport.....

***Harassment and vilification on the ground of disability is also unlawful***

**Harassment** is unlawful in employment, education, accommodation and the provision of goods, services and facilities. Harassment is where a person is threatened, abused, insulted or taunted, because of his/her disability, and he/she is or would be disadvantaged in objecting to these

**Vilification** means a public act that incites hatred, serious contempt or severe ridicule toward a particular person or group of persons because of their disability. This includes for

instance, public speaking, writing, broadcasting or playing recorded materials to the public or displaying of clothing, signs, flags. However, cases like fair reporting of a public act, or a public act for academic, artistic purposes are lawful under this Bill. Vilification is a complex concept. Please contact Anna Wu's Office and/or look at the Information Sheet on *Vilification* for more information.

***Not all differential treatments are unlawful, there are exceptions where "discrimination" is lawful***

**Undue hardship** - it would be lawful to deny the disabled admission to educational institutions, access to premises and vehicles, provision of goods, services and facilities, accommodation, membership or services of clubs if making any of these available to the disabled would impose undue hardship on the providers.

**Employment** - this allows employers to discriminate against disabled persons if they are unable to carry out the requirements of the job, or if it would impose undue hardship on the employers because supporting services or facilities are required for them to carry out the requirements. And if you are hiring a domestic helper to work in your home, you are free to choose an able person to be your helper. However, once hired, he/she enjoys the same protection as everyone else under this Bill regarding, for instance, terms of employment.

**Accommodation** - this includes accommodation provided by a religious body, or provided by a charitable or voluntary body solely for persons of a particular disability. And if you are leasing out part of your home (say, one of the rooms), your choice of tenants would not be restrained by the Bill.

**Disposal of a property by will or by way of gift**

**Measures intended to achieve equality or to meet special needs** - this includes giving preferential treatment to the disabled in employment (say, recruitment and promotion) and in other areas, establishing special educational institutions for the blind or the mentally retarded or providing Rehabus service specifically for the handicapped.

**Infectious disease** - discrimination is lawful if the person's disability is an infectious disease and it is necessary to protect public health; however, AIDS is not considered infectious.

**Religious bodies, religious schools** - this includes ordination of priests, acts done for religious purposes that conform to the doctrines of that religion, and employment in a religious educational institution for the sake of adherence to its doctrines.

**Charities and voluntary bodies** - charities may choose whomever they wish to receive their charitable benefits. This also includes non-profit making voluntary bodies in admitting members as well as providing benefits and services to members. These can be provided exclusively for the able persons for example.

**This is not a comprehensive list of exceptions, please contact Anna Wu's Office for more information.**

*Equal Opportunities Bill*

**Religious and Political Conviction Discrimination**

***Religious and political conviction discrimination under the proposed legislation is:***

- where you are treated unfairly or adversely because of your religious beliefs; for instance, because you are a Catholic, a Protestant, a Buddhist, a Muslim or an atheist, or
- where you are treated unfairly or adversely because of your political beliefs; for instance, because you are politically "left" or "right", a democrat, a conservative or a communist, or
- where you are not permitted to carry out a religious practice during working hours (for instance, Muslims need to pray at certain times, or Catholics need to attend Mass on Sundays) which is necessary or desirable according to your religious conviction (and is reasonable with regard to the circumstances of the employment), or
- where a rule or a policy (including recruitment criteria), that applies to everyone, in fact disadvantages members of your religious group or political group more than others and it's not reasonable; for instance, requiring all employees to wear a uniform which includes a cap is likely to disadvantage orthodox Sikhs who need to wear turbans for religious reasons.

***Religious and political conviction discrimination is unlawful under the proposed legislation in:***

**Employment** - this includes everything to do with work - from applying for a job, to terms of employment, to promotion, to leaving a job, to getting a professional qualification, to being invited to become a partner.

**Education** - this includes everything to do with schools, colleges and universities - from getting admitted, to being awarded a scholarship, to being expelled, to what happens in schools.

**Access to places and vehicles** - this includes public buildings and public transport, like the MTR, the KCR, ferries, buses.....

**Provision of goods, services and facilities** - this includes buying goods or getting services from, for instance, banks, lawyers, government departments, doctors, pubs, entertainment places, shops

**Accommodation** - this includes everything to do with renting (or purchasing) flats, houses, hotel rooms and commercial premises

**Land** - this includes the sale or disposal of a property.

**Registered clubs** - this includes becoming a member of a club, entering a club and enjoying services provided by a club

**Government programmes** - this includes government programmes and policies in areas such as housing, social welfare, taxation, education, employment, transport.....

*Not all differential treatments are unlawful, there are exceptions where "discrimination" is lawful*

**Accommodation** - this includes accommodation provided by a religious body, or provided by a charitable or voluntary body solely for persons of a particular religious belief. And if you are leasing out part of your home (say, one of the rooms), your choice of tenants would not be restrained by the Bill

**Employment** - this means if you are hiring a domestic helper to work in your home, you are free to choose a helper of a particular political or religious conviction. However, once hired, he/she enjoys the same protection as everyone else under this Bill regarding, for instance, terms of employment

**Disposal of a property by will or by way of gift**

**Religious bodies, religious hospitals and schools** - this includes ordination of priests, acts done for religious purposes that conform to the doctrines of that religion; employment of work in a religious hospital or private school where duties of the work involve participation in religious observances or practices; for instance, where staff members are responsible for conducting prayer sessions; and employment in a religious educational institution for the sake of adherence to its doctrines.

**Political parties and political activities** - for example, a person employing staff for a political party or electoral staff for a candidate could choose employees based on political conviction.

**Charities and voluntary bodies** - charities may choose whomever they wish to receive their charitable benefits. This also includes non-profit making voluntary bodies in admitting members as well as providing benefits and services to members. These can be provided exclusively for Buddhists, Catholics, non-Catholics, communists or liberals.

**This is not a comprehensive list of exceptions, please contact Anna Wu's Office for more information.**

## Equal Opportunities Bill

### Age Discrimination

#### *Age discrimination under the proposed legislation is:*

- where you are treated unfairly or adversely because of your age; for instance, because you are under 21, over 30, in the 40s, or over 55, or
- where a rule or a policy (including recruitment criteria), that applies to everyone, in fact disadvantages persons of your age more than others of different ages and it's not reasonable; for instance, employment of a secretary requiring applicants with "pleasant appearance" is likely to disadvantage older applicants.

#### *Age discrimination is unlawful under the proposed legislation in:*

**Employment** - this includes everything to do with work - from applying for a job, to terms of employment, to promotion, to leaving a job, to getting a professional qualification, to being invited to become a partner.

**Education** - this includes everything to do with schools, colleges and universities - from getting admitted, to being awarded a scholarship, to being expelled, to what happens in schools.

**Access to places and vehicles** - this includes public buildings and public transport, like the MTR, the KCR, ferries, buses.....

**Provision of goods, services and facilities** - this includes buying goods or getting services from, for instance, banks, lawyers, government departments, doctors, pubs, entertainment places, shops.

**Accommodation** - this includes everything to do with renting (or purchasing) flats, houses, hotel rooms and commercial premises.

**Land** - this includes the sale or disposal of a property.

**Registered clubs** - this includes becoming a member of a club, entering a club and enjoying services provided by a club.

**Superannuation schemes and provident funds** - this includes the terms, such as the level of contribution and benefit, of the schemes and funds.

**Government programmes** - this includes government programmes and policies in areas such as housing, social welfare, taxation, education, employment, transport.....

#### *Not all differential treatments are unlawful, there are exceptions where "discrimination" is lawful*

**Genuine occupational qualification** - this includes, for instance, employing only persons of a certain age in circumstances where the work involves dramatic performance, being an artist's or photographic model; or where such employment is more effective to provide services for persons of a particular age in order to promote their welfare.

**Employment** - this means if you are hiring a domestic helper to work in your home, you are free to choose a helper of a particular age. However, once hired, he/she enjoys the same protection as everyone else under this Bill regarding, for instance, terms of employment.

**Accommodation** - this includes accommodation provided by a religious body, or provided by a charitable or voluntary body solely for persons of a particular age. And if you are leasing out part of your home (say, one of the rooms), your choice of tenants would not be restrained by the Bill.

**Education** - mature age admission schemes would not be affected by the Bill.

**Bona fide benefits** - this includes providing discounts or concessionary fares for children and senior citizens.

**Measures intended to achieve equality or to meet special needs** - this includes establishing clinics for children, providing social services for the elderly or youth.

**Disposal of a property by will or by way of gift**

**Contract with minors** - it would be lawful to refuse to enter into any contract with persons under 18.

**Health and safety considerations** - it would be lawful to refuse persons of a particular age employment, access to premises and vehicles, the provision of goods, services and facilities, if making any of these available would pose a threat to their health and safety.

**Religious bodies, religious schools** - this includes ordination of priests, acts done for religious purposes that conform to the doctrines of that religion, and employment in a religious educational institution for the sake of adherence to its doctrines.

**Charities and voluntary bodies** - charities may choose whomever they wish to receive their charitable benefits. This also includes non-profit making voluntary bodies in admitting members as well as providing benefits and services to members. These can be provided exclusively for persons under 30 for example.

**This is not a comprehensive list of exceptions, please contact Anna Wu's Office for more information.**

*Equal Opportunities Bill*

**Spent Conviction Discrimination**

***Spent conviction discrimination under the proposed legislation is:***

- where you are treated unfairly or adversely because of a prior criminal conviction, which is fairly minor (i.e. not sentenced to imprisonment or to a fine exceeding \$50,000) and where 3 years has elapsed without another conviction, or
- where a rule or a policy (including recruitment criteria), that applies to everyone, in fact disadvantages persons with a spent conviction more than others and it's not reasonable.

(Note: There is already protection against such discrimination under existing law, the proposed Bill will provide further protection.)

***Spent conviction discrimination is unlawful under the proposed legislation in:***

**Employment** - this includes everything to do with work - from applying for a job, to terms of employment, to promotion, to leaving a job, to getting a professional qualification, to being invited to become a partner.

**Education** - this includes everything to do with schools, colleges and universities - from getting admitted, to being awarded a scholarship, to being expelled, to what happens in schools.

**Access to places and vehicles** - this includes public buildings and public transport, like the MTR, the KCR, ferries, buses.....

**Provision of goods, services and facilities** - this includes buying goods or getting services from, for instance, banks, lawyers, government departments, doctors, pubs, entertainment places, shops..

**Accommodation** - this includes everything to do with renting (or purchasing) flats, houses, hotel rooms and commercial premises.

**Land** - this includes the sale or disposal of a property.

**Registered clubs** - this includes becoming a member of a club, entering a club and enjoying services provided by a club

**Government programmes** - this includes government programmes and policies in areas such as housing, social welfare, taxation, education, employment, transport.....

***Not all differential treatments are unlawful, there are exceptions where "discrimination" is lawful***

**Accommodation** - this includes if you are leasing out part of your home (say, one of the rooms), your choice of tenants would not be restrained by the Bill.

**Employment** - this means if you are hiring a domestic helper to work in your home, you are free to choose someone without prior criminal record as your helper. However, once hired, he/she enjoys the same protection as everyone else under this Bill regarding, for instance, terms of employment

**Disposal of a property by will or by way of gift**

**Religious bodies, religious schools** - this includes ordination of priests, acts done for religious purposes that conform to the doctrines of that religion, and employment in a religious educational institution for the sake of adherence to its doctrines

**Charities and voluntary bodies** - charities may choose whomever they wish to receive their charitable benefits. This also includes non-profit making voluntary bodies in admitting members as well as providing benefits and services to members. These can be provided exclusively for persons without spent conviction for example.

**This is not a comprehensive list of exceptions, please contact Anna Wu's Office for more information.**



*Equal Opportunities Bill*

**Union Membership Discrimination**

***Union membership discrimination under the proposed legislation is:***

- where you are treated unfairly or adversely because you are a union member, or you are involved in union activities or because you are not a union member, or
- where a rule or a policy (including recruitment criteria), that applies to everyone, in fact disadvantages union members more than non-union members or vice versa and it's not reasonable.

***Union membership discrimination is unlawful under the proposed legislation in:***

**Employment** - this includes everything to do with work - from applying for a job, to terms of employment, to promotion, to leaving a job, to getting a professional qualification, to being invited to become a partner.

**Education** - this includes everything to do with schools, colleges and universities - from getting admitted, to being awarded a scholarship, to being expelled, to what happens in schools.

**Access to places and vehicles** - this includes public buildings and public transport, like the MTR, the KCR, ferries, buses, ....

**Provision of goods, services and facilities** - this includes buying goods or getting services from, for instance, banks, lawyers, government departments, doctors, pubs, entertainment places, shops...

**Accommodation** - this includes everything to do with renting (or purchasing) flats, houses, hotel rooms and commercial premises.

**Land** - this includes the sale or disposal of a property.

**Registered clubs** - this includes becoming a member of a club, entering a club and enjoying services provided by a club

**Government programmes** - this includes government programmes and policies in areas such as housing, social welfare, taxation, education, employment, transport.....

***Not all differential treatments are unlawful, there are exceptions where "discrimination" is lawful***

**Accommodation** - this includes accommodation provided by a religious body, or provided by a charitable or voluntary body solely for persons of a particular trade union. And if you are leasing out part of your home (say, one of the rooms), your choice of tenants would not be restrained by the Bill

**Employment** - this means if you are hiring a domestic helper to work in your home, you are free to choose a helper who is (or is not) a union member. However, once hired, he/she enjoys the same protection as everyone else under this Bill regarding, for instance, terms of employment

**Disposal of a property by will or by way of gift**

**Religious bodies, religious schools** - this includes ordination of priests, acts done for religious purposes that conform to the doctrines of that religion, and employment in a religious educational institution for the sake of adherence to its doctrines

**Charities and voluntary bodies** - charities may choose whomever they wish to receive their charitable benefits. This also includes non-profit making voluntary bodies in admitting members as well as providing benefits and services to members. These can be provided exclusively for non-union members for example

**This is not a comprehensive list of exceptions, please contact Anna Wu's Office for more information.**

*Equal Opportunities Bill*

**Vilification**

***Vilification on the grounds of race, sexuality, disability is unlawful under the proposed legislation***

Vilification means committing an act that incites hatred, serious contempt or severe ridicule toward a particular person or group of persons because of their race, or their sexual preference, or their disability. Vilification on any other grounds is not covered by the proposed legislation. The act or action must happen publicly, not in private, meaning what you do in private (of course including private conversation) is not unlawful under the Bill. A public act includes any form of communication to the public, like speaking, writing, broadcasting or playing recorded materials, and any conduct that can be seen by the public, like making gestures, wearing or displaying of clothing, signs, emblems or flags.

Like the legal prohibition on defamation, the proposed legislation is not intended to restrain freedom of speech. However, it does recognize that in exercising the right to freedom of speech, one has to pay due respect to the fundamental rights of others; in this case, the right to be free from discrimination.

***Serious vilification can constitute a criminal offence under the Bill***

Serious vilification becomes a criminal offence if and only if it involves threatening, or encouraging others to threaten physical harm towards a person or group of persons (or towards their property) because of their race, or their sexual preference, or their disability.

Therefore, for instance, you commit a civil wrong if you publicly incite hate speech against children suffering Down's Syndrome. But if your act involves threatening, or encouraging others to threaten physical attacks on these children, you are liable to criminal prosecution.

***There are exceptions where "vilification" is lawful***

**Fair report of a public act** - this includes reporting an act of vilification in the media in a fair manner.

**Public acts done in good faith** - this includes public acts for academic, artistic, scientific or research purposes in the public interest, for instance, academic research, drama, musicals, seminars, etc.

## Equal Opportunities Bill

### Sexual Harassment

#### *What is sexual harassment?*

- Sexual harassment is when someone, or a group of persons behave in a sexual manner towards you when you don't want them to, i.e. unwanted conduct of a sexual nature. Therefore, if an employee wants to have any type of romantic or sexual contact with someone he/she works with, as long as the other person doesn't mind the sexual approaches and it doesn't affect his/her work, it is NOT sexual harassment.
- Sexual harassment is a form of sex discrimination and it is NOT merely a personal problem. In employment, for instance, sexual harassment creates a hostile and offensive working environment. Since women who are subject to sexual harassment (because of their sex) have to work in such intimidating working environment, they enjoy less favourable working conditions than their male colleagues and may be deprived of fair employment and promotion opportunities that are enjoyed by other colleagues without sexual considerations.
- Depending on the circumstances, each of the following acts may be sexual harassment (in some cases, just one of these may be enough to amount to sexual harassment):
  - ♦ suggestive behaviour
  - ♦ sexual propositions, such as asking you for a date or for sexual favours
  - ♦ sexual or physical contact, such as touching, patting or kissing
  - ♦ sexual jokes
  - ♦ sexually offensive gestures
  - ♦ staring and leering
  - ♦ sexual insults or taunts
  - ♦ display of sexually explicit or offensive materials, for example pornographic poses, in a public place or in an employee's work area.
- The harasser could be your boss, your supervisor, your colleagues, your teacher, your professor, your landlord or your doctor.
- It is usually men who sexually harass women. However, there are also cases that women sexually harass men, men sexually harass men and women sexually harass women. All of these are covered by the proposed legislation.

#### *Sexual harassment is unlawful under the proposed legislation in*

**Employment** - when you apply for a job, or at any time during your employment;

**Education** - when you apply to get into, or are studying in, any school, college or university;

**Accommodation** - when you rent, or try to rent, for example, a flat, a room, commercial premises, a hotel room, etc.,

**Provision of goods, services and facilities** - when you get, or try to get goods or services from, for example, shops, pubs, entertainment places, banks, lawyers, doctors, government departments.

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FOREIGN AFFAIRS  
COMMITTEE

First Report

RELATIONS BETWEEN THE UNITED KINGDOM  
AND CHINA IN THE PERIOD UP TO  
AND BEYOND 1997

Volume I

Report, together with the  
Proceedings of the Committee

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*Ordered by The House of Commons to be printed  
23 March 1994*

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The Foreign Affairs Committee is appointed under Standing Order No 130 to examine the expenditure, administration and policy of the Foreign and Commonwealth Office and associated public bodies.

The Committee consists of 11 Members. It has a quorum of three. Unless the House otherwise orders, all members nominated to the Committee continue to be members of it for the remainder of the Parliament.

The Committee has power:

- (a) to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, and to report from time to time;
- (b) to appoint specialist advisers either to supply information which is not readily available or to elucidate matters of complexity within the Committee's order of reference;
- (c) to communicate to any other committee appointed under the same Standing Order (or to the Committee of Public Accounts) its evidence and any other documents relating to matters of common interest;
- (d) to meet concurrently with any other such committee for the purposes of deliberating, taking evidence, or considering draft reports.

The Committee has power to appoint one sub-committee and to report from time to time the minutes of evidence taken before it. The sub-committee has power to send for persons, papers and records, to sit notwithstanding any adjournment of the House, and to adjourn from place to place. It has a quorum of three.

The membership of the Committee since its nomination on 13 July 1992 has been as follows:

Rt Hon David Howell, *Guildford* (Chairman)

Mr Dennis Canavan, *Falkirk West*

Mr Mike Gapes, *Ifford South*

Mr David Harris, *St Ives*

Rt Hon Michael Jopling, *Westmorland  
and Lonsdale*

Mr Jim Lester, *Broxtowe*

Mr Ted Rowlands, *Merthyr Tydfil  
and Rhymney*

Rt Hon Peter Shore, *Bethnal Green  
and Stepney*

Rt Hon Sir John Stanley, *Tonbridge  
and Malling*

Mr David Sumberg, *Bury South*

Mr Robert Warcing, *Liverpool West  
Derby*

## Methods of operation

Within the framework of its operation, the national institution shall:

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

### Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

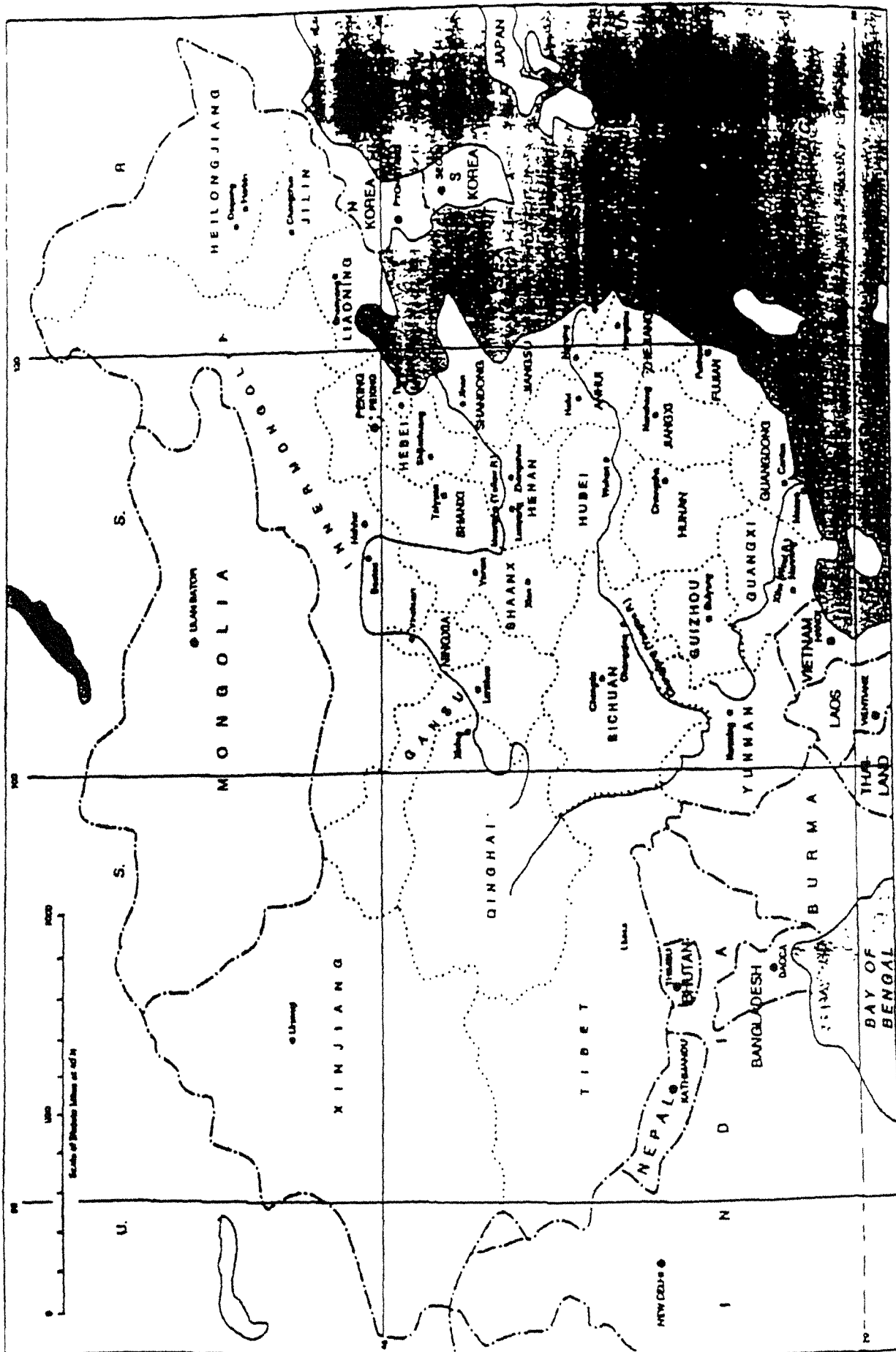
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THE PEOPLE'S REPUBLIC OF CHINA



6. The second is Hong Kong itself. The reversion of the colony to Chinese rule in 1997 will necessarily impose a new framework upon Anglo-Chinese relations. In 1989 the then Foreign Affairs Committee produced a Report on the future of Hong Kong.<sup>4</sup> Since then, and especially since the massacre of students and citizens of Peking near Tiananmen Square on June 4 1989,<sup>5</sup> Hong Kong too has experienced remarkable change. In particular, attitudes in Hong Kong to China have changed. We have been told that Hong Kong is now a different place. China's perception of what will happen in July 1997 under the terms of the Joint Declaration agreed by Britain and China in 1984 has also changed. This report examines relations between the United Kingdom and China during the period of transition before 1997 and beyond.

#### Work of the Committee

7. After an initial session of evidence from the Minister of State at the Foreign and Commonwealth Office (FCO) (Mr Goodlad) in July, we visited the People's Republic of China, Hong Kong and Taiwan in October 1993. Our hosts in China were the Foreign Affairs Committee of the National People's Congress, who arranged our programme of meetings with senior ministers and officials. We are grateful to our colleagues in Peking and to the Chinese Ambassador in London, His Excellency Mr Ma Yuzhen for their help in arranging the visit and to those representatives of the Chinese Foreign Affairs Committee who accompanied groups of the Committee to Guangdong and Shenzhen and to Shanghai, where we were able to get a flavour of the astonishing pace of economic and social change in China. In Hong Kong we met the Governor, Mr Chris Patten, and most members of the Legislative and Executive Councils, as well as the British Trade Commissioner, leading business men and women and the Chinese representative in Hong Kong, and visited the site of the new airport at Chek Lap Kok. During a brief visit to Taipei, we met President Lee Teng Hui, senior ministers and officials, and visited the British Trade and Cultural Office and the Anglo-Taiwan Education Centre.

8. Since our visit we have taken eight further sessions of evidence at Westminster. We have also had helpful informal discussions including several with members of the Hong Kong Legislative Council (LegCo), the Chinese ambassador and the Taipei representative in London. We are grateful to all our witnesses and to those who submitted written evidence.

9. We were assisted in this inquiry by two specialist advisers, Peter Ferdinand Director of the Centre for Studies in Democratisation, University of Warwick and, until October 1993 also head of the Asia-Pacific programme at the Royal Institute of International Affairs and Elizabeth Wright, Head of the Chinese Service of the BBC World Service. We are most grateful for their help and advice. We also thank the Royal Institute of International Affairs for making it possible for Dr Ferdinand to accompany the Committee on its visit.

<sup>4</sup>Hong Kong, Second Report from the Foreign Affairs Committee, HC 281, 1988-89, hereafter referred to as 'the 1989 Report'.

<sup>5</sup>On the night of 3/4 June 1989 the Chinese People's Liberation Army advanced on the centre of Peking from points outside the city to break up the pro-democracy demonstrations which had been taking place in the capital since late April. In addition to calls for greater democracy, the demonstrators were also calling, amongst other things, for an end to corruption in the Chinese Communist Party, for greater dialogue with the Government, and for prices and inflation to be brought under control. As the tanks and armoured personnel carriers advanced along the main East-West axis road to the centre of the city they encountered barriers and opposition from demonstrators. The PLA opened fire on the crowd, many of whom retaliated with stones, cudgels and bottles. The largest number of deaths took place along the route to Tiananmen Square, and in the area around it. Since the Square has traditionally been the scene of both triumph and protest in China, and was the main thrust of the Chinese armed forces, the events of 3/4 June are often known as the 'Tiananmen Square Massacre', although the Chinese Government denies that anyone was killed within the boundary which they strictly define as the Square. It is not known how many died. Estimates vary from several hundred to well over a thousand. For accounts of demonstrations in other parts of China, see Johnathan Unger (ed) *The Pro-Democracy Protests in China: Report from the Provinces*, New York and London, M E Sharpe, 1991.

<sup>6</sup>CHINESE PLACE NAMES: Throughout this report we refer to Peking, rather than Beijing. It is widely believed that the Chinese government changed the name from Peking to Beijing. However, Peking has always been known in standard Mandarin as Beijing, northern capital (apart from periods when it was known as Peiping, northern peace.) Peking is the anglicized pronunciation of a dialect pronunciation of Beijing. The Chinese Government decided that Chinese themselves were going to refer to Peking as Beijing, in the same way that Italians refer to Firenze or Germans to München. Peking/Beijing is the same as Florence/Firenze or Munich/München. Other place names which occur throughout the report are spelt according to the most commonly used English spelling.

1997 or 1998.<sup>244</sup> These ambitious plans demonstrate the confidence in Hong Kong about its continued economic strength and growth beyond 1997.

182. Plans for the airport are governed by a Memorandum of Understanding (MOU) between the United Kingdom and China signed in 1991. Work on the airport site itself and the associated construction works — bridges, roads and railways — is underway and well in train. Fifty per cent of its cost is due to be met by the private sector. In the MOU China undertook to support the project; arrangements were set out for cooperation in the Airport Committee under the Joint Liaison Group; for consultation on granting of major contracts; and an agreement was apparently reached on Chinese support for borrowing by the Hong Kong government to finance the project. However, despite intensive discussions during 1992, agreement has still not been reached with China on an overall financing package for the airport and work is proceeding on a step-by-step basis.<sup>245</sup> China has at the same time failed to agree to the Hong Kong government's proposals for the construction of Container Terminal 9 (CT9). The Governor estimated that, if CT9 is delayed by 2 years, the economic loss to Hong Kong would be \$20 billion in the ten years after 1997.<sup>246</sup>

183. It is China, as well as Hong Kong itself, which will benefit from these great infrastructure projects. Britain's interests are marginal, beyond its desire to do the best for Hong Kong. China's refusal to cooperate to make these plans come to fruition is another example of China appearing to break the agreement in the Joint Declaration for closer cooperation to ensure a smooth transition in 1997. The Governor, when we saw him in January 1994, was confident that the airport would be built — but feared that the absence of agreement with China would make progress slower than it should have been.<sup>247</sup> We support the Governor's verdict on China's attitude towards these projects:

"There is no excuse whatsoever for playing politics with Hong Kong's economic prospects."<sup>248</sup>

We urge the Chinese government to resume cooperation on these projects of such significance to its own, as well as Hong Kong's economy.

#### The rule of law and human rights in Hong Kong

184. The issue of human rights in mainland China, and their place in the context of UK relations with the PRC, is discussed in Chapter V. The issue of human rights in Hong Kong is somewhat different given the historical responsibility of the UK for the people of that territory and the terms of the Joint Declaration, an international treaty between the UK and the PRC registered with the UN. The relevant provisions of the Joint Declaration are:

- (i) The Hong Kong SAR will enjoy a high degree of autonomy<sup>249</sup>;
- (ii) The Hong Kong SAR will be vested with executive, legislative and independent judicial power, including that of final adjudication. The laws currently in force in Hong Kong will remain basically unchanged<sup>250</sup>;
- (iii) The current social and economic systems in Hong Kong will remain unchanged, and so will the life-style. Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief will be ensured by law in the Hong Kong SAR. Private property, ownership of

<sup>244</sup> Cm 2489, para 54.

<sup>245</sup> Ev. p 19.

<sup>246</sup> Governor's speech to LegCo, 6 October 1993, para 27.

<sup>247</sup> Q 478.

<sup>248</sup> Q 478.

<sup>249</sup> Joint Declaration, para 3(2).

<sup>250</sup> *Ibid.*, para 3(3).

enterprises, legitimate right of inheritance and foreign investment will be protected by law<sup>251</sup>;

- (iv) The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force<sup>252</sup>;
- (v) Using the name of "Hong Kong, China", the Hong Kong SAR may on its own maintain and develop economic and cultural relations and conclude relevant agreements with states, regions and relevant international organisations<sup>253</sup>; and
- (vi) the socialist system and socialist policies shall not be practised in the Hong Kong SAR for fifty years.<sup>254</sup>

185. The Minister of State at the FCO told us:

"I think there are grounds for good confidence that human rights in Hong Kong will be well-protected after 1997"<sup>255</sup>

However, events since the negotiation and signing of the Joint Declaration have shown that while the UK's responsibilities with regard to Hong Kong might be *expressed* adequately in the Joint Declaration, the securing of the treaty in itself is not necessarily a satisfactory discharge of the UK's duty.

186. At face value the terms of the Joint Declaration might appear to amount to a fairly impressive guarantee of fundamental rights and freedoms for the people of Hong Kong. In China there is however, an obligation incumbent upon citizens of the PRC that: "The Socialist system is the basic system of the PRC. Sabotage of the socialist system by any organisation or individual is prohibited"<sup>256</sup> which Lord Howe saw as circumscribing all other rights and freedoms of Chinese citizens.<sup>257</sup> Some witnesses held that Article 23 of the Basic Law which requires Hong Kong SAR legislation prohibiting, amongst other things, "subversion" might have a similar effect.<sup>258</sup> Subversion is not a concept recognised in Hong Kong's current legal system and Mr Paul Harris, from the Bar Human Rights Committee, said:

"It is a term that is often used in China, and has been used in other totalitarian systems, to mean 'opposition to the State'; what we would regard as normal democratic expression of view"<sup>259</sup>

The available Chinese definition of subversion is an act "committed with the goal of overthrowing the political power of the dictatorship of the proletariat and the socialist system"<sup>260</sup>. It is difficult to reconcile such a provision with the statement that, according to the Joint Declaration, the socialist system and socialist policies shall not be practised in the Hong Kong SAR for fifty years.

187. Article 18 of the Basic Law provides for the Standing Committee of the Chinese National People's Congress to declare a state of emergency in Hong Kong SAR in the event

<sup>251</sup> *Ibid.*, para 3(5).

<sup>252</sup> *Ibid.*, Annex I, Chapter XIII, Article 156.

<sup>253</sup> *Ibid.*, para 3(10).

<sup>254</sup> *Ibid.*, Annex I, Chapter I, Article 42.

<sup>255</sup> Q 41.

<sup>256</sup> Article 1 of the Chinese Constitution.

<sup>257</sup> Report of the Visit to China by the Delegation led by Lord Howe of Aberavon, HMSO, 1993, paras 3.1 -3.4.

<sup>258</sup> *Urgent Business: Hong Kong, Freedom of Expression and 1997*, Joint Report of Hong Kong Journalists Association and Article 19, January 1993, pp 12 & 13.

<sup>259</sup> Q 211.

<sup>260</sup> Articles 90-104, PRC Criminal Code.

there is "turmoil ... which endangers national unity or security and is beyond the control of the government of the Region". This is one area where the International Commission of Jurists considered that China had failed to comply with the obligations it had accepted upon signing the Joint Declaration. The ICJ stated that this power was "clearly inconsistent" with paragraph 3(11) and Annex XII of the Joint Declaration which provide that the maintenance of public order in the SAR shall be the responsibility of the SAR Government.<sup>261</sup> In 1989 the then Foreign Affairs Committee concluded that such a provision would contravene the provisions of the Joint Declaration and called for Article 18 to the (then) draft Basic Law to be revised.<sup>262</sup>

188. Some members of LegCo, particularly, but not only, the Lobby Group, led by Ms Christine Loh, Ms Anna Wu and Ms Emily Lau, have continued to urge that the Government needs to do more to safeguard human rights in Hong Kong so as to protect the pluralistic society based on the rule of law which is provided for in the Joint Declaration.<sup>263</sup> The Hong Kong Bar Association told us that the preservation of the rule of law after 1997 "is one of the most important foundations of the successful implementation of the Joint Declaration and the Basic Law."<sup>264</sup> For Hong Kong's way of life to remain unchanged, as promised in the Joint Declaration, it is of paramount importance that the rule of law remain the fundamental principle underlying all institutions and all activity in Hong Kong.

189. It is clear, even though there are now greater contacts on legal matters between China and the west, that the present Chinese regime does not believe in pluralism and freedom of expression, and that there is not yet any satisfactory legal underpinning of individual rights and freedoms in China (see Chapter V). There are hints that this may develop: in our discussions in Peking we learned that the Chinese authorities have clearly understood that there is a need to re-examine the legal framework in which businesses operate, in order to attract outside investment. But as regards individual rights and freedoms, there is little sign yet of real change, despite occasional gestures made over specific issues such as the hosting of the Olympics or the recent re-consideration by the United States of America of China's MFN status. A real change that has been noticed is in Hong Kong. Signs of self-censorship in the media are now apparent alongside the harassment by China of out-spoken journalists. The extent of the freedom of speech and of the press in Hong Kong after 1997 will be an important litmus test of China's sincerity in going beyond the politics of gesture.

190. We have received several representations about how to buttress the rule of law in Hong Kong to protect individual rights and Hong Kong's pluralistic way of life after 1997. There are two strands to the concerns which have been put to us. First that there are some provisions (and some gaps) in current Hong Kong law which, although not in common usage, are fairly draconian in their potential to restrict freedoms. Secondly that there are concerns over the interaction of the Basic Law and the Joint Declaration and a growing apprehension over an apparent gap between the interpretations of the agreements reached between the UK and the PRC referred to in paragraph 172.

#### *Existing Hong Kong legislation*

191. In the 1989 Report the Committee recommended that existing Hong Kong law be reviewed, as a matter of urgency, to identify which areas are in possible breach of the two International Covenants<sup>265</sup>. In June 1991 The Hong Kong Bill of Rights Ordinance was implemented giving effect to the relevant provisions of the covenants and a number of existing laws were subsequently amended.<sup>266</sup> The FCO stated that this process of amending

<sup>261</sup> *Countdown to 1997*. Report of a Mission to Hong Kong, Geneva, International Commission of Jurists, 1992, Chapter XIV.

<sup>262</sup> IHC 281, 1988-89, para 2.12.

<sup>263</sup> See eg Ev.pp 361-362; 358.

<sup>264</sup> Ev.p 276.

<sup>265</sup> *Op cit*, para 2.9 - The International Conventions on Civil and Political and Economic, Social and Cultural Rights.

<sup>266</sup> Ev.p 16, para 6.

legislation to align Hong Kong law with the Bill of Rights will continue.<sup>267</sup> The Bar Human Rights Committee, amongst others, told us: "there are existing Hong Kong laws which would be open to very serious abuse."<sup>268</sup>

192. We were told by some in Hong Kong that the Bill of Rights had been a great success and that there were grounds for optimism that it was not incompatible with the Basic Law and should survive re-examination of its provisions by China. Others were less optimistic. Problems identified to us during our visit included:

- the Bill of Rights was applied only to the public, not to the private sector;
- other Hong Kong laws, on matters such as public order and police powers, were inconsistent with the provisions of the Bill of Rights and should be amended; and
- positive action by the government to translate the Bill into legislation was needed, to protect privacy and freedom of expression and to prevent discrimination.

We also heard calls for an independent Commission on Human Rights; and for an independent legal aid commission to ensure equal access to justice for all.

193. Specific concerns identified by our witnesses included the freedom of expression and of the media (in view of the Emergency Regulations Ordinance, the Broadcasting Authority Ordinance and the Film Censorship Ordinance), and the freedom of information (in view of the Official Secrets Act 1989 which does not allow a public interest defence).<sup>269</sup> We also received evidence of discrimination against women throughout Hong Kong society including instances where some traditional Chinese practices (such as the denial of women's right of succession and inheritance of land — now abolished in other Chinese societies) had been "frozen in time by colonial ordinances".<sup>270</sup> The Bar Human Rights Committee told us that the most glaring deficiency in Hong Kong legislation with regard to human rights was that:

"there is no sex discrimination legislation in Hong Kong. It is bizarre, coming from England, to read the jobs page in the *South China Morning Post*, an English language paper, and see again and again job advertisements saying 'Requirements — male'.<sup>271</sup>

194. In August 1993 the Hong Kong Government published a Green Paper on sex discrimination which included the option of extending to Hong Kong the Convention on the Elimination of All Forms of Discrimination Against Women. A decision on action is promised in early 1994.<sup>272</sup> We strongly support positive action to end sex discrimination in Hong Kong.

195. The FCO said, with regard to the potential threat to the freedom of the press that such freedom "is secure under Hong Kong law" but did go on to say, "a number of provisions are either obsolete or seem to be at odds with the Bill of Rights Ordinance, and proposals will be made to either repeal or amend them as soon as the legislative programme allows."<sup>273</sup> To date three out of seven such provisions have been amended.<sup>274</sup> The FCO also addressed the

<sup>267</sup> *Ibid.*

<sup>268</sup> Q 211.

<sup>269</sup> *Urgent Business, op cit.*, pp ix-xi.

<sup>270</sup> See Ev.p 358.

<sup>271</sup> Q 211.

<sup>272</sup> *Hong Kong Annual Report, 1993*, Cm 2489, 1993-94, para 23.

<sup>273</sup> Ev.p 16.

<sup>274</sup> *Hong Kong Annual Report, 1993*, para 22.



issue of privacy, data protection and access to personal records by individuals, saying that the subject was under consultation but that interim measures to allow private individuals to check personal data provided by them to the Government were in place.<sup>273</sup> Legislation for these measures as well as for enhancing the individual's right to privacy (Article 14 of the Bill of Rights Ordinance) are currently being drafted by the Hong Kong Government.<sup>274</sup>

*The Basic Law and the Joint Declaration*

196. Concern over a number of provisions in the Basic Law were expressed to us. The Bar Human Rights Committee told us:

"Article 18 of the Basic Law permits the Government of the People's Republic of China to impose the laws of the remainder of the People's Republic of China if there is what is described as 'turmoil' in the Hong Kong Special Administrative Region. Our view is that that provision is easily open to abuse; that 'turmoil' is a very elastic term; that there was a history during the cultural revolution period of demonstrations being organised, orchestrated in Hong Kong from China, and that that provision is, therefore, a loophole that could easily be exploited."<sup>277</sup>

The Hong Kong Journalists Association (HKJA) and Article 19 drew our attention to a report from the International Commission of Jurists (ICJ)<sup>278</sup> which said this power was inconsistent with the Joint Declaration which provides that "maintenance of public order in the [SAR] shall be the responsibility of the [SAR] Government".<sup>279</sup> Under Article 18 of the Basic Law the Standing Committee of the NPC holds the power to decide when the Region has reached a state of emergency. The ICJ view was that this decision should rest with the SAR Government.

197. Article 158 of the Basic Law was also claimed to be in contradiction with the terms of the Joint Declaration and to threaten Hong Kong's autonomy after 1997.<sup>280</sup> This Article gives the Standing Committee of the NPC ultimate power of interpretation of the Basic Law and power to overrule the Court of Final Appeal. This would appear to be incompatible with the statement of Hong Kong's judicial autonomy as expressed at Paragraph 184 (ii) above and elaborated in Annex I of the Joint Declaration.<sup>281</sup> The Bar Human Rights Committee expressed the view that this location of the final power to interpret the Basic Law was "a fundamental threat to the Rule of Law".<sup>282</sup>

198. A draft version of this article was considered by the then Foreign Affairs Committee in 1989, when the Committee recommended:

"Total confidence in the legal system ... will exist only if there is a Joint Constitutional Court situated in Hong Kong which will continue to interpret the laws in accordance with the legal principles that have hitherto held sway in the Territory."<sup>283</sup>

199. The Hong Kong Bar Association believes Article 158 is unworkable<sup>284</sup> and calls for it to be reviewed and amended. We conclude that Articles 18 and 158 of the Basic Law are grave potential threats to the autonomy of the Hong Kong SAR after 1997 and to the implementation of the Joint Declaration.

<sup>273</sup> *Ibid.*

<sup>274</sup> *Ibid.*

<sup>277</sup> Q 211.

<sup>278</sup> 'Urgent Business' *op cit.*

<sup>279</sup> *Ibid.*, paragraph 3(11) and Annex I, Article XII.

<sup>280</sup> *Ibid.*, page vii, para 1.4.

<sup>281</sup> *Ibid.*, Chapter III, Article 68.

<sup>282</sup> Q 211.

<sup>283</sup> HC 281, 1988-89, para 2.8.

<sup>284</sup> Ev.p 274.

200. Our witnesses feared that Article 158 could be used to overrule the Bill of Rights. Our panel of lawyers however, told us that the Hong Kong Bill of Rights was entirely compatible with the Basic Law.<sup>285</sup> The Bill of Rights enshrines in Hong Kong law most of the provisions of the International Covenants on Civil and Political and on Economic, Social and Cultural Rights (ICCPR and ICESCR). Under the Joint Declaration China has accepted that these Covenants, to which the PRC itself is not yet a signatory, will continue to apply in the Hong Kong SAR after 1997. These factors yield the necessity for a Bill of Rights or similar legislation if the provisions of the Joint Declaration are to be effected. If China repealed the Bill of Rights after 1997, it would be in breach of the Joint Declaration.<sup>286</sup>

201. It appears to be assumed by the FCO that under the agreement with China the continued application of the ICCPR in Hong Kong means that China must accept not only the substantive legal provisions<sup>287</sup> (the Bill of Rights) but also follow the relevant reporting procedures. Mr Chamberlain, Deputy Legal Adviser FCO, told us:

"the Chinese agreed in the Joint Declaration that the PRC will have to report to the UN Human Rights Committee under the Covenant after 1997."<sup>288</sup>

The Hong Kong Journalists Association and Article 19 hold a contrary view saying that "[China] as a non-signatory state...is under no direct obligation to ensure the proper implementation of the Covenant after 1997." Moreover the Annex I of the Joint Declaration simply states that:

"The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force."<sup>289</sup>

202. The international lawyers told us that it was the function of domestic Bills of Rights and constitutions to spell out lists of rights but that:

"The essence of international human rights treaties is the international procedure and the international mechanisms...the reference to the provisions of the International Covenant should be understood as covering the mechanisms and that those mechanisms that had been in force in relation to Hong Kong (that is to say the reporting mechanism) should continue after 1997."<sup>290</sup>

It was put to us by other witnesses that the UK should seek clarification from the UN Human Rights Committee, as to whether it agrees with the UK's interpretation of Joint Declaration in this regard and whether it would accept reports from a sovereignty not party to the relevant Covenant<sup>291</sup> and that it was also important that the Chinese side clarify its own position, both with regard to the reporting procedures themselves, and with regard to the location and constitution of the organ responsible for carrying out this task.<sup>292</sup> We recommend that the Government seek the opinion of the UN Human Rights Committee on the interpretation of the provision in the Joint Declaration about the application to Hong Kong of International Covenants on Human Rights.

203. One point that was highlighted by witnesses was that residents of Hong Kong do not currently have the right of individual petition to the United Nations Human Rights Committee under the International Covenant on Civil and Political Rights. Unless either that procedure is extended by the United Kingdom to Hong Kong, or China ratifies the provisions and

<sup>285</sup> Q 78.

<sup>286</sup> Q 80.

<sup>287</sup> QQ 78, 79, 82, 111, 112.

<sup>288</sup> Q 84.

<sup>289</sup> 'Urgent Business' *op cit*, Chapter XIII.

<sup>290</sup> Q 111.

<sup>291</sup> Ev. p 362.

<sup>292</sup> *Ibid*.

procedures of the International Covenant (including the Optional Protocol) before 1 July 1997, residents of Hong Kong will not have that right after the transfer of sovereignty.<sup>293</sup> Legal witnesses, and many in Hong Kong, including the 28th Governor,<sup>294</sup> believed that it would be desirable for the People's Republic of China to ratify the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights as soon as possible.<sup>295</sup>

204. Lord Howe thought it would be difficult to persuade China that extending the right of individual petition to Hong Kong would be desirable, pointing out that the UK had not extended this provision to residents of the United Kingdom. He acknowledged that in the UK citizens have instead the right to petition the European Court of Human Rights but was not certain this would be regarded as convincing by China.<sup>296</sup> The Foreign Secretary appeared to agree with him.<sup>297</sup> However, this argument could equally have been used against the introduction of Hong Kong's Bill of Rights. While we would not want to set the UK up as an absolute paragon of virtue in this sphere, it might be fair to say that there are sufficient differences between the political and legal structures of the UK and the PRC to invalidate the yardstick of direct comparability between what avenues of recourse are available to UK citizens, and those that might be made available to the inhabitants of Hong Kong, in the event of infringements of the rights of either group. A more telling argument against this reform is that of Mr Peter Duffy, one of the international lawyers that gave evidence:

"Currently the people of Hong Kong do not have access to an individual petition system...Her Majesty's Government has not made the necessary declaration in order to bring that right of petition into play. As regards the obligations on the Government of China by virtue of Article XIII...that obligation cannot therefore, as a matter of strict law, encompass an obligation to introduce something which did not previously exist, namely, the right of individual access to the Human Rights Committee under the optional protocol...this is a measure that would have to be taken with the agreement of the PRC."<sup>298</sup>

#### *A human rights commission and monitoring body*

205. We were told of proposals for two new institutions for the protection of human rights in Hong Kong, a statutory Human Rights Commission and an independent Human Rights Monitor.<sup>299</sup> Mr Harris, from the Bar Human Rights Committee told us:

"The main function of the governmental commission, as canvassed, would be something similar to the Equal Opportunities Commission or the Commission for Racial Equality in Britain, promoting legislation, taking up individual cases. The function of the independent non-governmental commission would be different. It would be an information gatherer, a watchdog, to some extent a lobbyist, and it would not be promoted by the British Government. It would be inconsistent with the idea of an independent monitor that it would be set up by government. The proposal is that it should be set up either by the International Commission of Jurists or by another international body or group of bodies."<sup>300</sup>

The role of the Human Rights Monitor as proposed is to collect and disseminate information on legislative changes in Hong Kong, before and after 1997, judicial, legal and political developments in Hong Kong, neighbouring Guangdong and Peking and alleged human rights abuses in Hong Kong. Amongst the factors cited as indicative of the need for an independent human rights watchdog for Hong Kong in the period up to and beyond 1997 were: problems and disputes over the establishment of the Court of Final Appeal; the unavailability of the

<sup>293</sup> Qs 111-112, 114.

<sup>294</sup> Hong Kong Governor's Address to LegCo, 6 October 1993, para 156.

<sup>295</sup> Q 111

<sup>296</sup> Q 190.

<sup>297</sup> Q 548.

<sup>298</sup> Q 114

<sup>299</sup> *JCI Report*, "Countdown to 1997", March 1992, Ev. pp 358, 360, 98 & Q 211

<sup>300</sup> Q 211.

ICCPR Optional Protocol; the attitude of China to Governor Patten's proposals for LegCo reform; Governor Patten's opposition to the use of human rights' conditionality in trade relations between the USA and China (China's MFN status); and China's public stance (and alleged record) on human rights.<sup>301</sup>

206. The statutory Commission was not seen as a competing proposal. The role of this body would be to receive, investigate and conciliate (or recommend for adjudication) human rights-based complaints; act as an adviser to the SAR Government; as an *amicus curiae* in the courts and as an organ of public education in the field of human rights.<sup>302</sup> The Bar Human Rights Committee supported proposals for both the independent monitor, and governmental commission but believed the absence of the latter made the establishment of the former more imperative.<sup>303</sup> Lord Howe however said that:

"I do not on the face of it see why the existing court system should not be effective for upholding those [human] rights, but there may be some special cause that I am not familiar with."<sup>304</sup>

A sufficient "special cause" may be the resumption of sovereignty over Hong Kong (and, by way of Article 158, over the "existing court system") by a China whose attitude to, and record regarding the protection of human rights is the subject of substantial and wide-ranging criticisms made by, *inter alia*, the report of the recent visit by Lord Howe's Delegation to that country.

207. Britain cannot guarantee much protection to the people of Hong Kong after 1997 and there is little the United Kingdom alone can do, beyond diplomatic exhortation, if China decides to dismantle the electoral structures in place on 1 July 1997. Before that date however there is room for manoeuvre. Securing, for instance, an individual right of petition under the ICCPR might make the job of the British administration in Hong Kong less comfortable in the period before 1997 but that would be a small price to pay for putting in place a mode of redress for infringements of the rights of citizens of Hong Kong after 1997. However the balance of evidence is against this reform being legally possible without the agreement of the PRC. We conclude, that the other proposals put forward for the establishment of an independent statutory human rights commission and an independent human rights 'watchdog', along the lines suggested by many of our witnesses, are possible, legal and desirable.

208. Were the transition to Chinese sovereignty proceeding smoothly, with agreement on both sides, such provisions might appear unnecessary. However, China's increasingly threatening noises as disagreement continues over electoral change; its unwillingness to cooperate over what ought to be straightforward matters in the Joint Liaison Group; and the threats China has voiced to individual members of LegCo who have taken a stand for democracy, make fears that China will not honour its commitments in the Joint Declaration very understandable. We support the Hong Kong Government continuing to implement measures that will strengthen the protection of fundamental human rights and freedoms in Hong Kong up to and beyond 1997.

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<sup>301</sup> Ev.p 100-101.

<sup>302</sup> See Ev.p 358.

<sup>303</sup> See Ev.p 100-103.

<sup>304</sup> Q 190.

Bureau, Britain has 23 districts linked to regions in China, some of which are active and some of which are dormant. Since the passage of the Local Government (Overseas Assistance) Act 1993, local authorities in Great Britain are now authorized to provide advice and assistance as regards matters in which they have skill and experience to bodies engaged in local government outside the United Kingdom. This came about because of the demand for assistance from central and eastern Europe, supported by the Government's Know-How Fund.

298. It is quite clear that there is a need in many parts of the world for improved technical and democratic links independent of government operations. We hope the Government and the Local Government International Bureau will encourage local authorities to seek to expand these programmes of practical cooperation with local and provincial authorities in China.

299. At times when other things are difficult, we remain convinced that by encouraging a wide range of non-governmental contacts with China, as illustrated in the preceding paragraphs, the United Kingdom has nothing to lose and everything to gain by strengthening ties in all walks of life. Different points of view about attitudes to human rights and differences over Hong Kong are a reason for doing more, not less to strengthen people-to-people contacts. We believe there would be merit too, in encouraging the setting up of a non-governmental, forward-looking body of leading figures in both countries, similar to the UK Japan 2000 Group (or the UK Korea Forum for the Future), to set the agenda for future relations between Britain and China.

## VII CONCLUSION

300. In 1847 a Select Committee on Commercial Relations with China concluded:

"...we hope that the newly-opened intercourse with this remarkable empire may be further extended from time to time; and that the jealousies by which it has been so long limited and confined, may, in spite of temporary misunderstandings, which are the natural result of recent differences and ancient prejudices, give way ere long to a cordial confidence, founded on a sense of mutual benefits and mutual respect."<sup>302</sup>

150 years later, in 1997, with Hong Kong's reversion to Chinese sovereignty, there will be a new opportunity for Britain and China to try again to identify and build on such "mutual benefits and mutual respect".

301. The most obvious reason why Britain's interests would be best served by closer and more cooperative relations with China is economic: China is set to become an economic superpower and is the biggest potential new market for British goods and services. From Britain's perspective, China is a vast potential trading and investment partner which, after long isolation, has for the past decade been seeking to open its economy to the rest of the world.

302. But an emerging China is much more than that. It is the United Kingdom's colleague in the permanent core of the United Nations system with similar interests in, for example, preventing the proliferation of weapons of mass destruction. It is actually, or potentially, a great military power, whose actions affect the interests of not just other states in the region, but the whole world.

303. For Britain, two major problems stand in the way of improving relations with China. The first of these — China's attitude to human rights — Britain shares with other democracies. The second, Hong Kong, confronts Britain with a unique blend of moral, political and commercial issues.

<sup>302</sup> Report from the Select Committee on Commercial Relations with China, HC 654, 1847.

### Human rights

304. There are too many recent examples of abuses for anyone to claim that there has been any significant change in recent years in Chinese human rights policies. There have been more reports of dissidents being arrested as we concluded this inquiry. Our witnesses showed that China continues to disregard human rights in Tibet.<sup>303</sup> But Chinese attitudes may slowly be changing. Lord Howe's evidence, and the publication by the Chinese Government of regular reports about human rights in China are signs that China is coming to recognise the legitimacy of debate on the subject. Perhaps even more encouraging, is evidence that China is interested in finding out about legal systems in West. We note that China is currently reviewing its criminal law, examining issues such as access to a lawyer.<sup>304</sup>

305. The Director of the Great Britain-China Centre believed "with increasing economic activity people are recognising the need for the rule of law, protection of property and so on, which also comes into areas of individual rights and so forth...the whole climate and the whole attitude towards the protection of individual rights is changing in China".<sup>305</sup>

306. However, China remains unstable and no one should be under any illusions. A horror along the lines of 'Tiananmen Square' could yet happen again. Mr Philip Baker suggested a three-prong approach towards the human rights in China:

"one of them is dialogue through all means possible; a second prong is training, to train those who, within China, will have to change the legal system and will have to operate a new legal system, the judges, the lawyers and procurators; and perhaps a third prong is to enforce those existing UK laws which would have an effect to improve human rights in China. I am thinking particularly there of the importance of existing UK legislation on foreign prison made goods — to prevent goods made in the Chinese gulag from reaching this country."<sup>306</sup>

307. Lord Howe told us that:

"If the United Kingdom in any context begins to be identified exclusively and obsessively with human rights then *pro tanto* I think our advocacy is diminished. If we are identified with an interest in a broadening and intensification of relations, of cultural relations, of economic relations, then human rights are a legitimate part of that debate and this I think is the best way of carrying it forward."<sup>307</sup>

308. Our witnesses broadly favoured a mix of public and private diplomacy about human rights.<sup>308</sup> We agree with that approach. Dialogue on human rights should continue, as it does now, to form part of all contacts between the British Government and Chinese officials. In the long run, however, such dialogue will only lead to changing attitudes if it is underpinned by broader contacts in as many walks of life as possible. In Chapter VI above, we explore some of the ways in which dialogue can be extended, and understanding mixed with cooperation in the interests of both countries. We urge the Government to give all types of dialogue a fair wind.

309. There are, in addition to such bilateral efforts, multi-lateral channels whereby other countries can put pressure on China to improve human rights and conform to international standards. China wants and needs to join GATT if its open-door policy is fully to succeed. China needs to trade with the USA and with other states including the countries of Western Europe. The USA has sought to persuade China to make progress in improving human rights in exchange for extension of its 'Most Favoured Nation' trading status with the USA, so far

<sup>303</sup> eg. QQ 44, 176, 210 and 326; Ev.pp 4, 96 and 145-152. Asia Watch pp xxiv-xxvi and 163-202.

<sup>304</sup> Q 411.

<sup>305</sup> Q 413.

<sup>306</sup> Q 200.

<sup>307</sup> Q 170.

<sup>308</sup> See Qs 171, 172, 200.

with little sign of success. The European Union could take a different line. The European Union Vice-President, Sir Leon Brittan, has already warned China to keep its trade policies and its political quarrels — for example with the UK over Hong Kong — as separate as possible. China's failure to do so could lead to aid, trade and economic consequences for its relationship with the European Union and with its Member States.

### Hong Kong

310. Since the then Foreign Affairs Committee's report on Hong Kong in 1989 there have been a number of significant and dramatic developments:

- the 'Tiananmen Square' massacre;
- the appointment of a new high profile political figure as Governor; and
- a recent deterioration in relations between the Chinese and British and Chinese and Hong Kong governments.

311. They have been followed by a breakdown in negotiations and the probable end of the process envisaged in 1984 of a "through train" to 1997 and beyond. As a consequence the Hong Kong and British governments are confronted with a choice they sought for a decade to avoid: to choose between meeting the legitimate aspirations of the people of Hong Kong for a distinctive democratic government and an agreement with the Chinese. The British government had hoped that these two aspirations would not have been incompatible. They now appear to be so. The "holy grail" seems out of reach. This Report has sought to explain how this situation has arisen; to answer the question as to whether it was avoidable; and to outline the consequences of no agreement.

312. If the massacre around Tiananmen Square had not happened, the "through train" might have been achieved. But the mutual distrust of the two sides as a result of the "Tiananmen Square" events, has given China an opportunity to exploit the gaps in the Joint Declaration and the Basic Law and to seek to block the development of democracy in Hong Kong. We have been convinced by the arguments put both by the Foreign Secretary and the Governor, that a democratically defensible set of arrangements for LegCo must be put in place.

313. But it has become clear that the Chinese have interpreted the Basic Law, Joint Declaration and accompanying procedures, as requiring not only consultation upon these arrangements but also their consent: in effect a veto.

314. The absence of agreement means that China has announced that the LegCo elected in 1995 will be disbanded in 1997, and indeed, the Chinese may seek to undermine its authority before that date. A British Government is powerless to prevent this happening. We should emphasise, of course, that, even with a better understanding with China, the Chinese would have sought to vet and possibly veto, via the Preparatory Committee, individual Hong Kong LegCo members continuing to serve after 1997.

315. The seriousness of the breakdown in negotiations and the probability of the disbanding of LegCo in 1997, have compelled us to consider an alternative strategy — the minimalist approach to the 1995 elections, in some way advocated by Sir Percy Cradock and others, which would have obtained Chinese agreement and secured the through train. Supporters of that approach claim that it would have had the virtue of ensuring a measure of continuity and possibly stability to and through 1997. The post 1997 LegCo might have gradually been developed in the way envisaged in the Basic Law.

316. We have concluded that this would not be a tenable position, and that it would not be an honourable one either. It would represent a failure to discharge Britain's commitments to advancing democracy in Hong Kong and it would fly in the face of the Hong Kong people's aspirations for more democracy.

317. We cannot overemphasize the significant change in mood and attitude that has taken place in Hong Kong. On the occasion of the then Committee's visit in 1989 Members found a clear desire for democratic progress. The events around Tiananmen Square appear to have transformed that desire into an urgent necessity. The Chinese government's handling of 'Tiananmen Square' shattered confidence in Chinese credentials to uphold the principle of one country — two systems — at least in the political sense. Hong Kong now seeks an extra guarantee in more democratically elected institutions prior to 1997, though paradoxically and sadly these can hardly be seen as guarantees given the clear Chinese threat to abolish them.

318. One other consideration has played a part in our analysis of recent changes and developments — the significance of the appointment of such a high profile political figure as Mr Patten and his particular approach to the problems confronting Hong Kong. It would be idle to pretend that the appointment of Mr Patten did not alter the environment of the negotiations with the Chinese. Even if the Foreign Secretary and the Governor strongly argue that it has not constituted a change of policy, it was clearly perceived to be so by the Chinese. The tone and style of relationships have changed. However, while we have received a number of criticisms of the tactics and the handling of issues since the appointment of the new Governor, we have firmly concluded that the Governor has rightly chosen the course of seeking to satisfy the demands of the people of Hong Kong. That is his primary duty, and we support him in fulfilling that duty. There will be sadly little joy or satisfaction, if the Chinese overthrow the 1995 elected LegCo. We can only hope wise counsels will prevail between now and 1997. It would be curious, to say the least, if international opinion were prepared to stand up for human rights in China, but countenance, without protest, the suppression of political freedoms, the abolition of a representative Hong Kong institution and the debarring from public office of popularly elected representatives in Hong Kong. In the meantime the British Government and Parliament must endeavour to do their utmost in supporting developments in Hong Kong and upholding the rights and wishes of all its people.

319. For the United Kingdom, the main policy priority in its relations with China up to 1997 will have to be managing the transition in Hong Kong. The questions of political reform and electoral change in Hong Kong which have dominated our evidence and most of the political debate during the period of our inquiry will have to be settled by July 1994 to permit arrangements for elections in 1994 and 1995 to go ahead. China has threatened economic reprisals if the UK does not give in to its demand for a veto over political changes. The British Government needs to weigh up the extent to which China will use economic weapons as a reprisal for democratic changes in Hong Kong. Some witnesses (including some we spoke to in Hong Kong) consider such a threat would be shortlived. Others, particularly Sir Percy Cradock, believe lasting damage is being done to Britain's relations with China, and to the circumstances of Hong Kong.

320. For the remaining three years of the British administration, the UK has a duty to work with the people of Hong Kong and with the Chinese authorities to equip Hong Kong for its future as part of China. In Chapter IV above we made clear our view that that duty includes working to set in place a legislative framework including reinforcement of human rights provisions so as to underpin the freedoms and liberties upon which a thriving Hong Kong will continue to depend as a separate system within the PRC. Under the Joint Declaration, the two sides have an obligation to cooperate to ensure a smooth transition. We urge the Government to do everything it can to encourage China to cooperate. But if it will not, we believe the British government must act alone.

321. We emphasise that the Joint Declaration is an international treaty registered with the United Nations. We believe that it will be important and a matter of concern for the international community to ensure that the letter and spirit of the Joint Declaration, with its underpinning of the fundamental rights and freedoms of the people of Hong Kong, be maintained. We urge the British Government to ensure continued international support for the protection of human rights and the rule of law in Hong Kong.



### Taiwan

322. The process of change in Taiwan is hardly less extraordinary than that on the mainland. The former government composed of mainlanders who escaped with the Kuomintang leaders after 1945 has been succeeded by a new Kuomintang government consisting principally of descendants of the original population of the island. The military dictatorship has been replaced by a multi-party system which, though still young, is a positive move. The prospect of a change of government at some point is no longer unthinkable.

323. Of all the changes, the change in the relationship between Taiwan and the mainland is perhaps the most remarkable. Although contacts are still limited, there are now negotiations, albeit indirect, between the two, including contacts between the Straits Exchange Council of Taiwan and Peking's Mainland Affairs Council on practical matters. From very different standpoints, both Taiwan and the mainland are moving, at different speeds and within ideologies which are apparently poles apart, towards market economies and a more plural society. We were surprised by the range of similarities we identified between the two. The Chinese rulers in Peking and in Taipei appear to be establishing a *modus vivendi* based on the separation of economics from politics and it is reasonable to expect their economic ties to strengthen while, for the foreseeable future, their politics remain, on the surface, deeply incompatible.

324. Relations with Taiwan are not Britain's problem alone. It is not in Britain's interests to antagonise the government in either Peking or in Taipei by interfering. If Taiwan and the mainland can establish a *modus vivendi*, we believe the UK should be able to have a working relationship with each. We endorse the steps the Government has taken to strengthen trade and educational links with Taipei.

### Long term relations with China

325. Despite the dispute between Britain and China over political matters in Hong Kong, the two countries have a major interest in common: to maintain Hong Kong's position as an international trading centre. On Hong Kong's behalf, the UK has supported China's bids to retain its Most Favoured Nation (MFN) status in the USA and to join GATT. Hong Kong's importance to the economic opening up of China cannot be underestimated. But it is naïve to suppose Hong Kong is a direct vehicle by which western-style values or political systems can invade China. Lord Howe told us:

"... the most important single proposition is that one country, two systems is a two-way deal, and if Hong Kong is entitled to say that our system, our way of life and our structure of government is to be preserved free of interference from the mainland, then the proposition works in the opposite direction as well, and that Hong Kong is not entitled to regard itself — or would be very unwise to regard itself — as a bridgehead for change within the people's Republic of China.....if Hong Kong wishes to preserve that which is enshrined in the Joint Declaration, then it should not regard itself as a bridgehead, although it may regard itself as an example."<sup>309</sup>

326. The challenge for the Government, and for the Governor, in the remaining years of British rule, is to transform Hong Kong from a liability to an asset in relations with China. Hong Kong should be a catalyst for improving long term relations with the People's Republic. The present phase of dispute and bad relations between the UK and China has got to be resolved.

327. In this report we have tried to set out some positive ways in which the UK, through Hong Kong and its people, can extend its relations with the People's Republic of China. We have also demonstrated the inescapable dilemma inherent in trying to improve relations with a country containing one quarter of the world's population, a dynamic economy, which is

<sup>309</sup> Q 165.

bound to be a dominant economic power in the twenty-first century, yet some of whose basic values appear so different from our own.

328. There is therefore a need for a dialogue with the PRC on such issues and the ways in which other states cope with them. No government will find this growing internationalisation of comment easy to handle. The aims of such a dialogue would be to reassure China that comment and discussion do not constitute 'interference' in the affairs of a sovereign state; to explain to them that globalisation of the media, including China's own media, means that debate on international issues from across the globe will be an inevitable feature of international relations in the twenty-first century; and to demonstrate an equal readiness to debate with China problems in the internal regimes of the UK and its Western partners. Regimes which are confident of their own inner strength do not shun vigorous debate.

329. Above all three considerations should be paramount. The first is that the two sides must treat each other as equals. Each has things to learn from the other. Neither should aspire to teach the other. Secondly, this dialogue should partly be private and partly public. Nothing would be more likely to antagonise the government of the PRC than a dialogue through 'megaphone' diplomacy alone. Thirdly, there must be greater contact between peoples on both sides. Governments can only do so much. If further progress is to be made, it will need to be underpinned by a broader base of popular support and commitment, not least commitment by British companies to take a long view in their relations with China.

330. Britain must too, ensure that where it can, it proceeds in cooperation with its partners and allies — principally with other states of the European Union, with the USA, and with other allies in the region. Although there are commercial rivalries between EU countries, it is important that a common policy be reached concerning the implementation of concessional finance and other aid and trade agreements with China, in particular the new expectations of the European Union about the performance of aid-recipient countries in the fields of human rights and democratisation. Expanded relations between Europe and China must not be allowed to become a free-for-all where states and companies compete to the disregard of fundamental human values. The more trade there is, however, the greater the entitlement of states trading with China to raise different matters with the Chinese government.

331. China has opened its doors to the world; no-one's interests will be served by rebuffing the People's Republic. On all fronts contact must be sought, understanding enlarged, discussion developed and collaboration strengthened. The only way forward for all nations, in shaping and building new relations with this giant of all nations, is the one of patience and positive effort.

332. Our other conclusions and recommendations, earlier in this Report, are set out again below:

*Political and diplomatic relations*

- i. United Kingdom policy towards China needs to be reassessed in the light of developments in China's relations with the other countries of the region with which the UK has substantial, often long-standing, close relations. (Para 64)
- ii. It will be important for the Government to continue to press upon the People's Republic of China, bilaterally and through the United Nations, the need for restraint in the transfer of weapons and military technology, and to monitor closely the PRC's performance in this area. (Para 69)
- iii. We recommend closer contacts between Westminster and the Legislative Yuan in Taipei. (Para 73)
- iv. Whilst not wishing to recommend any changes which might unilaterally affect the status of Taiwan in international law we recommend that the Government review the status of the Taiwanese Representative Office in the UK, and that a relaxation of restrictions should be undertaken wherever that is consonant with British law. (Para 75)

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- v. We recommend that the Foreign and Commonwealth Office review the number of Chinese speakers, particularly of Cantonese, available to the Diplomatic Service. (Para 80)

*Economic relations*

- vi. We endorse the recommendation of the Trade and Industry Committee in 1992 that UK trade with Hong Kong, Guangdong and Taiwan should be studied further in the period leading up to 1997 and believe that this should include trade with the whole of China, not just Guangdong. (Para 83)
- vii. We recommend that the United Kingdom take a lead in encouraging the European Union to formulate common ground rules in respect of trade with China. (Para 105)
- viii. Although many details still remain to be negotiated, we entirely support Taiwanese admission to GATT at the earliest possible opportunity. (Para 113)

*Hong Kong*

- ix. We are satisfied, from the evidence we have received, that the Governor's proposals for electoral changes prior to 1997 are within the letter of the agreements reached with China. (Para 137)
- x. We endorse the decision by the Governor and the British Government that it would not have been right to enter into detailed negotiations with China about the Governor's proposals before they were announced to the people of Hong Kong and to the Hong Kong Legislative Council (LegCo). (Para 141)
- xi. When Mr Patten took office no arrangements had been made for elections to LegCo in 1995. It would have been wholly unacceptable for new arrangements affecting the people of Hong Kong not to have been announced in Hong Kong. (Para 142)
- xii. For as long as they exist, we support the widening of the democratic base of functional constituencies as proposed by the Governor. (Para 148)
- xiii. In present circumstances, the wisest course for the British Government to follow is that which it believes is best for the people of Hong Kong. We endorse the steps taken by the Governor and the United Kingdom Government to ensure that the final decision about pre-1997 electoral arrangements will be taken by LegCo. (Para 172)
- xiv. We believe that in the face of Chinese unwillingness to find a compromise, the Governor had no choice but to put his proposals in full to LegCo. As we noted in paragraphs 147 and 153 above, those proposals were, in any event, drawn up to remain within the parameters set by the Joint Declaration and the Basic Law. We hope LegCo will, with the information now set before it, be able to agree electoral arrangements which are within the terms of the Joint Declaration and the Basic Law and which are open, fair and acceptable to the people of Hong Kong. (Para 175)
- xv. We recommend that if China continues to block further negotiations in the Joint Liaison Group, thereby breaching the Joint Declaration, there can be no choice but for the Hong Kong Government to put before LegCo the necessary legislation to adapt and localise legislation prior to the transfer of sovereignty. (Para 180)
- xvi. The extent of freedom of speech and of the press in Hong Kong after 1997 will be an important litmus test of China's sincerity in going beyond the politics of gesture. (Para 189)

- xvii. We strongly support positive action to end sex discrimination in Hong Kong. (Para 194)
- xviii. We conclude that Articles 18 and 158 of the Basic Law are grave potential threats to the autonomy of the Hong Kong Special Administrative Region (SAR) after 1997 and to the implementation of the Joint Declaration. (Para 199)
- xix. We recommend that the Government seek the opinion of the UN Human Rights Committee on the interpretation of the provision in the Joint Declaration about the application to Hong Kong of International Covenants on Human Rights. (Para 202)
- xx. We conclude, that proposals put forward for the establishment of an independent statutory human rights commission and an independent human rights 'watchdog', along the lines suggested by many of our witnesses, are possible, legal and desirable. (Para 207)
- xxi. We support the Hong Kong Government continuing to implement measures that will strengthen the protection of fundamental human rights and freedoms in Hong Kong up to and beyond 1997. (Para 208)
- xxii. We recommend that the Government agree to the request by the few wives and widows of ex-servicemen in Hong Kong and grant them full British citizenship forthwith. (Para 213)
- xxiii. We remain of the view expressed by the then Committee in 1989, that Britain has a duty to give non-Chinese ethnic minority residents of Hong Kong full British citizenship. If the Government continues to refuse to do this, we recommend that the Government state publicly that if this group encounter discrimination in the new SAR, whether or not they face explicit pressure to leave, they will be given every help to enter Britain and acquire British nationality. (Para 215)

#### *Human Rights*

- xxiv. In its Report on UK-Soviet Relations in 1986 a previous Foreign Affairs Committee said "the domestic civil, political and religious rights of the citizens of a particular country cannot in modern times, be regarded as a matter of concern to the citizens and government of that country alone". We stand by this sentiment. (Para 217)
- xxv. A conclusion that can be drawn from the concerns about human rights in China set out in Lord Howe's Report in 1993 is that the administration of justice through the legal and penal system in the PRC seems to be fundamentally arbitrary. The definition of crime and the meting out of punishment appear to be inextricably linked with the current policies of the political regime. In China it appears to be not so much a case of human rights abuse being prevalent despite the system but rather that, looked at from a contemporary Western perspective, the system itself abuses human rights. (Para 228)
- xxvi. Despite China's employment of the *language* of human rights there remains a gulf in understanding on this subject that poses a serious obstacle to communications and relations between China and this country. (Para 239)
- xxvii. We recommend that, in any discussions of human rights in China, the UK Government seek further information on the subject of the actual practices of population control throughout the PRC. (Para 250)
- xxviii. We recommend that the UK Government pursues its dialogue with the PRC on the matter of particular human rights abuses in Tibet and opens a discussion on the subject of Tibet's right to self-determination. We conclude that a satisfactory conclusion to the former concern may only be achieved by progress on the latter. Furthermore we conclude that China's attitude to Tibet may contain a warning for

the future of Hong Kong. The world will not allow the issue of Tibet to be ignored. The Chinese government may find that the advantages to China of their policies in Tibet may be outweighed by the trouble those policies cause to China's international relations generally. China may find too, that other countries, particularly on her northern and western borders, will take an increasing interest in the treatment of other minority communities within the PRC. (Para 258)

*Wider fields of cooperation*

- xxix. We recommend that the Government support the British Council's plans to expand its work to parts of China where it is not currently engaged. (Para 269)
- xxx. We recommend that, as long as circumstances are appropriate, the British Government encourage joint arts events and cultural exchanges with China. (Para 277)
- xxxi. We recommend that the Government encourage ways whereby Hong Kong, now and after 1997, could offer some of the means and expertise China needs to develop its economic and social infrastructure. (Para 278)
- xxxii. Student and other educational exchanges with China should be seen as a long-term investment in the interests of the societies and economies of both countries. (Para 281)
- xxxiii. At the current time when formal relations are under strain, and in this new climate in China, the importance of maintaining and strengthening the BBC World Service stands out sharply. We are very concerned at the exclusion of the BBC World Service Television from the China region. We hope the BBC will succeed very soon in finding a new means of broadcasting the World Service news and information channel to China and other countries in the region. We recommend that the Government take steps to assist the BBC World Service to continue to extend its services to China. (Para 291)
- xxxiv. We believe it is in Britain's economic, as well as cultural, interest for there to be more teaching about China in our schools and universities. As China's significance in the world increases, it will be important for there to be greater academic knowledge of, and research into, Chinese language, economy and society. (Para 294)
- xxxv. At times when other things are difficult, we remain convinced that by encouraging a wide range of non-governmental contacts with China, as illustrated in Chapter VI of this Report, the United Kingdom has nothing to lose and everything to gain by strengthening ties in all walks of life. Different points of view about attitudes to human rights and differences over Hong Kong are a reason for doing more, not less, to strengthen people-to-people contacts. We believe there would be merit too, in encouraging the setting up of a non-governmental, forward-looking body of leading figures in both countries, similar to the UK Japan 2000 Group (or the UK Korea Forum for the Future), to set the agenda for future relations between Britain and China. (Para 299)

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**HONG KONG AND  
HUMAN RIGHTS: FLAWS  
IN THE SYSTEM**

**A Call for Institutional Reform to  
Protect Human Rights**



April 1994  
AI Index: ASA 19/01/94  
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INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM

# **amnesty international**

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

### **A Call for Institutional Reform to Protect Human Rights**

APRIL 1994

SUMMARY

AI INDEX: ASA 19/01/94

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This report examines the lack of accessible, affordable, effective remedies in Hong Kong for people who wish to bring a complaint alleging that their human rights have been violated. Such remedies are essential for implementing the International Covenant on Civil and Political Rights (ICCPR), including rights on which Amnesty International's work focuses, both before and after Hong Kong becomes a Special Administrative Region of China in 1997. The report also identifies the need for much greater priority and much greater resources to be given to human rights promotion, education and training programs.

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

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

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

1. The government should establish an independent human rights commission, with a mandate to develop:

- a. an accessible, affordable, speedy and effective human rights complaints system, to complement the judicial system;
- b. a more proactive, forward-looking and effective approach to human rights implementation; and
- c. effective human rights awareness, education and training programs.

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

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

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

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

5. The UK should extend to Hong Kong the following international human rights conventions: UN Convention and Protocol relating to the Status of Refugees, Convention on the Elimination of All Forms of Discrimination against Women, and UN Convention on the Rights of the Child. The UK should ratify and extend to Hong Kong the Optional Protocol to the ICCPR, and the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty. The UK should declare under Article 22 of the UN Convention against Torture (with extension to Hong



Kong) that it recognizes the competence of the Committee against Torture to consider individual complaints of violations. Reservations made to fundamental rights of individuals in the ICCPR by the UK in respect of Hong Kong should be withdrawn.

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

**KEYWORDS:** LEGISLATION / ICCPR / INDEPENDENCE OF JUDICIARY / REFUGEES / BANNING / CENSORSHIP / STUDENTS / WOMEN / HUMAN RIGHTS EDUCATION / INTERNATIONAL MEETINGS / HUMAN RIGHTS INSTRUMENTS / MISSIONS / UK / PHOTOGRAPHS /

This summarizes a 45-page document (18,996 words), *Hong Kong and Human Rights: Flaws in the System - A Call for Institutional Reform to Protect Human Rights* (AI Index: ASA 19/01/94), issued by Amnesty International in April 1994. Anyone wanting further details or to take action on this issue should consult the full document.

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# HONG KONG AND HUMAN RIGHTS: FLAWS IN THE SYSTEM

## A Call for Institutional Reform to Protect Human Rights

### Introduction

#### ◆ *Background of this report*

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

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

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

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

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

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

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

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

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

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

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

Hong Kong is currently a "dependent territory" of the UK, administered by a Governor who is appointed by and responsible to the UK Government. The current Governor, Christopher Patten,

was appointed in 1992. The Governor presides over an Executive Council, currently composed of the Governor, 10 members appointed by the Governor (one of whom is the Secretary for the Civil Service), plus three ex officio members (the Chief Secretary, Financial Secretary and Attorney General).

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

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

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

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

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

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

### ◆ *International standards*

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

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

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

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

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

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

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\* A Bill of Rights *civil* action is a lawsuit brought by an individual against the government which has for its object the protection of one's rights; *criminal* proceedings, on the other hand, are initiated by the government against a person charged with an offence.

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

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

Some students wished to challenge certain restrictions on public assembly (in the Public Order Ordinance) which they believed infringed their rights to freedom of assembly and freedom of speech under the Bill of Rights. As they did not have enough money to bring a civil case, they reportedly



Vietnamese asylum-seekers in Whitehead Detention Centre, September 1990, Hong Kong. Thousands remain in detention in Hong Kong.

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



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

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

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

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

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

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

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

◆ ***Conclusion and recommendation***

The governments of Hong Kong and the UK will not be fulfilling the ICCPR obligation to provide an effective remedy for all victims of human rights violations until an accessible, affordable, speedy and effective complaints system is established. Amnesty International urges the government to introduce such a complaints system without delay, as part of an independent human rights commission. This complaints system should be complementary to the judicial system, and should never prevent victims of human rights violations from taking their case to the courts.

◆ ***Background information***

**The Commissioner for Administrative Complaints**

The Commissioner for Administrative Complaints, a position established in 1988, is responsible for investigating complaints relating to "maladministration" by public officials in Hong Kong. The scope of the Commissioner's jurisdiction (cases of "inefficient, bad or improper administration") means that the Commissioner's office does not tend to deal with many Bill of Rights issues and does not question whether laws are consistent with the Bill of Rights. Nevertheless, some of the reforms currently proposed to procedures of the Commissioner's office could prove instructive for a future independent human rights commission. The Commissioner has urged that two limitations put on the office's work be removed: people should be able to lodge a complaint directly with the office (rather than having to do so through a member of the Legislative Council), and the Commissioner should be able to issue decisions publicly when they are made (rather than being required to wait for publication of the office's annual report).

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

The legal community, Legislative Council members and others have repeatedly drawn attention to the unacceptable barriers which prevent Hong Kong people bringing civil cases to protect their human rights. They have called for establishment of an independent human rights commission

which would offer an affordable, accessible and effective procedure for dealing with complaints about infringements of the Bill of Rights.

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

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

"Legal aid is understood not to be generally available to the ordinary citizen who wishes to challenge a statutory provision as being in conflict with the Bill of Rights but who has nothing at stake in terms of personal liberty or financially and many procedural obstacles exist to a successful legal challenge."<sup>1</sup>

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

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

"In a number of instances potential plaintiffs have been unable to commence civil cases which raise important matters of public interest under the Bill of Rights. The reason for this has been the prospect of a costs award against them if they are unsuccessful; the cases they wish to bring are strongly arguable, but the chances of success are difficult to predict at this stage of the development of the Bill of Rights."<sup>2</sup>

Johannes Chan and Yash Ghai (respectively Senior Lecturer and Professor of Public Law, University of Hong Kong Law Faculty) noted in a 1993 analysis of Hong Kong's Bill of Rights that "litigation is extremely expensive in Hong Kong, and shuts off whole sections of the community from the courts. There is a danger that the Bill of Rights will mean rights only for the rich."<sup>3</sup> They concluded that an independent human rights commission "would provide an informal and inexpensive way to resolve disputes and to help in the enforcement of standards necessary to give effect to various rights. It can empower groups who are not easily able to obtain access to courts."<sup>4</sup>

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

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

Legislative Council member Henry Tang noted in the same debate:

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

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

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

Non-governmental human rights organizations in Hong Kong have also pointed to the need for an accessible and effective complaints system. The Hong Kong Human Rights Commission (a local grassroots human rights organization) noted in a May 1993 report that the judicial system in Hong Kong "is not accessible to and cannot be utilized by everyone, especially those who cannot afford the legal costs. By and large, the prohibitive legal costs effectively deny the rights of these people who seek justice through legal proceedings. Thus, there is an urgent need to establish an independent mechanism such as a Commission of Human Rights, as an alternative..."<sup>5</sup>

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

### ◆ *International standards*

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

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

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

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

### ◆ *What is needed from governments*

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

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

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

"In the United Kingdom's dependent territories, there were no special methods of increasing public awareness of the Covenant's provisions and the study of the Covenant was not a specific feature of educational programmes....In Hong Kong the wide-ranging debate on the drafting of the Basic Law had been widely commented on by the media and there was no doubt that the population was fully aware of the Covenant's provisions....He could not say whether the Chinese version of the Covenant was readily available, but extracts from it were often published in the Chinese press in Hong Kong and quoted during debates in the Legislative Council."<sup>6</sup>

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

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

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

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

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

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

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

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

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

◆ **Conclusion and recommendation**

Amnesty International is concerned about shortcomings in the past and present approach to implementation of the ICCPR in Hong Kong. It is calling on the Hong Kong Government to establish an independent human rights commission to take the lead in developing a more proactive, forward-looking and effective approach to human rights implementation.

◆ **Background information**

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

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

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

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

"[T]he Administration has been less than lukewarm in making [the Bill of Rights] an effective instrument for the protection of human rights. The Administration has taken a very limited initiative to review existing legislation and administrative practices for consistency with the Bill of Rights preferring to await decisions by the courts that provisions or practices are inconsistent before preparing amending legislation."<sup>8</sup>



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

- i) "[T]he government, while trumpeting its commitment to the Bill of Rights, has persisted in relying on laws which are very likely inconsistent with it, stating that it is for the courts to determine their validity, secure in the knowledge that very few of the vulnerable provisions will ever be challenged in court."<sup>9</sup>
- ii) "The record of the Hong Kong administration has been rather patchy to date, with support for the goals of the Bill of Rights varying over time and among the various branches of the administration....[S]ince there is no insistent pressure from the top to ensure that the letter and spirit of the ICCPR and the Bill of Rights are embraced, policy-makers in the different areas are relatively free to define their own approach to the Bill of Rights."<sup>10</sup>

Johannes Chan and Yash Ghai of the University of Hong Kong Law Faculty referred in 1993 to "the extreme reluctance of the government to take any positive steps towards implementation" of the Bill of Rights.<sup>11</sup>

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

#### **◆ *International standards***

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

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

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

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

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

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

◆ ***The record in Hong Kong***

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

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

The budget for human rights promotion and education in Hong Kong is extremely small and inadequate. The annual budget of the entire Committee on the Promotion of Civic Education (which carries out human rights work as well as many areas of civic education work not directly related to human rights) for budget year 1993-94 is only HK\$2.4 million (approximately US\$310,760).<sup>12</sup> Of this, only about HK\$1 million (approximately US\$130,000) is being spent during the year directly on human rights promotion and education – approximately HK\$600,000 (approximately US\$78,000) of the HK\$1 million is money donated by the Royal Hong Kong Jockey Club for human rights education and production related areas, which freed up some

money in the government budget to be used during the year for other projects, including a special exhibition (funded from the general civic education budget during this fiscal year) which related to promotion of human rights and the rule of law, at a cost of around HK\$500,000 (approximately US\$65,000).<sup>13</sup> In any event, the budget for human rights promotion and education is very small for a population of around 6 million people. In addition to the HK\$1 million figure from the central budget, District Boards in Hong Kong spend money at the local level for community programs which may include civic education or human rights promotion elements.

Following are some other 1993-94 Hong Kong budget figures<sup>14</sup> for an idea of how the HK\$1 million allocated to human rights promotion/education compares (all figures in Hong Kong dollars, estimates for the budget year ending 31 March 1994):

- \$ 1.5 million: cash awards to civil servants for suggestions on improving the efficiency of the civil service
- \$ 3.5 million: relief and welfare for civil servants including television sets for staff recreation rooms, recreational activities, purchase of retirement souvenirs, and commemorative awards for long and meritorious service
- \$ 4.1 million: expenses of special visitors to Hong Kong and overseas speaking engagements by prominent Hong Kong personalities (transport, hotel, meals, laundry)
- \$ 7.6 million: cost for engaging consultants to conduct "minor studies" for the Planning Department (costing between \$50,000 and \$2,000,000 each)
- \$ 18.8 million: cost of "long service travel award scheme" for overseas travel for local non-directorate civil service officers and their spouses, "in recognition of long and meritorious service"
- \$ 29 million: Consumer Council
- \$ 60.9 million: Hong Kong Sports Development Board
- \$ 180.7 million: transportation costs for civil servants and their families eligible for overseas passages, and children of civil servants being educated overseas
- \$ 337 million: Hong Kong Tourist Association

\$ 358.7 million: payment of local and overseas education allowances to civil service officers whose eligible children are receiving education either locally or overseas

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

By October 1993 the Sub-Committee reportedly had received about 30 funding applications for human rights promotion projects, but had only been able to fund nine of these due to financial constraints.<sup>15</sup>

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

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

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

#### ◆ *Training*

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

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

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

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

The UN instruments containing such standards include:

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

All of the declarations and other instruments listed in (i) to (xiii) above apply to all countries and territories, including Hong Kong. The international human rights treaties listed in (xiv) to (xvii) currently apply to Hong Kong. The last three international human rights treaties listed - the UN Convention and Protocol relating to the Status of Refugees, the Convention on

the Elimination of All Forms of Discrimination against Women, and the UN Convention on the Rights of the Child - have been ratified by the UK itself, but so far the UK has not extended them to Hong Kong. As noted in section 8 of this report, Amnesty International is calling on the UK Government to extend these three conventions to Hong Kong.

#### ◆ **Conclusion and recommendation**

Amnesty International welcomes the recent initiatives in human rights promotion and education, the openness to ideas and assistance from non-governmental organizations, the focus on imaginative, grassroots projects, and the special efforts to reach young people. The Sub-Committee's work represents a step in the right direction. However, much more needs to be done; this important task needs to be given much higher priority, much greater resources, and the sort of specialized, full-time institutional support which an independent human rights commission could provide.

Amnesty International is calling on the government to establish an independent, adequately resourced human rights commission to develop effective human rights awareness, education and training programs. Internationally-recognized human rights standards should be integrated into training programs and professional codes of conduct.

#### ◆ **Background information**

##### **Human rights promotion/education projects undertaken**

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

- i) exhibitions (including poster exhibitions) about human rights and the Bill of Rights, in various districts of Hong Kong;
- ii) a series of radio programs, aired free of charge, where celebrities present a story which raises human rights issues. After the story, a lawyer gives a brief explanation of the issue, and time is allowed for the audience to telephone in and ask questions;
- iii) a series of television programs about human rights aired at prime time;
- iv) telephone hot-lines where people can call to hear Hong Kong celebrities give a short message about human rights;
- v) seminars and lectures to train young people how to be "human rights ambassadors" who promote human rights;

- vi) teaching kits aimed at secondary school students aged 15 and over. The kits include a manual for teachers and teaching modules covering various human rights issues;
- vii) a crossword puzzle competition with basic human rights questions;
- viii) a comic book about the Bill of Rights, with stories highlighting the various rights, and at the end the full text of each right and a list of various non-governmental organizations where people can go for human rights information (the first print run of 100,000 has been distributed, and it is being reprinted);
- ix) special cards of the sort which young people in Hong Kong collect, each bearing the picture of a celebrity and referring to one article of the Bill of Rights. (For example, one card has a picture of pop singer Jacky Cheung over the caption: "If I want to express an opinion, I can do this through various channels. This is a good thing about human rights" [translation from Chinese-language original]. The text of Article 16 [freedom of opinion and expression] is on the back of the card.)

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

#### **Training measures undertaken**

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

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

"In contrast to the steps taken by the legal profession, it appears that no steps were taken under the in-house education program of the judiciary (the Judicial Studies Board) in preparation for the enactment of the Bill of Rights. Since the commencement of the Bill, the first (and so far only) organized measure as part of this program was a visit by a former Canadian Chief Justice and an official from the Canadian Justice Department some nine months after the enactment of the Bill of Rights."<sup>16</sup>

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

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

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

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

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

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

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

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

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

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

Legislative Council member Henry Tang noted in the same debate: "Although we passed the Bill of Rights in 1991, the majority of the Hong Kong population is still very ignorant about these rights." He advocated establishment of an independent human rights commission which



could take the lead in "campaigns in promoting and campaigns in educating the public on human rights," which were "desperately needed."

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

"At present, the Committee on the Promotion of Civic Education is responsible for promoting the Bill of Rights Ordinance. Not only was the amount of funds allocated to the committee meagre, but its lack of expertise and overload of work also undermine the effectiveness of the promotion efforts. The government should be determined to make an impact on the hearts of the citizens. It is now time to put more resources on educating the public."

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

##### **◆ *International standards***

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

##### **◆ *Potential achievements of a commission in Hong Kong***

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

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

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

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

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

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

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

1. An independent commission could be instrumental in helping the Government of Hong Kong, both before and after 1997, fulfil its continuing obligation to implement the ICCPR fully, not just in law but also in practice. That continuing obligation is recognized by the Joint Declaration and Basic Law.
2. An independent commission applying the Bill of Rights could provide an effective remedy for human rights violations: an affordable, accessible, speedy and effective mechanism for dealing with complaints in a way which complements the judicial system. Both the ICCPR and Bill of Rights require that there be an effective remedy.
3. Other countries have created effective human rights commissions which complement the jurisdiction of their courts. Some of these other countries have legal systems very similar to that in Hong Kong.
4. An independent commission could have a level and breadth of human rights expertise and experience unmatched by the courts or government departments.

5. An independent commission could have capacities which Hong Kong courts generally lack: specialized, independent investigative powers combined with the ability to keep a human rights case or issue under ongoing review, with follow-up powers.
6. An independent commission could comprehensively examine human rights issues on its own initiative, unlike courts which are generally limited to examining individual cases which happen to come before them.
7. An independent commission could hold public hearings and undertake special reviews of human rights issues of particular concern to the people of Hong Kong.
8. An independent commission could give expert attention to identifying the underlying causes of human rights abuses.
9. An independent commission could play an important preventive role by identifying measures needed (such as institutional or legal reform) to prevent abuses in future. The courts, which generally deal with individual cases only after violations have occurred, are more limited in their preventive role (though their decisions may set important precedents or strike down laws infringing human rights).
10. Hong Kong's Legislative Council voted without dissent in July 1993 to establish an independent human rights commission. This was not a sudden decision -- in 1990 and 1991 a Legislative Council ad hoc group chaired by Selina Chow had held extensive deliberations on the subject, and concluded by recommending the establishment of an independent commission. Legislative Council debates over the years have demonstrated very strong support for an independent commission by legislators from different parts of the political spectrum. As indicated in the addenda to sections 1, 2 and 3 of this report, legislators have repeatedly called for an independent commission as a means of addressing fundamental shortcomings of the system for protecting and promoting human rights in Hong Kong.
11. Numerous public petitions advocating an independent human rights commission have been presented to the Legislative Council, indicating strong support among the public. Local non-governmental organizations have also been vocal in their support.
12. The legal community of Hong Kong has firmly advocated establishment of an independent human rights commission.

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

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

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

...[The] haphazard and disorganised approach must end. Some direction and order must be introduced. An optional avenue must be found to test issues under the Bill of Rights without the necessity of resorting to costly and time-consuming litigation in the Courts."<sup>17</sup>

The Bar Association's conclusion was summarized in its 27 August 1993 submission to the UK House of Commons Foreign Affairs Committee: "We believe that the establishment of a Human Rights Commission is necessary as a domestic measure for the better protection of human rights in Hong Kong."<sup>18</sup>



Demonstrators surrounding Governor Patten as he arrived at the Legislative Council on 6 October 1993. One of the placards says: "Respect the views of the Hong Kong people".  
© EPA/Popperfoto

Simon Ip, the Legislative Council member representing the legal community, has repeatedly voiced strong support for the proposal. In the 22 October 1992 Legislative Council debate he stated:

"Despite widespread support, the Government has taken the view that a Human Rights Commission is unnecessary. That view is unsupportable. As things stand the rights prescribed by the Bill of Rights are more theoretical than real. We need concrete actions,

not just words and legislation, to demonstrate our commitment to the rule of law. Without a Human Rights Commission, development of human rights law will be a piecemeal and haphazard process of legal challenge in the courts. Promotion of a human rights culture in our community will stagnate. We will be unable to inculcate an attitude in our society of respect for the rule of law without the existence of a secure institution such as a Human Rights Commission."

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

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

"It is obvious that [the courts] can handle only a small number of cases, while the expense of litigation cuts off a large proportion of the population from access to them.... One of the most effective means for the implementation of human rights is a commission of human rights....It would provide an informal and inexpensive way to resolve disputes and to help in the enforcement of standards necessary to give effect to various rights. It can empower groups who are not easily able to obtain access to courts. It can play a particularly useful role in supervising affirmative action policies. It can, through co-operation with non-governmental organizations, involve the community in the safeguarding of human rights."<sup>19</sup>

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

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

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

16. A human rights commission would have the expertise to work with various official and professional sectors to organize more comprehensive and effective human rights training

programs, and to ensure that internationally-recognized minimum standards relevant to their work are incorporated in codes of practice. These sectors would include law enforcement officials; the judiciary; prosecutors; the legal and medical professions; government officials and civil servants generally.

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

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

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

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

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

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

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

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

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

25. An independent commission could issue regular public reports covering all areas of its work and providing an overview of human rights issues in Hong Kong. Such reports should document all complaints it has received (together with action taken in each case), explain reforms undertaken and proposed, and describe human rights awareness, education and training initiatives.

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

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

The General Assembly resolution welcomes:

"the growing interest shown worldwide in the creation and strengthening of national institutions expressed during the Regional Preparatory Meeting for Africa for the World Conference on Human Rights [Tunis, 1992]..., the Regional Preparatory Meeting for Latin America and the Caribbean [San José, 1993]..., the Regional Preparatory Meeting for Asia [Bangkok, 1993]..., the Commonwealth Workshop on National Human Rights Institutions

[Ottawa, 1992]... and the Workshop for the Asia and Pacific Region on Human Rights Issues [Jakarta, 1993]..., and manifested in the decisions announced recently by several Member States to establish national institutions for the promotion and protection of human rights."

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

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

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

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

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

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

31. The 1988 Lawasia Conference on the Role of Human Rights Commissions and Other Organs concluded by recommending "that each government in the region establish a strong, effective and independent national Human Rights Commission the purpose of which will be to investigate complaints of Human Rights abuses, to recommend prosecution where necessary and to conduct comprehensive Human Rights education programmes."<sup>20</sup> The Lawasia Conference was attended by participants from many parts of the Asia and Pacific region, including Supreme Court justices, legal experts, and members of three human rights commissions in the region: Australia, New Zealand and the Philippines.



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

◆ *Comments by Governor Patten*

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

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

"The best protection for human rights in Hong Kong - now and beyond 1997 - lies in the strength and integrity of Hong Kong's legal system and its institutions. That is why I am so concerned to ensure that they are maintained; frankly, I am inclined to regard that task as more important than trying to establish new bodies, such as a Human Rights Commission. If your human rights are infringed in Hong Kong, remedies and means of redress already exist. I am a passionate believer in human rights; but whether a Human Rights Commission is really necessary, in addition to the Bill of Rights, the Courts, the ICAC [Independent Commission Against Corruption], the legislature, the free Press, to defend them is a more open question. There is always the risk that it might prove an unnecessary distraction from the main task at hand. But I remain open to the arguments, open to persuasion as any accountable Governor should. I would welcome further public debate on the issue."<sup>21</sup>

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

In the same speech the Governor referred to "the legislature to which the Executive is accountable"<sup>22</sup> and said: "[I]n recent years, of course, the rule of law has been supported here by an evolving system of accountability to an increasingly democratic assembly in Hong Kong."<sup>23</sup> The spirit of these remarks suggest that the Legislative Council's consensus vote to establish an independent commission must be considered to be among the strong arguments in favour of the executive branch of government agreeing to do so.

◆ ***Conclusion and recommendation***

As explained in the previous three sections of this report, Amnesty International considers it essential, in order to implement the ICCPR, that Hong Kong develops an accessible, effective complaints system; a more proactive, forward-looking approach to human rights implementation; and effective human rights awareness, education and training programs. Amnesty International does not prescribe to governments any precise form for institutions to promote and protect human rights, but in the case of Hong Kong the organization believes that the proposed independent human rights commission (if properly constituted, adequately resourced, and genuinely independent) is the sort of institution which could accomplish all three of these essential goals. It therefore calls on the government to establish such a commission without delay.

The commission should reflect the principles established for such bodies by the UN (see Appendix 2 of this report). It should also meet the Amnesty International standards proposed for human rights commissions (also in Appendix 2), which were first issued by the organization at the UN Asia-Pacific Workshop on Human Rights Issues (Jakarta, January 1993) and which were circulated by the UN as an Amnesty International statement to the Asia Regional Preparatory Meeting (Bangkok, March-April 1993) for the UN World Conference on Human Rights. Both the United Nations principles and the proposed Amnesty International standards emphasize the importance of such commissions being genuinely independent; the Amnesty International standards, for example, propose that the commission should be independent from government and that the terms of appointment and tenure of the commission members "should afford the strongest possible guarantees of competence, impartiality and independence."

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

The repeated and strong calls within Hong Kong for establishment of an independent human rights commission as a means of addressing shortcomings in Hong Kong's system for the

protection and promotion of human rights are referred to in the addenda of sections 1, 2 and 3 of this report, as well as points 10 through 13 of the "32 arguments supporting the establishment of an effective, independent human rights commission" (above).

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

### ◆ *International standards*

The ICCPR requires:

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

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

If the ICCPR is to be effectively implemented in Hong Kong, the public must have full confidence in the impartiality of the agency determining which cases qualify for legal aid. This is vital, because in practice the denial of legal aid can amount to denial of a remedy. Bringing a case to court in Hong Kong can be very expensive, and without legal aid a great number of people in Hong Kong can be left effectively without any remedy and without any access to a court. See, for example, cases referred to in section 1 of this report, where people denied legal aid were unable to pursue human rights challenges against the government.

### ◆ *The record in Hong Kong*

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

as to whether or not their case against the government receives legal aid is made by civil servants in a department of that same government.

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

#### ◆ **Conclusion and recommendation**

Amnesty International has studied the Consultative Paper on Legal Aid and considered views put forward by the government, the legal profession and others. The organization has concluded that establishment of a fully independent legal aid agency would be an important factor in ensuring effective implementation of the ICCPR in Hong Kong, and ensuring effective access to the courts for all victims of human rights violations. Amnesty International is therefore calling for the agency and staff determining which cases qualify for legal aid to be made independent of the government, to ensure that their decision-making is impartial and seen to be impartial.

#### ◆ **Background information**

##### **General information about the current legal aid system**

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

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

Under the "merits test" for *civil* cases, the Legal Aid Department must decide that a person has "a reasonable claim or reasonable defence which justifies taking some action in law." In making the decision the Legal Aid officers are supposed to consider "the relevant law and the evidence available in support of the applicant's case, balancing same with the value of the benefit sought, the chances of succeeding in obtaining the benefit and the costs of doing so." Between June 1991 (when the Bill of Rights took effect) and 30 November 1993, out of 15 applications

for legal aid in civil cases raising mainly Bill of Rights issues (excluding immigration cases) only one application was granted, 12 were refused under the "merits test", and two were withdrawn. By rejecting 12 out of 13 applications on which decisions were taken under the "merits test", the Legal Aid Department's rejection rate for non-immigration Bill of Rights civil cases was over 92%. For immigration cases raising Bill of Rights issues (involving judicial reviews against removal orders of the Director of Immigration), all such cases were granted legal aid until 22 June 1993 when a Hong Kong court ruled that the Bill of Rights does not permit challenges against removal orders. Since then, no legal aid has been granted in such immigration cases.<sup>24</sup>

During the second half of 1993 there were 10,433 applications for legal aid in civil cases overall: 804 applications (7.7% of total applications) were refused under the "means test", and 3521 (33.7% of total applications) were refused under the "merits test".<sup>25</sup>

For *criminal* cases, if a person passes the "means" test legal aid is always granted for a trial. But there is a "merits test" to receive legal aid for an appeal (other than a murder appeal for which the grant of legal aid is mandatory): legal aid is supposed to be granted if the Legal Aid Department considers that the applicant has "meritorious grounds of appeal." In the second half of 1993 there were 2330 applications for legal aid in criminal cases: 10 applications (0.4% of total applications) were refused under the "means test", and under the "merits test" there were 632 refusals for appeals.<sup>26</sup> The Director of Legal Aid since July 1992 has had discretion to grant legal aid in criminal cases to people whose financial resources exceeded the usual "means test" limits, if the Director is "satisfied that it is desirable in the interests of justice."

The Legal Aid Department's case-related expenditure for 1992-93 was HK\$158,776,000 (approximately US\$20,558,850). As of 31 December 1993 the Department had 463 staff including 62 lawyers and 144 paralegals.<sup>27</sup>

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

#### The "Consultative Paper on Legal Aid"

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

"the perception of independence is important. The Working Group therefore gave serious consideration to ways of further enhancing the independence of legal aid administration, and the mechanism for monitoring efficiency and cost-effectiveness."<sup>28</sup>

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

- a) The status quo would be maintained (decision-making would remain with the government), except for establishment of a broad-based Advisory Committee on Legal Aid.
- b) Legal Aid would be made completely independent of the government, and the employees would no longer be civil servants. Administration would be supervised by a newly-established non-government authority.
- c) A Legal Aid Services Council would be established for the overall management of legal aid (chaired by a community person independent of the legal profession, with members including lawyers, non-lawyers and government officials). However, Legal Aid would still be a government department, and the Council "would not interfere with the handling of individual cases, ...but would examine and advise the Government on general matters...."<sup>29</sup>

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

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

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

#### **The forthcoming decision**

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

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

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

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

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

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

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

The Law Society of Hong Kong and the Hong Kong Bar Association have repeatedly advocated that legal aid be fully independent of the government, supervised by an independent Legal Aid Commission. The Law Society and Bar Association, in a September 1993 joint statement, said that the government's recommendation in the Consultative Paper (option c) would make only cosmetic changes: "The fact remains that its staff would still be civil servants within the Government system and dependent on the whims and accountable to other civil servants within the executive."<sup>30</sup> The statement concluded:

"Past experience and individual cases have shown the need for an independent authority to be set up outside Government which is, and is seen to be, free from Governmental influence in the granting of Legal Aid and the conduct of litigation by aided persons... Without legal aid an independent judiciary is of limited benefit to the majority of the population -- without an independent legal aid authority we have a system of access to the courts that cannot be said to be fully effective and assured of a sound future."<sup>31</sup>

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

### ◆ *International standards*

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

### ◆ *Concern about the future*

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

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



### ◆ *Conclusion and recommendation*

In order to instill more confidence in the future protection of judicial independence, Amnesty International is calling on the government to commission an independent review aimed at identifying any further measures which may be needed to guarantee the future independence of the judiciary in Hong Kong. The review should also consider means of ensuring the recruitment of judges with the highest standards of competence, integrity and independence.

The review should also consider the extent to which the UN Basic Principles on the Independence of the Judiciary have been integrated into law, practice and training in Hong Kong, and should propose any further measures which may be needed for fuller integration. In this regard, special note should be taken of the requirements in the UN "Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary," which include:

- i) "All States shall adopt and implement in their justice systems the Basic Principles on the Independence of the Judiciary in accordance with their constitutional process and domestic practice" (Procedure 1).
- ii) "Judges, lawyers, members of the executive, the legislature, and the public in general, shall be informed in the most appropriate manner of the content and the importance of the Basic Principles so that they may promote their application within the framework of the justice system" (Procedure 4).
- iii) "Member States shall inform the [UN] Secretary-General every five years, beginning in 1988, of the progress achieved in the implementation of the Basic Principles, including their dissemination, their incorporation into national legislation, the problems faced and difficulties or obstacles encountered in their implementation at the national level and the assistance that might be needed from the international community" (Procedure 7).

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

### ◆ *International standards*

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

### ◆ *The record in Hong Kong*

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

As noted in section 5 of this report, in July 1992 the Director of Legal Aid was given discretion to grant legal aid in *criminal* cases to people whose financial resources exceed the usual "means test" limits, if the Director is "satisfied that it is desirable in the interests of justice." However, the government has not provided for such discretion in *civil* cases, including those where an individual wishes to initiate a case against the government for an alleged infringement of human rights.<sup>32</sup>

### ◆ *Conclusion and recommendation*

Amnesty International considers that orders to pay government costs in Bill of Rights cases amount to a real deterrence to victims of human rights violations seeking a judicial remedy. It therefore calls on the government to ensure that people are not ordered to pay government costs in such cases, assuming the court does not deem the Bill of Rights aspects of the case to be abusive or frivolous.

Amnesty International also calls for the Director of Legal Aid (whatever the future structure of that agency) to be granted discretion in civil Bill of Rights cases to grant legal aid to people whose resources exceed the usual "means test" limits, if the Director considers that this would be in the interests of justice.

### ◆ *Background information*

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

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

### **◆ *International standards***

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

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

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

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

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

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

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

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

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

◆ **Conclusion and recommendation**

When a government ratifies international human rights conventions, it affirms to the international community its determination to respect the dignity and worth of the human person. The instruments noted above contain provisions which if respected would safeguard specific human rights which Amnesty International works to protect, as well as other important fundamental human rights. Many of the provisions in those conventions were inspired by the principles set forth in the Universal Declaration of Human Rights and the ICCPR. Amnesty International urges all states, when ratifying international human rights instruments, to do so without reservations.

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

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

◆ **International standards**

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

**◆ Fulfilling the reporting obligations after July 1997**

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

**◆ Conclusion and recommendation**

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

## 10. Conclusion - Amnesty International's Recommendations

"What do human rights amount to without suitable machinery and structures to ensure their effectiveness...?"<sup>33</sup>

UN Secretary-General Boutros Boutros-Ghali, June 1993

"[M]uch remains to be done, such as developing a human rights culture in Hong Kong, creating human rights consciousness....The Bill [of Rights] is neither a device to oppose China nor just 'a fake Rolex watch'; on the contrary, its proper role should be to strengthen the foundation of the existing legal system and thereby to reassure ordinary people that their rights will be protected....It is only right to hold that 'only if the Bill and the values it stands for are brought into contact with the lives of ordinary people, and are supported by them will the system survive.'"<sup>34</sup>

Beijing University Professor of Comparative Law Gong Xiangru, June 1991

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

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

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

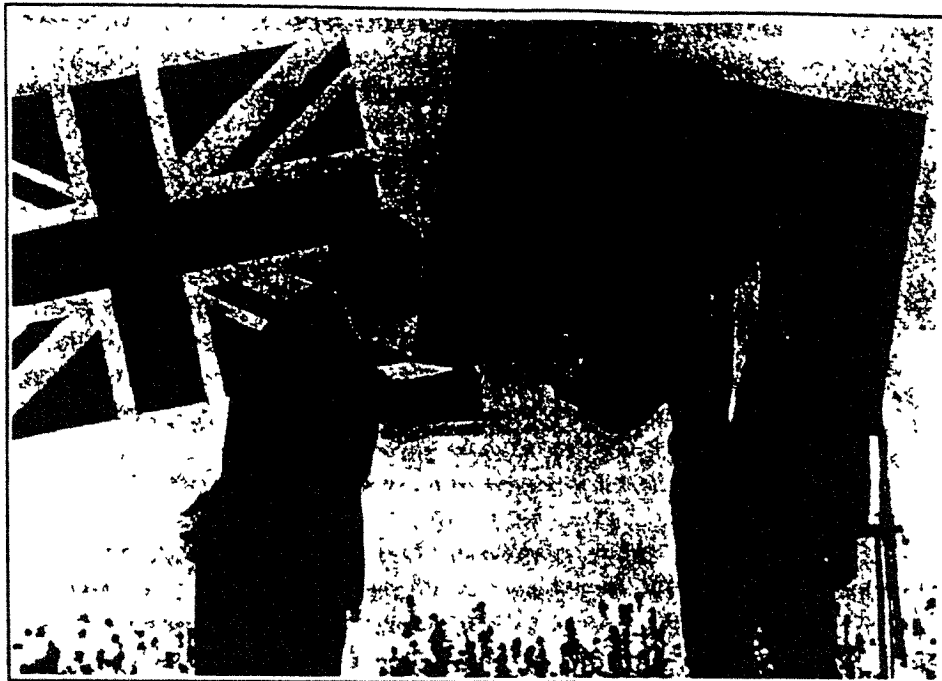
**Amnesty International calls on the Government of Hong Kong (or, in respect of recommendations 5 and 6, the Government of the UK) to take the following steps, without further delay, toward effective implementation of the ICCPR:**

1. The government should establish an independent human rights commission, with a mandate to develop:
  - a. an accessible, affordable, speedy and effective human rights complaints system, to complement the judicial system;

b. a more proactive, forward-looking and effective approach to human rights implementation; and

c. effective human rights awareness, education and training programs.

The commission should reflect the principles adopted for such bodies by the United Nations (see



Governor Christopher Patten and New China News Agency Director Zhou Nan, China's top official in Hong Kong, at a function on 29 September 1993.

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

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

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

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

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

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



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- 31 *Ibid.*
32. The Director of Legal Aid only has discretion in civil cases when computing income from any source for the purposes of "means test" limits, where the Director can disregard any amount considered reasonable having regard to the nature of the income or to any other circumstances of the case.
33. UN Secretary-General Boutros Boutros-Ghali, "Human Rights: The Common Language of Humanity," in World Conference on Human Rights (New York: United Nations Department of Public Information, 1993), p. 13.
34. Gong Xiangrui, "Constitutional protection of human rights: The Chinese view under the notion of 'one country, two systems'," in The Hong Kong Bill of Rights: A Comparative Approach, ed. Johannes Chan and Yash Ghai (Hong Kong, Singapore, Malaysia: Butterworths Asia, 1993), pp. 490-491.

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

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- Helton, Arthur. "Judicial Review of the Refugee Status Determination Procedure for Vietnamese Asylum Seekers in Hong Kong: The Case of Do Giau." Brooklyn Journal of International Law 17 (1991): 263-291.
- Hong Kong Bar Association. "Submissions to the UK Foreign Affairs Committee." Hong Kong, 1993.
- Hong Kong Bar Association. "Submissions to the UN Human Rights Committee on the Third Periodic Report on Hong Kong." Hong Kong, 1991.
- Hong Kong Council of Women. "Report by the Hong Kong Council of Women on the Third Periodic Report by Hong Kong under Article 40 of the International Covenant on Civil and Political Rights." Hong Kong, undated.
- Hong Kong Government. "The Committee on the Promotion of Civic Education." Hong Kong, undated brochure.
- Hong Kong Government. "Consultative Paper on Legal Aid." Hong Kong, 1993.
- Hong Kong Government. "Green Paper on Equal Opportunities for Women and Men." Hong Kong, August 1993.
- Hong Kong Government. "Hong Kong: Today's Success, Tomorrow's Challenges - Address by Governor Christopher Patten at the opening of the 1993/94 Session of the Legislative Council, 6 October 1993." Hong Kong, 1993.
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United Kingdom Government -- see below under "United Nations documents" for details of the UK Government's reports to the UN Human Rights Committee about implementation of the ICCPR in Hong Kong.

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

Second periodic report

1. Second periodic report about implementation of the ICCPR in Hong Kong (submitted by the UK government to the UN Human Rights Committee). UN Doc. CCPR/C/32/ADD.14 and 15 (20 June 1988 and 5 October 1988 respectively).
2. Summary records of the UN Human Rights Committee's review of the second periodic report. UN Docs. CCPR/C/SR.855 through SR.857 (8-9 November 1988).

Third periodic report

1. Third periodic report about implementation of the ICCPR in Hong Kong (submitted by the UK government to the UN Human Rights Committee). UN Doc. CCPR/C/58/Add.6 (6 March 1990).
2. Update to the third periodic report. UN Doc. CCPR/C/58/Add.11 (18 March 1991).
3. Summary records of the UN Human Rights Committee's review of the third periodic report. UN Docs. CCPR/C/SR.1045 through SR.1050 (4-8 April 1991).

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# *amnesty international*

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## *Proposed Standards for National Human Rights Commissions*

JANUARY 1993

AI INDEX: IOR 40/01/93

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The creation of a national human rights commission can be an important mechanism for strengthening human rights protection but can never replace, nor should it in any way diminish, the safeguards inherent in comprehensive and effective legal structures enforced by an independent, impartial, adequately resourced and accessible judiciary. The creation of such a human rights commission should go hand in hand with a thorough review of existing legal and other institutions in order to make these more effective instruments of human rights protection. These initiatives should be accompanied by a determined government policy aimed at holding the perpetrators of human rights violations fully accountable, thus ensuring that those who violate human rights cannot do so with impunity.

In March 1992 the United Nations Commission on Human Rights endorsed the *Principles relating to the status of national institutions*.<sup>1</sup> These internationally recognized Principles should serve as the basic minimum guidelines for the establishment of national institutions for the promotion and protection of human rights.

Amnesty International would like to recommend the following standards, as essential elements for consideration in the establishment and functioning of national human rights commissions.

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<sup>1</sup> In March 1992 the United Nations Commission on Human Rights adopted by consensus Resolution 1992/54, which reaffirmed the importance of developing effective national institutions for the promotion and protection of human rights, and included the *Principles relating to the status of national institutions*. The text of the Principles is appended to this document.

### Mandate and composition of the Commission

- The Commission should be independent from government and its Charter should reflect this. The Commission should be established by law or, preferably, by Constitutional amendment.
- The Commission should consist of men and women known for their integrity and impartiality of judgment who shall decide matters before them on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences from any quarter or for any reason. Its members should be independent of government, have a proven expertise and competence in the field of protecting and promoting human rights, and should be drawn from a variety of different backgrounds, including relevant professional groups and the non-governmental sector.
- The method of selection of its members should be fair and transparent and should afford all necessary guarantees of independence and broad representation. Commission members should serve in their individual capacity and should be able to serve the Commission effectively. The terms of their appointment, tenure and removal should be clearly specified, laid down in the Charter and should afford the strongest possible guarantees of competence, impartiality and independence.
- The Commission should be mandated to monitor and report on compliance with and implementation of relevant international human rights standards, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the United Nations (UN) Declaration and Convention against Torture, as well as the UN Code of Conduct for Law Enforcement Officials, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary or Summary Executions.
- The Commission should be mandated to review the effectiveness of existing legislation and or administrative provisions in protecting human rights and should be able to make recommendations for the amendment of such legislation or the introduction of new legislation as necessary. The Commission should also examine bills and proposals for new legislation put forward by the government or parliament to verify its conformity with international human rights standards and to ensure the state's compliance with the above international human rights instruments.
- The scope of the Commission's concerns should be defined in terms of state obligations under international human rights law. The Commission should therefore exclude from its mandate criminal actions by criminal organizations, by political groups which have resorted to arms as a means to achieve their goals, and criminal actions occurring in the context of domestic violence.
- The Commission should have precisely defined powers to investigate on its own initiative situations and cases of reported human rights violations and set clear priorities for its work in accordance with the seriousness of the violations reported to it. Priority should



be given to alleged violations of the right to life and security of the person, and the right not to be tortured (rights from which no derogation can be made by any government under any circumstances); as well as to the right not to be arbitrarily arrested or detained.

- The Commission should be directed to establish effective cooperation with non-governmental organizations with first-hand information about reports of human rights violations.
- The Commission should also have the powers to conduct wide-ranging national inquiries on human rights concerns of fundamental importance to the nation.
- It is recommended that initially the Commission conduct a critical analysis of the factors which have contributed to the persistence of human rights violations within the national territory, including the failure of existing institutions and legal mechanisms to provide adequate human rights protection. Recommendations for legal and institutional reform to halt violations may be proposed on the basis of the findings of the study.
- The Commission should be authorized to investigate the conduct of the security forces throughout the national territory. To do this effectively, the Commission should have adequate facilities to conduct thorough investigations, independent of the security forces, whose conduct it will be called upon to assess.

#### Facilities and methodology of the Commission

- The Commission should have all necessary human and material resources to examine, thoroughly, effectively, speedily and throughout the country, the evidence and other case material concerning specific allegations of violations reported to it.
- The Commission should have its own investigative machinery and should have access to expert assistance whenever required to verify alleged violations. It should have adequate facilities to carry out on-the-spot investigations. The Commission should have immediate and unhindered access to all places where detained persons are held or are suspected to be held. Officials should be obliged to cooperate with the Commission's investigations.
- The Commission should have powers to initiate investigations on its own initiative. It should be able to receive communications not only from the complainants themselves but also, if they themselves are unable or prevented from doing so, from lawyers, relatives or others acting on their behalf, including non-governmental groups. Investigations initiated by the Commission should be adequately publicized, especially at the regional and local levels, to enable and encourage witnesses to come forward to testify.
- The Commission should have full and effective powers to compel the attendance of witnesses and the production of documents.
- The Commission should have full and effective powers to protect witnesses, complainants, or others providing evidence to the Commission, including bringing about the suspension or transfer of officials allegedly involved - without prejudice pending completion of

investigations - to other duties where they would have no power over witnesses or complainants. Victims or relatives should have access to all relevant information and documents relating to the investigation and be granted all necessary facilities to present evidence. The Commission should be able to provide financial assistance to witnesses enabling them to travel and be accommodated in order to present their evidence before the Commission.

- The Commission should work in an open way with its hearings generally open to the public. Private hearings should be an exceptional measure and be resorted to only in specific pre-established circumstances. The Commission's methodology and the results of its investigations, together with official reports, including *post mortem* and other expert reports as well as police and court records, should in each case be published in full, in an easily accessible and comprehensible form.
- The Commission should also prepare regular reports documenting all the complaints it has received, together with the action taken in each case, as well as an account of all its other activities for the promotion and protection of human rights. The Commission's reports should be presented periodically to representative national and regional bodies.
- The result of the Commission's investigations should be referred to appropriate judicial bodies without delay. Anyone the Commission alleges to have been responsible for committing human rights violations or for ordering, encouraging or permitting them, should automatically be brought to justice. The government should ensure that any prosecutions for human rights-related offences are brought by authorities which are distinctly independent from the security forces or other bodies allegedly implicated in the human rights violations.
- The Commission should have powers to ensure that superior officers are held accountable for acts committed under their authority and should be mandated to closely follow subsequent legal proceedings in the case, by monitoring trials, or if necessary appearing before the court to make legal submissions to press for appropriate legal action to be taken within a reasonable time.
- The Commission should have powers to ensure effective remedies, including interim measures to protect the life and safety of an individual and free medical treatment where necessary; it should ensure that full and prompt compensation is paid and other measures of redress and rehabilitation are taken in all cases it has taken up in which members of the security forces are found to have perpetrated human rights violations.
- The government should undertake an obligation to respond, within a reasonable time, to the case-specific as well as the more general findings, conclusions and recommendations made by the Commission. The government's response should be made public.

Annex to Resolution 1992/54 on  
National institutions for the promotion and protection of human rights  
Adopted by consensus by  
the United Nations Commission on Human Rights  
3 March 1992

Adopted by consensus by  
the United Nations General Assembly  
on 20 December 1993 (Resolution 48/134)

Principles relating to the status of national institutions

Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

- (i) Any legislative or administrative provisions, as well as provisions relating to judicial organization, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
- (ii) Any situation of violation of human rights which it decides to take up;
- (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
- (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

(i)

(b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research in human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

#### Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

(e) Government departments (if they are included, these representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

**NEWS CONFERENCE  
BY LEGISLATIVE COUNCILLOR ANNA WU  
ON THE HUMAN RIGHTS AND EQUAL OPPORTUNITES COMMISSION BILL**

**Time: Thursday, 21 April, 4:30 pm**

**Place: Press Room at the Legislative Council Building**

The news conference will follow Governor Patten's question period at 2:30 with the Legislative Council on the Foreign Affairs Committee report on Hong Kong. That report recommends establishing a human rights commission in the territory. The Hong Kong government said it would remain "open-minded" to the FAC's proposal but thought existing channels for resolving human rights issues probably suffice.

Governor Patten will, no doubt, be questioned about the human rights commission. His answers are of interest because Ms. Wu's bill to establish such a body must have the Governor's permission to be introduced to the Legislative Council because of its financial implication; the commission's running costs are estimated at \$80 million per year.

Also on Thursday, Amnesty International will release its report on Hong Kong which recommends establishing a human rights commission.

If you need the information packet on Ms. Wu's proposal for the Human Rights Commission or the Equal Opportunites Bill, please contact the Office. Packets will also be available at the news conference on Thursday.

Tel: 537-2466; 537-2467  
Fax: 530-2018

**Statement by Legislative Councillor Anna Wu – 21 April 1994**

Hong Kong needs a credible and authoritative human rights commission independent of the government. There is no legal impediment to its establishment; the issue is clearly a matter of the Governor's political will to permit the introduction of the Human Rights and Equal Opportunities Commission Bill to the Legislative Council.

Government statements have suggested that a commission is not necessary. In light of the colonial authorities' dismal record in promoting awareness of human rights, it should not be left to the government to evaluate Hong Kong's need for a commission. They are an interested party whose interests lie in preserving the status quo. Consider the record:

**1984:** Hong Kong people were informed, for the first time, that they were protected by the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. This information came eight years after the covenants were extended to Hong Kong in 1976, and even then was publicised only because of the Joint Declaration.

**1988:** When the United Nations Human Rights Committee asked a British delegation what the colonial government had done to promote awareness among the people of their rights, the response was, "no publicity has been launched on the Covenant".

**1990:** The government submitted for public consultation a draft of the Bill of Rights Ordinance (BORO). This draft included equal opportunity provisions applicable both to the public and private sector.

**1991:** BORO was passed but without the original drafted provisions covering the private sector. The government implicitly promised to rectify this deficiency. That pledge has yet to be honoured; that is my reason for introducing the Equal Opportunities Bill and the Human Rights and Equal Opportunities Commission Bill.

**1993:** I sponsored a motion that was passed (without dissenting votes) by the Legislative Council in July urging the prompt establishment of a human rights commission. The government has ignored this motion.

In view of these past actions, the government's claim that there is no need for a human rights commission is hardly convincing; government has little incentive to sanction its own misconduct.

The Human Rights and Equal Opportunities Commission would offer an affordable venue for citizens to bring complaints for conciliation in areas such as discrimination on the grounds of sex, disability and age and violations of human rights. The Commission has several advantages over the courts for dispute resolution. The Commission's informality would encourage settlement and also spare those involved the high cost of litigation and lawyers' fees. For those cases which go to court, the commission could provide legal and financial assistance. The Commission would also have educational and legislative review functions.

I will continue to pressure the government for the establishment of a HRC and I hope that the public will widely discuss the issue and support its establishment.

GOVERNOR: Yes. I think it is important that the Council should be absolutely clear about that. I, as Governor, like my predecessors, have final responsibility to authorize any interception. This Council will know that when one is dealing, for example, with major international crime or big corruption cases, these techniques are not just desirable and necessary, but essential if one is to make any progress. But nothing is done unless I finally authorize it. If something has to be done urgently in the case of the ICAC, the Commissioner of the ICAC has regular meetings with the designated officer who is able to authorize, but he is only able to authorize until I actually put my stamp on things myself which I do very swiftly. And nothing sensitive would be done, I am absolutely convinced, without my say so. But eventually, every decision comes to me, every single decision that is made is authorized by me.

PRESIDENT: Ms Anna WU.

MS ANNA WU: *Thank you, Mr President. Governor, given the recommendation in the FAC report that it would be possible, legal and desirable to set up a Human Rights Commission in Hong Kong, and given the added unequivocal support from Amnesty International, what will it take you and your government to set up a commission in Hong Kong or to allow that matter to be determined by the Legislative Council? What is troubling you on this proposal to set up a commission in Hong Kong?*

GOVERNOR: Nothing is troubling me. I am, as the Council knows, a trouble-free man. What does interest me is how we can best secure the Bill of Rights and its proper implementation. Let me spell out what I mean in some detail. The arguments set out by Amnesty and by the Foreign Affairs Select Committee and persuasively by the honourable lady for a Human Rights Commission are posited on the assumption that we need to make progress in three areas. First of all, we need to do something about awareness of human rights. Secondly, we need to do something about access and thirdly we need to do something about affordability. Now it is a legitimate question to ask whether you meet those objectives best by setting up a Human Rights Commission or whether there are other ways in which you can meet those objectives. That seems to me to be a perfectly reasonable argument to have. If you look around the world, it is difficult to find many examples of communities which have both a Bill of Rights

and a Human Rights Commission. Canada is one such, but there are not many other examples. One can think of some Human Rights Commissions which are pretty toothless creatures and, perhaps at the end of the day, do less for the advance of human rights than could have been achieved in other ways.

All I am doing is saying to the honourable lady, there is an argument and what we want to ensure at the end of the day is that we have done more to secure the Bill of Rights rather than more to undermine the Bill of Rights. We also want to make sure that we meet these specific objectives set out by Amnesty and others which I share, that is, awareness, access and affordability.

There will be a lot of discussion and debate about this. There will be a good deal of discussion and debate about how an Equal Opportunities Commission or Women's Commission, if there is pressure to set one of those up, would sit along side a Human Rights Commission, when it would be plainly doing a great deal of the work of a Human Rights Commission. There will be a good deal of discussion about the enhanced role of the Commissioner for Administrative Complaints in relation to a Human Rights Commission. I am sure at the end of the day we can all share the objective of strengthening the Bill of Rights and its implementation and I hope that we come off with solutions which the honourable lady finds as acceptable as I do.

MS ANNA WU: *May I ask a short follow-up, Mr President? Governor, how long will it take you to come to a decision on this matter?*

GOVERNOR: As I said in my statement, we want to come to a decision by the end of June, but it may well be that in relation to that and one or two other issues which are interesting and concerning the council, we would want to come to a conclusion earlier than that if possible.

MS ANNA WU: *Thank you.*

PRESIDENT: Mr Timothy HA



To: Anna Wu, Andrew Byrnes, Eric, Nancy and Adam

From: Carole Petersen

I realize that this is a bit late for considering an amendment to the EOB and I apologize for not noticing it earlier. I am hoping that we can address this now, but if not, perhaps we can keep this in a file to be considered after the bill is introduced.

My concern is that the language we used for harassment on the grounds of sexuality, disability, and race is not really adequate for these contexts. Our language is based on provisions against sexual harassment. In that context, the perpetrator is generally trying to "get close" to the victim and she is afraid to object to the advances, for fear of reprisals. Thus we have, as an element of the claim, that the victim is disadvantaged as the result of objecting to the conduct or that she fears that objecting would disadvantage her. (The only exception is in the employment context, where it is sufficient to show that the harassment creates a "hostile" working environment.)

The problem is that in the context of harassment on <sup>the</sup> ground of sexuality, race or disability, the perpetrator is not trying to "get close" to the victim, but rather to harass him into leaving (the job, school, shop or whatever). Thus it seems that objecting to the conduct (or a fear that to do so would disadvantage the victim) should not be a necessary element of the claim of harassment. It is not simply an inability to object, but rather the harassment itself that is doing the harm.

Our reference to "hostile working environment" addresses this issue in the context of a job, but we have nothing similar in the context of accommodation, education, and access to goods, facilities and services. I would suggest that we add a short additional clause expanding on the definition of harassment. For example, in clause 80, we could add the following:

";or (c) the relevant threats, abuse, insults or taunts substantially interfere with the other person's access to or enjoyment of the educational institution"

We could use the same language for the other areas, merely changing "the educational institution" to the relevant term (eg, "the accommodation", or "the goods, services and facilities"). Then we could make the same changes to harassment on the ground of race and disability. We might even want to add it to the provisions on sexual harassment in education, accommodation, and goods and services (to address harassment meant to drive away women (eg from a school) rather than to get close to them).

[On a side note, there are some small typos in clauses 80 and 31. In 80, the word "harass" is missing from line one of (2), in 81(2), line 1, we need to change "racially" to "harass"]

Any thoughts? Thanks,

other person's access to, use or enjoyment of the facilities of the educational institution."

#### **Section 81. Harassment related to accommodation**

The definition of harassment in subsection (2) should be amended by the addition of the following paragraph (c) (the word "or" at the end of paragraph (a) also needs to be deleted and placed after paragraph (b)):

"; or

(c) the threats, abuse, insults or taunts substantially interfere with the other person's access to, use or enjoyment of that accommodation."

#### **Section 82. Harassment in the provision of goods, services and facilities**

Subsection 82(2)(b) should be amended in the following manner:

"(b) as a result of the objection by the other person to the relevant threats, abuse, insults or taunts, the other person is disadvantaged in any way in connection with access to or the provision of goods, services or facilities~~employment or work, or possible employment or possible work, of the other person, or~~".

A new paragraph (c) should be added:

"(c) the threats, abuse, insults or taunts substantially interfere with the other person's access to, use or enjoyment of those goods, services or facilities."

#### **Section 104 [105] Racial harassment in education**

The definition of harassment in subsection (2) should be amended by the addition of the following paragraph (c) (the word "or" at the end of paragraph (a) also needs to be deleted and placed after paragraph (b)):

"; or

(c) or the threats, abuse, insults or taunts substantially interfere with the other person's access to, use or enjoyment of the facilities of the educational institution."

#### **Section 105 [106] Racial harassment related to accommodation**

The definition of harassment in subsection (2) should be amended by the addition of the following paragraph (c) (the word "or" at the end of paragraph (a) also needs to be deleted and placed after paragraph (b)):

## CHANGES TO THE HARASSMENT PROVISIONS

### Section 31 Sexual harassment in education

The definition of harassment in subsection (2) should be amended by the addition of the following paragraph (c) (the word "or" at the end of paragraph (a) also needs to be deleted and placed after paragraph (b)):

"; or

(c) conduct of the first-mentioned person substantially interferes with the other person's access to, use or enjoyment of the facilities of the educational institution."

### Section 32 Sexual harassment related to accommodation

The definition of harassment in subsection (2) should be amended by the addition of the following paragraph (c) (the word "or" at the end of paragraph (a) also needs to be deleted and placed after paragraph (b)):

"; or

(c) the conduct of the first-mentioned person substantially interferes with the other person's access to, use or enjoyment of that accommodation."

### Section 33. Sexual harassment in the provision of goods, services and facilities

The definition of harassment in subsection (2) should be amended by the addition of the following paragraph (c) (the word "or" at the end of paragraph (a) also needs to be deleted and placed after paragraph (b)):

"; or

(c) the conduct of the first-mentioned person substantially interferes with the other person's access to, use or enjoyment of those goods, services or facilities."

### Section 80 Harassment in education

The definition of harassment in subsection (2) should be amended by the addition of the following paragraph (c) (the word "or" at the end of paragraph (a) also needs to be deleted and placed after paragraph (b)):

"; or

(c) or the threats, abuse, insults or taunts substantially interfere with the

"; or

(c) the threats, abuse, insults or taunts substantially interfere with the other person's access to, use or enjoyment of that accommodation.

**Section 106 [107] Racial harassment in the provision of goods, services and facilities**

Subsection 106(2)(b) [108(2)(b)] should be amended in the following manner:

"(b) as a result of the objection by the other person to the relevant threats, abuse, insults or taunts, the other person is disadvantaged in any way in connection with access to or the provision of goods, services or facilities~~employment or work, or possible employment or possible work, of the other person; or~~".

A new paragraph (c) should be added:

"(c) the threats, abuse, insults or taunts substantially interfere with the other person's access to, use or enjoyment of those goods, services or facilities."

**Section 133B [137] Harassment on the ground of disability in education**

The definition of harassment in subsection (2) should be amended by the addition of the following paragraph (c) (the word "or" at the end of paragraph (a) also needs to be deleted and placed after paragraph (b)):

"; or

(c) the threats, abuse, insults or taunts substantially interfere with the other person's access to, use or enjoyment of the facilities of the educational institution."

**Section 133C [138] Harassment on the ground of disability in relation to accommodation**

The definition of harassment in subsection (2) should be amended by the addition of the following paragraph (c) (the word "or" at the end of paragraph (a) also needs to be deleted and placed after paragraph (b)):

"; or

(c) the threats, abuse, insults or taunts substantially interfere with the other person's access to, use or enjoyment of that accommodation."

**Section 133D [139] Harassment on the ground of disability in the provision of goods, services and facilities**

Subsection 133D(2)(b) [139(2)(b)] should be amended in the following manner:

"; or

(c) the threats, abuse, insults or taunts substantially interfere with the other person's access to, use or enjoyment of that accommodation.

**Section 106 [107] Racial harassment in the provision of goods, services and facilities**

Subsection 106(2)(b) [108(2)(b)] should be amended in the following manner:

"(b) as a result of the objection by the other person to the relevant threats, abuse, insults or taunts, the other person is disadvantaged in any way in connection with access to or the provision of goods, services or facilities~~employment or work, or possible employment or possible work, of the other person, or~~".

A new paragraph (c) should be added:

"(c) the threats, abuse, insults or taunts substantially interfere with the other person's access to, use or enjoyment of those goods, services or facilities."

**Section 133B [137] Harassment on the ground of disability in education**

The definition of harassment in subsection (2) should be amended by the addition of the following paragraph (c) (the word "or" at the end of paragraph (a) also needs to be deleted and placed after paragraph (b)):

"; or

(c) the threats, abuse, insults or taunts substantially interfere with the other person's access to, use or enjoyment of the facilities of the educational institution."

**Section 133C [138] Harassment on the ground of disability in relation to accommodation**

The definition of harassment in subsection (2) should be amended by the addition of the following paragraph (c) (the word "or" at the end of paragraph (a) also needs to be deleted and placed after paragraph (b)):

"; or

(c) the threats, abuse, insults or taunts substantially interfere with the other person's access to, use or enjoyment of that accommodation."

**Section 133D [139] Harassment on the ground of disability in the provision of goods, services and facilities**

Subsection 133D(2)(b) [139(2)(b)] should be amended in the following manner:

"; or

(c) the threats, abuse, insults or taunts substantially interfere with the other person's access to, use or enjoyment of that accommodation.

**Section 106 [107] Racial harassment in the provision of goods, services and facilities**

Subsection 106(2)(b) [108(2)(b)] should be amended in the following manner:

"(b) as a result of the objection by the other person to the relevant threats, abuse, insults or taunts, the other person is disadvantaged in any way in connection with access to or the provision of goods, services or facilities~~employment or work, or possible employment or possible work, of the other person; or~~".

A new paragraph (c) should be added:

"(c) the threats, abuse, insults or taunts substantially interfere with the other person's access to, use or enjoyment of those goods, services or facilities."

**Section 133B [137] Harassment on the ground of disability in education**

The definition of harassment in subsection (2) should be amended by the addition of the following paragraph (c) (the word "or" at the end of paragraph (a) also needs to be deleted and placed after paragraph (b)):

"; or

(c) the threats, abuse, insults or taunts substantially interfere with the other person's access to, use or enjoyment of the facilities of the educational institution."

**Section 133C [138] Harassment on the ground of disability in relation to accommodation**

The definition of harassment in subsection (2) should be amended by the addition of the following paragraph (c) (the word "or" at the end of paragraph (a) also needs to be deleted and placed after paragraph (b)):

"; or

(c) the threats, abuse, insults or taunts substantially interfere with the other person's access to, use or enjoyment of that accommodation."

**Section 133D [139] Harassment on the ground of disability in the provision of goods, services and facilities**

Subsection 133D(2)(b) [139(2)(b)] should be amended in the following manner:

## CHANGES TO THE HARASSMENT PROVISIONS

### Section 31 Sexual harassment in education

The definition of harassment in subsection (2) should be amended by the addition of the following paragraph (c) (the word "or" at the end of paragraph (a) also needs to be deleted and placed after paragraph (b)):

"; or

(c) conduct of the first-mentioned person substantially interferes with the other person's access to, use or enjoyment of the facilities of the educational institution."

### Section 32 Sexual harassment related to accommodation

The definition of harassment in subsection (2) should be amended by the addition of the following paragraph (c) (the word "or" at the end of paragraph (a) also needs to be deleted and placed after paragraph (b)):

"; or

(c) the conduct of the first-mentioned person substantially interferes with the other person's access to, use or enjoyment of that accommodation."

### Section 33. Sexual harassment in the provision of goods, services and facilities

The definition of harassment in subsection (2) should be amended by the addition of the following paragraph (c) (the word "or" at the end of paragraph (a) also needs to be deleted and placed after paragraph (b)):

"; or

(c) the conduct of the first-mentioned person substantially interferes with the other person's access to, use or enjoyment of those goods, services or facilities."

### Section 80 Harassment in education

The definition of harassment in subsection (2) should be amended by the addition of the following paragraph (c) (the word "or" at the end of paragraph (a) also needs to be deleted and placed after paragraph (b)):

"; or

(c) or the threats, abuse, insults or taunts substantially interfere with the

other person's access to, use or enjoyment of the facilities of the educational institution."

#### **Section 81. Harassment related to accommodation**

The definition of harassment in subsection (2) should be amended by the addition of the following paragraph (c) (the word "or" at the end of paragraph (a) also needs to be deleted and placed after paragraph (b)):

"; or

(c) the threats, abuse, insults or taunts substantially interfere with the other person's access to, use or enjoyment of that accommodation."

#### **Section 82. Harassment in the provision of goods, services and facilities**

Subsection 82(2)(b) should be amended in the following manner:

"(b) as a result of the objection by the other person to the relevant threats, abuse, insults or taunts, the other person is disadvantaged in any way in connection with access to or the provision of goods, services or facilities~~employment or work, or possible employment or possible work, of the other person; or~~".

A new paragraph (c) should be added:

"(c) the threats, abuse, insults or taunts substantially interfere with the other person's access to, use or enjoyment of those goods, services or facilities."

#### **Section 104 [105] Racial harassment in education**

The definition of harassment in subsection (2) should be amended by the addition of the following paragraph (c) (the word "or" at the end of paragraph (a) also needs to be deleted and placed after paragraph (b)):

"; or

(c) or the threats, abuse, insults or taunts substantially interfere with the other person's access to, use or enjoyment of the facilities of the educational institution."

#### **Section 105 [106] Racial harassment related to accommodation**

The definition of harassment in subsection (2) should be amended by the addition of the following paragraph (c) (the word "or" at the end of paragraph (a) also needs to be deleted and placed after paragraph (b)):



Office of Anna Wu  
Rm. 415, Central Government Offices (West Wing)  
11 Ice House Street  
Hong Kong  
Fax: 530-2018 Tel: 537-2467

9th May, 1994

Mr. K. S. Law  
Deputy Secretary General  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Mr. Law,

As you know, I am putting forward two private member's bills, the **Equal Opportunities Bill** and the **Human Rights and Equal Opportunities Commission Bill**. I would like to take the opportunity of our meeting Thursday, 12 May, to discuss with you the schedule for introducing the **Equal Opportunities Bill** into the Legislative Council, preferably by the end of this session.

I would also appreciate your assistance in resolving two procedural questions relating to the Commission Bill:

1. It is fairly clear that the Commission Bill has financial implications as defined in SO 23, while the Equal Opportunities Bill does not. The Commission Bill therefore cannot be moved for second reading without a recommendation from the Governor (SO 42(1)).

I am perplexed, however, that the list of items which must be delivered to the Clerk for presentation to the Council includes a certificate from the Chief Secretary indicating that the Governor's recommendation will be forthcoming (SO 39(2)). This seems to imply that a private member's bill with financial implications may not proceed even to gazettal and first reading without the Governor's consent, a result which would render SO 42(1) superfluous. I would like to know if there is an accepted interpretation of this provision of the Standing Orders and, if not, how to seek one so that I may proceed appropriately with the Commission Bill.

2. I would prefer to forward only the English draft of the Commission Bill for presentation to the Council and first reading, in order to avoid the expense and delay of translation until the possibility of reaching second reading seems more certain.

This appears to be procedurally possible under the Standing Orders (SO 38(3A)), but I am uncertain about how to proceed. I do not think that the procedure provided by SO 39(3) (for urgent enactment pursuant to section 4(3) of the Official Languages Ordinance (Cap. 5)) is the relevant one, as it is my intention to have the Bill translated before second reading.

I am forwarding for your information copies of the Equal Opportunities Bill and its explanatory memorandum as sent to the Law Draftsman, as well as the consultation draft of the Commission Bill.

I look forward to speaking with you.

Yours sincerely,

Anna Wu

Enc.

Hong Kong Legislative Council

(London Office)

香港立法局秘書處倫敦辦事處

7 Catherine Place, Westminster, London SW1E 6DX

Tel : 071-630 5122 (3 lines) Fax : 071-233 8498

TO: Adam Mayer Hon Anna Wu's Office  
FROM: Member of the Legislative Councillor  
DATE: Paula Cartwright, London Office  
13 May, 1994  
TIME: 4.15 pm  
T.O.

Dear Adam

I confirm that I have sent Miss Wu's letter and enclosure to all Peers on Speakers List for debate on 18 May, 1994. Copy of my covering letter attached. Some Peers have two addresses listed, so I sent copy of information to both addresses to ensure that they had adequate time to read letters etc.. As list is updated I will follow-up Speakers with correspondence.

If there is anything else Miss Wu requires, please let us know.

Best regards.

(Paula Cartwright)  
Office Manager.

13 May, 1994

The Viscount Weir  
Rodinghead  
Mauchline  
Ayrshire KA5 5TR

Dear Viscount Weir,

I refer to previous correspondence from this office regarding the Hong Kong debate in the House of Lords on 18 May.

Hong Kong Legislative Councillor, Miss Anna Wu, has asked us to pass on the attached letter to you and summary of the Human Rights and Equal Opportunities Commission Bill, which are self-explanatory.

Miss Wu hopes this information will be helpful to you in your preparations for the debate.

If we can be of any further assistance, please do not hesitate to contact us.

Yours sincerely,

The following is the transcript of the media session by the Governor, the Rt Hon Christopher Patten, after his talk to the Amnesty International on May 16, 1994

Question: You said in your speech when we stand up to human rights. We are firm together that we are a single human community. Now, you yourself have spoken on the matter of Xi Yang, our colleague, and Ambassador McLaren has investigated in that. Can you explain to us please why Legco last week, the ex-officio people abstained on that particular matter, and was that sending a kind of message to Peking, or what were....?

Governor: No, it was because the motion was directed at the Government of the PRC rather than the Government of Hong Kong but there's no doubt, I think, in anybody's mind that we have made our views on the Xi Yang case plain. We were very disturbed by the sentence that was handed out and we were very disturbed by the opaqueness of the proceedings. We recognise, of course, that these are Chinese rules applied in Chinese courts but we've argued again and again and again that because there are so many of our people, our journalists working in China, it's reasonable for Chinese authorities to say exactly what the rules and regulations they have to follow, are. We've made that clear, several of us, myself, the Chief Secretary and others, on a number of occasions.

Question: How can you on one hand talk of the importance of human rights for Hong Kong, but at the same time, Hong Kong is effectively undermining those in the United States for seeking to use MFN to put pressure on Beijing to improve human rights in China?

Governor: But, your assumption is the only people who are concerned about human rights in China are those who believe that human rights should be linked to trade. I read this weekend an editorial in the Washington Post which said that there's a change of mind on the issue and believed that the best way of promoting human rights in China was through opening up the economy, was through more trade and through pursuing a political dialogue. It happens to be the case that despite the fact that we in Hong Kong have more reasons than, perhaps, anybody to be concerned about human rights, we believe as the Washington Post argued and as many Americans argue, as Congressman Lee Hamilton, one of the most distinguished democrats in Congress has argued, that it's not sensible to link human rights, political issues with matters of trade and economics. It's a perfectly respectable position to take up and it doesn't in any way undermine our belief in human rights.

Question: Sir, with your support to the speech on "Silence of the Lamb", what sort of political pressures that the Administration right now are feeling, and.....?

Governor: It shouldn't surprise anybody that the Governor of Hong Kong and the Secretary for the Treasury are in favour of prudent financing. It's through prudent financing that, or partly through prudent financing that Hong Kong has become so prosperous and stayed so prosperous over the years. I don't think it's sensible in politics to be gun-held about, to be enthusiastic about spending money but not, for example, so enthusiastic about raising the money in order to meet the bills. I think the Secretary for the Treasury was saying with false inelegance that we have to go on and balancing the books in Hong Kong. Now, there is nothing undemocratic about believing in prudent public financing. I could point to you to all sorts of democracy over the world. We have party state in power for years advocating prudent public financing. At the moment, the President of United States is trying to cut the budget deficit, a sort of anti-democratic thing to do. It's a sensible thing to do. So, in our open society, the give-and-take of public debate includes the rights of the executive to say from time to time what he thinks about political issues.

Question: Governor, ... the Ta Kung Pao on its editorial about human rights expressed that .....just now said Hong Kong people should not get caught up with the lead in human rights commission which is said to be the work of a handful of people, referred to the British, but there were clauses in the Basic Law. It went on to say that the American has no such commission, neither does the United Kingdom, and it is a very peculiar thing now setting it up 141 days before reverting to China, how do you respond to that?

Governor: We'll give our response to Ta Kung Pao and indeed to the FAC and Amnesty before the end of June. We are committed to responding to the FAC in that time scale. It's perfectly true, as I said in my speech, that you can think of lots of examples of countries with a bill of rights but no human rights commissions and examples as well of communities with a human rights commission but no bill of rights. And it's only in one or two examples, in only one or two countries, I think Canada is one, where there is both the bill of rights and the human rights commission. You can also think of examples of human rights commissions that aren't very effective and others that are. I think that what is important, as well as addressing the institutional question, is to address what it is that people expect the human rights commission to do and Amnesty's talked about affordability, accessibility and awareness of human rights and I hope those issues don't get lost when talking about that institutional matter.

Question: Governor, I was struck by the fact that you are quite naturally congratulating yourself on your human rights achievements, but you were absolutely silent on Hong Kong's human rights failings...

I am sure that you know that the Hong Kong Government historically has a very poor record on human rights. And if the British Government which you are a part, play a big role in Hong Kong having such a poor human rights record, and as you know, the British Government opposed to a Bill of Rights in Hong Kong up until Tianman Square, and the reasons that they gave at the time was that there was no need for a Bill of Rights, and that all of Hong Kong's laws were totally in conformity with the international covenants because, as you said, each piece of legislation is vetted for compliance to these ..... obligations and all of a sudden we discovered that there are 10 pieces of legislation that needed amending because they might infringe on human rights. And the Chinese are now using this British argument, pre-Tianman British argument, to say there is no need for a Bill of Rights. There is no need for a Human Rights Commission because after all, the British had been very carefully vetting all legislation, go there is nothing in Hong Kong... contradicts the covenants. Now I think it leaves you to assume some responsibilities on this?

Governor: But, Frank, if we're to exchange arguments about history, I am not sure where it will get us. You are keen to point out pessimism as it were that we haven't done enough in the past on human rights. We can argue about that. What I am conscious of is the importance of ensuring that we do enough today and I am sure if you think we are not doing enough, not responding adequately, you'll knock us all over the place as it is your total right.

Question: In your speech just now, you referred to the FAC report and the Amnesty report, and you said you'll be considering about the Human Rights commission, and then, of course, you go on arguing the Joint Declaration means that China is obliged to give a report to the United Nations about human rights, etc. Well, in the FAC report, they have actually said the way China treated Tibet, Tibet is of course also bound by an agreement, an international agreement like Hong Kong has, that it serves a warning for the future of Hong Kong. Have you ever tried to compare how the different agreements for Hong Kong and for Tibet, and see in a way what sort of guarantee Hong Kong actually has. It's all very well saying, you know, it's an international treaty but they have broken an international treaty for Tibet, what if they break one for Hong Kong?

Governor: I am not a Tibetan expert though I have read the declaration on Tibet but I don't think that you are arguing that it is a treaty lodged at the United Nations between two sovereign powers and that's what the Joint Declaration amounts to. I am absolutely sure that the Chinese, having signed it as an international treaty, intends to abide by it.

Question: Two points, Governor. I mean, just ..... of treaties that

had been broken in history that non-aggression pacts and the.....  
People are aware of that and they are very nervous. Given the degr  
and anxiety that people have, whether you philosophically dispo  
towards something or not, would it not be beneficial and try  
reassure people to put as much as possible into the law and try  
concrete structure as you possibly can to make people feel better  
whether there is an access to information bill or human right  
commissions, what ever it may be, concretise it, even if it's no  
philosophical in its disposition because it makes people feel better

Governor: I am not sure that it necessarily makes people feel better  
to pass a law. Each of these issues, each of the ones you touch on  
freedom of speech, freedom of the press, access to information, ho  
you'd like to describe it, human rights commissions and so on, each of  
those things involves matters of judgment in which one is trying to  
secure the position not just for the short term but for the longer  
term and we have to wait, we have to arrive at those judgments over  
the next few weeks and months. I hope we'll be able to do so in a way  
which commands majority consent in the community. I certainly will be  
trying to explain and justify whatever decisions we come to. One more  
last one.

Question: This idea about a human rights commission be mutually  
exclusive from the Bill of Rights...

Governor: That is not my argument.

Question:... There is an indication that perhaps, some are cited as  
saying that you have corruption large enough..... the ICAC and you  
have Security Branch. You don't need SFC. Why not have two together,  
of course,.....

Governor: You could have the two together. I just pointed out that  
not many people do and I pointed out that while Canada did work  
successfully, I couldn't think of many other examples. Which other  
examples can you think of? (Remarks by reporters inaudible) I don't  
believe that it is an exclusive argument but I pointed out that it was  
of interest that I can only think of one example where the two co-  
exist and you can't think of another.

Question: If you're looking long term, Governor, and you want to make  
things long term rather than short term. I can't understand the logic  
of relying on administrative procedures that can change by....

Governor: We are totally relying on administrative procedures but I  
think you'd better wait and hear what we actually have to say in a  
month or so.

Question: Are you going to reverse yourself on what you've said before  
and preferring administrative procedures?

Governor: I am going to make the position clear before the end of  
June. Thanks.



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# MEMBERS OF LEGISLATIVE COUNCIL

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立法局議員

Office of Anna Wu

Rm. 415, Central Government Offices (West Wing)

11 Ice House Street

Hong Kong

Fax: 530-2018 Tel: 537-2467

17th May, 1994

The Lord Marlesford  
House of Lords  
Westminster  
London SW1A 0PW  
United Kingdom

Dear Lord Marlesford,

I expect you have already received the materials, relating to the Human Rights and Equal Opportunities Commission Bill, that I forwarded to Peers scheduled to speak in the 18 May debate on Hong Kong. As I have heard you have a particular interest in human rights issues in Hong Kong, I am forwarding some additional information to you personally.

As the attached newspaper article indicates, it is becoming clear that the Governor will not support moves to establish a human rights commission for Hong Kong, despite the recommendations made in favor of a commission by the Foreign Affairs Committee and Amnesty International. It appears the Governor will argue that experiences in other jurisdictions raise doubts about the appropriateness of such an institution for Hong Kong.

The composition of local institutions to protect local human rights, however, should properly be a matter for Hong Kong's Legislative Council to decide.

As you know, I have completed a draft bill to establish a human rights commission. Because of the bill's financial implications, however, it cannot be debated in the Legislative Council without consent in advance by the Governor.

It is particularly inappropriate to withhold this issue from the Council in light of the Governor's efforts to enhance the Council's role in government. The Governor should not be seen to set a precedent for using executive control over bills with financial implications to thwart consideration of fundamental local issues by Hong Kong's only representative institution.

Thank you for your consideration.

Yours sincerely,

Anna Wu

Enc.

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# **MEMBERS OF LEGISLATIVE COUNCIL**

立法局議員

Office of Anna Wu  
Rm. 415, Central Government Offices (West Wing)  
11 Ice House Street  
Hong Kong  
Fax: 530-2018 Tel: 537-2467

17th May, 1994

The Lord Archer of Sandwell  
House of Lords  
Westminster  
London SW1A 0PW  
United Kingdom

Dear Lord Archer,

I expect you have already received the materials, relating to the Human Rights and Equal Opportunities Commission Bill, that I forwarded to Peers scheduled to speak in the 18 May debate on Hong Kong. As I have heard you have a particular interest in human rights issues in Hong Kong, I am forwarding some additional information to you personally.

As the attached newspaper article indicates, it is becoming clear that the Governor will not support moves to establish a human rights commission for Hong Kong, despite the recommendations made in favor of a commission by the Foreign Affairs Committee and Amnesty International. It appears the Governor will argue that experiences in other jurisdictions raise doubts about the appropriateness of such an institution for Hong Kong.

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It is particularly inappropriate to withhold this issue from the Council in light of the Governor's efforts to enhance the Council's role in government. The Governor should not be seen to set a precedent for using executive control over bills with financial implications to thwart consideration of fundamental local issues by Hong Kong's only representative institution.

Thank you for your consideration.

Yours sincerely,

Anna Wu

Enc.

Office of Anna Wu  
Rm. 415, Central Government Offices (West Wing)  
11 Ice House Street  
Hong Kong  
Fax: 530-2018 Tel: 537-2467

17th May, 1994

The Lord Bonham-Carter  
% Norman Bonham-Carter  
London, England

Dear Lord Bonham-Carter,

Thank you for considering our points about a human rights commission for Hong Kong. On Monday night, Governor Patten addressed the local chapter of Amnesty International. As the attached newspaper article indicates, it is becoming clear that the Governor will not support moves to establish a human rights commission for Hong Kong, despite the recommendations made in favor of such a body by the Foreign Affairs Committee and Amnesty International. It appears the Governor will argue that experiences in other jurisdictions raise doubts about the appropriateness of such an institution for Hong Kong.\*

The composition of local institutions to protect local human rights, however, should properly be a matter for Hong Kong's Legislative Council to decide.

As you know, I have completed a draft bill to establish a human rights commission. Because of the bill's financial implications, however, it cannot be debated in the Legislative Council without consent in advance by the Governor.

It is particularly inappropriate to withhold this issue from the Council in light of the Governor's efforts to enhance the Council's role in government. The Governor should not be seen to set a precedent for using executive control over bills with financial implications to thwart consideration of fundamental local issues by Hong Kong's only representative institution.

Thank you for your consideration.

Yours sincerely,

Anna Wu

\*Hong Kong has a Bill of Rights and the Governor seems to indicate that this alone suffices and a human rights commission is not necessary. He says that only one country -- Canada -- has both. These are not mutually exclusive entities and furthermore by the Hong Kong government's admission, the Bill of Rights is incomplete. It only covers practices by public authorities and not between private parties. The government promised to breach the gap when the Bill of Rights was passed but has yet to do so.

# Rights not wrong

Chris Patten faces a moral dilemma over human rights: the rule of law and liberal values. Robert Curjel asks if he will do the right thing

As the international community looks on, the British Government is faced with a moral dilemma: the rule of law and liberal values. Robert Curjel asks if he will do the right thing

Chris Patten, the new Governor of Hong Kong, is facing a moral dilemma. He is being asked to sign a bill that would give the government the power to suspend the rights of citizens in the event of a state of emergency. This is a bill that has been passed by the Legislative Council, but it is now being challenged by the courts. Patten is being asked to sign the bill, but he is being told that he should not do so if he believes that it is wrong. This is a moral dilemma that Patten is facing. He is being asked to sign a bill that he believes is wrong, but he is being told that he should do so if he believes that it is the right thing to do. Patten is being asked to sign a bill that he believes is wrong, but he is being told that he should do so if he believes that it is the right thing to do. Patten is being asked to sign a bill that he believes is wrong, but he is being told that he should do so if he believes that it is the right thing to do.

Chris Patten is facing a moral dilemma. He is being asked to sign a bill that he believes is wrong, but he is being told that he should do so if he believes that it is the right thing to do. Patten is being asked to sign a bill that he believes is wrong, but he is being told that he should do so if he believes that it is the right thing to do. Patten is being asked to sign a bill that he believes is wrong, but he is being told that he should do so if he believes that it is the right thing to do.

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elsewhere, that the need to keep talking about wider aspects, whatever the strong views held about the democracy package, is essential.

Another reaction was an outspoken threat to United Kingdom companies wishing to do business with China. Here I must declare an interest as deputy chairman of Hanson Pacific Limited, a subsidiary of Hanson PLC; and as an adviser to British Aerospace. Whilst the threats were real enough, I must tell the House that when I visited Hong Kong and China in early March, I found thankfully no evidence of any trade discrimination. This was exceedingly reassuring. The EC Commissioner, Sir Leon Brittan, took a very strong line, when he went to Peking, and Her Majesty's Government were rightly not to be intimidated. The threats would in any case hardly be conducive to China's membership of GATT or possibly even to renewed most favoured nation status. And since then Prime Minister Li Peng has made it clear that there will be no discriminatory policy towards British companies.

Having said that, I believe it is perfectly possible for us to maintain our principles while driving a hard bargain for the benefit of Hong Kong, without tarring ourselves with charges of sleight of hand. Britain has enormous future economic benefits to be derived from China—and China has enormous future economic benefits to derive from Britain as her economic reforms gather pace. She has a very real wish to engage in dialogue about commercial matters. So I think that a little enlightened self-interest is no bad thing and need not conflict with our obligations to Hong Kong.

There are two other subjects on which I must touch: human rights in China and the United Kingdom's responsibilities towards certain minorities in Hong Kong who do not have right of abode in the United Kingdom. International concern about human rights in China is considerable and understandable. It is all very well to adopt a "holier than thou" attitude, but again it is important to encourage self-awareness in China about how a fundamental, if gradual, reappraisal of their position can help them. We should be encouraged by an understanding that China is, as the Foreign Affairs Committee report states, coming to recognise the legitimacy of debate on the subject. We should go on discussing China—bilaterally, multilaterally, privately, publicly—as that report suggests. I very much hope that the tone that the report strikes

will read across to Hong Kong. I very much hope that the preservation—indeed, development—of human rights in the territory can be enshrined post 1997. That seems a fundamental aspect of assurance which her people will need, and it will have to be addressed by Her Majesty's Government with great care as they consider their response to the FAC report.

As to the second matter—non-ethnic Chinese British dependent territory citizens and war widows—here I must, not for the first time, strike a critical note. Circumstances have changed since 1986 when the Hong Kong nationality order was before your Lordships. I gave certain assurances then on behalf of the Government. I gave them in good faith. The words that

I used were drafted by me personally and reflected the circumstances as far as we could see them at that time and looking into the future.

By refusing to acknowledge the current climate affecting some 7,000 non-ethnic Chinese BDTCs and a mere 52 wives and widows of ex-servicemen, or doing so grudgingly, and not allowing them full British citizenship as the Foreign Affairs Committee Report recommends, I believe—and I do not like to say so—that the Government are not only acting meanly but also dishonourably. I honestly believe that the Government's position is unsustainable. Those people are special cases and do not raise a thin-end-of-the-wedge immigration argument. They are special to Hong Kong's unusual circumstances. I believe that the Government have a duty to these people. Fudged assurances about unrestricted access do not properly address that duty.

Let me end on a more upbeat note. It is very easy to be critical. It is quite another thing to be charged with the responsibility for discharging the immensely complex transition for Hong Kong which both Britain and China face. China's position as a world power and as a developing economic power is a fact with which we have to come to terms. She is a different, yet vastly exciting country. We should not expect to find affinity with every aspect of her politics or her culture, any more than her people find total affinity with ours.

Hong Kong, as part of China, but with her own unique set of special arrangements, is better poised than most to be a catalyst for China's development; and China for Hong Kong's future prosperity.

The omens are not discouraging—quite the opposite. We should continue to discharge our obligations to Hong Kong cautiously and honourably. We should do so clearly bearing in mind the fact that a long-term developing relationship of Britain with China is as much part and parcel of Hong Kong's interests as it is of our own. My Lords, I beg to move for Papers.

3.23 p.m.

The Minister of State, Foreign and Commonwealth Office (Baroness Chalker of Wallasey): My Lords, all who care about Hong Kong are glad that my noble friend Lord Glenarthur has initiated this debate. I am pleased to see many in the House today whose acquaintance with Hong Kong is much longer and deeper than my 14 years. Your Lordships will understand if I single out the noble Baroness, Lady Dunn, who has travelled far to be with us; and the noble Lords, Lord MacLachlan and Lord Wilson of Tillyorn, who both did so much to lay the foundations for Hong Kong's present success.

Today's debate is naturally an occasion for taking stock and for looking back at developments since this House last debated Hong Kong in December 1992. I hope that we can also use it as an opportunity to look forward at the 1,100 or so days remaining of the British administration of the territory and particularly at the prospects for Hong Kong beyond 30th June 1997.

First, however, a few words of history. Britain's policy has always been, in the words which Sir Richard Luce used in another place in December 1984, to build up a firmly based democratic administration in Hong

[LORD ARCHER OF SANDWELL] ... be unfounded. The reserves have transpired to be not only what was predicted by the Hong Kong Government but greater than that prediction.

The only sensible conclusion from all this is that we are not condemned to impotence, but that genuine dialogue is likely to achieve more than gesture politics. I suggest three corollaries. First, Mr. Qian Qichen, the Foreign Minister, recently confirmed that the breakdown of the constitutional discussions did not preclude co-operation in other matters which a moment ago the noble Baroness, Lady Chalker, described as technical, not political. There are a number of areas where patient, detailed negotiation, particularly within the Joint Liaison Group, may be well repaid. An obvious example is the construction of the airport.

Perhaps I may mention a different one. There is a great deal to be done on agreeing what amendments, if any, are needed to the legal system to make it consistent with the Basic Law under which Hong Kong will be ruled after the transfer. I hope that the noble Baroness will be able to tell us at the conclusion of the debate what progress is being made in relation to that. But it is encouraging that the Chinese Government considers it important to clarify the law. Clearly, the intention is that the law will be observed.

There is work to be done on the details of land disposal and on the future of the Civil Service, and a number of other matters which may be well chronicled in the history books, but are of great importance to the individuals who are affected by them.

Secondly, there is how we seek to influence China's policy in the field of human rights. No one can pretend that the Chinese Government have a commendable record. The International Society for Human Rights has only this week published a horrifying study of the forced labour system in China. I have never believed that in the international forum where human rights are discussed, we should soften our judgement towards any country because we may have a common enemy. I hope that we, together with the remainder of the international community, will judge China by the same standards as we would judge anyone else. If the Chinese Government expect any dispensations as a price of negotiations in the negotiations, they misunderstand the purposes of international human rights institutions.

As to human rights in Hong Kong, the Chinese authorities have hardly increased confidence by the 12-year sentence recently passed on Mr. Li Xia and the reporter for the Hong Kong newspaper, the *Ming Pao Daily News*. That is bound to cast a question mark over the guarantee of future press freedom under the Basic Law.

It is hardly surprising that Miss Anna Wu is seeking to introduce into the Legislative Council her Human Rights and Equal Opportunities Commission Bill, and that a substantial number of members of the Council seem to wish to discuss it. I venture no opinion on the merits of the Bill, but I hope that the Governor, who, despite all the arguments about democracy, still appears to have a veto over what Bills are discussed, will reconsider his decision not to permit the Bill to be

discussed, particularly in view of the recommendation for a human rights commission in the House of Commons Foreign Affairs Select Committee report. Should we not also address those human rights which lie within our own competence, in particular the matter referred to by the noble Lord, Lord Glenarthur, as to British citizenship for the special cases which he mentioned?

Finally, there is the future of electoral reform. It is hardly surprising that the Chinese comment that after 160 years, in which the British expressed little enthusiasm for electoral reform in the colony, their Damascus road conversion seems to have come before they leave. But re-reminders about the past are academic. Any move forward must be from where we are now.

As the noble Lord, Lord Glenarthur, pointed out, and as the noble Baroness, Lady Chalker, emphasised, it is the people of Hong Kong who will benefit or suffer from any decisions about Hong Kong's constitutional future. I believe that we should be guided by their views as to where their welfare lies. Having accorded them a Legislative Council and sought to make it more representative, surely we should listen to the opinion of the Legislative Council as to whether and how it wishes to see future negotiations.

I believe that all parties in this House who wish to the people of Hong Kong for the future, a future in which we hope to participate, have a duty to do so. Good wishes into action must be largely a matter of listening to them.

3.47 p.m.

Lord Wilson of Tyrone: My Lords, we all have reason to be grateful to the noble Lord, Lord Glenarthur, for this chance to discuss Hong Kong. I suppose it could be said that there is never a time when to have such a discussion things in Hong Kong are at a low ebb, and that is one of its great virtues. However, surely it must be right that every effort should be made to stop and take stock of what is happening. It is right that we should do this now when it is only slightly over three years before British administration of Hong Kong comes to an end and, therefore, the end of the story of Britain's largest surviving and historically most successful dependent territory.

There is a useful by-product in having a debate of this kind: it is an opportunity to hear from my noble friend Lady Dunn who has come especially from Hong Kong. She has a unique blend of direct personal experience and wisdom which will be of great benefit to the House. However, that pleasure is tainted by sadness about those who cannot be with us, like Lord Sharp of Grimsdyke.

There are certain specific points of which we can take stock. One of them is arrangements for the Legislative Council. We have come to, or indeed passed, a turning point with the breakdown in negotiations with China on the arrangements for the Legislative Council through 1997. I do not intend to dwell on how we got into that position; I prefer to look ahead to see where we go from here.

The first need is to clear our own minds on the consequences of where we are now. The Chinese have

they stay? The Union Jack Club? The proposition is ludicrous and undignified. What they want is the dignity of a British passport. What they fear, staying in Hong Kong, is victimisation after 1997. They believe that if they had British passports, they would be likely to be better protected.

The Home Secretary has the discretion to give those passports. Why in the name of fortune can he not do so? I plead with the Minister to use her influence and to plead with him to go back on that rather mean-spirited and ungenerous decision which, as has been said, is a tacky and miserly compromise. That is the first issue, that I wanted to raise.

The second is the old issue of the non-Chinese ethnic minorities. We passed a resolution in this House. We passed a Private Member's Bill in this House which was supported by the Select Committee on Foreign Affairs in both its last and present reports. That Bill is supported also by the Governor of Hong Kong. It is unanimously supported by LegCo. It is supported by the two previous Governors of Hong Kong. Indeed, so far as I know, only the Home Office opposes it. I think that for once the Home Office should bow to the judgment of others on this matter.

I should now like to ask a question, to which the noble and learned Lord, Lord Archer, referred and about which I hope that the Minister will give us some information. I refer to the question of the human rights commission which the Governor has rejected. He may have had very good grounds for rejecting it. He may be quite right that if you have a Bill of Rights, you do not need a human rights commission. However, the people in Hong Kong are rightly worried about the protection of their rights after 1997. If the Governor is to turn down a human rights commission, I think that he should state what protection he is going to build in legally for their protection after that date. I hope that the Minister will be able to reassure us on that issue.

As many noble Lords have said, and as the Minister has told us, Hong Kong is a particularly successful. It is a most splendid example of what a city state can contribute to civilisation and progress. In fact, it is one of the last city states to survive. There are very few in the 20th century. It is the inheritor of an ancient tradition dating back to Ancient Greece and continuing through Renaissance Italy.

However, I must confess that, unlike the noble Lord, Lord Glenarthur, I found visiting Hong Kong in the present circumstances a somewhat melancholy experience. In 1997, it will fall into the hands of a regime which, if one listens to the speeches that have been made, will affect Hong Kong (whether by the noble Lord, Lord Marsh, or the noble Lord, Lord Ehnala) or if one accepts the words of Sir Percy Chaddock, is, to say the least, a regime of brutal tyranny which is hardly worthy of governing the brilliant, humorous and sophisticated inhabitants of Hong Kong. Even if that regime understands the infinite financial and commercial importance of Hong Kong to China, which I suspect that it does; and even if it understands the value of the animal that it is about to acquire, I very much doubt whether it knows how to

look after that animal. Everything that the noble Lord, Lord Marsh, said, confirmed that rather sceptical view of the future.

Lord Marsh: My Lords, I am grateful to the noble Lord for giving way; but since he mentioned my name, perhaps I should say that if I gave him that impression, I misled him. I think that the Chinese are perfectly capable of looking after Hong Kong. It is just that they have a different approach to opposition to the system than we have in Westminster or Hampstead.

Lord Bonham-Carter: My Lords, I accept the noble Lord's assurance. I think that what I am about to say will indicate why I have reservations about that assurance.

The polarisation of opinion in Hong Kong about its future is as acute as it is in your Lordships' House. I have found it difficult to see how the two points of view can be brought together. They start from two totally different analyses of the nature of the problem and go on to give two different approaches to handling it. Those who oppose what I call in shorthand the "Patten policy" see it, in the words of one of them who has spoken to me, as an exercise in futility. From the position that he has adopted, they see no way out but to retreat and to kowtow—even if M. Ballardur's attempt to do precisely that has hardly proved that that tactic would be particularly productive.

That is the view of the bulk of the business community—but not of all the business community. They argue that British policy changed radically in 1992—and that has been argued here today. They argue that the Patten proposals are not in accordance with the Basic Law, the Joint Declaration or the programme of gradual and orderly progress. Beijing advocates argue, and their position is identical—oddly enough (or perhaps not oddly enough)—with that of the business community; that China is committed to treating Hong Kong differently from the People's Republic, and that it must be trusted to carry out that undertaking.

Almost the only matter on which that group and those who support Governor Patten's policy agree is on the importance of the events that took place in Tiananmen Square. In my experience, according to both groups that was a watershed which changed relations between China and Hong Kong and between Hong Kong and China. One million people in Hong Kong demonstrated against China. In my experience, according to both parties, before the events in Tiananmen Square a rational consensus could sometimes be seen to be arrived at despite heated disputes. After Tiananmen, everything changed. After Tiananmen, the Chinese Government saw Hong Kong as a poisoned pill and as a dangerous influence on the internal politics of China against which China had to protect itself. Nonetheless, the opponents of the Patten policy go on to argue that unless we trust the Chinese to honour the Basic Law, and unless we get China's blessing, nothing can be achieved: the Patten reforms will be abolished in 1997; the transitional arrangements—which are essential to a smooth transition—will not be made, and the "through train" will run into the buffers in 1997.

The other position is, of course, totally different. The position of those who support the Governor—I am not

issues. My noble friend Lord Maffesford was right, as I believe he said, that the United States administration should give full weight to the damage which could be done to the Hong Kong economy by the withdrawal of the most favoured nation status for China. But that does not mean that we should not be talking with China about the very real worries that we have on issues of human rights. I believe that President Clinton will be taking a decision on MFN renewal as soon as next week.

Many comments were made on the Joint Liaison Group.

Lord Archer of Sandwell: My Lords, I am grateful to the noble Baroness for allowing me to intervene. A few moments ago she gave some welcome assurances that the Governor and the Government were committed to making the voice of LegCo effective. On the subject of human rights, is there a possibility that the Governor will reconsider his decision virtually to veto the introduction of Miss Anna Wu's human rights Bill?

Baroness Williams of Wallasey: My Lords, the noble and learned Lord asked a comment I was about to make. I understood that the reason that the Governor was concerned about the Wu Bill was that China had pledged to submit an "Commission" that would be set up by the Human Rights Bill. Therefore the Governor is seeking to find an alternative way forward to implement human rights recommendations which may be set by the Commission.

I am a member of the Joint Liaison Group. As we all know, the Joint Liaison Group consists both of government and of LegCo members. It is determined to discharge our responsibilities. We need the support of the Chinese in those matters. Much of the JLG's agenda is technical and legal but uncontroversial. I believe that it should not be too difficult to complete the matter on time. I believe it important to do so in the interests of individuals and businesses in Hong Kong. The noble and learned Lord, Lord Archer, asked me about the localisation of UK legislation applied to Hong Kong. That is our urgent task. It is in the backlog. If not completed, there would be an immediate legal vacuum when the UK legislation expires on 1st July 1997. Therefore we are conscious of the problems and seek to work on them as soon as we can.

The noble Lords, Lord Willson of Tillym, and Lord MacLhosie, talked about the civil service and about the preliminary working committees. We very much agree on the need for continuity in the civil service as does China. There is no question of forbidding individual civil servants having contact with the preliminary working groups. They are free to meet. But we must bear in mind that the Chinese have made it clear that the preliminary working committees is not an organ of power. The only organs of power that decide matters are the Government of the People's Republic of China and the UK Government.

I turn to comments made by my noble friend Lord Willoughby de Broke, the noble Lord, Lord Ennals, and the noble Lord, St. John of Bletso. The human rights situation is, and will continue to be, very worrying. I cannot answer all the detailed points made by the noble Lord, Lord Ennals. I can say that we are both aware of

them and seek ways to help resolve the matter where there is a problem. However, I believe that some issues are blown out of proportion.

On the critical issue of provision after 1997 for non-Chinese ethnic communities there is no question of any British dependent territory citizen becoming stateless. I understand the great feeling of my noble friend, Lord Glenarthur, the noble and learned Lord, Lord Archer and others, and the strength of comments made by the noble Lord, Lord Bonham-Carter. I shall certainly bring those remarks to the attention of my colleagues.

The assurance that wives and widows of ex-servicemen will be welcome to enter the United Kingdom to settle at any time was repeated by the present Home Secretary in a personal letter to those ladies last month. I understand the wider concerns expressed by the noble Lord, Lord Bonham-Carter. Certainly we are aware that a small number of people in that category are concerned. It is not for me to decide the matter. I shall certainly take the issue back and see what more may be done.

Several noble Lords asked about a response to the Foreign Affairs Select Committee report. It is a most excellent and thorough report. It stimulated great debate about further steps that are necessary or desirable to reinforce the measures already in place to try to protect human rights in the territory. We are considering with the Hong Kong Government the response that we shall present to Parliament before long. I cannot comment at present on the individual matters as it is not policy to do so.

I turn finally to the hope of co-operation with China over Hong Kong. Perhaps I may say without reservation that we want to see a successful transition to Chinese sovereignty in 1997. Our door has been open all along. It remains open for discussion with the Chinese Government. There is no reason why our inability to agree on election arrangements should mean that we cannot co-operate on all the many other matters of importance to Hong Kong.

I note the recent remarks by the leader of the pro-China party, the Democratic Alliance for the Betterment of Hong Kong, that Peking realises that it cannot cut all contacts with the UK and Hong Kong governments and achieve a smooth transfer of sovereignty in 1997. I hope that there is some hope in that comment. But there is plenty of evidence that in areas other than constitutional development, Britain and China continue to co-operate. As my noble friends Lord Welt and Lord Glenarthur said, there is an important relationship with China, far greater than I think the debate has given credit for. But I believe that Britain must continue to develop that wide ranging relationship with China, not only covering the vital issues of Hong Kong but all the many other aspects of the work that we are doing.

We have today ranged far and wide across the great canvas of Hong Kong's future. It is Hong Kong's future that we have at the top of our agenda in our considerations. We remain responsible for Hong Kong's administration until 30th June 1997. We shall discharge that responsibility to the best of our ability. But we



## **PRESS ANNOUNCEMENT**

**From the Office of Legislative Councillor Anna Wu**

**Brian Burdekin, the Federal Human Rights Commissioner of Australia, will visit Hong Kong from 23-25 May at the invitation of the Hong Kong University Law Faculty and Legislative Councillor Anna Wu.**

**Mr. Burdekin, a lawyer, will meet with government officials and community leaders to discuss the practical ways in which a commission can function. He will address an open session of the Legislative Council on Tuesday, 24 May at 9:00. A press conference will follow at 10:30 in Legco's Press Room.**

**The press is also invited to a seminar with pressure groups and community activists on Monday 23 May at 6:00 at the Duke of Windsor Social Service Building, 15 Hennessy Road, Wanchai.**

**His perspective as the Senior Commissioner responsible for running the Australian Human Rights Commission for the last 7 1/2 years should be of interest as the debate over a Human Rights Commission will intensify in anticipation of Governor Chris Patten's pending response to whether such a body should be established. Governor Patten said on 16 May that the issue will be a top priority during his upcoming meeting in London with the Foreign Secretary.**

**Setting up a commission has been supported by Amnesty International and the Foreign Affairs Committee. Ms. Wu has proposed a bill to establish a Human Rights and Equal Opportunities Commission which will require the Governor's permission to be introduced into Legislative Council.**

**For more information or an interview with Mr. Burdekin, please contact Anna Wu's Legco office: 537-2466, 537-2467 (O) 530-2018 (fax)**

### **Monday, 23 May**

**Meeting with pressure groups and community activists**

**6:00 p.m.**

**Room 103, Duke of Windsor Social Service Building**

**15 Hennessy Road, Wanchai**

### **Tuesday, 24 May**

**Press conference following an open meeting (which begins at 9:00) with Legco**

**10 30 a.m.**

**Legco press room**

# To Governor Chris Patten

## Why give people a voice but not let them speak?

You are now in consultation with the Foreign Secretary on whether Hong Kong should establish a human rights commission. We ask that you let Hong Kong's Legislative Council decide this issue.

You fought hard for reforms to make the Legislative Council more representative and accountable to Hong Kong people.

You effectively gave the people a voice in the Legislative Council — now let them speak.

**Let the Legislative Council, not you or London, decide whether Hong Kong should have a human rights commission.**

Joint Association of People's  
Organizations for Promotion of  
Democratic Government  
Movement Against Discrimination  
HK Human Rights Commission  
Society for Community  
Organization  
HK Confederation of Trade  
Unions  
HK Journalists Association  
HK Social Workers' General Union  
HK Professional Teachers' Union  
HK Women Christian Council  
Association for the Advancement  
of Feminism  
Alliance for Patients' Mutual Help  
Organizations  
HK Ten Percent Club  
HK Policy Viewers  
Legislative Councillor Anna Wu  
Democratic Forum  
Democracy Platform  
Pioneers for Democracy  
Civil Rights Education Centre

United Arts  
Christians for HK Society  
HK Christian Institute  
Justice and Peace Commission of  
the HK Catholic Diocese  
HK Christian Industrial Committee  
HK Catholic Youth Council  
Breakthrough Youth Development  
Centre — Social Concern Group  
HK Student Christian Movement  
Shatin Power  
Social Concern Group of HK  
Residents  
HK Citizens' Livelihood Concern  
Group  
Shamshuiipo Development and  
Service Centre  
Shek Yam Concern Group  
Shek Lek Livelihood Concern  
Group  
North East Kwai Chung Resident  
Association  
West Kwai Chung Resident  
Association

GOVERNOR BRIEFING  
27 May 1994

Chris Patten: Good morning. This has been one of my regular visits to London. I have been coming here about four or five times a year like my predecessors, and I intend to continue to come with that degree of regularity. This is particularly important when there are so many difficult issues on the agenda to be handled which are much better handled by face-to-face discussion with Ministers rather than just through telegrams and cables.

I have had some valuable meetings. I had just over two weeks on Monday evening with the Prime Minister, when we discussed Hong Kong extensively. I had a breakfast meeting on Wednesday with the Foreign Secretary after his return from Japan. I have had meetings with a number of other Government Ministers and, of course, several meetings with the Governor and his Office officials. I have also met business leaders, Members of the House of Lords, and Members of the House of Commons. I have also met the Secretary of the Foreign Affairs and Commonwealth Relations Committee of the House of Commons. I have also met the Secretary of the Hong Kong Parliamentary Group. There have been several meetings in total, and I think the targets meet.

Chris Patten:

I had a very good visit yesterday to Manchester, which is the largest Hong Kong Chinese community outside Hong Kong. It was to visit a sheltered accommodation scheme, a day care centre, and see the facilities made available by the city to provide a service for Chinese speakers.

I made one of two speeches that I have made this week in Hong Kong to a large audience. It was the (Annual) Dinner of the Century - and I had spoken earlier in the day to a similar group of Hong Kong business-related matters. I have found great support and enthusiasm for us to move on in cooperation wherever possible with China to secure the prosperity and the stability of Hong Kong.

Hong Kong over the next few years.

So it was a useful visit and I am delighted with the course of it. We have all heard the news that the Administration has decided to renew MFN status and indeed, for some time, to de-couple trade from politics. We have argued that point in Washington extensively over the last few years. I took the argument to Washington last year. Then the Chief Secretary, Anson Chan, was in Washington putting the same case, and many other representatives of our community have argued the same, both in Hong Kong and outside.

I am particularly grateful to the American Chamber of Commerce in Hong Kong for the efforts they have made and the way in which they have argued the case with eloquence and vigour. Clearly, it must have been a difficult decision for President Clinton but in Hong Kong I think you would find that virtually everyone is delighted at the outcome of his deliberations.

No one has more reason for being concerned about human rights than people in Hong Kong but we have never believed that the right way to pursue concern about human rights was through limiting trade. We think that opening up markets is the best way of opening up minds. So it is good news at the end of this week. I do not think there is a good case for mixing up politics and economics, human rights and trade.

We look forward, I trust, to a growing and cordial trading relationship between China and the United States: that is greatly in our interest in Hong Kong but it is not just a selfish point - it is also in the interests of China and the United States and indeed of the region and the world. So I would like to express without any qualification my gratitude and the gratitude of Hong Kong for a decision which I know will have reflected in part an understanding in the American administration of the impact that we would have had to bear had the decision been other than it has turned out to be.

### Questions

Johnzilison (Oriental Daily): I was going to ask you how difficult you have found, or are finding, your decision on human rights defections in Hong Kong, on the establishment of conditions or otherwise, at this period, and the extent to which that decision may still be influenced in one way or another by President Clinton's decision.

Chris Patten: I do not think there is any relationship between President Clinton's decision and the decisions which the Executive Council and I will be coming to in the next few weeks. We are determined to secure the human rights set out in terms in the Joint Declaration, in the Bill of Rights. We are determined to do everything we can to secure those rights. There will, of course, be different views about how that is likely to be best achieved. That is a matter which we have to resolve in the next few weeks. I am very keen that we should get the decision over in a reasonably good order and set out our case and our arguments for the community and the Legislative Council before the end of June. I do not think we want to have the issue hanging around for too long.

Chris Patten: I think we can say again that there is absolutely no doubt that the objectives being to ensure that Hong Kong continues to enjoy the freedoms and values of an open, plural society.

Julie Mapleston (TVB): Mr Patten, concerning the advertisement which appeared in The Times, requesting that the decision be left to LegCo rather than ExCo, why is it being taken by ExCo? Is there any chance of it being taken by LegCo?

Chris Patten: In Hong Kong we have an executive led government in which the executive is accountable to the legislature. We do not have a legislative led government, for reasons which have much to do with the constitutional and political development of the community. That is not to say that we do not have to take account of the Legislative Council's views and the Legislative Council has responsibility for monitoring public expenditure, for monitoring and, from time to time,

a pending legislation. The Legislative Council is a reflection of views in the community although, because it is not wholly directly elected, it is not, as it were, a perfect democratic election.

Recently, in a debate in which the question of the Legislative Council's powers were discussed, one Legislative Council member drew wholly legitimately the distinctions which exist between parliaments in Western societies and indeed in some Asian societies which are wholly directly elected, from which the government emerges as the process of that direct election, and the situation that we have in Hong Kong. The situation is very different. I am not saying whether it should or should not be different, but I am saying that it is very different because of our stage of political development.

So there are rather different checks and balances of which we have to be aware in Hong Kong, and that is a point which I am sure we will be developing in the coming weeks and months. We are interested in the way the Council is going to see its enhanced democratic responsibilities leading to a more influential role in determining policies of the territory, to a considerable extent, that has been foreseen. But do not think that we want to see the process of development as to result in the balance between executive and legislative and the Legislature being completely unbalanced.

David Wallen (SCMP): When you saw Michael Howard was there any progress on the ethnic minorities issue?

Chris Patten: I saw a senior official in the Home Office. I did not actually see Michael Howard on this occasion. I put our case once again. The case was put with considerable vigour in the Foreign Affairs Select Committee Report. It is a case which has been put by one or two peers, including Lord Bonham-Carter and I know that the Home Office are under no doubts about the strength of feelings in Hong Kong on the issue.

Anthony Cheeswright (HK Standard): Who was the senior official from the Home Office?

Chris Patten: One of the Home Secretary's senior

edwocora.

Sara Yuen (Cable TV): Could I just ask you how you perceive the situation with China? Has there been some sign of a thaw in the situation? Have things died down a bit so that the negotiations will resume?

Chris Patten: A number of senior Chinese officials, including, for example the Vice Premier and Foreign Minister Qian Qichen, have said that they think we should draw a distinction between disagreements we have had on political matters and the importance of co-operating on other matters. I think we are starting to see a reflection of that now.

I notice also that Director Lu Ping has said that he thought there was no reason why the 28th British Governor should not be able to fly out of Hong Kong from the new airport on 30 June 1997. I took that as being a friendly, rather than unfriendly, reference to my eventual and constitutionally necessary departure. I hope very much that he is right. We will do everything we can to ensure that he is right, although one should want to leave Hong Kong by plane rather than ship is a matter which is at present unresolved. Or the through train, of course - I suppose it would be possible to go by train.

John Ellison: Can I ask you about human rights? You spoke as though you were taking this human rights decision in ExCo without any particular reference to the impact which your decision may have on China and, indeed, on her relationship to which you have just been referring. It does seem to me that you are between a rock and a hard place on this. You are under great pressure to provide safeguards, providing you can make them tougher than other crises, or at least difficulties in China which you could do without. Is that a difficult position?

Chris Patten: No, I do not find it difficult. I do not think China would want to take issue with efforts which we make in Hong Kong to ensure the proper implementation of the Bill of Rights. A number of factors will need to be taken account of in the decision we come to.

have to be... ...that is likely to work in the best  
...best chance of continuing to work into the  
indefinite future. That will be at the top of our agenda when  
we are considering pressures from outside.

It is also important to recognize that our main concern is  
what is best for the people of Hong Kong. I hope we have made  
that abundantly plain in the last couple of years and we will  
certainly continue to have that as our principal guide until 30  
June 1997.

David Healy (Sunday Morning Post): On the question of  
making a distinction on political issues between Hong Kong and  
China and other matters, do you think that the MFN decision may  
have a direct bearing on that process?

Chris Patten: It is fair to say that we have been more  
consistent perhaps than some others over the years in drawing a  
distinction between economics and politics, between economics and  
trade, but we have been more consistent than many others over the  
years in drawing that distinction.

Chinese officials have said in the context of their  
relationship with America and their relationship with other  
countries in the region that they thought there should not be any  
entangling of those matters and I have always assumed that if  
they thought that about their relationship with the US, they  
should think it too about their relationship with Hong Kong.  
After all, if we do not secure the wellbeing of Hong Kong that  
is not only bad for Hong Kong, but sooner rather than later, it  
is bad for southern China as well.

I must say that the difficult, but welcome decision that  
President Clinton has taken will underline the importance of  
pursuing issues along the appropriate channels.

David Healy: Including, say, the airport?

Chris Patten: We had a more satisfactory meeting of  
the Airport Committee recently. I said in Hong Kong - this was  
a 'groan metaphor' - that I thought we had achieved a take off  
but had not yet landed. It was in progress, but the sooner we  
can get that issue sorted out and behind us, the better. The



whole community sees the airport being built at a pace which would astound Europe or North America, but equally, the whole community believes that we could be going even faster, and doing the job even better. That is what we all want to do. I suspect that increasingly Chinese officials feel that as well.

Julie Mapleston: You say that you expect President Clinton's decision to have an effect on the Chinese ability to handle economic and political matters, or that it ought to -

Chris Patten: It ought to.

Julie Mapleston: Do you have an expectation that it will?

Chris Patten: I am a man of infinite hope! I think that it should be the case that the decision taken by President Clinton will underline for everybody the importance of separating economics and trade from politics and human rights, not because human rights are not important, but because to entangle them with issues of trade issues of economic well-being, is not in our judgment, sensible. We have been pressing that point for some years, most notably and most eloquently, during Anson Chan's visit to Washington.

Julie Mapleston: Does China's response to the arrival of Han Dongfang concern you, and Wu F'keixi's application for a visa in Hong Kong? Are you concerned about China's reaction? Will you do anything to make sure that Hong Kong does not become a base for subversion?

Chris Patten: Let me separate Mr Han's case from the general issue. Mr Han is not in Hong Kong because of anything the Hong Kong Government has done. Mr Han is in Hong Kong because the Chinese Government will not allow him back into China, which is what he wants to do. We can hardly be blamed for the fact that Mr Han is living in Hong Kong.

The second point which is important and was made by Anson Chan the other day is that one country/two systems involves restraint on both sides. It involves, I trust, restraint on the side of Chinese officials, and it involves restraint on our side as well. We do not wish to appear to Chinese officials or to

China to be offering a threat or a challenge, which I do not believe we are, but there may be times when people in Hong Kong have to bite their tongue. There may be times when we need to be even more responsible than we are normally in discussing what is happening on the mainland.

Julie Mapleston: Does that mean that Wu E'keixi will not get a visa?

Chris Patten: It means that we consider every case on its merits and that we do not discuss individual cases, but I want to underline the point that in Hong Kong we have a free press, we have open debate and argument, but one of the ways in which we can best secure that open debate and argument and that free press is not through self-censorship, but is through restraint in the way we debate matters. I have to show that, and I think we all recognise that the whole community has to show that from time to time. It does not mean that there are not very strong views about what goes on elsewhere.

Vien Ng (HK Economic Times): Do you think issues like special access through the courts should deal with human rights cases and issues like ensuring that how an individual citizen is assessed by the courts on human rights issues, can best be dealt with through a human rights commission, or do you accept that it will come through giving more legal aid or special arrangements?

Chris Patten: That is an extremely good question, in which you invite me to say whether or not I am in favour of a human rights commission. I have said before that we will be announcing that before the end of June.

Of course, you return the argument to a point I was making earlier, that advocates of a human rights commission want a human rights commission if they believe it will achieve certain purposes. There are purposes like greater education about human rights, like greater access to the courts for people with legitimate human rights grievances, like the affordability for people who have human rights grievances taking them to court. Some people say that those things need a human rights commission, others say you can achieve those things with a human rights

commission, and we have to reach a balanced judgment on that in the course of the next few weeks.

But you are quite right to underline the fact that the most important thing is to get the lives rather than the instruments.

Sheila Dawes (Ming Pao): Have you decided to make a move of securing the greater safety of Hong Kong journalists reporting on China?

Chris Patten: We have continued to press Chinese officials for greater clarity and transparency about the regulations within which Hong Kong journalists have to work when they are reporting events on the mainland. It is perhaps one of the most practical issues to be raised by the extremely sad case of Mr Xi Yang. We will continue to press that point and I hope we will get a more satisfactory response in due course.

I think that Chinese officials need to understand the depth of concern about the matter in Hong Kong and the relationship between satisfying opinion in Hong Kong on the matter and reassuring people about the future, not only about the future of a free press, but about broader issues in the future as well. There may be more issues that come up like this in due course and unless they are dealt with promptly and sympathetically, then it will not be helpful to a smooth transition and it will not help build that confidence in the future which I want to see and which I am sure Chinese officials like Director Lo Pang want to see.

The more we have a sense of understanding of that point from Chinese officials, the better for the prospects of transition.

Huang Yu (Si Yu Chinese Times): It is nearly five years since the massacre in Peking. Looking back at those events, do you have any further second thoughts on the military action deploying the tanks. After five years China has astonished the world and started to worry about the cost, whereby there is a wave of changing mentality and thinking of western strategy, saying that China should best go through their own courts. You have alluded to the haste of political development

in Hong Kong which was quite anti this sort of side. What do you think, nearly exactly five years on, about the events themselves, and after on the development and for the future, what will be after the Deng era? It is a very big question. I would just welcome your views.

Chris Fatten: My views will be expressed with the caution and restraint which I said we should all show earlier, as our side of the bargain of one country/two systems. It involves restraint in both directions.

First of all, what we are doing in Hong Kong in relation to political development is no more and no less than trying to make a reality of an international treaty signed between Britain and China guaranteeing the future of Hong Kong. That international treaty talks about a legislature composed by elections, and we are determined to ensure that those elections are fair rather than counterfeit.

Secondly, so far as the tragic events in Tianenmen Square are concerned and their aftermath, I will only say that there have, of course, been political implications from that, political consequences, in Hong Kong as doubtless elsewhere. But I do not think it is helpful to the successful implementation of the one country/two systems concept for me to set out extensively my views about internal politics in China.

Derek Davies (Window Magazine): I take it you welcome the findings of the Foreign Affairs Committee and their rejection of Sir Percy Cradock's case. Do you have any comments on that case, in particular, reference to the briefing you were given by the FCO in the weeks and months leading up to your taking office?

Chris Fatten: The Foreign Affairs Committee concluded that the sort of approach advocated by Sir Percy would be neither tenable nor honourable and that seems to me to be a pretty comprehensive rejection by a cross-party group of Members of Parliament of the approach which he advocated. I think everybody knows Sir Percy's views by now. For a retiring and retired public servant, he has made them abundantly plain. I do not frankly think that anybody is surprised by them anymore. They

may be surprised at his decision to set them out. They may well asked themselves what his reaction had been if retired public servants had criticised the policies that he was implementing in the 1980s. But I think that most people will note that predictions of doom made over the last two years have not actually seen the ceiling or the skies fall in in Hong Kong.

When I was a small boy, I used to be taken every Christmas to Hamleys toyshop in Regent Street. I can remember that every year, there was a white-haired gentleman outside with a sandwich board saying the end of the world is nigh, with several other quotations on the other side. Well, we went on turning up every Christmas and I kept on getting train sets and fire engines, and the world went on. I do not know what the old man is doing these days, perhaps he is advising a banker!

John Ellison. Some of the Cradock views were expressed very forcibly in the Lords last week by someone called Lord Cromer who says he has lived in Hong Kong for 25 years. Do you find those views are in fact reflected by the Hong Kong business community?

Chris Patten: I notice that the other day there was a widely unreported poll, for example, of British businesses in Hong Kong which showed 68% of them thought that the approach we had taken was in the interests of Hong Kong. That is true. I am bound to say, and it probably shows my inadequate appreciation of his contribution to Hong Kong life, that I had never heard of Lord Cromer before, although I have heard of his distinguished father. However, we will look forward to many of his future contributions to the discussion on these matters in the House of Lords.

I met some of the Hong Kong Parliamentary Group the other day. We had a very good meeting. Unfortunately I do not think that Lord Cromer was able to attend, though some others who had taken part in the debate were able to do so, showing their interest and their continuing interest in Hong Kong.

For me, the most important part of the debate was the confirmation of the agreement cross-party between the front

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1998

FRIDAY, JUNE 3, 1994

GOVERNMENT TO BAN SEX DISCRIMINATION

\* \* \* \* \*

The Government has decided to press ahead with legislation prohibiting sex discrimination in Hong Kong. Drafting of this legislation which will establish the Equal Opportunities Commission will begin immediately, the Secretary for Home Affairs, Mr. Michael Suen said.

The decision was endorsed by the Executive Council at a meeting earlier this week.

Announcing the Government's response to the Green Paper consultation on Equal Opportunities for Women and Men at a press conference this (Friday) afternoon, Mr. Suen said the move was Government's answer to the widespread community support for these two issues during the consultation exercise conducted from August to December last year.

"The legislation would contain general provisions prohibiting discrimination in areas such as employment, including recruitment, pay and training; education; and political participation," he said.

Mr. Suen pointed out that the Government was mindful of the fact that such legislation should be effective and yet not stifle free competition in the labour market.

"We will address the concerns already expressed by employers, in particular those in small businesses, over problems which could arise from frivolous complaints and cost implications.

"These concerns could hopefully be allayed through full consultation with employers during the drafting stage," he added. As for the proposed statutory Equal Opportunities Commission to be set up to oversee the implementation of the sex discrimination law, Mr. Suen said the Commission would work towards the elimination of sex discrimination.

"Its functions would be to keep under review the working of the proposed legislation against sex discrimination; to receive complaints, provide assistance and conduct investigations under the proposed legislation; and to develop codes of practice and conduct public education and research on gender issues.

Mr. Suen said the Government has also decided to approach the

United Kingdom Government to seek the extension of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to Hong Kong.

This decision is also taken in response to the strong call expressed by the community during the consultation period.

"Since the application of the convention will confer new international rights and obligations in respect of Hong Kong, and as it is intended that such international rights and obligations should continue to apply to Hong Kong after 1997, we will, as the first step, consult the Chinese side on the proposed extension through the Joint Liaison Group," he said.

"In seeking to extend CEDAW to Hong Kong, we intend to ask the United Kingdom Government to enter reservations to cover the provision of rent concession under Annex III to the Joint Declaration and the small house policy.

"The purpose and effect of our proposed reservations is to reserve the right to continue to operate our present policies in respect of these two areas," he added.

He went on to say that institution of sex discrimination legislation is a means to implement the provisions in CEDAW.

"Many States Parties, including the United Kingdom, have instituted sex discrimination legislation. China, which is also a party to the Convention, enacted a set of legislation to protect women's rights in 1992.

"Drafting of legislation against sex discrimination and consultation with China on the extension of CEDAW to Hong Kong will proceed in parallel," he said.

Reiterating the Government's firm commitment to uphold equality between the sexes, Mr. Suen said while the above proposals were being put into place, public education on gender equality would be stepped up. "We will, for instance, enlist employers' cooperation to promote the principle of equal opportunities in the workplace".

"The objective of this strategy is to remove potential injustice or unfair restriction of an individual's prospects on account of his or her gender.

"We are convinced that they are effective, practical and will serve Hong Kong's needs well," he said.



Mr. Suen paid tribute to the many organisations and individuals who had aired their views on this important issue of public concern.

"All of them have contributed towards meeting the community's aspiration of fostering gender equality in Hong Kong," he said.

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Note to editors:

Copies of "Green Paper on Equal Opportunities for Women and Men: Compendium of Submissions" will be boxed at GIS for collection.

END/

**LEGISLATIVE COUNCIL BRIEF**  
**EQUAL OPPORTUNITIES FOR WOMEN AND MEN**

**INTRODUCTION**

At the meeting of the Executive Council on 31 May 1994, the Council ADVISED and the GOVERNOR ORDERED that :-

- (i) the Hong Kong Government should approach the United Kingdom Government, and subject to consultation with China through the Joint Liaison Group, should seek the extension to Hong Kong of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) with reservations to safeguard the rent concession under the Joint Declaration and the Small House Policy;
- (ii) since extending CEDAW would create new international rights and obligations in respect of Hong Kong, the first step should be to consult China through the JLG;

- (iii) in anticipation of the extension of CEDAW to Hong Kong, action should be taken to enact legislation against sex discrimination which will establish an Equal Opportunities Commission in Hong Kong; and
- (iv) public education programmes on equality between the sexes should be stepped up.

## **BACKGROUND**

A Green Paper on Equal Opportunities for Women and Men was published in August 1993 to solicit the views of the public on the need for action to promote equal opportunities and the measures to be taken. During the four-month consultation period, we have received 1,161 submissions and 52,610 signatures.

2. There were widespread calls for the extension of CEDAW to Hong Kong and the establishment of a statutory women's commission with executive powers. Majority of the respondents were also in favour of the introduction of legislation against sex discrimination and equal pay legislation. However, some employer associations, while supporting the principle of gender equality, expressed reservations about the proposal to institute equal pay legislation. Cost and

Government's interference in the labour market were their main concerns.

3. There was also strong support for the elimination of discrimination against female indigenous villagers and the enhancement of public education on gender equality. Other comments received include demands for an increase in the provision of subsidised child care facilities, establishment of women's welfare centres to cater for the needs of women and improvements to the employee retraining scheme.

4. An opinion poll was also conducted in December 1993 to gauge public opinion on the same issue. A summary of all the comments received and the findings of the opinion poll are at Annexes A and B.

### **United Nations Convention on the Elimination of All Forms of Discrimination Against Women**

5. We stated in the Green Paper that we would consider the extension of CEDAW to Hong Kong if the community viewed the extension in a positive light. Almost all the submissions received indicated support for the extension.

6. The extension to Hong Kong of CEDAW, an international convention to which both the United Kingdom (UK) and China are parties, will symbolize our recognition of the status of women in our society and our commitment to uphold women's rights, as part of our wider commitment to human rights.

7. CEDAW imposes a range of obligations upon States Parties including the requirements to adopt legislative measures prohibiting discrimination against women and to take all appropriate measures, including legislation, to modify or abolish existing laws, customs and practices which constitute discrimination against women. While States Parties may enter reservations against the provisions in the Convention, any such reservations must not be incompatible with the object and purpose of the Convention. States Parties are also required to submit to the Secretary-General of the United Nations for consideration by the Committee on the Elimination of Discrimination Against Women periodic reports on the measures which have been adopted to implement the Convention.

8. In general terms, Hong Kong is well-positioned to meet the aims of CEDAW. The Bill of Rights Ordinance and Article VII(3) of the Letters Patent ensure that Hong Kong's legislation shall not be inconsistent with the International Covenant on Civil and Political Rights (ICCPR) as applied to Hong Kong. The ICCPR contains a general guarantee of equality before the law in addition to the provision that the rights contained in the ICCPR shall be enjoyed without distinction of any kind.

9. In seeking to extend CEDAW to Hong Kong, we intend to ask, subject to consultation with China, the UK government to enter Hong Kong specific reservations to preserve our position with respect to the rent concession provided under Annex III to the Joint Declaration and the small house policy. The purpose and effect of the proposed reservations is to reserve the right to continue to operate our present policies in respect of these two areas.

## Legislation Against Sex Discrimination

10. Most States Parties to CEDAW (including the UK) have enacted legislation against sex discrimination; this is commonly accepted to be a fundamental measure to eliminate sex discrimination. Apart from its deterrent effect, legislation has an important educational value: it sets down in law acceptable standards of behaviour. In response to the Green Paper, members of the community have made strong calls for the enactment of legislation against sex discrimination. In view of the experience of other CEDAW States Parties and the strength of public feeling, we will need to introduce some form of legislation prohibiting sex discrimination, which would include equal pay legislation, before CEDAW is formally extended to Hong Kong.

11. The scope of legislation against sex discrimination would contain general provisions prohibiting discrimination in areas like employment (e.g. in recruitment, pay and training), education, political participation, and the provision of certain services and facilities (e.g. transport facilities and hotel accommodation).

12. The legislation should be effective yet not stifle free competition in the labour market. We therefore propose that actions for alleged sex discrimination in the employment field be dealt with by the Labour Tribunal. Aggrieved parties may either bring their cases directly to the Labour Tribunal or seek assistance from the Equal Opportunities Commission (the Commission) which would be established under the proposed legislation against sex discrimination

(see paragraph 16 below). The Commission would be empowered to, inter alia, receive complaints, provide mediation service and legal advice. However, the Commission would not assume a judicial role. If mediation fails, the Commission would refer the case to the Labour Tribunal for adjudication. This approach would have the advantage of providing a recourse for complainants who prefer to settle their disputes through mediation without having to resort to legal action. In so doing, the Commission would help to screen out frivolous complaints.

13. As in the case of other labour laws, codes of practices elaborating on the legislative provisions prohibiting discrimination in employment would be developed and issued by the Commission to assist compliance by employers and employees. The legislative provisions pertaining to discrimination in employment would only come into force when the codes of practices are available.

14. As for alleged sex discrimination in other areas such as political participation, provision of education and other facilities and services, these allegations could be dealt with by the aggrieved persons bringing civil proceedings before the courts. Where complaints have been lodged, the Commission would provide assistance and, if appropriate, refer the cases to the Legal Aid Department.

15. It is expected that the most controversial aspect of the legislation against sex discrimination would be in respect of employment matters. Employers, in particular those in small businesses, have already expressed concerns over problems which could

arise from frivolous complaints and cost implications. These concerns could be addressed by consulting the employers fully when drafting the legislation and by making special provisions for small business enterprises in terms of exemptions or provisions for a reasonable transitional period to enable small businesses to comply with the legislative requirements.

## **An Equal Opportunities Commission**

16. Many States Parties to CEDAW have set up a Commission to monitor the implementation of the Convention and to promote gender equality. In this connection, many Legislative Councillors and members of the public have called for the establishment of a statutory Commission empowered to deal with complaints. We therefore propose to establish a statutory Equal Opportunities Commission (the Commission) to oversee the implementation of the legislation against sex discrimination. We suggest that the Commission should be modelled upon the Equal Opportunities Commission in the United Kingdom; the functions of the Commission would be to-

- (i) work towards the elimination of sex discrimination;
- (ii) keep under review the working of the proposed legislation against discrimination;
- (iii) receive complaints, provide assistance and conduct investigations under the proposed legislation; and
- (iv) develop and issue codes of practice and conduct public education and research on gender issues.



17. Members of the Commission would be drawn from a wide cross section of the community and appointed by the Governor. We envisage that the Commission would be served by a secretariat headed by a full time Commissioner. The Commission would be required by law to submit an annual report to the Governor.

### **Interim Measures**

18. It would be some time before CEDAW would be formally extended to Hong Kong. To raise the level of public awareness, we propose to step up public education on gender equality through civic education and family life education programmes. Employers' support should also be enlisted to promote the principle of equal opportunities in employment and cultivate a cooperative spirit in the workplace. They would be encouraged to develop guidelines on equal treatment for male and female employees.

### **Other Women Related Matters**

19. As foreshadowed in paragraph 3 above, there are calls for setting up women's welfare centres, increasing the provision of child care facilities and improving the employee retraining schemes.

20. Women's groups have called for the establishment of women's welfare centres to provide counselling and other welfare services for women. However, welfare services are at present being provided on the basis of need rather than gender. Counselling and welfare services for women are presently provided as part of family services and this arrangement serves Hong Kong's needs well.

21. As more and more women join the work force, our provision of welfare services takes into account of their changing role. We have already provided additional child care facilities and have plans to increase them further. We are introducing more flexible childcare arrangements, such as extended nursery hours and encouraging work-based childcare centres to be set up.

22. The Employees Retraining Scheme was extended in 1993 to cover homemakers who wish to re-enter the labour market and need for retraining to update their skills. A number of tailor made retraining programmes are available to meet the special needs of homemakers. The retraining programmes are reviewed from time to time to keep abreast of the changing needs of users.

### **Financial and Staffing Implications**

23. We estimate that the proposed Equal Opportunities Commission will require a start-up capital expenditure of \$4.5 million and \$30 million per year in annually recurrent cost.

24. The proposed legislation against sex discrimination will have resource implications for the Judiciary although these cannot be assessed with precision at this stage. Cases of alleged sex discrimination in employment to be brought before the Labour Tribunal and an increase in civil litigation to be handled by the District Court regarding alleged discrimination in other matters. Cases may also have to be referred to the High Court. Without further lengthening waiting times, the Judiciary will need to be allocated additional resources to deal with this new area of jurisdiction. The addition of one court, comprising the Judge and supporting staff, in the Labour Tribunal, the District Court and the High Court, will cost \$5.1 million, \$3.8 million and \$7.2 million per year respectively.

### **Publicity**

25. A press conference will be held on 3 June 1994 to announce the way forward on this issue.

Home Affairs Branch

HAB CR 1/2/21 X

June 1994

**RESTRICTED** 內部文件



**Green Paper on Equal Opportunities for Women and Men**  
**Summary of Comments Received from the Public**  
**During the Consultation Exercise conducted**  
**Between August to December 1993**

Issue

Comment

Groups/Individual

I. EMPLOYMENT

- |                                       |   |  |
|---------------------------------------|---|--|
| - General situation                   | - Opportunity to join the work force is equal | HK Watch & Clock Council<br>Federation of HK Industries<br>HK Management Association<br>Retail Management Association Limited<br>Employers' Federation of HK   |
| - Equal pay legislation in employment | - Equal pay legislation should be introduced  | CHOW Kit-bing (Eastern DB)<br>HK Christian Women Association<br>HK Christian Students' Movement<br>A Member of Wan Chai DB<br>HK Association of Business & Professional Women<br>6 students from HK Poly.<br>34 joint Labour Unions<br>Coalition of Women's Organization<br>UD HK<br>SKH Lady Maclehorse Centre<br>Federation of HK & Kln Labour Unions<br>HK Council of Women<br>Students from True Light College<br>A Member of Wong Tai Sin DB<br>HK International Training In Communication<br>HK Institute of Personnel Management<br>HK General Chamber of Commerce<br>Zonta Club of HK East<br>Tuen Mun Caritas Youth Centre<br>957 individuals<br>51605 signatures |

Issue

Comment

Groups/Individual

- Reservations on legislative control as the introduction of equal pay legislation would have undesirable effects, for instance, small manufacturing establishments (employing less than 10 person) may have difficulties in setting up a formal system of recruitment. It will also lead to more antagonism between employers and employees.

A Member of North DB  
Federation of HK Industries  
Retail Management Association Ltd.  
Employers' Federation of HK  
Chinese General Chamber of Commerce  
Chinese Chamber of Commerce, Kowloon  
Kowloon Chamber of Commerce

- If legislation were introduced, a 'soft' approach where employers are required to make effort to achieve the principle of equal opportunity should be adopted. Rigid restriction should be avoided.

HK Watch & Clock Council  
HK Management Association  
Employers' Federation of HK

<u>Issue</u>	<u>Comment</u>	<u>Groups/Individual</u>
- Organizations should be allowed to decide on their manpower planning and allocation rather than following legal obligations which can hinder the best decision of human resources management		Federation of HK Industries Employers' Federation of HK Chinese General Chamber of Commerce The HK Chinese Importers' & Exporters' Association 1 Individual
- To review legislations relating to women workers, including :-		
(i) Full pay maternity leave		HK & Kln Trade Union Council 34 joint Labour Unions Association for the Advancement of Feminism HK Federation of Women A Member of Kwun Tong DB HK Construction Association Ltd. A Member of Tuen Mun DB Coalition of Women's Organization HK Chinese Enterprises Association Wanchai West Area Committee HK Women Christian Council HK General Chamber of Commerce
(ii) Restriction on women to work on "dangerous job" should be abolished. Instead, a pleasant and safe working environment should be provided to all workers		



Issue

Comment

Groups/Individual

- Retraining programmes for women

- More retraining programs for women needed to enable them, especially the housewives, to join the workforce.

Meeting Point  
HK Association of Business & Professional Women  
6 students from HK Poly.  
SKH Lady Maclehoose Centre  
HK Institute of Personnel Management  
Eastern District New Women Federation  
Fook Kwan Women's Rights Association  
Tuen Mun Caritas Youth Centre  
25 joint organizations  
576 individuals  
515 signatures

- Retraining programme is not very effective in helping women to enter the work force again

Mei Lam Youth Centre

- Sexual harassment

- Measures should be taken to address sexual harassment at work.

HK Council of Women  
Eastern District New Women Federation

- Men and the family

- Introduction of paternity leave and encourage men to play a more active role in family affairs.

Association for the Advancement of Feminism  
HK Christian Students Movement  
A Member of Tuen Mun DB  
34 Joint Labour Unions  
1 individual

IssueCommentGroups/IndividualII. EDUCATION

- Attitudes and  
Values  
Traditional values  
affect the public's  
attitude on role  
and status of women

Public education should be stepped up to  
promote a balanced view in society on  
the role of men and women. Such  
programmes could be targeted at  
employers to remove gender role bias.

Meeting Point  
HK Christian Students Movement  
CHOW Kit-ling (Eastern DB)  
HK Christian Service  
A Member of Wong Tai Sin DB  
HK Institute of Personnel Management  
2 students of HK Poly.  
Zonta Club  
A Member of Wan Chai DB  
Wan Chai West Area Committee  
HK Ten Percent Club  
HK Council of Social Service  
Chinese General Chamber of Commerce  
Dr. WONG Ngai-kwan (HK Poly)  
HK Federation of Women  
Association for the Advancement of Feminism  
6 students from HK Poly.  
Association of HK Nursing Staff  
7 Joint Religious Groups  
Students from True Light College  
Retail Management Association Limited  
Federation of Youth Groups  
Zonta Club of HK East  
Chan Hing Social Service Centre  
A group of social service workers  
580 individuals  
330 signatures

Issue

Comment

Groups/Individual

- Gender role stereotyping  
 Gender role biased materials are found in school textbooks and teaching materials. The mass media also distorts the image and role of women

- A comprehensive review on school textbook, teaching curriculum and educational TV programme is needed to remove gender role biases.

- HK Association of Business & Professional Women
- Dr. Cecilia CHAN (HKU)
- HK YMCA
- HK Women Christian Council
- HK Christian Service
- Department of Curriculum Studies, HKU
- HK Institute of Personnel Management
- Zonta Club of HK East
- 3 Tertiary School Students
- 2 students of HK Poly.
- 3 Individuals

- To set up a public media committee to promote the principle of equality between women & men.

2 Individuals

Issue

Comment

Groups/Individual

III. PARTICIPATION IN  
POLITICAL & COMMUNITY  
AFFAIRS

- Low level of  
community  
participation by  
women

- The government must provide more support  
services for the family, including child  
care facilities, to enable women to  
participate actively in community  
affairs

Dr. Cecilia CHAN (HKU)  
HK YWCA  
1 Individual

- There should be a functional  
constituency for women in the  
Legislative Council.

A Member of Wan Chai DB  
HK & Kln Trades Union Council  
NT Association of Societies  
1 Individual

Issue

Comment

Groups/Individual

IV. SOCIAL WELFARE & COMMUNITY SERVICES

- Support services for women are inadequate. This resulted in women being tied to their traditional family role

- To increase child care and family support services so that women could have the choice to participate in work force or in other community affairs

- HK & Kln Trades Union Council
- HK General Chamber of Commerce Meeting Point
- A Member of Central & Western DB
- Dr. HO Ngai-kwan (HK Poly)
- A Member of Wan Chai DB
- Coalition of Women's Organization
- Association of HK Nursing Staff
- HK Chinese Enterprises Association
- Federation of HK & Kln Labour Unions
- HK Council of Women
- Eastern District New Women Federation
- Fook Kwan Women's Rights Association
- Dr. Cecilia CHAN (HKU)
- HK Federation of Women
- HK Council of Social Service
- Tuen Mun Caritas Youth Centre
- HK Women Foundation Ltd.
- The HK Chinese Importers' & Exporters' Association
- A group of social service workers
- 3 individuals

- To encourage private companies to provide work based daycare facilities according to the ratio of employees

HK Association of Business and Professional Women

<u>Issue</u>	<u>Comment</u>	<u>Groups/Individual</u>
- Domestic violence	- A review on services to cater for the need of women is required.	Social Welfare Advisory Committee HK YWCA SKH Lady Maclehoose Centre HK Women Christian Council Students from True Light College Eastern District New Women Federation HK Council of Social Service Meeting Point A HKU Student Chan High Social Service Centre Tuen Mun Caritas Youth Centre 25 joint organizations NT Association of Societies A group of social service workers 977 Individuals 42610 signatures
- Better protection for battered wives is required, this could be in the form of providing more sheltered homes, enhancing the education of police and social workers in handling battered spouse cases.		6 students from HK Poly. Coalition of Women's Organization HK Council of Women Fook Kwan Women's Rights Association HK Association of Business and Professional Women Chan Hing Social Service Centre

<u>Issue</u>	<u>Comment</u>	<u>Groups/Individual</u>
V. <u>RIGHTS OF INDIGENOUS WOMEN IN THE NT</u>		
- Land succession		
-	The NT Ordinance should be amended to remove the discriminatory provisions which deprived female Indigenous villagers of their succession rights.	HK Christian Women's Association HK Christian Students Movement A Member of Southern DB HK & Kln Trades Union Council HK Association of Business & Professional Women 6 students from HK Poly. A Group of NT Women Walled Villagers A Member of Kwun Tong DB HK YMCA Federation of HK & Kln Labour Unions HK Council of Women Committee Against Discrimination to Indigenous Women Eastern District New Women Federation A Member of Central & Western DB A Member of Tsuen Wan DB Zonta Club Chinese General Chamber of Commerce Tuen Mun Caritas Youth Centre HK Women Foundation Ltd A Group of Women HK Christian Council NT East Discussion Group Zonta Club of HK East Kowloon Chamber of Commerce The HK Chinese Importers' Exporters' Association NT Association of Societies 25 Joint organizations' 974 Individuals 50174 signatures

<u>Issue</u>	<u>Comment</u>	<u>Groups/Individual</u>
- Rural Committee elections should be opened to women		HK Federation of Women 6 students from HK Poly. Coalition of Women's Organization HK Council of Women Students from True Light College NT Association of Societies
- To set up a women sub-committee in the Henry Yee Kuk to enable women to render advice on matters of their concern.		HK Federation of Women NT Association of Societies
- MTO need not be amended. Amendments should be made to the Intestate Estates Ordinance to provide female Indigenous villagers the right to inherit land/property.		HK Federation of Women



Issue

Comment

Groups/Individual

- NTO need not be amended

Fanling District Rural Committee  
Heung Yee Kuk

- Government should review the small house policy to ensure equal treatment for male and female indigenous villagers.

A Member of Central & Western DB  
Heung Yee Kuk  
HK Federation of Women  
NT Association of Societies

<u>Issue</u>	<u>Comment</u>	<u>Groups/Individual</u>
VI. MEASURES TO ENHANCE EQUALITY BETWEEN WOMEN & MEN	- CEDAW  - Extend CEDAW to Hong Kong	<p>A Member of Southern DB Meeting Point CHOW Kit-bing (Eastern DB) A Member of Tuen Mun DB HK &amp; Kln Trades Union Council Causway Bay Central Area Committee HK Association of Business &amp; Professional Women HK Federation of Women HK Association of Banks A Member of North DB Carolyn Muir (HKU) 6 students from HK Poly. 34 Joint Labour Unions Coalition of Women's Organization UD HK Association of HK Nursing Staff A Member of Kwun Tong DB HK YMCA The Spiritual Assembly of the Bahais of HK Federation of HK &amp; Kln Labour Unions HK Council of Women 7 Joint Religious Groups HK Christian Service A Member of Wong Tai Sin DB HK International Training In Communication HK Institute of Personnel Management A Member of Shatin DB HK General Chamber of Commerce A Group of HKU Lecturers &amp; Tutors Susanna HOE + Prof. Derek Roebuck HK Girl Guides Association</p>

<u>Issue</u>	<u>Comment</u>	<u>Groups/Individual</u>
-	It is not necessary to extend CEDAW to Hong Kong. The principle of equality between women and men should be promoted through education which would help to change the attitude of people.	NT Association of Societies Zonta Club of HK East Eastern District New Women Federation HK Confederation of Trade Unions HK Council of Social Service Federation of Youth Groups Fook Kwan Women's Rights Association Harmony House Zonta Club JUSTICE HK Women Foundation Ltd. HK Federation of Women Lawyers Chan Hing Social Service Centre 2 HKU students HK Christian Society HK Christian Council NT East Discussion Group Tuen Mun Caritas Youth Centre Kowloon Chamber of Commerce Faculty of Education, CUHK 25 joint organizations 131 LegCo, UC, RC and DB Members 453 individuals 52610 signatures  Retail Management Association Limited Heung Yee Kuk 1 Individual

Issue

- A women's commission

Comment

- Set up a Women's Commission to advise on policies and research; to receive complaints on discrimination, promote and educate the public on equality between women and men etc.

Groups/Individual

Meeting Point  
Dr. HO Ngai-kwan (HK Poly)  
Dr. Cecilia CHAN (HKU)  
Association for the Advancement of Feminism  
A Member of Wan Chai DB  
HK Christian Women Association  
HK Christian Students' Movement  
HK Federation of Trade Union  
HK Association of Business & Professional Women  
HK & Kln Trade Union Council  
A Member of North DB  
A Member of Tuen Mun DB  
Carolyn Muir (HKU)  
34 Joint Labour Unions  
Coalition of Women's Organization  
UD HK  
Association of HK Nursing Staff  
A Member of Kwun Tong DB  
HK YMCA  
NT Association of Societies  
Zonta Club of HK East  
HK Chinese Enterprises Association  
The Spiritual Assembly of the Bahais of HK  
Federation of HK & Kln Labour Unions  
HK Council of Women  
7 Joint Religious Groups  
HK Christian Service  
Students for True Light College  
A Member of Wong Tai Sin DB  
HK International Training in Communication  
HK Institute of Personnel Management  
A group of social service workers

Groups/Individual

Susanna HOE + Prof. Derek Reebuck  
 A Member of Shatin DB  
 HK Girl Guides Association  
 Eastern District New Women Federation  
 HK Confederation of Trade Unions  
 A Member of Central & Western DB  
 HK Council of Social Service  
 Fook Kwan Women's Rights Association  
 Harmony House  
 Zonta Club  
 HK General Chamber of Commerce  
 Chinese General Chamber of Commerce  
 A Group of HKU Lecturers & Tutors  
 HK Federation of Women Lawyers  
 A HK student  
 HK Christian Society  
 HK Christian Council  
 Chan Hing Social Service Centre  
 The HK Chinese Importers' & Exporters' Association  
 Faculty of Education, CUHK  
 25 joint organizations  
 406 individuals  
 131 LegCo, UC, RC and DB Members  
 52610 signatures

Comment

HK Christian Institute  
 JUSTICE

- To set up a Human Rights Commission to  
 handle complaints on discrimination  
 against women and violation of human  
 rights

<u>Issue</u>	<u>Comment</u>	<u>Groups/Individual</u>
- Legislative measures	- To introduce anti-sex discrimination legislation	HK Association of Business & Professional Women HK Federation of Women UD HK Association of HK Nursing Staff 7 joint Religious Groups A Member of Wong Tai Sin DB HK Institute of Personnel Management Eastern District New Women Federation A Member of Central & Western DB HK Council of Social Service Zonta Club JUSTICE HK Federation of Women Lawyers Zonta Club of HK East A group of social service workers 25 joint organizations 576 individuals 52584 signatures

Opinion Poll on Public's Perception on  
Equality between Women and Men  
Summary of Findings

The Hong Kong Government commissioned the Gender Research Programme of the Chinese University of Hong Kong to conduct a Survey on the Public's Perception of Equality between Women and Men. As part of the survey, an opinion poll on the measures to promote gender equality was conducted in December to January 1994.

2. 2,012 responses have been analysed. Respondents were asked to express their views on the need for 13 different measures to promote gender equality. Rankings of the need ranged from 'no need', 'some need', 'much need', 'great need' to no response. It was found that in general, a majority of the respondents saw the need to introduce some measures to promote gender equality.

- 93.6% of the respondents felt that there is a need to implement the provisions in CEDAW.
- 89.2% of the respondents agreed that there is a need to set up a women's commission.
- 88.6% of the respondents saw the need to enact equal pay legislation.

Encl 1 Details are at Enclosure 1.

3. Respondents are more receptive to direct improvement measures which are perceived to be more specific.

	<u>No Need</u>	<u>Some Need</u>	<u>Much Need</u>	<u>Great Need</u>	<u>Sub- Total</u>
	(%)	(%)	(%)	(%)	(%)
(a) Implement the provisions of CEDAW	6.3	16.4	43.4	33.8	93.6
(b) Enact equal pay legislation	11.4	15.5	34.9	38.2	88.6
(c) Set up a women's commission	10.8	24.3	44.8	20.1	89.2
(d) Enhance concept of gender equality in school curriculum	10.1	27.0	40.1	22.9	90
(e) Public education on gender equality	6.1	21.9	42.1	29.9	93.9
(f) Establish well-women centres	6.0	17.6	39.9	36.5	94
(g) Provide more child care facilities	2.3	13.7	35.0	49.0	97.7
(h) Set up women welfare centres	4.8	18.4	45.4	31.4	95.2



	<u>No Need</u> (%)	<u>Some Need</u> (%)	<u>Much Need</u> (%)	<u>Great Need</u> (%)	<u>Sub- Total</u> (%)
(i) Educate police and medical staff to enhance their understanding of victims of sexual offences	4.2	15.9	40.0	39.8	95.7
(j) Employment re-training for housewives	5.9	19.8	42.5	31.9	94.2
(k) Establish a Government Department to handle complaints on matters pertaining to women	5.1	18.3	40.3	36.3	94.9
(l) Enact legislation to ensure same rights of succession for men and women	3.8	11.1	32.3	52.7	96.1
(m) Encourage women to participate in community activities	5.9	22.2	46.2	25.7	94.1

立法局議員

PRESS STATEMENT ON  
EQUAL OPPORTUNITIES BETWEEN WOMEN AND MEN

CHRISTINE LOH and ANNA WU, LEGISLATIVE COUNCILLORS  
JUNE 3, 1994

Legislative Councillors Christine Loh and Anna Wu said the Government is right to legislate against general sex discrimination, including in the employment field, but the Government's proposal to exclude areas which are gender related, such as in cases of marital status, pregnancy, sexual harassment, single parenthood and sexuality, are incomprehensible. The reason provided by the Government that these other areas are not sex-related is incomprehensible since they clearly are.

Ms Loh believes that Hong Kong also needs non-sex related discrimination legislation. It is encouraging that Government will legislate to protect the mentally and physically handicapped next year but the Government does not have the commitment to eliminate discrimination in other areas, such as those based on race, religion, political conviction, education, and union membership. Ms Loh said that: "The Government's aim is too narrow. It is regrettable that it does not have the courage to adopt Anna Wu's comprehensive Bill covering all forms of discrimination".

The implication of the adoption of CEDAW is that Government will have the duty to prevent and redress gender discrimination and violence against women whether committed by public authorities or by private persons. The Government's proposal does not go far enough to achieve this end in the legislators' view.

They further point out that CEDAW signals that discrimination against women will no longer be accepted, and it provides authority and coherence for constructive efforts throughout society to reduce and eliminate discrimination whenever it occurs. Ms Loh warns that if the Government does not incorporate at least all sex-related areas of concern into the Government's Bill, including provisions related to the Equal Opportunities Commission, then legislators may have to propose amendments to ensure that the objectives of CEDAW can be fully realized.

It is also regrettable that the small house policy, which is an administrative policy, will not be dealt with at present although the Government acknowledges that it is a problem requiring time to resolve. Ms Loh and Ms Wu believe that the policy already violates the Bill of Rights. The Government's further hesitation simply perpetuates a known area of discrimination.

The legislators would also like the Government to undertake to compile comprehensive statistical information in future which is necessary for the better understanding of the real situation of women in Hong Kong. The Government should ensure that in compiling census and other data that the various categories distinguish gender both in terms of percentage and numbers.

PRESS STATEMENT  
Legislative Councillor Anna Wu

Anna Wu: 843-7353  
Eric Chow: 537-2466 1128635 x 8939  
Adam Mayes: 537-2467 1128028 x 1325

CEDAW

The logic behind the government's reservation to CEDAW is appalling.

How can a government accept a United Nations convention to combat discrimination against women and then say 'but a certain group of women are deprived of their political and land rights'? It reveals the mind of a government that is in complete disarray about what to do about the widespread and systematic discriminatory practices in this colony.

Legally the proposed reservation is nonsense. There is no equivalent reservation qualifying either the Bill of Rights or the International Covenant on Political and Civil Rights, or for that matter any of Hong Kong's other relevant human rights obligations. Sex discrimination in the New Territories will remain as unlawful in the future as it is now, and it is time the government faced up to that.

The proposed legislation

The Convention to Eliminate Discrimination Against Women (CEDAW) alone will not solve Hong Kong's problems on gender equality. Like any law or regulation, a human rights treaty is only as good as its implementation and enforcement.

It is disappointing the Government's approach continues to be grudging and reactive. The Government's proposed legislation omits any protection against discrimination on the ground of age, family and marital status, race, or sexuality. It covers only the narrowest possible conception

of sex discrimination, without reference to discrimination on the ground of pregnancy, discrimination against single parents, or in the form of sexual harassment.

The Commission that the Government is proposing is essentially a conciliation service for sex discrimination cases. This is a step in the right direction, but a tiny one.

It is essential that a commission not be confined to a narrow legalistic notion of women's rights. The worst human rights problems are social as well as legal. A survey reported in the papers today showed that one in five girls between the ages of 12 and 17 wishes she were a boy. No amount of litigation can by itself address the underlying problems that produce this very sad statistic.

To be effective, a commission must be able to take the initiative. Passively dealing with disputes brought before it is not enough. It must be proactive. It should be able to provide expert help to the police in learning how to deal with domestic violence. Its voice should be audible in debates over stereotyping in schoolbooks. It should also be able to call into question government policies that disadvantage women.

Calling a commission independent does not make it so. The true measure of a Commission's independence is its ability to critically examine government policy. A commission must not only follow through on existing policy, but also be empowered to study and make recommendations on where change is needed, both in law and in policy.

The proposed commission lives down to Governor Patten's expressed fear about commissions. It is toothless. I hope the Governor comes to recognize that a principled stand on human rights includes knowing when to stand aside, and allows Legco to consider the Human Rights and Equal Opportunities Commission Bill.

PRESS STATEMENT  
ON EQUAL OPPORTUNITIES ISSUES

The following is a statement issued by the Secretary for Home Affairs, Mr Michael Suen, today (Monday):

There have been several reports in the media about equal opportunities legislation which require clarification. The issues concerned are sexual harassment, protection for pregnant workers and marital status. The position of the Administration on these three issues is as follows:

On sexual harassment, we will be drafting legislation to cover this so as to ensure that genuine cases of sexual harassment are dealt with firmly and seriously. Certain aspects of sexual harassment, insofar as they constitute indecent assault, are already criminal offences.

On the question of protection for pregnant workers, this is an issue which is covered by the Employment Ordinance. We are currently reviewing the relevant provisions of that Ordinance to ensure that pregnant workers are adequately protected.

On marital status the Administration's policy on the advice of ExCo is to introduce legislation against sex discrimination in any areas where there is a clearly demonstrated need for it. In drawing up our legislation we will be examining the case for covering the issue of marital status against this clearly stated criterion. Our overall aim will be to ensure that legislation on sex discrimination is sufficiently comprehensive to cover all aspects of the issue.

MONDAY, JUNE 6, 1994

ATTENTION NEWS EDITORS:

THE FOLLOWING IS THE TRANSCRIPT OF THE MEDIA SESSION BY THE GOVERNOR, THE RT HON CHRISTOPHER PATTEN, AFTER HIS ADDRESS AT THE AUSTRALIAN CHAMBER OF COMMERCE THIS (MONDAY) AFTERNOON:-

QUESTION: MR PATTEN, CAN YOU GIVE US SOME ASSURANCE THAT THE GOVERNMENT DOES CONSIDER THE MARITAL STATUS AND PREGNANCY OUGHT TO BE FACTORS IN SEXUAL DISCRIMINATION. THEY ARE GOING TO BE INCLUDED IN THE LEGISLATION DESPITE WHAT THE SECRETARY FOR HOME AFFAIRS SAID ON FRIDAY?

GOVERNOR: YES, WE ARE GOING TO BRING FORWARD COMPREHENSIVE PROPOSALS ON SEX DISCRIMINATION. I'D LIKE TO MAKE THAT ABSOLUTELY CLEAR IF THERE HAS BEEN ANY CONFUSION. IT'S SOMETHING THAT WE NEED TO PUT CLEAR STRAIGHT-A-WAY.

QUESTION: ..... SHENZHEN ACCIDENT?

GOVERNOR: OBVIOUSLY, OUR THOUGHTS AND PRAYERS GO OUT TO THOSE WHO'VE LOST LOVED ONES IN SHENZHEN AND I VERY MUCH HOPE THAT IF THE SHENZHEN AUTHORITIES NEED ANY ASSISTANCE FROM OUR EMERGENCY DEPARTMENTS, THEY WILL LET US KNOW. WE DID OFFER ASSISTANCE AS SOON AS WE HEARD ABOUT THE DISASTER. BUT WE WERE ASSURED THAT IT WOULDN'T BE REQUIRED. BUT, WE MUST ALWAYS MAKE IT CLEAR IN HONG KONG THAT WE'RE READY TO OFFER A HELPING HAND TO COLLEAGUES IN CHINA ON OCCASIONS LIKE THIS.

QUESTION: WHAT SHOULD BE DONE ABOUT WORK SAFETY?

GOVERNOR: THAT'S A MATTER FOR THE SHENZHEN AUTHORITIES. I HAVE TO SAY THAT THOUGH WE HAVEN'T, I THINK, HAD A TRAGEDY QUITE LIKE THAT, WE DON'T HAVE A SOAPBOX THAT WE CAN BOOST FROM BECAUSE OUR RECORD ON INDUSTRIAL SAFETY IS BAD AND MUST BE A GREAT DEAL BETTER. IT'S PARTICULARLY BAD IN THE CONSTRUCTION INDUSTRY AND WE NEED TO IMPROVE IT. WE ARE TAKING FURTHER MEASURES TO DO SO BUT WE CAN'T LECTURE OTHER PEOPLE 'CAUSE WE'VE GOT TO DO BETTER OURSELVES.

QUESTION: MR SUEN SAID ON FRIDAY THAT HE HAD NO PLANS TO INCLUDE OTHER MARITAL STATUS AND PREGNANCY IN THE ANTI-DISCRIMINATION BILL. ARE YOU DOING A U-TURN ON THAT LINE?

GOVERNOR: NO, WE ARE NOT DOING A U-TURN. I'M TELLING YOU AS I DID A MOMENT OR TWO AGO WHAT THE SITUATION IS.

QUESTION: DO YOU MIND GIVING US A CURTAIN RAISER ON THE PROPERTY PRICES BECAUSE EVER SINCE THE GOVERNMENT ANNOUNCED MEASURES TO CURB THE PROPERTY SPECULATION, I BELIEVE IT HAD DROPPED BETWEEN 10 AND 15 PERCENT. THERE IS A LOT OF UNCERTAINTY IN THE PROPERTY SECTOR, AND THAT'S BEEN REFLECTED IN THE STOCK MARKET. COULD YOU JUST GIVE US A CURTAIN RAISER ON WHAT SORT OF MEASURES THE GOVERNMENT WILL INTRODUCE?

GOVERNOR: I'VE BEEN READING ALL SORTS OF MORE OR LESS INFORMED SPECULATION ABOUT WHAT THE GOVERNMENT MAY DO BUT YOU WON'T HAVE VERY LONG TO WAIT. THE TASK FORCE, AS I SAID IN MY SPEECH, IS REPORTING TO THE EXECUTIVE COUNCIL THIS WEEK AND SOON AFTER THAT WE'LL BE MAKING A PUBLIC STATEMENT. I MENTIONED THAT WHAT WE HAVE TO DO IS TO GET RIGHT A RATHER DIFFICULT BALANCE. ON THE ONE HAND, WE WANT TO ABATE THE STEEP INCREASE IN PRICES. ON THE OTHER HAND, WE DON'T WANT TO DO ANYTHING WHICH WOULD BE FUNDAMENTALLY DESTABILISING FOR THE PROPERTY SECTOR. I HOPE THAT WE'VE GOT THAT BALANCE RIGHT.

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USEFUL,

PRESS STATEMENT  
OFFICE OF LEGISLATIVE COUNCILLOR ANNA WU

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Adam Mayes: 1128028 x 1325  
Eric Chow: 1128635 x 8939

6 June 1994

The continuing confusion over the scope of the proposed law against sex discrimination is one of many indications that the government's package is a patchwork effort, assembled in haste to forestall more serious treatment.

Whatever the scope of the proposed legislation, the proposal as a whole clearly does not meet Governor Patten's specific requirements of affordability and accessibility for a system to redress violations of civil and human rights.

In every recent speech Governor Patten has made about human rights, he has endorsed Amnesty International's recommendation that the system addressing human rights grievances must be both more accessible and more affordable. Nothing in this package -- in either version -- addresses the Governor's specific criteria.

The government's proposed commission on sex discrimination can hear and mediate disputes but cannot grant remedies. If remedies are sought by an injured party, the case is referred to the Labour Tribunal if the violation occurred in the workplace. Otherwise, violations must be resolved through courts.

The Labour Tribunal is notoriously overburdened by its existing caseload, with justice often denied by long delay. This is hardly an accessible system. And as for the courts, they too are extremely overcrowded and furthermore, who can afford the legal costs? The proposal will be worthless unless people can find an affordable and accessible way to solve their problems.

Secondly, the Honourable Member is wholly correct — and I know from the example he has given and I know how much attention he has given to the matter — to talk about the importance of good infrastructure development to the provision of housing at a reasonable speed and if there is shoddy workmanship then that is going to set back the provision of our housing goals, so I hope we can both put infrastructure in place in time and avoid the sort of problems the Honourable Member referred to.

PRESIDENT: Mr Martin LEE.

MR MARTIN LEE: *Now that the Governor of Hong Kong has been censured by this Council, will the Governor inform this Council whether he is now prepared to pay more respect to this Council by allowing Private Members' Bills to be presented in relation to Human Rights Commission and freedom of information, so as to avoid further censure motions, this time even from his own appointed Members?*

GOVERNOR: I think the honourable gentleman has packed a lot into that question and perhaps he will let me unpack the suitcase in my own speed over the next few moments.

First of all, I noted the debate that took place in the Council yesterday. I have to say to the Honourable Member that much though I always admire his speeches, yesterday I slightly preferred the speech made by the Financial Secretary. That is the case from time to time but I mean no criticism of the Honourable Member whose courage and eloquence I, like the rest of the community, recognize.

What I will always do, and I can assure the honourable gentleman of this, is to defend the right of this Council to be critical of the Government or critical of the Governor. I very much hope that that right is one which we can take for granted, not just before but after 1997 and I very much hope that while that right is not exercised too frequently, that when it is exercised the Governor and the Government will be able to take their chastisement in a reasonable spirit.



I think that it is important to consider what our argument and our position in the Administration is. Our bottom line is to do whatever is in the interests of Hong Kong in the long term. I hope that we can usually do that with the understanding and co-operation of the future sovereign power and with the understanding and co-operation of this Legislative Council. But if, from time to time, we fail to be able to secure either of those objectives, we still believe that it is in the long-term interests of Hong Kong to take a particular view, then we are right to do so and we would be wrong to retreat, to resile from that position.

I will go on defending the rights of this Council and I believe passionately strongly that those rights are best secured if this Council is seen to be credibly and fairly and openly elected, which is why the Administration will be arguing with all the force it can command at the end of this month to secure the legislation which we have put before the Council. And I just say in parenthesis (I just say in parenthesis) that I think those who believe that if that legislation was substantially watered down then somehow the argument would go away, are kidding themselves. The argument would continue in greater force right the way down to 1997 and arguably beyond. But conceivably I digress.

I will go on defending the rights of this Council to vet public expenditure, to decide whether or not the Government should be voted money to meet the objectives it sets for itself.

I will also go on defending the right of this Council to vet and monitor legislation. And I note, just in passing, that last year this Council proposed three times, three times as many amendments to bills and secured them, as happened a decade ago.

But I do not believe that it would be in the interests, either in the long term or today, of Hong Kong, for me to abandon the right of the executive to secure its own revenue and its own resources and that is not a very curious position for the Chief Executive of a government to take up. It would be taken up if I was the President of the United States, which I am self-evidently not, or if I was in charge of any other administration. It would be bad for our economic management. It would lead to imprudent public financing and it would be bad for Hong Kong today and for the future.

So there is no disjuncture between arguing on the one hand, very strongly, for the rights of this Council as they are set out in our existing constitution and as they will be set out in the constitution in the future, for arguing for those rights and for arguing that this Council should be properly elected, while on the other hand arguing that the rights of the executive have to be noted as well. But I hope that in the medium and the long terms, though I guess things may change the closer we get to the elections, we will have little need for the Council to show freedom of speech and censure the Governor or any of his colleagues in the Administration.

The Honourable Member then asks me about proposals which have been canvassed on human rights, on a statutory right of information and on other matters.

I think the Council knows that we have been discussing those issues with a number of Honourable Members and we will be explaining to this Council in due course how we believe the Administration should respond. The Council itself will have, if there is legislation subsequently, to decide how far it wishes to go. Let me take the question of equal opportunities legislation for example. The Government intends, this is our clear objective, to legislate on equal opportunities this year. If the Council does not think we are going far enough then presumably the Council will amend that legislation and take it further. That is the Council's right constitutionally, but I hope that we will be able to persuade the Council and the community that the balance we have struck is the right one and that is what we will be, in due course, seeking to do.

So I repeat for the Honourable Member, whose question was important which is why I answer it at some length, that we recognize the role of this Council, the rights and powers of this Council, including the right to criticize the Governor when this Council wishes though I happen not to agree with the issue which caused this debate. But we are not and I think it would be wrong to do so, going to resile from positions which we think are in the long-term interests of Hong Kong just to avoid a censure in this Council or, if I may say so, just to avoid the occasional mild argument with the future sovereign.

MR MARTIN LEE: *A very straightforward follow-up. Will the Government vigorously defend this Council if the other bill were to be passed on 29 June, by assenting to it?*

GOVERNOR: I assume by "the other bill" and I think I should use caps in referring to that, is a reference to the bill proposed by the Honourable Member who sits in front of me and looks rather balefully at me as I try to, beautifully but balefully, as I try to answer the question. I have noted what has been said about support for the Honourable Member's bill and I have noted that there is one party which is debating conceivably even as we have this exchange today, whether or not it should join others in supporting the Honourable Member's bill. It would be a great triumph for the eloquence of the Honourable Member if she secured that paw-line conversion. I think that if the Honourable Member does secure that conversion and gets a majority for her bill, I will reply to the Honourable Member's question. But as he knows, I have an active distaste for answering hypothetical questions, finding the ones that are not hypothetical much too difficult anyway.

PRESIDENT: Mr SZETO Wah.

司徒華議員問：總督先生，我只提出一個很簡單及具體的問題。最近我接到坪石邨居民的投訴。這邨入伙已接30年了，最近更換電梯，花了數個月仍未完成，引起居民很大的不便。今早我致電房屋署的高級經理詢問為何會費時這麼久？他答稱換一部電梯需要9個月時間，一座大廈有兩部電梯，停用一部，更換一部，就需要18個月了。總督先生，你認為如此效率是否可以接納；以及我今日提問後，你可否設法使效率得到改善？

GOVERNOR: I must just say to begin with that if I would have to predict the question which the Honourable Member was going to ask, that would not necessarily have been it. But I recognize that the most important politics is local politics and the most important issues are ones that, or usually the most important issues, are the ones that affect people's livelihood which affect whether they have to clamber up several flights of stairs, with children, with the shopping, every day, or whether they can manage the passage in a lift. I will certainly look at the question which the Honourable Member raises. Given how quickly, with half a chance, we build a tunnel or an airport, it should not take us all that long to put in a lift.

Ref : MS/6

## Report of the Subcommittee on Procedural Matters

### Proposed amendment to Standing Orders concerning certification of Private Members' Bills

This paper invites Members to reconsider whether the Law Draftsman or the Legal Adviser, as Counsel to the Legislature, should be responsible for issuing certificates relating to presentation of Private Members' Bills to the Council.

#### Background

2. The respective roles of the Secretary General, the Legal Adviser and the Law Draftsman need to be redefined upon the establishment of the independent Legislative Council Commission on 1 April 1994. In March, the Subcommittee on Procedural Matters proposed to amend Standing Orders (SOs) to specify that :

- (a) the Secretary General 'is' the Clerk to the Legislative Council and is responsible for advising the President on procedural matters (SO 4);
- (b) the Legal Adviser assumes the role as Counsel to the Legislature and advises the President and the Clerk on legal questions relating to the Council (SO 4A); and
- (c) the Law Draftsman will continue to be responsible for issuing the certificates for Private Members' Bills (SO 39(1)).

3. The proposals in paragraph 2(a) and (b) above were endorsed by the House Committee on 25 March 1994. In respect of the proposal in paragraph 2(c) above, some Members considered that the Legal Adviser should be responsible for issuing certificates under SO 39(1), which stipulates that :

"A Member may at any time give notice of his intention to present a bill; such notice shall be sent to the office of the Clerk and shall be accompanied by a copy of the bill and memorandum required by Standing Order No. 38 (Form of Bills), and in the case of a Member other than an ex officio Member, also by a certificate signed by the Counsel to the Legislature stating that the bill conforms to the requirements of that Standing Order and the general form of Hong Kong legislation."

The House Committee, therefore, decided to invite the subcommittee to reconsider this proposal.

#### Deliberations by the Subcommittee

4. In reconsidering the proposal, the Subcommittee was advised by the Legal Adviser that :

- (a) the Law Draftsman's role in certifying Private Members' Bills is in the nature of a duty rather than a power. he does not, in practical terms, simply refuse to issue a certificate for a bill. If he considers that the drafting does not meet the requirements of form he will either provide a correctly redrafted version or advise the Member how to do so. The Law Draftsman's concern is with form and technicality, not the policy aspect of the bill. Past experience demonstrates that the Law Draftsman has consistently been cooperative in this respect;
- (b) under the Royal Instructions, the Governor has to be satisfied that bills to be enacted comply with certain requirements on form and style. He would rely on the expert advice of the Law Draftsman. It would not be appropriate to deprive the Law Draftsman of this role during the legislative passage of a Private Member's Bill;
- (c) the President would need to take advice from the Law Draftsman in order to rule whether or not a Private Member's Bill is in acceptable form. If the Law Draftsman has no role under the SO, he could decline to assist Members in Private Members' Bills.
- (d) the Law Drafting Division of the Attorney General's Chambers, as compared with the Legislative Council Legal Service Division, has more staff resources to perform this function, especially when there is sudden increase in the number of Private Members' Bills; and
- (e) as a matter of principle it remains the duty of the Member concerned, rather than the Law Draftsman, to draft a Private Member's Bill in the right form. The Law Draftsman would likely resist, on the ground that SOs only regulate proceedings of the Legislative Council, any attempt to stipulate in SOs that it is his duty to draft or perfect Private Member's Bills.

5. On the basis of his advice, the Legal Adviser has proposed for the Subcommittee's consideration a revised SO 39(1) at Appendix.

6. The Subcommittee is generally in agreement that the Law Draftsman should continue to issue certificates under the SO.

7. One Member of the Subcommittee, however, is of the view that although the proposed revised SO is an improvement, it only spells out that certification, but not improvement, of a Private Member's Bill is a duty of the Law Draftsman. If the duty is only to certify, he would prefer giving the duty to the Legal Adviser as Counsel to the Legislature. The President can rule on whether Private Members' Bills conform to the SOs and the general form of Hong Kong legislation, taking advice from either the Secretary General or the Legal Adviser.

#### Advice sought

8. Members are invited to advise whether the Law Draftsman or the Legal Adviser should be responsible for issuing certificates under SO 39, and, if Members' preference is the Law Draftsman, whether the proposed revised SO 39 at Appendix should be endorsed.

Legislative Council Secretariat  
10.6.1994

Faculty of Law  
University of Hong Kong

June 10, 1994

Ms Alison Suttie,  
Assistant to the Chief Whip,  
Liberal Democratic Party,  
Houses of Parliament,  
LONDON,  
U.K.

Fax: (44 71) 219 5713

Dear Ms Suttie,

I am writing to you on behalf of Ms Anna Wu Hung-yuk, an appointed member of the Hong Kong Legislative Council, in the hope that you may be able to offer us some advice and assistance in relation to unwillingness of Mr Chris Patten, our present Governor, to permit the local legislature to debate a Bill to establish a human rights commission. We were referred to you by Mr Paddy Ashdown's office.

Ms Wu has recently proposed and drafted two private member's Bills for introduction into the Hong Kong Legislative Council. The first of those Bills, the *Equal Opportunities Bill*, is a broad-ranging piece of anti-discrimination legislation, making unlawful discrimination on the basis of sex, marital status, pregnancy, race, disability, sexuality, political or religious conviction, age and spent criminal conviction. The second, the *Human Rights and Equal Opportunities Commission Bill*, would establish an independent human rights commission with a range of functions including conciliation of complaints, carrying out inquiries, and education.

As you may know, both the Select Committee on Foreign Affairs and Amnesty International have recently come out in support of the establishment of an independent human rights commission of this sort. Local academics, non-governmental organizations and others have been calling for the establishment of such a commission for some years now.

The Hong Kong administration and the Governor have indicated that they do not support the establishment of a human rights commission, although they have recently announced a decision to establish an independent commission to administer sex discrimination legislation they plan to introduce next year.

Under the Royal Instructions issued by the Queen to the Governor, as well as under the Standing Orders of the Hong Kong Legislative Council, a Bill with financial implications may not be introduced without the consent of the Governor. The *Equal Opportunities Bill* does not fall into this category, but the *Human Rights Commission Bill* does. While the Governor has not finally indicated that he will refuse consent, there is every indication that this is likely, despite criticism from legislative councillors and others that, whether or not he agrees with the proposal, he should at least allow the issue to be debated by the Legislative Council.

It is our goal to ensure that the Legislature -- which includes (in addition to appointed members and members elected by functional constituencies) a number of directly elected members -- the opportunity to debate an issue of fundamental public importance. Despite pressing for a more democratic electoral system in Hong Kong, the Governor has on a number of important issues steadfastly resisted other democratic initiatives.

We would greatly appreciate the opportunity to talk with you about the possibilities at the London end of ways in which we might at least be able to get the issue before the Legislative Council.

I shall try and contact you in the middle of next week after our holiday weekend. My contact numbers are (852) 859 2942 (work, phone and fax), (852) 817 9322 (home, phone), and (852) 817 9652 (home, fax).

Yours sincerely,

Andrew Byrnes



Faculty of Law  
University of Hong Kong

June 23, 1994

Lord Marlesford,  
House of Lords,  
Houses of Parliament,  
LONDON.  
U.K.

Fax: (44 71) 219 5979

Dear Lord Marlesford,

I am writing to you on behalf of Ms Anna Wu Hung-yuk, an appointed member of the Hong Kong Legislative Council, in the hope that you may be able to offer us some advice and assistance in relation to unwillingness of Mr Chris Patten, our present Governor, to permit the local legislature to debate a Bill to establish a human rights commission.

Ms Wu has recently proposed and drafted two private member's Bills for introduction into the Hong Kong Legislative Council. The first of those Bills, the *Equal Opportunities Bill*, is a broad-ranging piece of anti-discrimination legislation, making unlawful discrimination on the basis of sex, marital status, pregnancy, race, disability, sexuality, political or religious conviction, age and spent criminal conviction. The second, the *Human Rights and Equal Opportunities Commission Bill*, would establish an independent human rights commission with a range of functions including conciliation of complaints, carrying out inquiries, and education.

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Under the Royal Instructions issued by the Queen to the Governor, as well as under the Standing Orders of the Hong Kong Legislative Council, a Bill with financial implications may not be introduced without the consent of the Governor. The *Equal*

*Opportunities Bill* does not fall into this category, but the *Human Rights Commission Bill* does. While the Governor has not finally indicated that he will refuse consent, there is every indication that this is likely, despite criticism from legislative councillors and others that, whether or not he agrees with the proposal, he should at least allow the issue to be debated by the Legislative Council.

It is our goal to ensure that the Legislature -- which includes (in addition to appointed members and members elected by functional constituencies) a number of directly elected members -- the opportunity to debate an issue of fundamental public importance. Despite pressing for a more democratic electoral system in Hong Kong, the Governor has on a number of important issues steadfastly resisted other democratic initiatives.

We would greatly appreciate the opportunity to talk with you about the possibilities at the London end of ways in which we might at least be able to get the issue before the Legislative Council.

I shall try and contact you early next week. My contact numbers are (852) 859 2942 (work, phone and fax), (852) 817 9322 (home, phone), and (852) 817 9652 (home, fax).

Yours sincerely,

Andrew Byrnes

# DOCUMENT

NOTE TO AM

17th June 1992

Please check with Eric and S. K. Law and see if we can get the Chinese version to the Equal Opportunities Bill printed for gazettal as soon as possible even if the certificate has not yet arrived. If whatever that is required to put it right and even if it is minor, it should be safe for us to do that. I am getting nervous with the timing of the matter.

To Anna Wu  
From Adam Mayes  
Date 17/6/94

Procedure re. E.O. Bill financial implications

- 1 There is no formal procedure for these matters: Mr. Law seems to be extrapolating from the (rather skeletal) Standing Orders with the help of frequent consultations with the Legco President.
- 2 My understanding from Mr. Law is that as soon as he receives notice from us he will seek a ruling from the President on whether the Bill has financial implications (so that he knows whether he also needs a CS certificate from us before gazettal).
3. The President will want to hear the views of the relevant policy branch and of the Counsel to Legco (given the recent change in Standing Orders I don't know whether this means the new Counsel, Jonathan Daw, or the old Counsel, the Law Draftsman).
4. Mr. Law has already sent the earlier draft (of 25 May) to SHA for his views on the Bill's financial implications, but the SHA declined to respond on grounds that the Bill was only a draft. Now that he is armed with a letter stating the draft in hand is final, Mr. Law will again seek the SHA's view.
5. If there is delay in obtaining a ruling on whether the Bill has financial implications (e.g. because the SHA is dawdling), Mr. Law will go through all preparations for gazettal with the Government Printer (up to and including proofing, I think). But actual gazettal will have to await the President's ruling.
6. If SHA claims he needs time to consider the Bill or to draft a brief, I believe we would want to raise our objections with the President.

To : Anna Wu  
From : Adam Mayes  
Date : 24/6/94

Re. status of EO Bill

1. As of today, the Government Printer has all items needed to prepare the Bill in both English and Chinese
2. While I was with him this afternoon, Mr. Law phoned Stella Hung; she said Home Affairs' opinion on financial implications would not be ready until next week. Clerk to Legco has previously contacted Home Affairs 2 or 3 times in the past 2 weeks (including the attached letter, of which SHA received a copy) without receiving any response.
3. The speech given by the Officer/Member-in-charge of a bill to open 2nd reading is ordinarily about 5-7 minutes long. Legco Secretariat needs a copy early next week (preferably Tuesday) in order to distribute the speech 1 July (same day as gazettal). Carole and Nancy are working on the speech.

政務司  
香港德輔道中一百三十號  
電話：三十一一



Secretary for Home Affairs  
31st Floor, Southorn Centre,  
130 Hennessy Road,  
Wan Chai,  
Hong Kong

Our Ref: HAB/CR 1/34/1  
Tel: 835 1388

27 June 1994

Secretary General  
Legislative Council  
(Attn: Mr Wong Wai-man)  
Legislative Council Building  
8 Jackson Road, Central  
Hong Kong

Dear Sir,

**Private Member's Bill**  
**Equal Opportunities Bill**

I refer to your letter dated 17 June 1994 and the final version of Miss Anna Wu's Equal Opportunities Bill.

The Administration has carried out an assessment of the Bill's financial implications and has taken legal advice on the matter.

Our assessment is that the cost of implementing the Bill without adversely affecting existing judicial efficiency would be in the order of \$3.8 million annually, being the cost of an additional court at the District Court level to hear and determine actions brought under the Bill. However, it is our view, based on legal advice, that this implementation cost does not bring the Bill within the terms of Standing Order No. 23.

As you may know, the Administration intends to introduce into the Legislative Council, before the end of 1994, equal opportunities legislation covering discrimination on the grounds of gender.

I would be most grateful if you would convey our assessment to the President. Please let me know his decision on this Bill.

Yours/faithfully,

(M M Suen)  
Secretary for Home Affairs

PRESS INVITE

ATTENTION: NEWS EDITORS

Amnesty International meets the Governor.

Date: Friday, July 1st, 1994

Time: 6.0pm

Place: Government House, Upper Albert Road, Hong Kong.

The Governor, Chris Patten has asked to meet with representatives of the Hong Kong Section of Amnesty International to formally respond to Amnesty's recommendation contained in its report released in April - HONG KONG AND HUMAN RIGHTS: FLAWS IN THE SYSTEM: A Call for Institutional Reform Protect Human Rights.

The report made six recommendations to the government, including the need for a Human Rights Commission in Hong Kong. Other recommendations included that the agency and staff determining which cases qualify for legal aid should be made independent of the government, and that the government should take any measures necessary to guarantee the future independence of the judiciary in Hong Kong.

Immediately after the meeting with the Governor, AI delegates Robyn Kilpatrick, Anthony Chiu, Johannes Chan and Harriet Samuels will give an informal press conference outside Government House to members of the press (at approximately 6.30).

# PRESS STATEMENT

## Legislative Councillor Anna Wu

To: News Editors  
1 July 1994

Anna Wu 843-7353  
Eric Chow: 537-2466.1128635 x 8939  
Adam Mayes: 537-2467 1128028 x 1325

*(Legislative Councillor Anna Wu will speak at 6:45 p.m. in the Press Room, Legco Building, about the Government's response to calls for the establishment of a human rights commission and about today's gazettal of her Equal Opportunities Bill.)*

### The Equal Opportunities Bill

Earlier today the Equal Opportunities Bill was officially gazetted and distributed to Legco Members. I will speak to move the Second Reading of the Bill in next week's Legco sitting. The Bill provides comprehensive legal protection against discrimination on a variety of grounds, including sex, pregnancy, family or marital status, race, age and disability.

Under pressure, the Home Affairs branch on 3 June announced an intention to introduce its own bill in the Fall, which it has the temerity also to call an "equal opportunities bill."

The title "equal opportunities bill" is patently inappropriate for the government's proposed legislation. The government bill — as yet undrafted — excludes all grounds of discrimination save sex. Its conception of sex discrimination is the narrowest possible, excluding pregnancy and marital status issues.

The government thus offers the minimum, but calls it the maximum. This sleight of hand is symptomatic of government policy in the area of human rights.

### Abdication of leadership on human rights issues

The strong public interest in human rights protection clearly calls for leadership. The government, however, has abdicated its leadership role in this area.

Overall, government human rights measures are best described as a blueprint for inertia. A mixed bag of half-hearted ideas have been floated, uncoordinated, confused and confusing. The guiding principle appears to be: concede as little as possible to placate public opinion.

All indications are that the government wants to contain public demands for more effective human rights measures, not to address them, and to diffuse rather than harness public energy and enthusiasm.

For purely technical reasons, the cost of implementing the Equal Opportunities Bill does not legally constitute the type of "financial implications" that have empowered the Governor to block both my human rights commission bill and Christine Loh's Access to Information Bill. It is deplorable that Legco's right to consider human rights issues — and therefore the shape of future human rights protections in Hong Kong — should be held hostage to such legalistic technicalities.

Sadly, these technicalities are being enthusiastically wielded by a government more interested in obstruction than in progress when it comes to human rights issues.

If the government will not lead, at least it should not obstruct. The Governor should have the courage to stand aside and permit the Legislative Council to consider my Human Rights and Equal Opportunities Commission Bill, which would establish an independent, comprehensive and effective human rights monitor for Hong Kong.



WEDNESDAY, JULY 20, 1994

## GOVERNMENT TO INTRODUCE DISABILITY DISCRIMINATION LEGISLATION

\* \* \* \* \*

THE GOVERNMENT IS PROPOSING TO INTRODUCE A COMPREHENSIVE PIECE OF LEGISLATION TO PROTECT PEOPLE WITH A DISABILITY AGAINST DISCRIMINATION AND HARASSMENT, THE SECRETARY FOR HEALTH AND WELFARE, MRS ELIZABETH WONG, ANNOUNCED TODAY (WEDNESDAY).

"THE PROPOSED LEGISLATION, TO BE INTRODUCED INTO THE LEGISLATIVE COUNCIL IN EARLY 1995, WILL GIVE PEOPLE WITH A DISABILITY THE LEGAL WEAPONS TO FIGHT FOR EQUAL OPPORTUNITIES, AND FOR ACCESS TO AND INVOLVEMENT IN THE COMMUNITY, TO THE FULLEST EXTENT POSSIBLE," MRS WONG SAID.

SPEAKING AT A PRESS CONFERENCE, SHE POINTED OUT THAT THE ADMINISTRATION RECOGNISED THAT PUBLIC EDUCATION WAS OF VITAL IMPORTANCE IN CHANGING PEOPLE'S PERCEPTION OF THOSE WITH A DISABILITY AND CHANGING THEIR ATTITUDES ON HOW TO TREAT THEM.

"THAT IS WHY WE ARE SPENDING \$32 MILLION BETWEEN 1993 AND 1997 ON STRENGTHENING PUBLIC EDUCATION ON INTEGRATION.

"AND, AS IT HAS ELSEWHERE, THE LEGISLATION WILL ITSELF PERFORM A CAUTIONARY AND EDUCATIONAL FUNCTION.

"IT WILL ENSHRINE IN THE LAW THE STANDARDS TO WHICH WE BELIEVE HONG KONG, AS A CIVILISED COMMUNITY, SHOULD ADHERE," SHE SAID.

THE PROPOSED LEGISLATION WILL CONTAIN PROVISIONS TO COVER DISCRIMINATION ON THE GROUND OF DISABILITY IN, FOR EXAMPLE:

- \* WORK (BY EMPLOYERS, PROFESSIONAL AND TRADE ORGANISATIONS, AND EMPLOYMENT AGENCIES);
- \* MEMBERSHIP OF PARTNERSHIPS, PROFESSIONAL ORGANISATIONS, QUALIFYING BODIES AND CLUBS;
- \* EDUCATION (BY EDUCATIONAL INSTITUTIONS IN TERMS OF ADMISSION AND TREATMENT OF STUDENTS);
- \* ACCESS TO AND USE OF BUILDINGS, PLACES, VEHICLES AND SERVICES;
- \* ACCOMMODATION (BY LANDLORDS OR AGENTS IN DEALING WITH PERSON'S APPLICATION FOR COMMERCIAL OR RESIDENTIAL PREMISES); AND
- \* RECREATION AND SPORT.

"IN ADDITION, PROVISIONS ON DISCRIMINATION INVOLVING HARASSMENT OR VILIFICATION ON THE GROUND OF DISABILITY, WHICH ARE OF VITAL IMPORTANCE, WILL BE INCLUDED," SHE ADDED.

ON THE DEFINITION OF DISABILITY, MRS WONG SAID IT WAS PROPOSED TO DEFINE "DISABILITY" TO INCLUDE ANY PHYSICAL OR MENTAL IMPAIRMENT THAT LIMITED A PERSON'S LIFE ACTIVITIES.

"PEOPLE WITH HIV/AIDS WILL ALSO BE COVERED BY THE LEGISLATION, SHE SAID.

TO ENFORCE THE LEGISLATION, MRS WONG POINTED OUT THAT THE PURVIEW OF THE EQUAL OPPORTUNITIES COMMISSION, TO BE SET UP UNDER THE SEXUAL DISCRIMINATION LEGISLATION, WOULD BE EXPANDED.

SHE ENVISAGED THAT THE COMMISSION WOULD SETTLE MOST DISPUTES ON, FOR EXAMPLE, DISCRIMINATION IN THE WORK PLACE, THROUGH CONCILIATION.

"ONLY WHERE THIS FAILED WOULD THE COMMISSION HELP COMPLAINANTS TO TAKE THEIR CASES TO THE LABOUR TRIBUNAL.

"IN CASES INVOLVING DISCRIMINATION IN OTHER AREAS, E.G. MEMBERSHIP OF CLUBS OR EDUCATION, AND WHERE CONCILIATION FAILED, THEIR CASES COULD BE TAKEN TO COURT WITH THE ASSISTANCE OF THE LEGAL AID DEPARTMENT AS NECESSARY.

"THE COMMISSION COULD ALSO HELP STEER A TEST CASE OR A CLASS ACTION THROUGH THE COURTS," SHE SAID.

IN KEEPING WITH THE PRAGMATIC APPROACH IN HONG KONG, THE LEGISLATION WILL NOT IMPOSE GENERAL REQUIREMENTS ON EMPLOYERS, DEVELOPERS, SERVICE PROVIDERS AND SO ON TO PROVIDE MORE JOBS OR BETTER FACILITIES TO PERSONS WITH A DISABILITY.

"RATHER, IT WILL MAKE IT UNLAWFUL FOR THEM TO TREAT SUCH PERSONS LESS FAVOURABLY THAN OTHERS ON ACCOUNT OF THEIR DISABILITY, IN CIRCUMSTANCES THAT ARE THE SAME OR NOT MATERIALLY DIFFERENT.

"THE LEGISLATION WILL THUS PROTECT THE RIGHTS OF SUCH PERSONS NOT TO BE DISCRIMINATED AGAINST, RATHER THAN REQUIRE THE PROVISION OF SERVICES TO MEET THEIR NEEDS," MRS WONG EXPLAINED.

THE LEGISLATION WILL PROVIDE FOR TWO GENERAL EXEMPTIONS, UNJUSTIFIABLE HARDSHIP AND THE INHERENT REQUIREMENTS OF THE JOB.

"EMPLOYERS AND OTHERS, SUCH AS EDUCATIONAL INSTITUTIONS, LANDLORDS, TRANSPORT OPERATORS ETC. WOULD BE ABLE TO DEFEAT A CLAIM OF DISCRIMINATION BY SHOWING THAT ACTION NECESSARY TO ACCOMMODATE THE NEEDS OF PEOPLE WITH A DISABILITY WOULD IMPOSE 'UNJUSTIFIABLE HARDSHIP'," SHE SAID.

MRS WONG EXPLAINED THAT THE NEED TO DEMONSTRATE UNJUSTIFIABLE HARDSHIP WOULD ONLY ARISE IN RESPONSE TO A COMPLAINT TO THE EQUAL OPPORTUNITIES COMMISSION.

"IN DETERMINING UNJUSTIFIABLE HARDSHIP, ALL OF THE RELEVANT CIRCUMSTANCES OF A PARTICULAR CASE WOULD BE TAKEN INTO ACCOUNT, INCLUDING THE FINANCIAL CIRCUMSTANCES OF THE EMPLOYER OR BUSINESS CONCERNED, FOR EXAMPLE, THE TECHNICAL FEASIBILITY AND COSTS OF PROVIDING THE APPROPRIATE ACCOMMODATION OR SERVICES.

"MOREOVER, THE LEGISLATION WOULD NOT REQUIRE THAT PEOPLE WITH A DISABILITY BE GIVEN JOBS WHICH THEY COULD NOT DO.

"CONSEQUENTLY, THERE WOULD BE AN EXEMPTION WHICH DOES NOT PROHIBIT DISCRIMINATION IF THE PERSON IS NOT ABLE TO PERFORM THE INHERENT REQUIREMENTS OF THE PARTICULAR JOB," MRS WONG SAID.

ALSO, IT WOULD NOT BE UNLAWFUL UNDER THE LEGISLATION FOR SPECIAL MEASURES OR SERVICES, SUCH AS SPECIAL SCHOOLS OR SHELTERED WORKSHOPS, TO BE PROVIDED FOR PEOPLE WITH A DISABILITY.

"IN OTHER WORDS, THE LEGISLATION WILL NOT REQUIRE ABSOLUTE EQUALITY IN ALL AREAS WHATEVER THE COST, NOR PROHIBIT SPECIAL TREATMENT OR AFFIRMATIVE ACTION WHICH MIGHT APPEAR DISCRIMINATORY, BUT WHICH IS, IN FACT, IN THE INTERESTS OF PEOPLE WITH A DISABILITY," MRS WONG SAID.

END/

**LEGISLATIVE COUNCIL BRIEF**

**DISABILITY DISCRIMINATION LEGISLATION**

**INTRODUCTION**

At the meeting of the Executive Council on 19 July, the Council ADVISED and the Governor ORDERED that -

- (a) disability discrimination legislation be enacted;  
and
- (b) the purview of the Equal Opportunities Commission be expanded to cover discrimination on the ground of disability.

**BACKGROUND AND ARGUMENT**

Green Paper

2           The Working Party on Rehabilitation Policies and Services published the Green Paper "Equal Opportunities and Full Participation - A Better Tomorrow for All" in March 1992. Among other things, it recommended that the Law Reform Commission

- (a) review legislative provisions and procedures affecting people with a disability;
- (b) examine the effect of the Bill of Rights on these; and
- (c) consider the need to develop the various international conventions and declarations dealing with the rights and needs of people with a disability.

As a result, the Green Paper stated, "legislative changes could be proposed to bring about equalization of opportunities and full participation".

3. However, the Chairman of the Commission subsequently advised that since the question of such legislation and the issues it raised were ones of policy rather than law, the Law Reform Commission was not the appropriate forum to consider the subject.

4. The White Paper will be published towards the end of this year.

### Governor's pledge

5. In his Annual Address to the Legislative Council in October 1992, the Governor pledged that the necessary funds would be secured to meet in full the key targets in the Green Paper by 1997. These relate to 7,690 additional residential and day service places for people with disability. We and non-governmental organisations have been working very hard to achieve these targets on time.

### Harassment

6. In late 1992, some residents of Laguna City organised protests against the setting up of an activity centre for ex-mentally ill people. Similar protests culminating in acts of vandalism, were mounted at Tung Tau Estate in early 1993 against the setting up of a resource centre for parents with Down Syndrome children and a hostel for mentally handicapped people. We finally resolved the problem at Tung Tau, but the protests at Laguna City have continued unabated. Clients of the activity centre for the ex-mentally ill are subjected regularly to video taping and verbal abuse by some residents. To improve the quality of life for people with a disability, we need to ensure that the large number of rehabilitation projects in the pipeline are not held up by local opposition.

7 To address the serious problem of harassment, the Administration decided that there was a need for anti-discrimination legislation to be enacted. The Secretary for Health and Welfare made a commitment in LegCo to this effect in October last year.

#### Comprehensive Legislation

8. To demonstrate the Government's commitment to integrating people with a disability into the community and to tackle problems of discrimination and harassment, the Secretary for Health and Welfare decided that work should proceed on comprehensive disability discrimination legislation. This legislation will give people with a disability the legal weapons to fight for equal opportunities, and for access to and involvement in the community, to the fullest extent possible. But we recognise that public education is of vital importance in changing people's perception of those with a disability and changing their attitudes on how to treat them. That is why we are spending \$32 million between 1993 and 1997 on strengthening public education on integration. And, as it has elsewhere, the legislation will itself perform a cautionary and educational function. It will enshrine in the law the standards to which we believe Hong Kong, as a civilized community, should adhere

DISABILITY DISCRIMINATION LEGISLATION

9. Our proposed legislation will contain provisions to cover discrimination on the ground of disability in, for example,

work (by employers, professional and trade organisations, and employment agencies);

membership of partnerships, professional organisations, qualifying bodies and clubs ;

education (by educational institutions in terms of admission and treatment of students);

access to and use of buildings, places, vehicles and services ;

accommodation (by landlords or agents in dealing with a person's application for commercial or residential premises); and

recreation and sport.

In addition, provisions on discrimination involving harassment or vilification on the ground of disability, of vital importance in dealing with situations like Laguna City, will be included



- (a) work towards the elimination of discrimination against people with a disability ;
- (b) keep under review the working of the disability discrimination legislation ;
- (c) receive complaints, provide assistance and conduct investigations under the legislation ; and
- (d) develop and issue Codes of Practice and conduct public education and research into disability discrimination issues.

15. We envisage the Commission settling most disputes on, for example, discrimination in the work place, through conciliation. Only where this failed would the Commission help complainants to take their cases to the Labour Tribunal. In cases involving discrimination in other areas, such as access to welfare services or education, and where conciliation failed, their cases could be taken to court with the assistance of the Legal Aid Department as necessary. The Commission could also help steer a test case or a class action through the courts.

TIMETABLE

16. We intend to introduce the Bill into LegCo by the end of this year.

BILL OF RIGHTS IMPLICATIONS

17. The anti-discrimination provisions of the Hong Kong Bill of Rights Ordinance cover discrimination on the ground of disability, though not expressly. However, since the Ordinance binds only the Government and public authorities, it cannot be used to remedy discrimination by private parties. When the decision was taken in 1991 to exclude inter-citizen rights from the Ordinance, the Government undertook to look into infringement of civil liberties arising from 'private' discrimination. The proposed legislation can be seen as a partial fulfilment of that undertaking.

18. The legislation would also be consistent with the International Covenant on Civil and Political Rights, as applied to Hong Kong, and with a number of other international instruments, including the United Nations Declaration on the Rights of Disabled Persons.

## FINANCIAL AND STAFFING IMPLICATIONS

19. We estimate that the Equal Opportunities Commission, which will handle discrimination on the grounds of sex and race as well as disability, will cost \$60 million a year in recurrent expenditure on full operation. This expenditure will be phased over the next three years with the gradual implementation of the different pieces of anti-discrimination legislation. It is difficult to determine what proportion of the total cost will be due to the Commission's work for people with a disability.

20. The disability discrimination legislation is likely to increase the workload of the Courts, but we cannot assess the resource implications accurately at this stage. We estimate that the Judiciary will require an extra \$16.1 million in annually recurrent expenditure to deal with cases arising from all anti-discrimination legislation. These additional resources will be provided in this year's resource allocation exercise. Experience elsewhere indicates that the majority of cases brought to court under equal opportunities legislation relates to sex discrimination.

21. There will not be any substantial additional expenditure required on the part of Government to satisfy the provisions on access (see paragraph 23).

## ECONOMIC IMPLICATIONS

22. The Hong Kong economy is predominantly market oriented with little artificial impediment in the employment of local people. Job requirements and the terms and conditions of employment are determined between the employer and employee, taking into account the employer's business needs and the employee's work attributes, as well as the forces of supply and demand in the labour market. The proposed legislation whilst deterring discrimination would not impose conditions to reduce flexibility in the labour market by requiring employers to, for example, employ a quota of people with a disability.

23. The legislation will require (with some exceptions) that building approvals for new private buildings, or for renovations of existing buildings requiring approval, should not be granted unless the relevant authority is satisfied that reasonable access will be provided for people with a disability. Although Government buildings are exempted under the Buildings Ordinance, they are in fact designed in accordance with the "Design Manual - Access for the Disabled 1984", as are most non-domestic buildings in the private sector. The legislation will not, therefore, increase construction costs greatly, if at all, in either sector.

#### PUBLIC CONSULTATION

24. A three months public consultation exercise on the Green Paper was conducted in 1992. During this, there were calls for legislation to be introduced to promote equal opportunities, albeit more focussed on the mentally handicapped. We propose to consult relevant organisations and take their views into account during the drafting of the Bill.

#### PUBLICITY

25. A press conference was held on 3rd June 1994 to announce the way forward on the extension of CEDAW to Hong Kong and the proposed legislation against sex discrimination, which will also establish an Equal Opportunities Commission. During this press conference, it was confirmed that work was proceeding on disability discrimination legislation. A press conference will be held on 20 July to announce the proposal to enact disability discrimination legislation. A spokesman will be made available to handle media enquiries.

Health and Welfare Branch

20 July 1994

**REACTION ON DISABILITY DISCRIMINATION LEGISLATION**

Legislative Councillor Anna Wu welcomes and supports the Disability Discrimination Legislation announced today by the Secretary for Health and Welfare, Mrs. Elizabeth Wong. Ms. Wu hopes that the government would also support her comprehensive Equal Opportunities Bill.

According to the Government, the recurrent cost of the Equal Opportunities Commission will amount to \$48 million, whereas the estimate for the Human Rights and Equal Opportunities Commission is \$60 million. With an additional \$12 million, the Commission will be empowered to have the adjudicative function; to cover all forms of discrimination as well as other important human rights issues.

Regarding the composition and functioning of the Commission, Ms. Wu stresses that the Commissioner should be appointed by the Governor and confirmed by the Legislative Council so as to ensure its independence. She also hopes that there would be a mechanism requiring the Commission to compile and submit reports to the Attorney General, who should be obliged to table them in the Legislative Council. This would enhance the accountability and impartiality of the Commission.

Now that the Government has accepted the principles that legislation is required to eradicate discrimination and a statutory body is needed to implement the legislation, Ms. Wu is calling upon the Government to consider not only comprehensive legislation dealing with all forms of discrimination, but also a Commission with full range of power and functions so that everyone, not just the disabled, would be given an equal opportunity to participate in various aspects of life.

SEX DISCRIMINATION BILL

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A BILL

To

Render unlawful certain kinds of sex discrimination, discrimination on the ground of marital status or pregnancy, and sexual harassment; to provide for the establishment of a Commission with the functions of working towards the elimination of such discrimination and harassment and promoting equality of opportunity between men and women generally; and to provide for matters incidental thereto or connected therewith.

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PART I

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Sex Discrimination Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice in the Gazette, and different days may be so appointed for different provisions.

## 2. Interpretation

(1) In this Ordinance, unless the context otherwise requires -  
 "access" ( ) means access as construed in accordance with  
section 51;

"act" ( ) includes a deliberate omission;

"advertisement" ( ) includes every form of advertisement,  
 whether to the public or not, and whether -

(a) in a newspaper or other publication;

(b) by television or radio;

(c) by display of notices, signs, labels, showcards or  
 goods;

(d) by distribution of samples, circulars, catalogues,  
 price lists or other material;

(e) by exhibition of pictures, models or films; or

(f) in any other way,

and references to the publishing of advertisements shall be  
 construed accordingly;

"Chairman" ( ) means the Chairman of the Commission appointed  
 under section 56(3)(a);

"Commission" ( ) means the Equal Opportunities Commission  
 established under section 56(1);

"committee" ( ) means a committee established under section  
57(2)(a);

"contract worker" ( ) means contract worker as construed in  
 accordance with section 12;

"discrimination" ( ) means any discrimination falling within section 4, 5, 6, 7 or 8, and related expressions shall be construed accordingly;

"dispose" ( ), in relation to premises, includes granting a right to occupy the premises, and any reference to acquiring premises shall be construed accordingly;

["education" ( ) includes any form of training or instruction;]

"educational establishment" ( ) means an educational establishment specified in column 1 of Part 1 of Schedule 1;

"employment" ( ) means employment under -

(a) a contract of service or of apprenticeship; or

(b) a contract personally to execute any work or labour, and related expressions shall be construed accordingly;

"employment agency" ( ) means a person who, for profit or not, provides services for the purpose of finding employment for workers or supplying employers with workers;

"enforcement notice" ( ) means a notice under section 74(2);

"estate agent" ( ) means a person who, by way of profession or trade, provides services for the purpose of finding premises for persons seeking to acquire them or assisting in the disposal of premises;

"firm" ( ) means firm within the meaning of the Partnership Ordinance (Cap. 38);

"formal investigation" ( ) means an investigation under section 64;



- "general notice" (            ), in relation to any person, means a notice published by him at a time and in a manner appearing to him suitable for securing that the notice is seen within a reasonable time by persons likely to be affected by it;
- "genuine occupational qualification" (            ) means genuine occupational qualification as construed in accordance with section 11(2);
- "man" (            ) includes a male of any age;
- "notice" (            ) means a notice in writing;
- "prescribed" (            ) means prescribed in rules made under section 85;
- "profession" (            ) includes any vocation or occupation;
- "responsible body" (            ), in relation to an educational establishment, means the body specified in column 2 of Part 1 of Schedule 1 opposite that establishment;
- "retirement" (            ) includes retirement (whether voluntary or not) on grounds of age, length of service or incapacity;
- "sex discrimination" (            ) means any discrimination falling within section 4 or 5;
- "single sex establishment" (            ) means single sex establishment as construed in accordance with section 25;
- "trade" (            ) includes any business;

["training" ( ) includes any form of education or instruction;]

"tribunal" ( ) means tribunal within the meaning of section 2 of the Labour Tribunal Ordinance (Cap. 25);

"tribunal officer" ( ) means tribunal officer within the meaning of section 2 of the Labour Tribunal Ordinance (Cap. 25);

"woman" ( ) includes a female of any age.

(2) References in this Ordinance to the dismissal of a person from employment or to the expulsion of a person from a position as partner include references -

- (a) to the termination of that person's employment or partnership by the expiration of any period (including a period expiring by reference to an event or circumstance), not being a termination immediately after which the employment or partnership is renewed on the same terms;
- (b) to the termination of that person's employment or partnership by any act of his (including the giving of notice) in circumstance such that he is entitled to terminate it without notice by reason of the conduct of the employer, or the other partners, as the case may be.

(3) For the purposes of this Ordinance, an enforcement notice or a finding by the tribunal or District Court becomes final when an appeal against the notice or finding is dismissed, withdrawn or abandoned or when the time for appealing expires without an appeal

having been brought; and for this purpose an appeal against an enforcement notice shall be taken to be dismissed if, notwithstanding that a requirement of the notice is quashed on appeal, a direction is given in respect of it under section 75(3).

(4) For the purposes of this Ordinance, a person is a near relative of another if that person is the wife or husband, a parent or child, a grandparent or grandchild, or a brother or sister of the other (whether of full blood or half-blood or by affinity), and "child" ( ) includes an illegitimate child and the wife or husband of an illegitimate child.

(5) For the purposes of this Ordinance, a person (howsoever described) sexually harasses a woman if -

- (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to her; or
- (b) engages in other unwelcome conduct of a sexual nature in relation to her,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that she would be offended, humiliated or intimidated.

(6) In subsection (5) -

"conduct of a sexual nature" ( ) includes making a statement of a sexual nature to a woman, or in her presence, whether the statement is made orally or in writing.

(7) A provision of Part III or IV framed with reference to sexual harassment of women shall be treated as applying equally to

the treatment of men and for that purpose that provision, and subsections (5) and (6), shall have effect with such modifications as are necessary.

3. Application

This Ordinance binds the Government.

PART II

DISCRIMINATION TO WHICH ORDINANCE APPLIES

4. Sex discrimination against women

(1) A person discriminates against a woman in any circumstances relevant for the purposes of any provision of this Ordinance if -

(a) on the ground of her sex he treats her less favourably than he treats or would treat a man; or

(b) he applies to her a requirement or condition which he applies or would apply equally to a man but -

- (i) which is such that the proportion of women who can comply with it is considerably smaller than the proportion of men who can comply with it;
- (ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied; and
- (iii) which is to her detriment because she cannot comply with it.

布政司署  
香港下亞厘畢道



GOVERNMENT SECRETARIAT

LOWER ALBERT ROAD  
HONG KONG

本署檔號 Our Ref (23) in HW CR 2/5091/94VIII

來函檔號 Your Ref

22 August 1994

The Hon Anna Wu  
Member of Legislative Council  
Rm 415 Central Government Offices (West Wing)  
11 Ice House Street  
Hong Kong

Dear *Anna*

Mrs Wong has asked me to thank you for your letter of 16th August and for your kind offer to help in the formulation of our equal opportunities policies.

As you know, we in the Branch, have said on several occasions that we would be happy to meet with you to discuss our proposals for disability discrimination legislation. I called your office this morning to fix a date for us to get together and learned that you will be away until the end of the month. Perhaps you could give me a call on your return so that we can set up a meeting? By then, we will have completed our draft drafting instructions and be on the way to producing our bill.

I hope that you had a good holiday and look forward to speaking to you soon.

Yours sincerely,

(Miss J A Willis)  
for Secretary for Health & Welfare

# PROPOSED DISABILITY DISCRIMINATION LEGISLATION

## Questions & Answers

### for Task Group on Anti-discrimination Legislation for Disabled Persons of Hong Kong Council of Social Service

#### Objective

Q: What is the objective of the Government's proposed disability discrimination legislation?

A: The Government's legislation aims to promote the integration of people with a disability into the community and to tackle the problems of discrimination and harassment. It will give people with a disability the legal weapons to fight for equal opportunities and full participation.

#### Definitions

Q: How will the term "disability" be defined?

A: This important area is being discussed with the Attorney General's Chambers. We welcome your input.

Q : Will there be any definition of the term 'discrimination' under the legislation?

A : Yes, we propose that the term be defined in relation to provisions in the Disability Discrimination Bill. In other words , in relation to , for example , employment , a person discriminates against a person with a disability if he treats that person less favourably in determining who should get the job or in the terms offered than he would treat a person without a disability .

Q : What factors will be taken into consideration in determining 'unjustifiable hardship'?

A : All of the relevant circumstances of a particular case would be taken into account. These include the financial circumstances of the employer or business, the technical feasibility and costs of providing the appropriate accommodation or services necessary to enable a person with a disability to take up a particular job, a place in an educational institution or use a particular service. The Administration proposes that the Equal Opportunities Commission issue Codes of Practice advising people how to comply with the legislation.

Q : Does a Code of Practice have any legal status?

A : A Code of Practice is not legally binding, but it will set out guidelines for service providers to follow. In passing judgement on a case, the courts may take it into account.

### Scope

Q : What is the scope of the legislation?

A : We propose that the legislation be comprehensive covering various areas, such as work, education, access, membership of qualifying bodies, professional organisations, and clubs, accommodation (both commercial and residential), recreation and sport.

Q: Will the Government be bound by the legislation?

A : Yes.

Q: Will the legislation have any retrospective effect?

A: No.



## Progress

Q : When will the proposed legislation be introduced into the Legislative Council?

A : We aim to introduce the proposed legislation into the Legislative Council in early 1995.

## Equal Opportunities Commission (E.O.C.)

Q : What will be the status and organisational setup of the Commission?

A : We envisage that the Commission will be an independent statutory body served by a secretariat with a full time Chairman , required by law to submit an annual report to SHA who, in turn ,must lay it before LegCo. The composition has not been decided yet. But since the Commission will handle discrimination on the grounds of sex and disability, it is expected to have experts in these areas.

Q : What will be the functions of the Commission?

A : In the context of the Disability Discrimination legislation , the Administration proposes that the Commission's functions should include:

- working towards the elimination of discrimination against people with a disability;
- promoting equal opportunities for people with a disability ;
- working towards the elimination of harassment on the ground of disability.

Q : Will the court hear a case even if the Commission has already looked into that case?

A : Yes.

Q : Will the status of the Commission be similar to that of the Consumer Council?

A : Yes, in the sense that they are both independent bodies set up under statute to carry out executive functions. However, the Commission will be different from than the Consumer Council in that it will be able to settle disputes through conciliation, conduct formal investigations and issue enforcement notices.

Q : In what ways will the Commission provide assistance to enable disabled persons to exercise their rights?

A : We envisage that the Commission will give advice to claimants, try to effect conciliations, and, in certain cases, provide legal assistance. It should also help people with a disability by, for example, providing sign interpretation in its investigation and conciliation processes.

Q : Will there be Government officials on the Commission?

A : While there will be close liaison between the Commission and Government, we do not envisage Government officials being appointed to it. Although, it might have civil servants appointed to its advisory Committees.

Q : Will the Commission take cases to court?

A : No. We envisage claimants taking their cases to court with or without the Commission's assistance.

Q : Many cases might end up in the court and the present legal aid scheme is too restrictive. Would the legal costs involved prohibit claimants from taking their cases to court?

A : We do not anticipate many cases going to court. But should a claimant wish to take his case to court, people with a disability will be able to apply for legal assistance , like anyone else in the community.

Q : Can a third party take a case to the court?

A : We propose that a parent or guardian,for example, should be able to take a case to court on behalf of the claimant.

Q : Would it be possible for other parties to take a private organisation to court if it has a publicised discriminatory policy against employment of people with a disability?

A : A person or party may make an allegation against such an organisation to the Commission which we propose should have the power to conduct formal investigations.

Q : Is there any appeal mechanism for claimants under the Equal Opportunities Commission?

A : We do not propose that the Commission should make judgements and therefore, the question of appeal does not arise, except in relation to an appeal against an enforcement notice issued by the Commission. This notice would, for example, require the person on whom it is served not to commit any acts of discrimination and to effect any changes necessary to his practices to render them non-discriminatory. The objective of the Commission is to help people with a disability and it will, we envisage, include members representing their interests. But if the Commission is unable to resolve the matter in dispute, the claimant could still take their case to court.

Q : With no judicial powers, will the Commission have sufficient teeth to resolve problems effectively?

A : We propose that the Commission should have powers to settle disputes through conciliation, conduct formal investigations and issue enforcement notices. We believe it will be able to resolve problems effectively. Cases it cannot resolve may be taken to court.

Q : Will the Commission publicise the results of its investigations of discriminatory practices?

A : The Administration proposes that the Commission will publicise the findings of its formal investigations.

Q : When will the Commission be set up?

A : We hope to be able to establish the Commission as soon after the enactment of the Sex Discrimination Bill as possible.

### **Consultation**

Q : Will you consult the public at large on the proposed legislation?

A : We welcome members of the public to express their views now and when the Bill is published in the Gazette. We have already consulted the Rehabilitation Development Co-Ordinating Committee and are also in touch with concerned organisations and bodies.

Q : What about employers, transport operators and developers?

A : We have, consulted concerned branches and departments as to how service providers would react to the legislation. Their initial reaction is encouraging. They are now consulting relevant bodies such as the Labour Advisory Board, the Hong Kong Housing Authority, the Land and Building Advisory Committee, the Real Estate Developers Association and major transport operators. We will take their interests and concerns into account in the drafting of the Bill.

### **Employment**

Q : How will employers react to the legislation?

A : We will need to wait and see. But we think there may be some initial nervousness if they believe they will be required to employ, for example, a quota of people with a disability. This is not what we propose. They will be required to treat such people no less favourably than others on account of their disability, in circumstances that are the same or not materially different. And they will be able to defeat a claim of discrimination by showing that any special arrangements they would have to make to accommodate the needs of people with a disability would impose 'unjustifiable hardship' on them. Moreover, if the person with a disability is not able to perform the inherent requirements of the particular job, the employer would not be required

to hire that person. Once they understand this their concerns should diminish.

Q : What is meant by the term 'inherent requirements' of a job?

A : This will vary from job to job. The ability to speak Japanese, for example, could be an inherent requirement for a receptionist in a hotel catering for Japanese guests. However, factors such as the applicant's appearance could not be described as an inherent requirement.

Q : Will legal costs incurred by a defendant be regarded as 'unjustifiable hardship'?

A : No. As for the claimant, making a claim to the Equal Opportunities Commission will incur no legal costs. In fact, we envisage that few cases will end up in court. According to the experience in Australia, about 95% of cases are settled by the Commission through conciliation.

### Access to Buildings

Q : Will all buildings (Government & private) have to be designed to be accessible for people with a disability?



A : We propose that buildings for public use, including, for example, theatres, hotels, residential complexes (above a certain size), post offices will have to be designed to provide reasonable access for people with a disability.

Q : What are the access requirements now for buildings?

A : Current access requirements for people with a disability are applicable to schools, buildings used as places of public entertainment, public sports areas, hotel buildings and Government-aided housing. These access requirements are :

- access points and ramps from the street to the inside of building;
- hand-rails and doors suitable for use by the disabled;
- space for use and manoeuvring of wheel chairs in corridors, lobbies, similar areas and water closet cubicles; and
- lifts.

#### U.N. Covenant

Q : Is the proposed legislation based on any other local legislation, international law or UN Covenant?

A : The proposed legislation will be consistent with the International Covenant on Civil and Political Rights and with a number of other international instruments, including the UN Declaration on the Rights of Disabled Persons. It will also "borrow" the provisions on the Equal Opportunities Commission from the proposed Sex Discrimination Bill.

Q : How will the proposed disability discrimination legislation differ from the Bill of Rights?

A : The Administration proposes that it should be consistent with the Bill of Rights ,but that it should have a wider ambit in that it will remedy discrimination on the ground of disability by private parties.

### **Anna Wu's Bill**

Q : If Anna Wu's bill is enacted by the LegCo, will the Government still proceed with its own disability discrimination legislation?

A : We believe Government has the responsibility to take the initiative in promoting the integration of and equal opportunities for people with a disability. If LegCo, and the community as a whole, have both our proposals and Anna Wu's to consider, then this means that they will have a choice and will have to decide which proposals meet Hong Kong's needs and circumstances best.

## Proposed Legislation Against Sex Discrimination

At the Meeting of the Legislative Council Subcommittee on Women's Affairs held on 21.6.1994, Members of the Subcommittee raised a number of Questions and comments on the proposed legislation against sex discrimination. Our response to these questions are set out in the following paragraphs.

### Scope of the proposed legislation

2. The proposed legislation against sex discrimination will render sex discrimination and sexual harassment (whether of women or men) unlawful in specified areas of activity. The areas include employment, education and the provision of goods, facilities, services and premises. Our intention is that the Bill will also make it unlawful for a person to discriminate against a married person or a pregnant woman in the employment field.

3. Members have raised questions about equal pay. In relation to sex discrimination in the employment field, the proposed legislation will make it unlawful for an employer to discriminate against a person who is an employee or a job applicant, on the ground of his or her sex, in the terms upon which he offers him/her

employment. This covers the principle of equal pay for equal work. Furthermore, the legislation will also empower the Equal Opportunities Commission to develop and issue codes of practice which will provide guidance to employers and employees on measures which can be taken to achieve the equal pay principle. In developing such codes of practice, the Commission may make reference to the provisions of any legislation outside Hong Kong on equal pay. Where there are disputes and should the aggrieved party decide to take legal action, the appropriate Judicial body will adjudicate. In the proceedings under the proposed legislation, the Judicial body may take into account the provisions of the codes of practice developed by the Commission.

### The Equal Opportunities Commission

4. The legislation against sex discrimination will establish the Equal Opportunities Commission (the Commission) to oversee the implementation of the legislation. The principle functions of the Commission will be to work towards the elimination of sex discrimination under the legislation; to promote equality of opportunity between men and women and to work towards the elimination of sexual harassment. Members of the Commission will be appointed by the Governor and they will be drawn from a wide cross section of the community.

5. As an independent statutory body, the Commission will be serviced by a secretariat with a full time Chairman. We envisage that the main source of funding for the Commission's activities will be paid by the Government and appropriated by the Legislative Council. Other sources of funding may include, for example, donations. We estimate that the Commission would have around 30 members of staff. This would include a full time Chairman of the Commission; officers providing secretarial support to the Commission; officers providing assistance to the aggrieved parties, legal advisers, and other supporting staff. Apart from staff costs, premises, services and equipment, funding would also be provided for the Commission to initiate research and conduct promotional activities and public education programmes. We envisage that the Commission would have an annual recurrent budget of \$30 million and staff cost is estimated to account for around 60% of the total expenditure of the Commission.

Home Affairs Branch

September 1994

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TOTAL P.05

The New Territories Small House Policy

Introduction

This note describes the background and implementation of the small house policy.

Background

2. The present New Territories small house policy was established in December 1972 to enable New Territories indigenous villagers who needed housing to build houses for themselves. It was also aimed at improving the low standard of housing in the rural areas of the New Territories by allowing the replacement of the temporary housing then prevalent by permanent structures providing more accommodation and proper sanitary arrangements. The policy replaced a cumbersome system of restricted auctions of Government land in village areas with a system of private treaty grants at concessionary premium. Another objective of the policy was to preserve the cohesive pattern of indigenous communities in their villages. The policy allows an indigenous villager to apply for permission to build a house within his own village subject to compliance with certain requirements.

3. Implementation of the small house policy has undergone some changes over the years. A summary of the major changes is at Annex A. However, the objectives of the policy remain to ensure that indigenous communities continue to be adequately housed on the basis of tradition and custom.

The Policy

4. Indigenous villagers who own private agricultural land may apply for a free building licence to erect a small house on their own land. Villagers can alternatively apply to be granted a site for a small house on Government land at a concessionary premium. Small houses built on Government land may not be assigned or sold at any time unless the owner pays the balance of the full market premium and assignment of houses in Village

Expansion Areas (VEA - areas set aside for small house construction) is not permitted at all in the first three years after compliance with the conditions of grant has been certified. The owner of a small house built on the villager's own land under a free building licence may assign or sell the house after five years. If he wishes to assign or sell the house within five years of the issue of the certificate of compliance, he is required to pay a premium.

5. New Territories small houses, are exempted from the provisions of the Buildings Ordinance but are subject to control under the Buildings Ordinance (Application to the New Territories) Ordinance. In effect, small houses are exempt from the requirement to submit building plans to the Buildings Authority for approval as long as they conform to a standard set of design criteria. The houses may not exceed three storeys or 27 feet (8.23 metres) in height and 700 square feet (65.03 m<sup>2</sup>) in roofed-over area. There are also rules regarding building materials and construction standards. This arrangement enables villagers to construct small houses with a minimum of administrative procedure, while ensuring that the houses are properly and safely constructed.

#### Definition of an Indigenous Villager

6. For the purposes of the policy, a New Territories indigenous villager is defined as a male person at least 18 years of age, who is descended through the male line from a person who was a resident of a New Territories village included in a list of villages recognised by the Director of Lands as having existed in 1898.

#### Implementation

7. An indigenous villager may apply, once in his lifetime, for either a free building licence or a small house site on Government land to his local District Lands Office (DLO). He will be asked to attend an interview at the DLO to confirm his indigenous status and check relevant documents, such as his title



to private agricultural land in the case of an application for a free building licence. In the case of an application for a site on Government land, the Government departments concerned are consulted. A notice is then posted and, if no objections are received, the applicant will be granted a small house site.

8. Small houses may be built within existing village areas within a distance of 300 feet from the edge of the last house built before the current policy was introduced or within the 'V' zones in DPA/OZ plans. However, this rule is subject to the constraints of local topography, the need to avoid power lines, Kowloon Canton Railway land, country parks etc. and to comply with proper planning layouts. As available land within the 300-foot limit is becoming scarce in many village areas, Government land sites need to be provided in specially designated VEAs in an increasing number of villages.

#### Problems

9. The biggest problem encountered in implementing the small house policy is the shortage of suitable land for the purpose; and there is a large backlog of applications. Villagers who do not own private agricultural land have to wait until sites are available in VEAs. The processing of applications is a time consuming and resource intensive activity despite attempts to streamline the procedures over the years. The number of applications has also greatly increased in recent years.

10. The number of applications received and processed since 1972 and the amounts of land involved are set out at Annex B. 12,495 applications remained outstanding at 30 June 1994.

#### Limitations in Application

11. As noted above, only male indigenous villagers reaching the age of eighteen are covered by the small house policy. This reflects the traditions and customs of the New Territories

indigenous communities, where heads of households have traditionally been almost exclusively male and female villagers have moved away from their villages upon marriage.

#### Development for Profit

12. The restrictions on assignment included in the licence or grant conditions are designed to prevent indigenous villagers from cashing in on their eligibility for concessionary grants in blatant fashion. A villager wishing to sell a small house therefore has to pay a premium at full market value before he is permitted to do so.

#### BILL OF RIGHTS IMPLICATION

13. Regarding the question whether the Policy, in so far as it is restricted to male indigenous villagers, is consistent with the Bill of Rights Ordinance, it is generally recognized that differential treatment of persons will not be discriminatory if it has an objective and reasonable justification. The Small House Policy is intended to preserve the quality of housing in rural areas and to preserve the cohesion of indigenous village communities by preserving the links that indigenous villagers have with their own villages. The restriction of the Policy to male indigenous villagers reflects the traditions and customs of New Territories indigenous communities, where traditionally heads of households have generally been male and female villagers have moved away from their villages upon marriage.

14. The Administration believes that given these considerations as well as the shortage of suitable land for disposal under the Policy, its restriction to male indigenous villagers does have an objective and reasonable justification and is not therefore discriminatory within the meaning of the Bill of Rights Ordinance.

Changes in the Small House Policy

<u>Item</u>	<u>Date</u>	<u>Event</u>
(1)	Dec. 1972	- The New Territories Small House Policy was introduced.
		- The building not to exceed a height of 7.62m (25 ft.) nor contain more than two storeys with a cockloft.
(2)	1974	- Small Houses allowed to be built to 2½ storeys, the ½ storey being a cockloft or a penthouse.
(3)	August 1975	- The building allowed to be constructed to 3 storeys.
(4)	Feb. 1976	- A 5-year non-assignment clause imposed on all Small House Grants.
(5)	Oct. 1978	- Small Houses granted on government land to be subject to a perpetual assignment restriction. The 5-year non-assignment clause will be imposed on Free Building Licences/Building Licences on private land.
(6)	Nov. 1979	- Private Treaty Grants (PTGs) to 10-year Crown land licensees suspended.
(7)	May 1981	- Resumption of private land within village environs to meet the demand for village housing approved in principle by ExCo. It was also decided that the proportional cost of resumption, clearance and site formation and the cost of providing internal access roads, lanes and minor drainage works within the village expansion area incurred by Government for such purpose should be recovered from the premium chargeable for the Small House grants.

<u>Item</u>	<u>Date</u>	<u>Event</u>
(8)	June 1983	- Assessment of premium for the removal of the non-assignment clause to be done on an individual basis, replacing the old system of standard rates by classifying all the recognised villages in N.T. into 10 categories.
(9)	June 1983	- Assignment of individual shares or underletting of Small Houses in not more than three individual flats permitted on payment of an appropriate premium.
(10)	August 1983	- A new procedure to speed up the process of Small House sites was formulated. Simple layout plans would be drawn up in consultation with the Project Managers, District Land Surveyors and Village Representatives. Once villagers agreed to a layout, small house concessionary grants would be made. In villages where there was insufficient land, resumption and clearance under the Village Expansion Scheme could be implemented.
(11)	Nov. 1983	- Appeal procedures for Small House case agreed by the Working Party for Small House Policy.
(12)	Feb. 1984	- It was agreed that an adopted son of an indigenous N.T. villager should be considered eligible for a Small House grant.

TOTAL P.83

- (13) August 1986 - Restriction on mortgage relaxed to allow mortgage within the 5-year non-assignment period for Small Houses built under building licences. The restriction for Private Treaty Grant (PTG) and Exchanges were also relaxed from July 1987.
- (14) Oct. 1987 - Upon enactment of the Buildings Ordinance (Application to the New Territories) Ordinance, Chapter 121, small houses can be constructed to a height not exceeding 27 ft. (8.23m). This is conditional upon certain criteria e.g. the load bearing walls or party walls must be constructed to a prescribed thickness and Certificates of Exemptions in respect of drainage, site formation and building works must be obtained before any works commenced.
- (15) Dec. 1987 - 3-year restriction on removal of the non-assignment clause imposed on all PTGs in Village Expansion Area and resite areas after 26.5.1981. The 3-year period to operate from the date of issuing the Certificate of Compliance.
- (16) April 1993 - Small houses may be built beyond the 300-foot village environs if they are within 'V' zones of DPA/OZ plans or permission under s.16 of the Town Planning Ordinance is obtained.

Period : From December, 1972 to 30 June, 1994

Total number of small houses granted	:	16,038
The amount of land involved	:	104.25 Ha
(a) Government land granted	:	7,195 @ '65m <sup>2</sup> = 467,675m <sup>2</sup> say 46.77 Ha
(b) Private land (areas of exchanges & FBL/BL)	:	8,843 @ 65m <sup>2</sup> = 574,795m <sup>2</sup> say 57.48 Ha

Note : A total of 54,307 applications have been received during the period. 16,038 of these have been granted and 12,495 are currently being processed. The remainder have been rejected.

Office of Anna Wu  
Rm 415, Central Government Offices (West Wing)  
11 Ice House Street  
Hong Kong  
Fax 530-2018 Tel 537-2467

7th September, 1994

Mr Michael Suen, JP  
Secretary for Home Affairs  
City and New Territories Administration  
31st Floor  
Southorn Centre  
130 Hennessy Road  
Wanchai  
Hong Kong

Dear Mr. Suen,

I noticed some discussion of the details of the government's draft bill on sex discrimination in the Eastern Express this Monday. I would very much appreciate it if you could forward a copy of the draft bill to me.

When my office was forwarding early drafts of our bills to Home Affairs Branch, I recall that you asked us to hold off on sharing them until they were in a more final form. Even though the government's draft bill may now be in a comparably preliminary form, I would nonetheless be interested to see it, if only to get a general idea of the legislative approach proposed.

Thank you for your cooperation. I look forward to hearing from you.

Yours sincerely,

Anna Wu

# MEMBERS OF LEGISLATIVE COUNCIL

立法局議員

Office of Anna Wu  
Rm 415, Central Government Offices (West Wing)  
11 Ice House Street  
Hong Kong  
Fax: 530-2018 Tel: 537-2467

8th September, 1994

Governor Christopher Patten  
Government House  
Upper Albert Road  
Hong Kong

Dear Governor Patten,

I ask your assent for the introduction of the Human Rights and Equal Opportunities Commission Bill into the Legislative Council.

As you know, clause XXIV of the Royal Instructions provides that no bill having a charging effect on Crown revenue may be proposed in the Council without the express assent of the Governor. Because the Human Rights and Equal Opportunities Commission Bill is such a bill, the Council's power to examine the Bill depends on your assent.

You have already made clear that neither you nor your government believe such a commission represents the best way forward for Hong Kong. I am not asking you, however, to support or to endorse the establishment of a human rights commission. I wish strongly to emphasise that your answer should not be influenced by your opinion or your government's opinion on the merits of a commission.

The only relevant, principled question is whether the establishment of a human rights commission for Hong Kong is a matter which may properly be disposed of by confidential executive deliberations and then announced to the public, or instead a matter that ought to be publicly debated and finally decided — as the constitutional formula provides — “by and with the advice and consent of the Legislative Council.”

I ask that in formulating your answer you bear in mind the differences between the constitutional framework of the United Kingdom and that of Hong Kong. In the United Kingdom, a government's decision to prevent consideration of an important bill can ultimately be overcome by a public vote removing the government from power. In Hong Kong by contrast the government is unelected and has the power to withhold any bill from the legislative agenda indefinitely.

The kind of deadlock and frustration of public interest that can result is precisely what private member's bills — such as this one — are designed to avoid. Both Hong Kong's current and its future constitutional instruments make express provision for private member's bills. Your answer will set a precedent about what these provisions mean.



If your answer indicates that the Council will only be permitted to consider private member's bills that meet fully with government's approval — which are in effect government bills — then these constitutional provisions are mere surplusage. Such an answer would cripple an important mechanism for governmental accountability to the Legislative Council, whose role and representativeness you have otherwise been at pains to enhance.

You are not, of course, legally bound to answer this request at all. You could, in effect, exercise a silent veto by ignoring it. While that would be constitutionally possible, I hope you will agree that it would also be constitutionally undesirable. I know you are aware that, as the first Governor to have before him a private member's bill with charging effect, you now have the opportunity to set an important precedent for Hong Kong's future.

Yours sincerely,

Anna Wu

## PRESS RELEASE

### Legislative Councillor Anna Wu

To: News Editors  
8 September 1994

Anna Wu: 843-7353  
Eric Chow: 537-2466 or 1128635 x8939  
Adam Mayes: 537-2467 or 1128028 x1325

#### Anna Wu formally requests Governor's assent to introduce the human rights commission bill

Legislative Councillor Anna Wu today formally asked the Governor to permit her to introduce a human rights commission bill into Legco. Ms. Wu's letter to the Governor marks the first time a legislator has formally sought to introduce a private members bill with 'financial implications' for government.

The Human Rights and Equal Opportunities Commission Bill would establish an independent commission to monitor human rights issues in Hong Kong, in line with recommendations made by the UK Parliamentary Foreign Affairs Committee and by Amnesty International.

The bill was released for consultation in March, but because the establishment of the commission would cost the government money Ms. Wu must obtain consent from the Governor before introducing the bill into Legco.

Both the UK and the Hong Kong governments have already rejected the possibility of setting up a human rights commission. Ms. Wu stressed, however, that the Governor must not block the bill's consideration by Legco on the grounds that the government opposes a commission.

"I am not asking the Governor to change his mind about the desirability of a human rights commission. I am asking him not to stifle a full examination of the issue," Ms. Wu said.

"The government has plenty of leverage in Legco and would have ample opportunity to persuade legislators of the merits of its position. But the matter should be debated and decided publicly in Legco, not behind closed doors."

(Note: Legco is currently examining another bill sponsored by Ms. Wu, the Equal Opportunities Bill. For technical legal reasons, the Equal Opportunities Bill was deemed not to have the type of cost implications raised by the Commission Bill. Ms. Wu was therefore able to introduce the Equal Opportunities Bill into Legco without seeking governmental permission.)

The text of the letter sent to the Governor is attached.

A note on the differences  
between Article 22 of the Hong Kong  
Bill of Rights and the Equal Opportunities Bill

Article 22 of the Hong Kong Bill of Rights (BOR) is in identical terms to Article 26 of the International Covenant on Civil and Political Rights. Of Article 26, the UN Human Rights Committee has said:

"It prohibits discrimination in law or in fact in any field regulated and protected by public authorities."

The same is true of BOR Article 22: it binds only the Government and public authorities (see BOR Ordinance, s.7) and is concerned with discrimination in and under the law.

2. The Equal Opportunities Bill makes it unlawful for the Government, in the administration of laws and government programmes, to discriminate on a number of grounds (some of which are explicitly mentioned in BOR Article 22, some of which are not). The Bill also makes it unlawful for the Government and private persons to discriminate on those grounds in certain specific areas those of employment, accommodation, education, the provision of goods, facilities and services and the activities of clubs.

3. Unlike BOR Article 22, the Bill explicitly defines the meaning of "discrimination", in terms of less favourable treatment on each of the grounds covered, and provides for exceptions or exclusions in some circumstances.

4. In respect of exclusions or exceptions, it is generally thought that BOR Article 22 permits a



differentiation of treatment that would otherwise be discriminatory if the criteria for such differentiation are reasonable and objective and if its purpose is legitimate. In other words, a distinction will not be discriminatory if it has an objective and reasonable justification.

5. By contrast, the Equal Opportunities Bill does not provide a general exemption for differential treatment that has an objective and reasonable justification. Certain practices are prohibited by the Bill subject to an exception relating to reasonableness: see for example ss. 10(2)(b), 11(2)(b), 12(2)(b). No such exception applies, however, with respect to other practices, for example, sex discrimination under proposed s. 10(1) or discrimination on the ground of marital status under s. 11(1).

Human Rights Unit  
Attorney General's Chambers  
September 1994

# 香港十分一會

## HONG KONG TEN PERCENT CLUB

九龍中央郵箱72207號 Kowloon Central Post Office 72207

電話 Tel No 3148726

### Press Release

The Hong Kong Ten Percent Club, a lesbian and gay right organization, is demanding Hong Kong government to accept the Equal Opportunity Bill proposed by legislator Hon. Anna Wu in a press conference. The organization supports the E.O.B. to be inclusive of lesbians and gays equal opportunities.

Lesbians and gays are being treated as a second class citizens in Hong Kong. The government makes no attempt to improve lesbians and gays livelihood. The Discrimination Act in 1991 is insufficient to protect lesbians and gays from discrimination.

There are business premises which do not allow lesbians and gays patronage. There are no protection on employment and right to reside once their sexuality is being revealed. The lesbians and gay population are levied the same taxation as other and the gay and lesbian population entitle to equal opportunities as every other Hong Kong citizen.

The Hong Kong Ten Percent club aims to fight for equal right, to earn respect and social acceptance for lesbians and gays. The organization urges the Hong Kong government and the Legislative Council to end discrimination against lesbians and gays and demands the full acceptance of the Equal Opportunity Bill.

The organization will held regular press conference to announce its action to and discrimination against lesbians and gays in future.

Contact information : Eddy Wong (Secretary of Hong Kong Ten Percent Club) 13820210

PRESS STATEMENT  
Legislative Councillor Anna Wu

12 September, 1994

Re Press Conference held by the Ten Percent Club

Today's press conference marks the first time a gay group in Hong Kong has come out publicly to lobby for civil rights protection. Ms. Wu is happy to see that the Equal Opportunities Bill has received support from the Ten Percent Club.

Ms. Wu once again stresses that to be free from discrimination is a basic human right. Every one in our society, regardless of one's sexuality, should enjoy equal opportunity to participate in various aspects of life and should be able to contribute positively to the society.

The government is obliged to legislate against all forms of discrimination. Equal opportunity legislation aims at protecting the rights of the minorities and the vulnerable groups in our society. Victims of discrimination should not be required to generate substantial political pressure in order to receive such legal protection. Ms. Wu urges the government to act promptly and positively where discrimination exists.

## 新聞稿

致 各編輯／政治編輯

十分一會於今天召開的記者招待會將會是本港同性戀組織首次公開爭取立法保障其公民權利。就十分一會對〈平等機會條例草案〉所表達的支持，胡紅玉議員表示歡迎。

胡女士一再強調，不受歧視乃基本人權，不論個人的性傾向為何，社會上每一個人均應在生活的不同範疇裡享有公平的機會，讓所有人都能夠為社會作出貢獻。

胡女士表示，根據人權法規定，政府有責任立法禁止不同形式的歧視；制訂平等機會法例的目標就是要保障社會上的少數人士及弱者的權利，所以，政府不應要求這些受歧視者需先造成巨大政治壓力才能獲得法律保障。胡女士再次要求政府立即積極地採取措施遏止歧視。

立法局議員胡紅玉辦事處啓  
九四年九月十二日

政務司  
香港灣仔軒尼詩道一百三十號  
修頓中心三十一樓



Secretary for Home Affairs  
31st Floor, Southorn Centre,  
130 Hennessy Road,  
Wan Chai,  
Hong Kong

Ref : HAB/CR/1/2/21 Pt 15

13 September 1994

The Hon Anna Wu,  
Room 415, West Wing,  
Central Government Offices,  
11 Ice House Street,  
Hong Kong.

Dear Ms Wu,

Thank you for your letter of 7 September which is received this morning.

As far as the Eastern Express is concerned, I can assure you that their report is not the result of briefing by anyone in the Home Affairs Branch. Most of it is speculative, since we do not have a draft Bill as such. What we have at the moment is no more than a very rough working draft with some gaps in the proposed arrangements and other areas on which we have yet to finalise our ideas. In short, it is not in any shape or form as a means for reflecting our own proposals in a coherent way.

I note your expression of interest in seeing our draft bill. When we have put in sufficient work on the drafting process, we would be pleased to send you an advanced copy. In the meantime, I would ask for your forbearance and patience. It ought to be borne in mind that it is now barely a little more than two months since we announced our decision to get on with the drafting of the Bill. We need to spend more time on the draft to do full justice to this important bill.

Yours sincerely,

(Michael M. Y. Suen)  
Secretary for Home Affairs

**Note to Members of the Bills Committee  
studying the Equal Opportunities Bill**

1. Equal opportunity law in other jurisdictions

1.1. A chart showing the coverage of equal opportunity laws in other common law jurisdictions with advanced economies appears at Annex A. The Equal Opportunities Bill itself is modelled generally on Australian legislation and most closely resembles the Western Australian *Equal Opportunity Act 1984*.

1.2. Equal opportunity is extensively protected by European law and policy. Because of the difficulty of comparing civil and common law jurisdictions, European jurisdictions other than the UK are omitted from the chart at Annex A.

1.3. In Asia, a variety of constitutional provisions concerning equal opportunity are in force. Race discrimination is prohibited in the constitutions of 13 nations (Afghanistan, Bangladesh, Burma, Japan, Malaysia, Mongolia, Nepal, Pakistan, Papua New Guinea, the Philippines, Singapore, Sri Lanka, and Taiwan). Sex discrimination is prohibited in the constitutions of 13 nations (Bangladesh, Burma, China, India, Japan, South Korea, Laos, Nepal, Pakistan, Papua New Guinea, the Philippines, Sri Lanka and Vietnam). Provisions prohibiting discrimination on the ground of religion are also notably widespread (nine nations).

1.4. Legal provisions promoting the welfare of women, disadvantaged groups or minorities are also common in Asia, but few jurisdictions have enacted equal opportunity laws as such. In Japan, the *Equal Employment Opportunity Law 1986* addresses sex discrimination in the field of employment. In South Korea, recent enactments prohibit sexual harassment.

2. Separate, incremental and comprehensive enactment

2.1. Jurisdictions that have been innovators in the equal opportunity field have necessarily enacted laws in a piecemeal fashion. The first generation of equal opportunity laws (enacted in various Canadian provinces and US states between 1945 and 1960) typically concerned race discrimination only. These enactments also typically addressed a single, specified area of activity, e.g. employment only or accommodation only.

2.2. These early equal opportunity laws served as models for subsequent enactments that added new grounds of discrimination and extended protection against discrimination to multiple areas of activity. The first of the modern, comprehensive equal opportunity laws was enacted by the Province of Ontario in 1962. Many jurisdictions that were early innovators followed Ontario by eventually re-enacting (and simultaneously updating) their equal opportunity laws as consolidated, comprehensive codes.

2.3. For example, South Australia was the first of the Australian States to legislate on equal opportunity when it enacted the *Prohibition of Discrimination Act*



1966, concerning race discrimination. By 1984, South Australia had separate laws on race discrimination, sex discrimination and disability discrimination. In that year, it repealed those laws and replaced them with a comprehensive *Equal Opportunity Act*, which also extended protection against discrimination to new grounds such as sexuality and age.

2.4. Jurisdictions with no prior equal opportunity laws have often entered the field with a single, comprehensive enactment, relying on the experience of earlier actors. Examples include the Western Australian *Equal Opportunity Act 1984*, the Queensland *Anti-Discrimination Act 1991*, the Northern Territory's *Anti-Discrimination Act 1992*, and the Yukon Territory's *Human Rights Act 1987*.

2.5. Another factor influencing the order of enactment, particularly in national jurisdictions, has been the coming into force of relevant treaty provisions. In common law countries, although ratified treaties impose obligations on the national government, treaty provisions are typically not directly enforceable by courts as part of the domestic law. Certain treaty obligations, including many pertaining to equal opportunity, can therefore only be met by passage of domestic, implementing legislation.

2.6. In Australia, the first federal equal opportunity law — the *Racial Discrimination Act 1975* — came into operation at the same time that the *International Convention on the Elimination of All Forms of Racial Discrimination* entered into force there, in order to give effect to the Convention. Similarly, both the *Australian federal Sex Discrimination Act 1984* and the *Japanese Equal Employment Opportunity Law 1986* were enacted alongside ratification of *CEDAW*.

2.7. All 12 Canadian Provinces and Territories and seven of the eight Australian States and Territories now have unified, comprehensive equal opportunity enactments, as do New Zealand and Canada.

### 3. Social impact of equal opportunity law

3.1. Discrimination is a social problem. Educational and social measures play a central role in combatting discrimination, a point often stressed by the authorities charged with administering legal sanctions against discrimination. Experience has also shown, however, that equal opportunity policies only begin to be truly effective when backed by law.

3.2. The immediate aim and effect of equal opportunity law is to create remedies for *individuals* who suffer unfair treatment on the ground of an objectively irrelevant status.

3.3. The distribution of individual complaints across the various grounds of discrimination covered by law differs among jurisdictions. This naturally reflects their different social compositions and problems. Typically, however, where the law covers multiple grounds of discrimination, the greater proportion of individual complaints are lodged on the grounds of sex and of disability.

3 4        The Canadian Human Rights Commission, for example, reports that for each year from 1989 to 1992, 20-24% of individual discrimination complaints were lodged on the ground of sex, 9-13% on the related ground of family or marital status, and 29-34% on the ground of disability. Other grounds accounted for about one third of complaints.

Office of Anna Wu  
13 September 1994

H - provisions include prohibition against *harassment* or equivalent V = provisions include prohibition against *vilification* or equivalent  
 (numbers in parentheses refer to number of state, provincial or territorial jurisdictions that prohibit discrimination on the relevant ground)

Grounds covered by E. O. Bill	U.K.	Australia (Federal)	Canada (Federal)	New Zealand	U.S. (Federal)	Australian States & Territories	Canadian Provinces & Territories
Race	✓	✓ V	✓ H, V	✓ H, V	✓	✓ (7) V (4)	✓ (all)
Sex	✓ H	✓ H	✓ H, V	✓ H	✓ H	✓ H (all)	✓ H (all)
Marital Status	✓	✓	✓ H, V	✓		✓ (all)	✓ (all)
Pregnancy	✓	✓	✓ H, V	✓	✓	✓ (all)	✓ (3)
Family Status		✓	✓ H, V	✓		✓ (3)	✓ (2)
Sexuality		✓ * H		✓		✓ (5)	✓ (5)
Disability		✓ H	✓ H, V	✓	✓	✓ (7) H (1)	✓ (all)
Relig./Pol. Beliefs		✓ *	✓ H, V **	✓	✓ **	✓ (4) V (1)	✓ (10) ***
Age		✓ *	✓ H, V	✓	✓	✓ (5)	✓ (all)
Spent Conviction		✓ *	✓ H, V			✓ (3)	✓ (4)
Union Membership		✓ *			✓	✓ (3)	
Enforcement agencies	Equal Opportunities Commission, Commission for Racial Equality	Human Rights & Equal Opportunity Commission	Human Rights Commission	Human Rights Commission	Equal Employment Opportunity Commission	Var. boards and commissions	

\* non binding complaint and conciliation procedure  
 \*\* ground of religious beliefs but not political beliefs  
 \*\*\* five provinces protect political as well as religious beliefs



Ref. : HAB/CR/1/2/21 Pt. 15

20 September 1994

Tel. : 835 1388

The Hon. Anna Wu,  
Room 415, West Wing,  
Central Government Offices,  
11 Ice House Street,  
Hong Kong

Dear Ms. Wu,

Thank you for your letter of 16.8.94. I must apologise for the delay in replying to you.

We have been considering how best to deal with gathering the necessary community input on our initiatives in respect of equal opportunities. Your most generous offer came at a point when we were fully committed to the development of our draft legislation; we were not then able to take advantage of it. We are now in a position where we expect to finalise the draft Sex Discrimination Bill in the near future. We believe that any discussion with you and your staff would be most productive if it could be done in the context of examining the Sex Discrimination Bill. I will send you a copy of the Bill when it is ready and then arrange for my staff to contact you to discuss the contents with you in detail.

As regards the powers and functions of the Equal Opportunities Commission (EOC), you may recall that this was discussed at the last meeting of the Legislative Council Subcommittee on Women's Affairs. A copy of our submission to the Subcommittee on this subject is enclosed. Your views on the functions of the EOC would also be most appreciated.

As there is much public concern over the measures to foster gender equality, I am sure there will be lively discussions on this subject when the Sex Discrimination Bill is introduced into the Legislative Council later this year. I look forward to receiving your wise counsel on the Bill.

Yours sincerely,

(Michael M.Y. Suen)  
Secretary for Home Affairs

Encl.

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來函檔號 YOUR REF MC/61  
電話 TEL NO 835 1368  
圖文傳真 FAXLINE 834 6176

1 October 1994

Mrs. Betty Neoh  
Clerk to the Bills Committee  
to study the Equal Opportunities Bill  
Legislative Council Building  
8 Jackson Road  
HONG KONG

Dear

**Bills Committee to Study the  
Equal Opportunities Bill**

I refer to your letter dated 28 September 1994 concerning the Bills Committee's suggestion that the Administration should be requested to assist in the consultation on Anna Wu's Bill in respect of Government advisory bodies.

There are over 300 boards and committees set up to advise the Hong Kong Government. The Government is not in a position to arrange for the Equal Opportunities Bill to be considered by these groups. It is for the Chairman and Members of the individual Boards and Committees to decide whether the subject matter is relevant to their terms of reference and if it should be considered by them.

/Please find ....

Please find attached list of the existing advisory Boards and Committees. For details of their terms of reference and a contact address for the relevant secretariat you may wish to consult the Civil and Miscellaneous List. You or Ms Wu may contact the relevant board or committee secretariat to request them to seek approval for the Board concerned to consider the Bill.

(Mrs. Stella Hung)  
for Secretary for Home Affairs

Encl.

## Master List

- A. Statutory Advisory Boards and Committees
1. Advisory Committee on Legal Education
  2. Advisory Committee on Travel Agents
  3. Agricultural Products Scholarship Fund Advisory Committee
  4. Antiquities Advisory Board
  5. Authorized Persons' and Structural Engineers' Registration Committee
  6. Banking Advisory Committee
  7. Bilingual Laws Advisory Committee
  8. Board of Directors of Surviving Spouses' and Children's Pensions Scheme
  9. Board of Directors of Widows and Orphans Pension Scheme
  10. Board of Education
  11. Board of Inland Revenue
  12. Boundary and Election Commission
  13. Broadcasting Authority
  14. Clothing Industry Training Authority
  15. Construction Industry Training Authority
  16. Consumer Council
  17. Correctional Services Children's Education Trust Investment Advisory Board
  18. Council for the Hong Kong Society of Accountants
  19. Country Parks Board
  20. Deposit-Taking Companies Advisory Committee
  21. Education Services Liaison Sub-committee
  22. Emergency Relief Fund Committee
  23. Employees Compensation Insurance Levies Management Board
  24. Employees Retraining Board
  25. Endangered Species Advisory Committee
  26. Examination Board (Buildings)
  27. Exchange Fund Advisory Committee



28. Federation of Hong Kong Industries General Committee
29. Fish Marketing Advisory Board
30. Gas Safety Advisory Committee
31. Hong Kong Council for Academic Accreditation
32. Hong Kong Council on Smoking and Health
33. Hong Kong Export Credit Insurance Corporation Advisory Board
34. Hong Kong Institute of Education Provisional Governing Council
35. Hong Kong Productivity Council
36. Hong Kong Tourist Association Board of Management
37. Hong Kong Sports Development Board
38. Hong Kong Trade Development Council
39. Hong Kong War Memorial Pensions Advisory Committee
40. Hong Kong War Memorial Pensions Appeal Board
41. Hospital Authority
42. Insurance Advisory Committee
43. Judicial Service Commission
44. Kadoorie Agricultural Aid Loan Fund Committee
45. Marine Fish Scholarship Fund Advisory Committee
46. Marketing Advisory Board
47. Metro Planning Committee
48. Panel of Advisers (Film Censorship Ordinance)
49. Pecuniary Loss Adjustment Advisory Committee
50. Pensions Appeal Panel
51. Pilotage Advisory Committee
52. Pneumoconiosis Compensation Fund Board
53. Police Children's Education Trust Investment Advisory Board
54. Police Children's Education Trust Management Committee
55. Police Education and Welfare Trust Investment Advisory Board
56. Police Education and Welfare Trust Management Committee

- 57. Public Service Commission
- 58. Rural and New Town Planning Committee
- 59. Safety Officer Advisory Committee
- 60. Seamen's Recruiting Advisory Board
- 61. Securities and Futures Appeals Panel
- 62. Securities and Futures Commission
- 63. Sir David Trench Fund for Recreation Investment  
Advisory Committee
- 64. Sir Murray MacLehose Trust Fund Investment Advisory  
Committee
- 65. Social Work Training Fund Committee
- 66. Standing Advisory Committee (Oil Storage  
Installations)
- 67. Town Planning Board
- 68. Vocational Training Council
- 69. Working Group on Hong Kong Arts Development Council
- 70. District Boards (19)
- 71. Hong Kong Housing Authority

Total: 81

- B. Non-statutory Advisory Bodies and Committees
1. Access for the Disabled Committee (ADC)
  2. Action Committee Against Narcotics
  3. Advisory Board of Senior Staff Course
  4. Advisory Committee on Agriculture and Fisheries
  5. Advisory Committee on Corruption of the Independent Commission Against Corruption
  6. Advisory Committee on Post-retirement Employment
  7. Advisory Committee on Social Work Training and Manpower Planning
  8. Advisory Committee on Teacher Education and Qualifications
  9. Advisory Committee on the Appearance of Bridges and Associated Structure
  10. Advisory Council on AIDS
  11. Airport Consultative Committee
  12. Airport Facilitation Committee
  13. Airport Operations Committee
  14. Authorized Persons & Registered Structural Engineers Committee (APSEC)
  15. Aviation Advisory Board
  16. BN(O) Late Registration Appeals Advisory Committee
  17. Board of Overseers for the Institute of Biotechnology
  18. Board of Review - Long Term Prison Sentences
  19. Building Contractors Committee
  20. Certification Co-ordination Committee
  21. Certifying Body of Canada - Hong Kong Film and Television Co-production
  22. Chinese Textbooks Committee
  23. Citizens Advisory Committee on Community Relations of the Independent Commission against Corruption
  24. Commission on Youth
  25. Committee on Boating and Yachting
  26. Committee on Neighbourhood Level Community Development Projects
  27. Committee on the Promotion of Civic Education

28. Commonwealth Scholarship and Fellowship Plan (HK Awards) Selection Committee
29. Commonwealth Scholarships Fellowship Plan (Overseas Awards) Selection Committee
30. Construction Advisory Board
31. Consultative Committee Ship Personnel Management
32. Consulting Engineers' Committee
33. Corruption Prevention Advisory Committee of the Independent Commission Against Corruption
34. Council for the AIDS Trust Fund
35. Council for the Performing Arts
36. Curriculum Development Council
37. Dangerous Goods Standing Committee
38. Development Progress Committee
39. Disciplined Services Consultative Council
40. Economic Advisory Committee
41. Education Commission
42. Energy Efficiency Advisory Committee
43. Environmental Pollution Advisory Committee
44. Fight Crime Committee
45. Fisheries Development Loan Fund Advisory Committee
46. Government Maintenance Grants Selection Committee
47. Governor's Business Council
48. Health and Medical Development Advisory Committee
49. Hong Kong Committee for Pacific Economic Cooperation
50. Hong Kong Port Development Board
51. Hong Kong Rotary Club Students' Loan Fund and the Sing Tao Foundation Students' Loan Fund Selection Committee
52. Hygiene Services Committee
53. Independent Commission Against Corruption Complaints Committee
54. Industry and technology Development Council

55. Joint Committee on Student Finance
56. Joint Discussion Group on the Standa. Form of  
Conditions of Contract
57. Junior Secondary Education Assessment Committee,  
The
58. Labour Advisory Board
59. Land and Building Advisory Committee
60. Land Development Policy Committee
61. Land Policy Liaison Committee
62. Law Reform Commission of Hong Kong
63. Metrication Committee
64. Model Scale 1 Staff Consultative Council
65. Operations Review Committee of the Independent  
Commission against Corruption
66. Pay Trend Survey Committee
67. Police Complaints Committee
68. Police Force Council
69. Port Operations Committee
70. Port Progress Committee
71. Port Welfare Committee
72. Primary One Admission Committee, The
73. Private Schools Review Committee
74. Property Vetting Committee
75. Quarters Allocation Committee
76. Radiological Protection advisory Group
77. Rehabilitation Development Co-ordinating Committee
78. Research Grants Council
79. Rice Advisory Committee
80. Road Safety Council
81. Secondary School Places Allocation Committee
82. Senior Civil Service Council
83. Sir David Trench Fund Committee
84. Social Welfare Advisory Committee
85. Staff Suggestions Committee
86. Stamp Advisory Committee
87. Standing Commission on Civil Service Salaries and  
Conditions of Service
88. Standing Committee on Company Law Reform

89. Standing Committee on Directorate Salaries and Conditions of Service
90. Standing Committee on Disciplined Services Salaries and Conditions of Service
91. Standing Committee on Judicial Salaries and Conditions Service
92. Standing Committee on Legal Aid
93. Standing Committee on Medical and Dental Facilities for Civil Servants
94. Statistics Advisory Board
95. Subventions and Lotteries Fund Advisory Committee
96. Summer Youth Programme Committee
97. Supply Voltage Advisory Committee
98. Telecommunications Board
99. Textiles Advisory Board
100. Trade Advisory Board
101. Trading Standards Advisory Committee
102. Traffic Accident Victims Assistance Advisory Committee
103. Transport Advisory Committee
104. University and Polytechnic Grants Committee
105. Users' Committee of Inland Revenue Department
106. Working Group on Care for the Elderly
107. Working Group on Regulation of Estate Agents
108. Working Group on Data Protection Legislation
109. Working Group on General Products Safety (ad hoc in nature)
110. Working Party on Rehabilitation Policies and Services
111. Work Party on Title Registration
112. Area Committees (124)
113. District Fight Crime Committees (19)
114. District Management Committees (19)

Total : 273

# **PRESS STATEMENT: THE GOVERNOR'S POLICY ADDRESS**

**Legislative Councillor Anna Wu**

**To: News Editors**

**5 October 1994**

Anna Wu: 843-7353

Eric Chow: 537-2466 or 1128635 x8939

Adam Mayes: 537-2467 or 1128028 x1325

## Legco's place in an executive-led government

The terms in which the Governor described the Legislative Council's role within an "executive-led" government are disconcerting — even alarming — for their omissions.

"The administration proposes and Legco disposes." The Governor accords Legco a single function: to reject or approve the laws and expenditures laid before it by the administration.

This description is an alarming step backwards and away from the accountability the Governor prizes as essential to an executive-led government. What about the clearest expressions of Legco's sentiments: motion debates and, when faced by serious government inaction, Private Members' Bills?

These are precisely the ways in which Legco most directly carries out its principal function: to express the views of the public that Legco represents.

A government that is permanent and unelected — if it really aspires to be neutral and accountable — must pay close attention to these expressions.

I fear that the Governor's very limited conception of the Legislative Council's role may constrain its development. It would be ironic if, after battling to upgrade the Council's representativeness, this Governor then presided over the administration that crippled its effectiveness by tightfisted resource allocations and a grudging refusal to take account of its views.

## Human rights

If executive-led government is going to work, then the executive must lead — not remain passive, and certainly not obstruct.

The proposed measures on human rights reiterated today by the Governor certainly cannot be called leadership — each measure was only grudgingly adopted under outside pressure, and none go as far as they ought.

The administration apparently aims to concede just enough to pre-empt more effective action such as the establishment of a full-scale human rights commission.

This continuing resistance to real action on human rights only underlines how urgently we need an independent human rights commission *outside* government. That is why on 8 September I asked the Governor in writing for permission to introduce my human rights commission bill into the Legislative Council. I am still waiting for an answer.

I am not asking the Governor to change his opinion, which is set against the establishment of a commission. I am asking him to explain and to defend his opinion, in public and in detail, in a full debate on the matter in the Legislative Council.

*That is what accountability means.*

Accountability does *not* mean bypassing Legco, and stifling further action and debate, for reasons only explored during confidential consultations with Exco and the UK government.

I again urge the Governor to permit me finally to move this important bill. Time is running short in this legislative term, and I certainly hope the Governor does not intend to veto this important bill by his silence and inaction.

— end —





6 October 1994

Thank you for your letter dated 8 September.

Let me begin by saying that I share with you a common interest in the promotion of human rights in Hong Kong. Like you, I wish to see strong, effective and durable safeguards enhancing human rights protection here, both before and after 1997. Where we differ is only over the means to achieve this objective.

The Government has looked very carefully at your proposal for an independent Human Rights Commission in Hong Kong and there have been a number of discussions between senior members of the Administration and yourself on the question of your draft bill. As you know, we have come to the conclusion that setting up a Human Rights Commission is not the best way forward for Hong Kong. We believe, that, instead, we should seek to build upon our existing mechanisms through the introduction of practical and effective measures which will meet the real concerns of our community. To this end:

The Government is drafting its own legislation to tackle discrimination on the grounds of sex and disability. A central feature of this legislation is the intention to create an Equal Opportunities Commission with a wide remit. The Commission will be an independent organisation and will be given the resources and power to handle cases of discrimination effectively.

The Government will allocate additional funds to the Civic Education Committee to allow it to build on its important and effective work in the field of human rights education. We will also create a dedicated educational unit to support this work.

.../

The Government has decided to give the Director of Legal Aid the discretion to waive the means test in meritorious civil Bill of Rights cases and to establish an independent statutory Legal Aid Services Council to oversee the work of the Legal Aid Department and Duty Lawyer Service.

The Judiciary will establish five additional courts at various levels to handle cases involving the Bill of Rights and equal opportunities. This will enable the Judiciary to handle these cases within a reasonable period of time, without lengthening the waiting time for other cases.

We have also recently enhanced the powers of the Commissioner for Administrative Complaints; we are pressing ahead with our proposals to improve access to information held by the Government; and we are drafting new Data Protection legislation.

All these measures, taken together, constitute a significant and effective package which will greatly enhance human rights protection in Hong Kong. I am convinced that these initiatives represent a sensible and practical way forward for Hong Kong.

On the wider point raised in your letter, you argue that by withholding permission for you to introduce your bill, the Government would be denying the Legislative Council an opportunity to debate the merits of your proposal for a Human Rights and Equal Opportunities Commission. I have to disagree with you on this. The Legislative Council is responsible for its own agenda and can, of course, hold a debate on your proposal at any time.

However, it is common in Governments across the world for there to be limits on the ability of members of the Legislature to introduce bills which would have the effect of placing a charge on public revenue. Hong Kong is no exception. It is the normal process of government for the Executive to have the ability to manage its public policy programmes in a way that best serves the wider interests of the community. There are obviously competing demands on resources, and on the legislative time of the Legislative Council. It would be irresponsible if the

Administration, regardless of wider priorities, allowed disruptions to its legislative and funding programmes by permitting the introduction of money bills promoted by individual members of the legislature.

We have an ambitious legislative programme, which has been carefully drawn up to balance the competing needs and demands of the community. Its full diversity is set out in the legislative programme document published together with my Policy Address this year. It would not be right for the Administration to be deflected from its responsibility to carry out this programme.

As you would expect, I have reflected on this matter with the greatest care. I have concluded that I cannot agree to the introduction of a proposal which would, in the carefully considered opinion of the Administration, not be in the best interests of the Territory. Accordingly I am not prepared to give my assent for your bill to be submitted to the Legislative Council.

Governor

The Hon. Anna Wu Hung-yuk  
Room 415  
West Wing  
Central Government Offices  
11 Ice House Street  
Central  
Hong Kong

# PRESS STATEMENT

Legislative Councillor Anna Wu

DOCUMENT 63

To: News Editors  
7 October 1994

Anna Wu: 843-7353  
Eric Chow: 537-2466 or 1128635 x8939  
Adam Mayes: 537-2467 or 1128028 x1325

## Statement of Anna Wu on the Governor's veto of her human rights commission bill

In my 8 September letter to the Governor, I explained that I was not asking him to change his opinion, long set against the establishment of a commission. Rather, I was asking him not to stifle a full debate on the issue by blocking discussion of my bill.

The Governor disagrees — he says that "the Legislative Council is responsible for its own agenda and can, of course, hold a debate on your proposal at any time."

Has the Governor forgotten that this debate has already taken place? I sponsored a motion debate on setting up a human rights commission on 14 July last year. All members voting indicated their approval of the proposal.

Can the Governor suggest how the Legislative Council could possibly express its sentiments in favor of a commission more clearly than in that motion debate? Nonetheless, those sentiments were simply ignored by the Administration (aside from a few words from the Attorney General at the conclusion of the debate — essentially the same, now trite comments offered today by the Governor). The Administration's failure to respond is why I put forward a Private Members Bill on the matter.

Nonetheless, the Governor believes that a commission "is not the best way forward for Hong Kong." In the face of a clear reflection in Legco of public interest in a commission, I believe the Governor *has a duty* to explain and to defend his opinion, in public and in detail, in a full debate on the matter in the Legislative Council. *That is what accountability means.*

The Governor argues that it would be "irresponsible" to allow Private Member's Bills to "disrupt" the legislative and funding priorities set by the Administration; governments "across the world," he says, set similar limits on individually-sponsored money bills.

But elsewhere, elected representatives play a part — the dominant part — in *setting* those legislative and funding priorities.

It is irresponsible for the Governor to claim that an unelected Administration should have both the right to ignore legislative sentiments as it formulates policy *and* the right to pre-emptively veto legislative initiatives.

If that is what "accountability" means, accountability means nothing.

11 October 1994

Dear Friends,

I am writing to urge you to send a representative to the upcoming public hearings before the Legco bills committee<sup>1</sup> considering the Equal Opportunities Bill. These public hearings are an important opportunity for your organisation to make its views known, both on the scope of equal opportunity legislation that should be enacted in Hong Kong and on the ways in which it should be enforced.



The Equal Opportunities Bill, of which I am the sponsor, seeks to prohibit discrimination (including harassment) in a wide variety of activities and on several grounds that affect women, including sex, age, marital and family status, and pregnancy.

As you know, the Hong Kong government has announced that it will also introduce legislation to prohibit sex discrimination. Regrettably, it is my view that this belated initiative is intended not so much to promote the rights at stake as to offer the minimum concessions necessary to deflate public pressure for reform.

The government's reluctant attitude will no doubt influence the terms of the bill it proposes. Although the bill is not yet public, from the available information it is already clear that it will not measure up to the Equal Opportunities Bill either in the scope of its protection for women or in the ways in which it can be enforced.

One important advantage of the Equal Opportunities Bill is that it prohibits discrimination on the grounds of age, family status or family responsibility, grounds which will be omitted from the government's bill. Their omission would leave women vulnerable, because these forms of discrimination are often inextricably bound up with gender. Age discrimination especially is a problem in Hong Kong, where women regularly find themselves excluded from jobs when they reach the age of 30 or 35.

It also appears that the government does not intend to prohibit discrimination in rural elections, nor in the administration of government programmes. Although many (including myself) believe that such 'official' discrimination is already illegal under the Bill of Rights Ordinance, government does not share this view and cannot be expected to act until the day the matter is litigated — a day that may well never arrive. It is therefore important that such discrimination be clearly and directly prohibited, as it is in the Equal Opportunities Bill.

Enforcement is another vital concern. Although the Governor has vetoed a human rights commission, the government's sex discrimination package does include a commitment to establish an Equal Opportunities Commission (EOC).

Unfortunately, this body will be modelled along the lines of anti-discrimination commissions in the UK, despite long-standing disillusionment there with their performance. Specific concerns about the Commission's powers will emerge after the government bill becomes public, and I hope you will then join in seeking to amend it to

ensure that Hong Kong's EOC will be an effective guardian of rights and not a paper tiger.

One matter that is clear right now, however, is that regardless of the shape taken by the commission, a crucial set of discrimination cases will ultimately be decided in the courts.

Ideally, an expert "Equal Opportunities Tribunal" should be constituted to hear such cases (as was proposed in my human rights commission bill). Whether or not a specialist tribunal is set up, however, it is essential that certain procedural rules be relaxed to make the adjudicative process "friendlier" to equal opportunity claimants.

The Equal Opportunities Bill would give litigants the benefit of two important procedural changes:

First, the rule of costs is abrogated so that litigants bear their own costs but do not face the risk, if unsuccessful, of bearing their opponents' costs as well. The risk of being so burdened has already discouraged too many potential claimants in Bill of Rights cases. Ordinary people should not fear seeking vindication of their right to equal treatment in court.

Second, the rules of evidence are relaxed so that courts can examine all aspects of discrimination claims. Discrimination is easy to camouflage behind purportedly even-handed rules (for example, height and weight requirements). Courts need clear authorisation to consider unconventional evidence, such as statistics showing the effect of such rules, in order to uncover hidden forms of discrimination.

Finally, although you are understandably most concerned with women's issues, I hope that you will join with me in urging the bills committee to legislate against *all* forms of unfair discrimination.

As you know, the government is only prepared to legislate against discrimination on the ground of sex (and a few related grounds) and disability. The Equal Opportunities Bill in contrast would also prohibit discrimination on a variety of additional grounds including age, race, sexuality, religion, union membership and political belief. It is important that victims of discrimination stand together and work for a society based upon the principle of fairness and equality for all; the broader the base of community support for the measures taken, the more secure and effective they will be.

Thank you very much for your consideration. Please feel free to contact me if you have any questions concerning my bill and its differences from government's proposal. And please do sign up to appear before the bills committee to make your views known.

I hope that, with your support, the Legislative Council will ultimately reach what I believe would be the best result for Hong Kong: An effective (amended) version of the proposed commission, overseeing the comprehensive legal protection afforded by the Equal Opportunities Bill.

Yours sincerely,

Anna Wu

11 October 1994

Dear Friends,

I am writing to urge you to send a representative to the upcoming public hearings before the Legco bills committee considering the Equal Opportunities Bill. These public hearings are an important opportunity for your organisation to make its views known, both on the scope of equal opportunity legislation that should be enacted in Hong Kong and on the ways in which it should be enforced.



The Equal Opportunities Bill, of which I am the sponsor, seeks to prohibit discrimination in a wide variety of activities and on several grounds including disability.

As you know, the Hong Kong government has announced that it will also introduce legislation to prohibit discrimination against the disabled, along with discrimination on the ground of sex. The history of government inaction in this area raises concern, however, that it will only offer the minimum concessions necessary to deflate public pressure for reform. Although the government bill has not yet been publicised, from the available information it already appears that it will be less effective than the Equal Opportunities Bill.

The term 'disability', for example, is defined in broad terms in the Equal Opportunities Bill. By contrast, there are indications that the government inclines towards a narrower definition, arbitrarily limiting the disabilities covered (e.g. to disabilities which are deemed "serious") and supplementing the definition with a list of specific conditions.

It must be remembered that the purpose of the definition of "disability" in an equal opportunity law is legal, not medical. The aim is not to define with medical accuracy a pre-conceived set of conditions, but rather to capture *any* such condition that may give rise to prejudice and unfair treatment. The guiding principle should be to provide a remedy wherever unfair discrimination on the basis of disability is encountered, not merely in an arbitrarily limited set of cases.

For similar reasons, the Equal Opportunities Bill also extends protection against discrimination to associates (such as caregivers) and relatives of persons with disabilities, another important advantage over the government's more limited proposal.

Enforcement is another vital concern. Although the Governor has vetoed a human rights commission, his government has pledged to establish an Equal Opportunities Commission (EOC) to oversee matters relating to sex discrimination and disability discrimination.

Unfortunately, this body will be modelled along the lines of anti-discrimination commissions in the UK, despite long-standing disillusionment there with their performance. Specific concerns about the Commission's powers will emerge after the government bill becomes public, and I hope you will then join in seeking to amend it to ensure that Hong Kong's EOC will be an effective guardian of rights and not a paper tiger.

Room 415, Central Government Offices (West Wing), 11 Ice House Street, Hong Kong

Telephone: 557 2466, 557 2467 Facsimile: 550 2018 Law Office: 843 7355

LEGCO ASSISTANTS: Eric Chow 1128635 a c 8939 Adam Mayes 1128028 a c 1525

香港雪廠街十一號中區政府合署西座四一五室

One matter that is clear right now, however, is that regardless of the shape taken by the ~~commission~~; a crucial set of discrimination cases will ultimately be decided in the courts.

Ideally, an expert "Equal Opportunities Tribunal" should be constituted to hear such cases (as was proposed in my human rights commission bill). Whether or not a specialist tribunal is set up, however, it is essential that certain procedural rules be relaxed to make the adjudicative process "friendlier" to equal opportunity claimants.

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First, the rule of costs is abrogated so that litigants bear their own costs but do not face the risk, if unsuccessful, of bearing their opponents' costs as well. The risk of being so burdened has already discouraged too many potential claimants in Bill of Rights cases. Ordinary people should not fear seeking vindication of their right to equal treatment in court.

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Finally, although you are understandably most concerned with issues affecting people with disabilities, I hope that you will join with me in urging the bills committee to legislate against *all* forms of unfair discrimination.

While the government proposes only to legislate against discrimination on the ground of sex and disability, the Equal Opportunities Bill would also prohibit discrimination on several additional grounds including age, race, sexuality, religion, union membership and political belief. It is important that victims of discrimination stand together and work for a society based upon the principle of fairness and equality for all; the broader the base of community support for the measures taken, the more secure and effective they will be.

Thank you very much for your consideration. Please feel free to contact me if you have any questions concerning my bill and its differences from government's proposal. And please do sign up to appear before the bills committee to make your views known.

I hope that, with your support, the Legislative Council will ultimately reach what I believe would be the best result for Hong Kong: An effective (amended) version of the proposed commission, overseeing the comprehensive legal protection afforded by the Equal Opportunities Bill.

Yours sincerely,

Anna Wu



## Press Release

Press release for issue on Friday, 14 October 1994

### Bill to Prohibit Sex Discrimination Announced

A Bill to outlaw sex discrimination and sexual harassment and to provide for the establishment of an Equal Opportunities Commission was gazetted today (Friday).

Introducing the provisions of the Sex Discrimination Bill at a press conference, the Secretary for Home Affairs, Mr Michael Suen, said the Bill was the Government's response to the wide community support for legislation against gender-related discrimination.

"We have incorporated in the Bill all the key areas in which there is consensus in the community for legislative means to ban sex discrimination," Mr Suen said.

"The Bill published today takes into account a wide range of public opinions collected during the Green Paper consultation exercise conducted late last year.

"Even during the drafting stage, we continued to listen to views expressed by concerned groups and individuals in order to finetune our proposal to best fit community aspirations and Hong Kong's circumstances," Mr Suen said.

"The Government is firmly committed to fostering gender equality in Hong Kong. We believe that the proposed legislation will remove potential injustice and unfair restriction of an individual's prospects on account of his or her gender," he said.

"The Bill makes sex discrimination and sexual harassment unlawful in many areas of activity including employment, education, provision of goods and services, and the disposal and management of premises," Mr Suen said.

"It renders unlawful in the employment field to discriminate against a person on the ground of marital status or pregnancy," he added.

"With such provisions in the Bill, it will be illegal for an employer to discriminate against a person, on the ground of his or her sex, pregnancy or marital status in matters relating to recruitment, terms of employment, remuneration, promotion and training."

The Bill also renders unlawful discrimination by way of victimisation. "This may occur, for example, where an employee who has asserted her rights under the Bill is subsequently subject to unfavourable treatment by her employer as a consequence of the action taken under the Bill."

"To oversee the implementation of the sex discrimination legislation, the Bill provides for the establishment of a statutory body, the Equal Opportunities Commission."

"The Commission will have to perform a wide range of important functions – all pointing towards the ultimate goal of achieving equal opportunity between the sexes," he pointed out.

It will work towards the elimination of sex discrimination and sexual harassment; promote equality of opportunity between the sexes; and investigate complaints and endeavour the settlement of the matter in dispute by conciliation.

"In line with its responsibility to promote equality of opportunity between men and women, the Commission will carry out public education programmes to promote gender equality and conduct research into gender related issues."

The Commission will be empowered to develop and issue codes of practice in consultation with relevant organisations. These codes will provide practical guidance to assist members of the community to comply with the legislation.

"Since the legislation will have a major impact upon the employment sector, it is intended that the provisions pertaining to employment would come into force when the codes of practice in respect of employment matters have been developed and issued," Mr Suen said.

He emphasised that under the Bill, the Commission will be required to consult both employer and employee organisations in drawing up such codes.

Highlighting the strong conciliation role of the Commission, Mr Suen said that the Commission is empowered under the Bill to investigate complaints, and it may, for example, require parties relevant to a complaint to attend conferences with a view to resolving the matter by conciliation.

"Where conciliation fails, the Commission may provide assistance in respect of proceedings before the District Court.

"The Commission will also have the power under the Bill to conduct formal investigations on its own initiative or upon the request of the Chief Secretary. The Commission will prepare and publish or make available for public inspection a report on any formal investigation it initiates.

"The Commission will have the power to issue enforcement notices against persons where, in the course of any formal investigation, the Commission becomes satisfied that they have committed unlawful discriminatory acts or unlawful acts of sexual harassment.

"Where a person persistently commits such acts, the Commission is also empowered to apply to the District Court for an injunction restraining the person from so doing.

"With strong conciliation powers, the Commission will be able to perform the important task of safeguarding equal opportunities between the sexes without creating an unduly litigious social environment," Mr Suen said.

On the judicial mechanism, Mr Suen said the District Court will be vested with the power to hear all sex discrimination and sexual harassment cases.

"To enhance accessibility for the aggrieved parties, the Judiciary proposes to designate a court at the District Court level to hear all sex discrimination and sexual harassment cases under the Bill. To encourage access to the Court, it is proposed that the District Court's discretion to permit persons to address it who are neither legally qualified nor parties to the proceedings would be favourably exercised in appropriate cases.

"Moreover, the use of Chinese language in the Court will also be allowed. To make litigants less worried that they might have the other side's large bill of costs to pay if they lose, consideration could be given to making the court's power to make orders for costs exercisable only in exceptional circumstances.

"Taken together, the above measures will provide an efficient and accessible avenue of redress for the aggrieved," Mr Suen pointed out.

On provisions for exemptions, Mr Suen said the Bill provides exceptions to allow for situations where being a particular sex is a genuine occupational qualification. "Such situation will arise from the nature of the job (e.g. in theatrical performances), considerations of decency or privacy, the character of the establishment at which the duties are performed and the need for welfare, educational or other personal services to be provided by a person of a particular sex.

"With regard to discrimination on the ground of marital status, it will not be unlawful for an employer to provide different levels of specified benefits or allowances for employees with different marital status. This would allow, for example, an employer to provide a higher level of housing allowance to employees who are married," Mr Suen explained.

"To provide small employers with an opportunity to better understand the operation of the Bill and benefit from the experience of large business establishments, the Bill provides for a transitional period of five years to allow business establishments with not more than five employees to comply with the provisions of the Bill."

The Bill will be introduced into the Legislative Council on October 26, 1994.

\* \* \* \* \*

# **R E S T R I C T E D**

Ref.: HAB CR 1/2/21 XVI

## **LEGISLATIVE COUNCIL BRIEF**

### **SEX DISCRIMINATION BILL**

#### **INTRODUCTION**

1. At the meeting of the Executive Council on 11 October 1994, the Council ADVISED and the GOVERNOR ordered that the Sex Discrimination Bill (the Bill) should be introduced into the Legislative Council.

#### **BACKGROUND**

2. There is no legislation against sex discrimination in Hong Kong. In the light of widespread public support and in anticipation of the extension of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to Hong Kong, Government announced in June 1994 the decision to prepare legislation against sex discrimination in Hong Kong.

**Scope**

3. The Bill renders unlawful sex discrimination and sexual harassment in specified areas of activity; the areas will include employment, education, the provision of goods and services and the disposal and management of premises.

4. The Bill also makes it unlawful, in the employment field, to discriminate against a person on the ground of marital status or pregnancy. There is evidence that discriminatory practices of this nature presently occur. Although the Employment Ordinance (Cap. 57) provides maternity protection in employment matters such as the entitlement to be paid maternity leave, it does not address the problem of discrimination against pregnant persons in the context of recruitment, promotion or training. Furthermore there is no protection against discrimination on the ground of marital status. We accept that there is a need to tackle such discriminatory practices.

5. The Bill will also render unlawful discrimination by way of victimisation. This may occur, for example, where an employee who has asserted her rights under the Bill is subsequently subjected to unfavourable treatment by her employer as a consequence of the action taken under the Bill.



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## Exceptions

6. Legislation against sex discrimination should not be so onerous as to impose undue financial burdens or to unreasonably restrict individual freedom. We therefore propose to provide exceptions to the discrimination rendered unlawful by the Bill. Exceptions provided to avoid imposing undue financial burden include cases where, in single-sex dormitory accommodation, it would be unreasonable to require the accommodation to be altered to provide sleeping quarters and sanitary facilities for both sexes. Exceptions to avoid unreasonably restricting individual freedom include cases where non-profit making voluntary organisations are allowed to restrict membership to persons of one sex. Furthermore, exceptions will also be provided for services rendered by charitable organisations.

7. In relation to employment matters, we are also proposing exceptions to allow for situations where being a particular sex is a genuine occupational qualification. Such situations arise from the nature of the job, considerations of decency or privacy, the character of the establishment at which the duties are performed and the need for welfare, educational or other personal services to be provided by a person of a particular sex. With regard to discrimination on the ground of marital status, it will not be unlawful for an employer to provide different levels of specified benefits or allowances for employees with different marital status. This would allow, for example, an employer to provide a higher level of housing allowance to employees who are married.

**Transitional Arrangements**

8. During the Green Paper consultation exercise on the measures to promote gender equality in Hong Kong, employers, in particular those in small businesses, expressed concerns over the proposal to enact legislation against sex discrimination. They were concerned about the possible problems arising from frivolous complaints and the cost implications arising from the need to comply with the legislation. To address such concerns, we are proposing to provide a transitional period of five years to allow business establishments with not more than five employees to comply with the provisions of the Bill. This arrangement should provide small employers with the opportunity to better understand the operation of the Bill and benefit from the experience of large business establishments.

**Equal Opportunities Commission**

9. To oversee the implementation of the sex discrimination legislation, the Bill will provide for the establishment of a statutory body, the Equal Opportunities Commission (the Commission). The functions of the Commission include -

- (a) working towards the elimination of discrimination and sexual harassment;
  - (b) promoting equality of opportunity between men and women;
- and

# RESTRICTED

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- (c) upon complaint, investigating any act alleged to be unlawful by virtue of the Bill and endeavouring, by conciliation, to effect a settlement of the matter in dispute.

We propose that the Commission should comprise a full time Chairman and not less than 4 or more than 16 other members appointed by the Governor.

10. In line with its responsibility to promote equality of opportunity between men and women, the Commission will carry out public education programmes to promote equality between the sexes and conduct research into gender related issues.

11. The Commission will be empowered to develop and issue codes of practice, in consultation with relevant organisations. These codes will contain practical guidance to assist members of the community to comply with the legislation. Since the legislation will have a major impact upon the employment sector, it is our intention that the provisions relating to employment would be brought into operation after relevant codes of practice in relation to employment matters have been developed and issued by the Commission.

12. The Commission will also be empowered to provide assistance to persons who have been subjected to unlawful discrimination under the Bill either by conciliation of the matter in dispute, or, where conciliation fails, by providing appropriate assistance in respect of

proceedings before the District Court. The conciliation role of the Commission is particularly important as it will help to reduce the number of disputes required to be resolved by proceedings before the District Court. To this end, we intend to empower the Commission to investigate complaints alleging unlawful discrimination. The Commission will also be empowered to make rules to direct persons relevant to a complaint to attend conferences, with a view to resolving the matter in dispute.

13. Furthermore, the Commission will be empowered to carry out formal investigations, either on its own initiative or upon the request of the Chief Secretary. The Commission will prepare and publish or make available for public inspection a report on any formal investigation it initiates.

#### **Enforcement**

14. The Commission will have the power to issue enforcement notices against persons where, in the course of any formal investigation, the Commission becomes satisfied that they have committed unlawful discriminatory acts or unlawful acts of sexual harassment. Where a person persistently commits such acts, the Commission is also empowered to apply to the District Court for an injunction restraining the person from so doing.

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15. The Bill vests the power to hear all sex discrimination and sexual harassment cases under the Bill in the District Court. To enhance the accessibility of the District Court, we propose to designate a court at the District Court level to hear all sex discrimination and sexual harassment cases under the Bill. To encourage access to the court, we propose that the Court's discretion under Section 15(1)(d) of the District Court Ordinance (Cap. 336) to permit persons to address it who are neither legally qualified nor parties to the proceedings would be favourably exercised in appropriate cases. Moreover, the use of Chinese language in the court would be allowed. To make litigants less worried that they might have the other side's large bill of costs to pay if they lose, consideration could also be given to making the Court's power to make orders for costs exercisable only in exceptional circumstances.

16. Taken together, the above measures will provide an efficient and accessible avenue of redress for the aggrieved. With the strong conciliation role of the Commission provided under the Bill, we expect that a majority of the complaints will be resolved in the course of conciliation. This has been the overseas experience.

## THE BILL

17. Part 1 defines the terms used in the Bill and provides that the Bill binds the Government. Clause 2(5) and (6) specifies what constitutes sexual harassment for the purposes of the Bill.

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18. Part II specifies the various kinds of discrimination to which the Bill applies. These are sex discrimination against women, sex discrimination against men, discrimination on the ground of marital status or pregnancy in the employment field and discrimination by way of victimisation.

19. Part III relates to discrimination and sexual harassment in the employment field. Clause 10 is of particular importance, as it makes it unlawful for a person to discriminate against prospective or existing employees, both in respect of the terms on which employment is offered and in respect of access to opportunities for promotion, transfer or training. Clause 11 specifies the cases where clause 10 does not apply because a particular sex is a genuine occupational qualification for the job concerned.

20. Part IV relates to discrimination and sexual harassment in other fields. These other fields include education (clauses 22 to 24) and the provision of goods, facilities, services and premises (clauses 25 to 30).

21. Part V relates to other unlawful acts relating to discrimination and sexual harassment, in particular where persons engage in practices which result, or may result, in unlawful discrimination (clause 35). It is unlawful for certain persons to instruct, or exercise pressure on, another person to do an act which is unlawful under the Bill (clauses 37 and 38).

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22. Part VI provides for general exceptions from the Bill, including in relation to the application of the Bill to the New Territories Ordinance (Cap. 97) and the New Territories Leases (Extension) Ordinance (Cap. 150) (clause 53).

23. Part VII and Schedule 5 relate to the establishment of the Commission, its functions and powers, in particular in relation to the issuing of codes of practices (clause 61) and its power to conduct formal investigations (clauses 62 to 66).

24. Part VIII relates to the enforcement of the provisions of the Bill, and in this respect confers jurisdiction on the District Court to entertain claims of unlawful discrimination or sexual harassment in like manner as any other claim in tort (clause 68). The Commission is empowered to issue enforcement notices (clause 69) and to assist claimants and potential claimants (clauses 75, 76 and 77).

25. Part IX contains miscellaneous provisions, in particular in relation to the validity of discriminatory contracts (clause 79).

## FINANCIAL AND STAFFING IMPLICATIONS

26. The Commission will require start-up capital expenditure of \$5 million and \$36 million per year in recurrent expenditure. In addition, the Secretary for Home Affairs will require a preparatory

team of 10 staff for a period of 12 months to help set up the Commission. This is estimated to cost about \$6 million.

27. Cases will be brought before the District Court and may also have to be referred to the High Court. In order to cope with additional cases without lengthening existing court waiting times, the Judiciary will need to establish one additional court in the District Court and the High Court. This will cost \$3.8 million and \$7.2 million per year respectively.

## ECONOMIC IMPLICATIONS

28. The Hong Kong economy is predominantly free market oriented with very little impediment on the employment of local people. Job requirements and the terms and conditions of employment are basically determined between the employers and employees concerned, having regard specifically to the employer's business needs and the employees' qualifications and experience, and more generally to the forces of demand and supply in the labour market. In general when the labour market is tight, it would be disadvantageous to the employer if eligible candidates are excluded for the sake of sex and other forms of discrimination, as this would simply reduce the employer's source of labour supply.



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29. The introduction of legislation against sex discrimination in the employment field could risk increasing rigidity in the labour market and raising the cost of labour. Nevertheless, the exceptions to allow for situations where employment of persons of a particular sex is a genuine occupational qualification, the five year grace period provided for small businesses, as well as the conciliation role to be performed by the Commission, should minimise the impact of the legislation on employers.

30. For the provision of goods and services and the disposal and management of premises, it would be disadvantageous to a commercial seller if certain buyers are excluded for the sake of sex discrimination, as this would simply reduce the seller's market for the goods or services involved. In a market oriented economy, commercial decisions are basically determined by the forces of supply and demand. The introduction of legislation against sex discrimination could have some undesirable effects on the efficiency and smooth conduct of business. However, the various exceptions and the conciliation role of the Commission should help to minimize the impact of the legislation.

## PUBLICITY

31. A press conference will be held on 14 October 1994 to announce the introduction of the Bill into the Legislative Council.

# PRESS STATEMENT ON GOVERNMENT'S SEX DISCRIMINATION BILL

Legislative Councillor Anna Wu

To: News Editors  
14 October 1994

Anna Wu: 843-7353  
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## Government has conceded in principle

I would have liked to congratulate the government on the progress it has made in its attitude to sex discrimination.

Unfortunately, it is difficult not to see this bill as a cynical exercise in political damage control.

Earlier, in the Green Paper on Equal Opportunities for Women and Men, the government suggested no legislation was needed because there was no discrimination in Hong Kong. In Home Affairs' confusing June press conferences, government appeared uncertain about the need to prohibit sexual harassment, pregnancy discrimination and marital status discrimination.

Now, with gazettal of this bill, *the government has entirely conceded the principles behind the sex discrimination provisions of the Equal Opportunities Bill.*

So why is Home Affairs introducing this belated and now redundant initiative?

## Government is playing politics, not policy

*The administration introduced this bill to fight the Equal Opportunities Bill, not to fight sex discrimination.*

The government bill will bog Legco down in a welter of trivial, technical comparisons between it and the Equal Opportunities Bill — a result that could have been avoided if Home Affairs had co-operated with me in drafting the Equal Opportunities Bill and pressed their differences as amendments to the Equal Opportunities Bill, instead of a parallel but redundant bill.

But helping Legco formulate the best equal opportunity policy for Hong Kong is not the administration's principal concern in this controversy — derailing a Private Members' Bill is.

The administration has shown no interest in co-operation on equal opportunity because, from the administration's perspective, this is a zero-sum political game where the stakes are control over the legislative agenda.

## Government leaves other groups out in the cold

The government bill also aims to block any prohibitions against forms of discrimination other than sex (and disability), such as discrimination on the basis of race, age, sexuality, religion, or political belief.

The window of equal opportunity is *now*, in this Legislative term. It is now or never for this administration and Home Affairs is aiming for never.

In an RTHK interview this week, Michael Suen said that government's legislative programme was in 1997. Alongside this admission, Mr Suen's protestations that the administration will "consult" about forms of discrimination ring very hollow.

#### Government bill entrenches some forms sex discrimination

Finally, with respect to sex discrimination the government has taken pains to ensure that some of the entrenched discriminatory practices in this territory will remain undisturbed. For example:

- The government bill carves out a special and complete exemption for its Small House Policy in Territories.
- The bill specifically leaves intact all of Hong Kong's outdated and insulting "protective legislative blocks" which blocks women from various areas of construction and industrial work.
- In the Police, Fire Services, Immigration and other disciplined services, the bill specifically prevents legal challenges against certain discriminatory practices — such as excluding women from weapon training and from participation in certain units — even if the practices are wholly arbitrary and unnecessary.

— end —

**Note to Members of the Bills Committee  
studying the Equal Opportunities Bill**

This note covers:

1. Scope of grounds of discrimination
2. Direct and indirect discrimination
3. Meaning of clause 6, “Discrimination on the basis of the characteristics of an associate or relative of a person”

1. Scope of grounds of discrimination

1.1. While discrimination is defined in each Part, several terms — *sex, pregnancy, religious or political conviction, age, and trade union membership* — are not explicitly defined in the Bill and are meant to be understood according to the ordinary meaning of the terms. Clarification may also be sought from a considerable body of case-law on these terms, both under international law and in other common law jurisdictions.

1.2. The remaining terms that constitute grounds of discrimination (with the exception of spent conviction) are defined in clause 3(1), the interpretation clause. Copies of the relevant definitional clauses are attached at Annex A.

1.3. In accordance with the remedial purpose of the bill — to provide legal protection against arbitrary and unfair forms of discrimination — clause 3(1) defines the grounds of discrimination broadly. The aim is to capture any relevant condition or status that may give rise to prejudice and unfair treatment.

1.4. *Marital status* includes the status of being a de facto spouse. Clause 3(1) defines “de facto spouse” as a person not legally married to, but living with another person on a genuine domestic basis, whether the persons are of the same or opposite sex.

1.5. *Race* includes nationality for the purposes of the Bill. Also, in accordance with international jurisprudence racial segregation is ordinarily considered a form of race discrimination (clause 89(1)(ii)).

1.6. *Disability* is not restricted to the disabled person’s personal condition. Clauses 14-6 provide that discrimination may also be grounded on a disabled person’s being accompanied by:

- an animal trained to assist the person, such as a seeing-eye or hearing dog; or
- a palliative or therapeutic device or auxiliary aid, such as a walking frame, diabetic’s syringe or colostomy bag; or
- another person providing assistance, such as an interpreter, reader or carer.

1.7. *Spent conviction* is defined in clause 188, in terms taken from the Rehabilitation of Offenders Ordinance (Cap. 297). Relevant sections of that Ordinance are reproduced for comparison at Annex B.

1.8. The protection afforded *trade union membership* is an extension of aspects of the Employment Ordinance (Cap. 57). Part IVA of that Ordinance (“Protection Against Anti-Union Discrimination”) is reproduced for comparison at Annex C.

## 2. Direct and indirect discrimination

2.1. Direct discrimination occurs when a discriminator’s act treats one person less favourably than others because that person has a particular status or characteristic which the others do not share.

2.2. Indirect discrimination occurs when an apparently neutral requirement or condition not only disadvantages the claimant, but also disproportionately impacts the entire group of which the claimant is a member. Such a requirement or condition is discriminatory unless it can be shown to be reasonable in the circumstances.

2.3. The clauses that define direct and indirect discrimination for each ground on which the Bill prohibits discrimination are reproduced at Annex D.

## 3. Meaning of clause 6, “Discrimination on the basis of the characteristics of an associate or relative of a person”

3.1. Clause 6 in effect provides that discrimination against a person may include discrimination on grounds related to that person’s associate or relative.

3.2. Without clause 6 certain discriminatory acts would escape the law. For example, clause 6 enables a person to make a complaint of race discrimination against a club that refuses to admit her to membership on the ground, not of her own race, but of her husband’s race. It would be difficult for the husband whose race was the ground of discrimination to bring a complaint himself because he did not personally suffer any unfavourable treatment.

3.3. Both “associate” and “relative” are defined broadly in clause 3(1). In combination, “associate or relative” includes relations by blood, marriage, affinity or adoption; household members; dependants and carers; and business, sporting and recreational associates.

Office of Anna Wu  
18 October 1994

## THE EQUAL OPPORTUNITIES BILL AND INTERNATIONAL OBLIGATIONS TO ERADICATE DISCRIMINATION AND TO ENACT ANTI-DISCRIMINATION LEGISLATION

1. This note describes the most important existing and prospective international treaty obligations applicable to Hong Kong which oblige the United Kingdom and Hong Kong governments to provide legislative protection against different forms of discrimination, by both public and private actors. The note argues that, while the administration's proposals to legislate with respect to sex and disability discrimination fulfil some of the applicable international obligations, those proposals fall far short of implementing obligations which have, in some cases, been applicable to Hong Kong for a quarter of a century. The Equal Opportunities Bill, on the other hand, which is much wider in scope, gives effect to existing obligations to a much greater extent and is, for that reason, to be preferred to the government's piecemeal approach.

2. Under a number of international treaties applicable to Hong Kong, the United Kingdom has assumed obligations to take effective steps to eradicate various types of discrimination and to provide effective remedies under Hong Kong law for discrimination. In some cases, the relevant treaty explicitly requires legislation but even in those cases where it is not expressly required, the practice of the supervisory bodies established by the treaty makes clear that legislation will generally be required to fulfil obligations to eliminate the major forms of discrimination. A good faith interpretation of these treaties compels the conclusion that there must be legislation making particular types of discrimination unlawful and providing for effective and adequate remedies. Section 2(e) and (f) of the Equal Opportunities Bill make clear that one of the objectives of the Bill is to give effect to existing (and likely future) obligations under international treaties.

3 The treaties of particular relevance are:<sup>1</sup>

- the International Convention on the Elimination of All Forms of Racial Discrimination 1965, which was ratified in respect of Hong Kong in 1969.
- the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR), applicable to Hong Kong since 1976
- the International Covenant on Civil and Political Rights 1966, applicable to Hong Kong since 1976

<sup>1</sup> The text of the treaties can be found in A Byrnes and J Chan (eds), *Public Law and Human Rights: A Hong Kong Sourcebook* (Singapore: Butterworths Asia, 1993).

- the Convention on the Elimination of All Forms of Discrimination Against Women 1979, ratified by the United Kingdom in 1986, will be extended to Hong Kong following Chinese approval through the Joint Liaison Group.

**Discrimination on the ground of race, colour, descent, or national or ethnic origin**

4. The Racial Discrimination Convention obliges States parties to take legislative and other measures to eradicate racial discrimination by both public and private authorities. Under the Convention racial discrimination encompasses discrimination on the ground of race, colour, descent, or national or ethnic origin. In particular States parties undertake to:

“prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organizations.” (article 2(1)(d))

5. Under article 6 States parties agree that:

“States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”

6. Although the Convention requires legislative and other appropriate steps to be taken to eliminate racial discrimination, Hong Kong has no legislation which comprehensively implements the obligations applicable to it under the Convention. The Bill of Rights Ordinance (and article VII(5) of the Letters Patent) provide protection against racial discrimination by *public* authorities, but does not provide protection against racial discrimination by private parties.

7. The United Kingdom Government has consistently stated in its reports to the United Nations under the Convention that there is no racial discrimination in law or in fact in Hong Kong and that therefore no legislation making public and private racial discrimination unlawful is required.

8. This stance is questionable legally, even if it could be established that there was no racial discrimination in Hong Kong, a view which is not borne out by the facts. The body of independent experts which reviews reports under the Convention -- the Committee on the Elimination of Racial Discrimination (CERD) has consistently taken the view that, notwithstanding assertions by States Parties that there is no racial discrimination in their territory, there must still be a system of legal protection against such discrimination. In August 1993 a number of members of the Committee reiterated this view specifically in relation to Hong Kong, when the position in Hong Kong was

last considered by CERD.<sup>2</sup> The Committee expressed concern that the Convention had not been incorporated in the domestic legislation of the United Kingdom's dependent territories and recommended that this be done.<sup>3</sup>

9. At present, therefore, the lack of legal protection against racial discrimination by private parties represents a failure by the United Kingdom and Hong Kong governments to fulfil internationally binding obligations -- obligations which have been binding in respect of Hong Kong for 25 years. The government's proposals to legislate against discrimination do not include legislation against racial discrimination. However, Part V of the Equal Opportunities Bill, insofar as it makes discrimination on the ground of race, colour, descent, national or ethnic origin<sup>4</sup> unlawful would go a significant way towards implementing those obligations.

#### **Obligations under the International Covenant on Economic, Social and Cultural Rights relating to the elimination of discrimination**

10. Obligations to eliminate discrimination in the enjoyment of economic, social and cultural rights have also been accepted by the United Kingdom under the International Covenant on Economic, Social and Cultural Rights (ICESCR), applicable to Hong Kong since 1976. Under article 2 of the Covenant a State party:

**"undertakes to take steps, individually and through international assistance and co-operation, 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. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

11 While the ICESCR is generally (and oversimplistically) understood as requiring progressive implementation of its provisions (as opposed to the immediate implementation required by the ICCPR), article 2(2) of the Covenant nonetheless provides that States Parties undertake to guarantee that the rights contained in the Covenant will be exercised without discrimination of any kind.

12 Article 2(2) requires that steps be taken to ensure non-discrimination in the enjoyment of the rights guaranteed at the current level of enjoyment. In many cases, equality in the areas which are covered by those rights can be ensured

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<sup>2</sup> See UN Doc CERD/C/SR.997, at paras 26, 48

<sup>3</sup> UN Doc A/48/18, paras 418 and 423

<sup>4</sup> The Bill also covers discrimination on the basis of nationality, which does not fall within the definition of "racial discrimination" in the Convention.



immediately. For example, the undertaking to ensure that the right to just and favourable conditions of work (article 8 of the ICESCR) should be enjoyed without discrimination arguably requires a State to ensure that individuals are not denied employment opportunities on account of their sex, sexuality, disability or political or religious belief, since the right to non-discrimination can and should be guaranteed even though the general level of conditions falls short of the desired level.

13. The provisions of the Economic Covenant are not limited to violations of the guaranteed rights by public authorities, but also include violations by private individuals. Thus, the State party is under an obligation to take all appropriate measures to ensure that the rights guaranteed are enjoyed without discrimination by *any* person, whether that person is a public authority or private individual.

14. So far as the government and public authorities are concerned, the Bill of Rights Ordinance and the Letters Patent provide *de iure* protection against discrimination in the enjoyment of economic, social and cultural rights: this is the effect of article 22 of the Bill of Rights (article 26 of the ICCPR). However, as in the case of the Racial Discrimination Convention, there is little legislation ensuring the right to freedom from discrimination by private persons in the enjoyment of these rights; existing protection does not go as far as is required by the Economic Covenant.

15. As it is now 18 years since the Covenant entered into force for Hong Kong and discrimination in the enjoyment of economic, social and cultural rights persists in Hong Kong, it appears difficult for the government plausibly to maintain that any non-legislative measures taken to date have been effective or that "progressive" implementation is taking place. Accordingly, there appears to be a failure in important respects to fulfil applicable obligations under the ICESCR, in particular insofar a discrimination by private individuals is concerned.

16. The Equal Opportunities Bill will go a significant way towards fulfilling the obligation under article 2(2) of the ICESCR, at least as far as the *de iure* fulfilment of that obligation is concerned.

#### **Obligations under the International Covenant on Civil and Political Rights relating to the elimination of discrimination**

17. The International Covenant on Civil and Political Rights also imposes obligations on States parties to eliminate discrimination on various grounds. The principal provisions are articles 2(1) and 26:

##### *Article 2(1)*

"Each State Party to the present covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

##### *Article 26*

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

18. Articles 2(1) and 26 of the ICCPR plainly require the government and public authorities not to discriminate on the basis of the enumerated grounds or any other “status”. Article 26 also provides protection against legislation which embodies discriminatory classifications or which has a discriminatory effect, irrespective of whether the legislation affects only legal relations between an individual and a public authority or whether it affects legal relations between private persons. In this respect article 26 goes further than the identically-worded article 22 of the Bill of Rights, as the effect of section 7 of the Bill of Rights Ordinance (Cap 383) has been held to limit the protections of the Bill of Rights to legislation only insofar as that legislation affects relations between an individual and the government or a public authority.

19. It is less clear whether the ICCPR requires a State party to legislate generally against discrimination by private parties. Certainly, the Human Rights Committee has taken the view that States parties are obliged to protect individuals against the violation by other private individuals of at least some rights (for example, invasion of privacy, or the infliction of cruel, inhuman or degrading treatment or punishment). Accordingly, article 2(1) in conjunction with those guarantees appears to require States parties to take appropriate steps, including legislation, to provide protection against discrimination in the enjoyment of rights. For example, discrimination against a person on the ground of sexuality could be held to be a violation of the right to privacy guaranteed by article 17 of the ICCPR. However, despite this operation, article 2(1) does not constitute a general obligation to legislate against discrimination by private persons in all walks of life.

20. The extent to which article 26 of the ICCPR requires legislation against all forms of private discrimination is unclear. The prevailing view is that the article does not require legislation against *all* forms of private discrimination, but it may require legislation against *some* forms of private discrimination. The Human Rights Committee has stated that the article “prohibits discrimination in law or in fact in any field regulated and protected by public authorities”, but it is not clear what exactly this means. However, it is clear that the article 26 requires that legislation not embody discrimination. Accordingly, discrimination by a private party which is authorised or mandated by legislation (for example, refusing to employ a woman for night work because of existing legislative restrictions) would involve a failure by the State party to guarantee equal protection of the law, as it is required to do by article 26.

21. The Bill of Rights Ordinance and article VII(5) of the Letters Patent give effect to most of the obligations under the ICCPR requiring a State party to legislate against discrimination. However, as a result of *Tam Hing-ye* (1991) 1 HKPLR 261 (CA) the Bill of Rights Ordinance fails to implement the obligations imposed by the ICCPR in respect of private discrimination, in particular where private discrimination is expressly authorised or required by legislation.

22. The Equal Opportunities Bill, on the other hand, goes much further towards implementing the obligations accepted under the ICCPR. Not only does it make discrimination on a wide range of grounds in many areas unlawful, but it also removes the *Tam Hing-ye* restriction on the operation of the Bill of Rights in relation to legislation affecting legal relations between private parties. Clause 242 of the Bill legislatively reverses *Tam Hing-ye*, providing that all legislation is subject to the Bill of Rights. All legislation would, as a consequence, be subject to review and would be repealed if discriminatory. This provision would give effect to obligations under the ICCPR which are, at present, only partly fulfilled.

#### **Obligations to legislate against discrimination against women under the Convention on the Elimination of All Forms of Discrimination Against Women**

23 Although the Convention on the Elimination of All Forms of Discrimination Against Women does not apply to Hong Kong, the administration has announced that it will seek extension of the Convention to Hong Kong. The matter must, however, first be considered by the Joint Liaison Group, so it is unclear when the Convention is likely to be extended. However, the administration has expressed the view that the Convention requires the enactment of legislation covering discrimination against women, and its proposals are intended to fulfil the obligations that will be assumed under the Convention in this regard (subject to any valid reservations that may be entered).

24. Whether the administration's proposed legislation will give effect to obligations to eliminate discrimination on the ground of sex under the Women's Convention and the two Covenants, or whether it will do so more effectively than the Equal Opportunities Bill, is not clear at this stage, since the administration has not yet generally released its draft bill. However, the provisions of the Equal Opportunities Bill relating to discrimination on the ground of sex, marital status, pregnancy and family status would give effect to many of the obligations in the Convention.

#### **Human Rights and Equal Opportunities Commission Bill**

25 Each of the treaties mentioned above envisages or makes explicit that effective remedies for a breach of the rights guaranteed should be made available through appropriate national institutions, including courts and tribunals. The Human Rights and Equal Opportunities Bill, which was intended to be a companion Bill to the Equal Opportunities Bill, is intended to give effect to the obligations to provide effective and accessible remedies to persons who allege that their rights have been violated. The Human Rights and Equal Opportunities Bill is based on the assumption that a specialist commission with conciliation and mediation powers and a specialist tribunal are for many people the most effective means of ensuring remedies for discrimination, and for violations of human rights more generally.

26 It appears that the Governor is not prepared to give his consent to the introduction of the Human Rights and Equal Opportunities Bill to this Council, even though the administration now apparently considers that a commission is desirable for the implementation of its own proposed legislation. By refusing to permit the

introduction of this Bill, the Governor denies the Council the opportunity to choose what it considers to be the most effective way of ensuring the availability of effective remedies, and giving effect to the international obligation to ensure the availability of effective domestic remedies

### **Conclusion**

27 The Equal Opportunities Bill, covering as it does discrimination on a wide range of grounds, goes a considerable way towards fulfilling international obligations applicable to Hong Kong (or shortly to be extended to Hong Kong) which are at present not given effect to at all or which are only partly implemented. The proposals for sex discrimination and disability discrimination legislation announced by the administration are much more limited in substantive coverage and will leave important international obligations unfulfilled.

28 Accordingly, the passage of the Equal Opportunities Bill, rather than the passage of the more limited proposals to be put forward by the administration, will go much further towards fully implementing the international obligations which apply to Hong Kong.

Sex Discrimination Bill

Objects of Bill

The main objects of this Bill are :-

- (a) to render unlawful certain kinds of sex discrimination, discrimination on the ground of marital status or pregnancy, and sexual harassment; and
- (b) to establish an Equal Opportunities Commission ("the Commission") with the functions, inter alia, of working towards the elimination of such discrimination and harassment and promoting equality of opportunity between men and women generally.

Date of First Reading

2. 26 October 1994.

LegCo Brief Reference

3. HAB CR 1/2/2/XVI dated 14 October 1994 issued by Home Affairs Branch.

Comments

4. The Bill is substantially based on the provisions of the Sex Discrimination Act 1975 of the United Kingdom (c.65).
5. Part I defines the terms used in the Bill and provides that the Bill binds the Government.
6. Part II specifies the various kinds of discrimination to which the Bill applies. These are sex discrimination, discrimination on the ground of marital status or pregnancy in the employment field and discrimination by way of victimisation.
7. Part III relates to discrimination and sexual harassment in the employment field.

8. Part IV relates to discrimination and sexual harassment in other fields. These other fields include education and the provision of goods, facilities, services and premises.

9. Part V relates to other unlawful acts relating to discrimination and sexual harassment, in particular where persons engage in practices which result, or may result, in unlawful discrimination; where persons publish an advertisement which might reasonably be understood to indicate an intention to do an act unlawful under the provisions of Part III or IV unless the act concerned would not, in fact, be unlawful.

10. Apart from providing for exemptions to particular provisions within a particular Part, Part VI provides for general exemptions from the Bill, including in relation to the application of the Bill to the New Territories Ordinance (Cap.97) and the New Territories Leases (Extension) Ordinance (Cap.105).

11. Part VII and Schedule 5 relate to the establishment of the Commission, its functions and powers, in particular in relation to the issuing of codes of practice and its power to conduct formal investigations.

12. Part VIII relates to the enforcement of the provisions of the Bill, and in this respect confers jurisdiction on the District Court to entertain claims of unlawful discrimination or sexual harassment in like manner as any other claim in tort. The Commission is empowered to issue enforcement notices and to assist claimants and potential claimants.

13. Part IX contains miscellaneous provisions, in particular in relation to the validity of discriminatory contracts.

14. As far as implementation of the Bill, after its enactment, is concerned, it is noted that under paragraph 8 of the LegCo Brief, the Administration proposes to provide a transitional period of five years to allow business establishments with not more than five employees to comply with the provisions of the Bill (clause 10(6) of the Bill).

#### Comparison between the Sex Discrimination Bill and the Equal Opportunities Bill

15. Since the subject matter of the captioned Bills overlap to a certain extent, it may be useful here to draw a brief comparison between them.

16. The subject matter of the Sex Discrimination Bill overlaps, in substance, Part II of the Equal Opportunities Bill. They both cover similar scope of grounds of discrimination, namely sex, marital status and pregnancy. However, the application of the scope of grounds of discrimination between the two Bills is different. Under the Sex Discrimination Bill, sex discrimination is relevant for the purposes of any provisions of the Bill; while discrimination on the ground of marital status or pregnancy is only relevant for the purposes of any provisions of Part III (discrimination and sexual harassment in employment field). Under the Equal Opportunities Bill, the scope of ground of discrimination, namely sex, marital status and pregnancy, is applicable to a wider range of discriminating activities.

17. To oversee the implementation of the sex discrimination legislation the Bill provides for the establishment of a statutory body, the Equal Opportunities Commission. The

Commission is empowered to issue codes of practice, and investigate complaints filed by the public and require parties concerned to attend conferences to resolve the matter by conciliation. Public reports would be issued for any formal investigations. The Commission is further empowered to issue enforcement notices, which are not legally binding, against anyone deemed to have committed discriminatory acts or sexual harassment. When a person has persistently committed such acts, the Commission could apply to the District Court for an injunction. When conciliation fails, it may provide assistance in respect of proceedings before the District Court. The Equal Opportunities Bill does not make provision for the establishment of any similar body (principally because of the difficulties faced by a Private Member under SO 23).

18. The Sex Discrimination Bill proposes setting up a special court at District Court level to hear all sex discrimination and sex harassment cases under the Bill. The public can put cases directly to the court in the form of civil litigation to seek compensation. However, it is to be noted that proceedings under the Bill in respect of "discriminatory practices" under clause 35 may only be brought by the Commission in accordance with clauses 69 to 72 (issue of enforcement notices by the Commission). The Bill further proposes to relax the requirements relating to legal representation and costs. The Equal Opportunities bill proposes to make discriminatory acts or practices, in general, civil wrongs, triable in District Court. The Equal Opportunities Bill proposes that the court may disregard the ordinary rules of evidence to inform itself on any matter as it sees fit. The Equal Opportunities Bill also proposes that each party to litigation will ordinarily bear that party's own costs. The court may, however, award costs as it thinks fit in exceptional circumstances.

#### Recommendation

19. The Legal Service Division is continuing to scrutinize the legal aspects of the Bill. Members will no doubt wish to



examine the Bill in detail. In deciding how to take the matter further, Members may wish to consider allocating the Bill to the Bills Committee now studying the Equal Opportunities Bill. At its meeting on 21 October 1994 the Bills Committee (Chairman Dr. Hon C H Leong) indicated that it would take on scrutiny of the Sex Discrimination Bill if the House Committee so decided.

(Stephen LAM)  
Assistant Legal Adviser  
21 October 1994

SL/kp/REPSEX

21 October 1994

Dear Friends,

I am writing to draw your attention to some serious limitations that affect the government's recently publicised Sex Discrimination Bill. Although the bill contains a great deal of "fine print" and needs to be examined further, a number of flaws are immediately apparent.



1) *The bill fails to protect against discrimination on any ground other than sex, pregnancy and marital status. Age and family responsibility discrimination are not addressed despite their impact on women, nor are race and sexuality discrimination.*

2) *Pregnancy discrimination and marital status discrimination remain legal in all areas other than employment. [Clauses 6, 7.] Landlords, for example, may legally discriminate against single parents in access to housing.*

3) *The provisions in the bill affecting employment will not take effect until after the commission promulgates detailed codes of practices. The bill leaves the Secretary for Home Affairs to set dates on which various provisions will come into force. [Clause 1(2).] Home Affairs intends to withhold the employment provisions while the codes are prepared, even though these codes are not legally binding and serve only to provide guidance on how to comply with the law. A lengthy delay is likely, because the commission must first be established, and it then must not only draft the codes but also take them through specified stages of consultation and legislative approval. [Clause 61.]*

4) *The bill's employment provisions (except with respect to harassment) will not apply for five years to businesses with five or fewer employees. [Clause 10(3).] These small businesses employed at least 400,000 people in 1993. Note also that this five year period will not begin until the employment provisions are in force; this delay is thus added to the delay described above.*

5) *The government's Small House Policy in the New Territories is exempt. [Clause 54; Schedule 4, Part 2, sec. 2.] Women will remain ineligible for land grants made to indigenous villagers under the policy.*

6) *No provision in the bill expressly forbids discrimination in rural Village Representative elections. It is highly doubtful that the government intends the bill to alter current practices that block women from voting and candidacy.*

7) *The bill exempts all "protective legislation." These include regulations that shut women out of certain types of construction and industrial work. [Clauses 11(2)(g), 49; Schedule 2 ]*

8) *The bill exempts certain discriminatory practices in the Police, Customs, Fire Services and other disciplined services* [Clause 54; Schedule 4, Part 2, sec. 1.] These practices include, for example, height and weight requirements and the exclusion of women from weapons training. If the bill applied to these practices, they would remain legal only if reasonable; by exempting them, the bill authorises them no matter how unnecessary or unreasonable.

It is too early to make any detailed comments about the proposed commission. It is, of course, a much less ambitious body than a human rights commission, but it does provide a platform on which the Legislative Council can build by amendment.

Overall, however, the proposed bill allows an indeterminate delay before key provisions come into force; once the bill is fully in force, it will still be weakened by a multitude of major and minor limitations; and it entirely exempts some of the most controversial and entrenched forms of discrimination.

The aforementioned problems strongly suggest that the government continues to look for ways to delay or evade its responsibilities with respect to discrimination. I encourage you to continue pressing for real, not illusory measures.

Yours sincerely,

Anna Wu

# The Office of Anna Wu, Legislative Councillor

Rm 415, Central Government Offices (West Wing), Ice House St., Hong Kong.  
Tel: (852) 557-2467 Fax (852) 530-2018

## FACSIMILE MESSAGE

TO : Anna Wu  
Andrew Byrnes  
Carole Petersen  
NO. OF PAGES (INCLUDING THIS ONE) : 2

FROM : Adam Mayes  
DATE : 24/10/94

IF THE FAX IS INCOMPLETE, PLEASE NOTIFY US IMMEDIATELY.

MESSAGE :

### Re. procedural approach to reconciling EOB with govt's SDB

1. I talked to Jonathan Daw (Legco Legal Adviser [LA]) about this issue. His office has been giving it some thought and will be making the following suggestions.
2. In making procedural rulings, the President looks to UK parliamentary precedents but is not bound. LA feels Legco would be better off not following UK precedent on this issue. In the UK, if there are two bills on substantially the same issue (even if one is wider than the other), the first off the mark wins, more specifically —
  - 2.1. both may be introduced;
  - 2.2. if one passes 2d Reading, it goes forward and the other is dropped; and
  - 2.3. if one is rejected at 2d Reading, this is taken as a rejection of the principles underlying both bills and the other is also dropped!
3. LA feels Legco should be able to examine both and 'marry' them to reach the best legislative result. The suggested procedure is —
  - 3.1. Both bills should be jointly considered by one Bills Committee.
  - 3.2. If both bills pass 2d Reading, then they will be married in the Committee Stage — one bill (which I will call the framework bill) will be taken as the framework and the other bill (which I will call the modifying bill) will be added into the framework bill by way of amendment.
  - 3.3. This works smoothly for provisions of the modifying bill which are absent from the framework bill and which can therefore be written into it in whole (e.g. provisions establishing a commission could easily be added to the EOB). The clauses adopted in whole will then, of course, be subject to further change via ordinary Committee Stage Amendments [CSA's].
  - 3.4. Provisions of the modifying bill that parallel or duplicate provisions of the framework bill, however, can't be simply written into the framework bill. They

- must be rewritten and reduced to CSA's instead (if any aspect of them is to be added to the framework).
4. LA feels the details should be left in the first instance to the Bills Committee:
    - 4.1. First, as to whether the procedure suggested above should be followed. On this matter, the Bills Committee would be wise to refer its recommendations back to the House Committee for endorsement early, lest it put a lot of work into a final report predicated on a procedural approach that is ultimately rejected by the House.
    - 4.2. Second, once a procedural approach is endorsed by the House, the Bills Committee will work out the details of how to marry the bills and include these recommendations in its final report to the House Committee (which it will refer to the House when the Bills Committee winds up, before the bill returns to the full Council for resumption of 2d Reading). These details include:
      - 4.2.1. which bill to take as framework;
      - 4.2.2. which provisions of the modifying bill to add in whole to the framework (and whether and how to amend them further); and
      - 4.2.3. how and to what extent to rewrite other provisions of the modifying bill as CSA's.
  5. If the government really wants to play hardball, note that:
    - 5.1. The government can withdraw its bill anytime before the motion for 3d Reading is proposed.
    - 5.2. Even though permission to move a bill with financial implications will already have been given at the outset (before Michael Suen's introductory speech this Wednesday), it will have to be given anew if and when any provisions with financial implications — e.g. provisions establishing the commission — are moved as amendments to the EOB as framework bill.
  6. The good news is that the problems of relevance and scope that limit amendment of the SDB fall away once the EOB becomes the framework. If provisions establishing a commission are moved from the SDB into the EOB at Committee Stage, the commission's jurisdiction can be freely amended and expanded to cover other grounds of discrimination. No need for any Private Members' Amendment Bills or anything.
  7. It seems likely that a formal argument (e.g. by raising a point of order on Wednesday) that the SDB is improper because it is an amendment rather than a real bill would fail; in ruling on it, the President would look to UK precedent and to LA's recommendations, both of which would permit parallel bills to go forward (albeit along different routes).

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香港灣仔  
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來函檔號 YOUR REF

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圖文傳真 FAXLINE 834 6176

25 October 1994

Ms. Anna Wu  
Room 415  
Central Government Offices (West Wing)  
11 Ice House Street  
Hong Kong

Dear Ms. Wu,

I refer to your letter of 26 September 1994 to the Secretary for Home Affairs. I have been asked to reply to you on his behalf.

I will respond to your queries in order

- (1) As we indicated to the Secretary General of the Legislative Council in our letter dated 27 June 1994, the cost of implementing your Bill without adversely affecting existing judicial efficiency would be in the order of \$3.8M. This represents our estimate of the minimum cost necessary to maintain judicial efficiency.
- (2) As stated in the Legislative Council Brief on Equal Opportunities for Women and Men issued earlier this month, the cost of establishing the proposed Equal Opportunities Commission is estimated at \$5M capital cost with annual recurrent expenditure of approximately \$36M. In addition the Secretary for Home Affairs will require a preparatory team of ten staff for a period of twelve months to help set up the Commission. This is estimated to cost about \$6 million. Extension of the work of the Equal Opportunities Commission to cover disability is estimated to increase the cost of this agency to approximately \$54M per annum on full operation.

/.....

The sex discrimination legislation will have resource implications for the Judiciary. Cases will be brought before the District Court and may also have to be referred to the High Court. In order to cope with additional cases without lengthening existing court waiting time, the Judiciary will need to establish one additional court in the District Court and the High Court. This will cost \$3.8 million and \$7.2 million per year respectively. These additional courts will also enable the Judiciary to handle cases arising from the disability discrimination legislation.

- (3) With regard to the economic implications, the introduction of legislation against sex discrimination in the employment field could risk increasing rigidity in the labour market and raising the cost of labour. Nevertheless, the exceptions to allow for situations where employment of persons of a particular sex is a genuine occupational qualification, the five year grace period provided for small business, as well as the conciliation role to be performed by the Commission, should minimise the impact of the legislation on employers.

In a market oriented economy, commercial decisions are basically determined by the forces of supply and demand. The introduction of legislation against sex discrimination could have some undesirable effects on the efficiency and smooth conduct of business. However, the various exceptions and the conciliation role of the Commission should help to minimize the impact of the legislation.

For the disability legislation, our preliminary view is that some additional costs may arise from, for example, the need to provide access for people with a disability to buildings. In the proposed Disability Discrimination Legislation, there will be an exemption on the grounds of unjustifiable hardship; this means that a developer, could defeat a claim of discrimination by showing that action necessary to accommodate the need of people with a disability would impose "unjustifiable hardship" on him. It is also relevant to note that over the past ten years many buildings have been designed and built in accordance with the

/.....

"Manual on Access for the Disabled 1984". Our assessment, therefore, is that the impact on developers is unlikely to be very great.

Yours sincerely,

(D.W. Pescod)  
for Secretary for Home Affairs



**Speech by Mr. Michael M.Y. SUEN**  
**Secretary for Home Affairs**  
**in the Legislative Council on 26 October 1994**

**Second Reading of the**  
**Sex Discrimination Bill**

**Mr. President,**

I move that the Sex Discrimination Bill be read a second time.

Government is firmly committed to promoting gender equality in Hong Kong and accepts that the development of our society and community has reached the point where it is now appropriate to develop measures to achieve this. Towards this end, we published in August 1993 a Green Paper on Equal Opportunities for Women and Men to solicit public views on the measures which could be taken to enhance equal opportunities between the sexes. To legislate against sex discrimination was one of the proposals put forward in the Green Paper. Members of the public responded positively and we received 1100 written submissions on the Green Paper, the overwhelming majority of which supported the legislative option. In response to this clear community demand, we announced in June this year the decision to develop legislation against sex discrimination.

The Sex Discrimination Bill is the product of 14 months of thorough research, wide consultation and in-depth analysis. This Bill has been prepared after careful thought; it takes into account the diverse views expressed by various sectors of our community. It reflects community aspirations on how we should proceed to achieve equal opportunities between the sexes in a measured and appropriate manner.

The Bill renders unlawful sex discrimination and sexual harassment in specified areas of activity. These include employment, education, provision of goods and services, and the disposal and management of premises. In addition, the Bill also makes it unlawful to discriminate against a person on the ground of marital status or pregnancy in the employment field. The Bill also renders unlawful discrimination by way of victimisation. This may occur, for example, where an employee who has asserted his or her rights under the Bill is subsequently subject to unfavourable treatment by her employer as a direct consequence of the action taken under the Bill.

To oversee the implementation of the sex discrimination legislation, the Bill provides for the establishment of an Equal Opportunities Commission. There are four main functions of the Commission : first, to work towards the elimination of sex

discrimination and sexual harassment; secondly, to promote equality of opportunity between men and women; thirdly, to investigate upon complaint, any act alleged to be unlawful by virtue of the Bill and endeavouring, by conciliation, to effect a settlement of the matter in dispute; and fourthly, to keep under review the working of the sex discrimination legislation and where necessary, submit recommendations to the Governor for amending the legislation.

In line with its responsibility to promote gender equality, the Commission will carry out public education programmes to promote equality of opportunities between the sexes and conduct research into gender related issues. The Commission is also empowered under the Bill to develop and issue codes of practice, in consultation with relevant organisations. These codes will contain practical guidance to assist members of the community to comply with the legislation.

The Commission will have a strong conciliation role. The Bill empowers the Commission to investigate into complaints and it can make rules to require parties related to a complaint to attend conferences with a view to resolving the matter. Where conciliation fails, the Commission may provide assistance in respect of legal proceedings. Nonetheless, I expect that a majority of the complaints will be resolved in the course of conciliation without the need for resorting to the court.

The Bill also empowers the Commission to conduct formal investigations on its own initiative or upon the request of the Chief

Secretary, for any purpose connected with the carrying out of its functions. The Commission will prepare and publish or make available for public inspection a report on any formal investigation it initiates. Furthermore, the Bill empowers the Commission to issue enforcement notices against persons where, in the course of any formal investigation, the Commission is satisfied that such persons have contravened the Bill. Where a person persistently contravenes the Bill, the Commission is empowered to apply to the District Court for an injunction to restrain such persistent discriminatory practices or sexual harassment.

As regards enforcement, the Bill vests the power to hear all sex discrimination and sexual harassment cases with the District Court. To enhance the accessibility of the District Court, the Judiciary proposes to designate a court at the District Court level to hear all sex discrimination and sexual harassment cases arising from the Bill. The District Court may also allow persons who are neither legally qualified nor parties to the proceedings to address it. Furthermore, the use of Chinese language in the Court will also be allowed. Consideration will also be given for the District Court to make orders for costs exercisable only in exceptional circumstances. Taken together, these innovative measures enshrined in the Bill would provide an efficient and accessible avenue of redress for the aggrieved.

While it is important that sex discrimination legislation should be effective, we recognise that such legislation should not unreasonably restrict individual freedom or impose undue financial burdens. After careful consideration, we have therefore provided exceptions to the discrimination rendered unlawful by the Bill. In relation to employment matters, exceptions are provided to allow for situations where being a particular sex is a genuine occupational qualification. Such situations arise from the nature of the job, considerations of decency or privacy, the nature of the establishment at which duties are performed, and the need for welfare, educational or personal services to be provided by persons of a particular sex. With regard to discrimination on the ground of marital status, the Bill provides that it will not be unlawful for an employer to provide different levels of specified benefits or allowances for employees with different marital status. By virtue of this exception, an employer is allowed to provide, for example, a higher level of housing allowance to employees who are married.

During the Green Paper consultation exercise, small employers have expressed concerns about the possible problems arising from frivolous complaints and the cost implications in complying with the legislation. To address these legitimate concerns, we have proposed in the Bill a grace period of five years as a transitional measure to allow small business establishments with not more than five employees to comply with the legislation. We believe that this

arrangement will give small employers the time to better understand the operation of the Bill and we indeed hope to see employer associations working together with the Equal Opportunities Commission to promote understanding of the Bill among small employers.

In line with our decision to seek to enter a reservation to CEDAW in respect of the small house policy, the Bill also provides an exception for this policy. This exception allows us to reserve the right to continue with the small house policy.

The Sex Discrimination Bill is a major step in the development of an environment conducive to free competition in Hong Kong. We have not moved hastily, we have not tried to go beyond the levels which the community at large want us to go; we have approached this issue carefully, aware of the high emotions which such sensitive issues can raise. We have prepared legislation which is suitable for Hong Kong and, more importantly, have gone beyond legislation to ensure that there will be an effective independent agency set up to ensure the effective implementation of the sex-discrimination legislation and to fulfil the essential function of public education which is crucial to the success of any measures introduced to eliminate discrimination.

The enactment of the Bill will provide the means by which members of the community will be able to make the most of their

potential to participate fully in all areas of activity. Moreover, it will ensure that the people of Hong Kong enjoy a similar level of legal protection as their counterparts in other advanced societies in respect of equal opportunities between women and men. We are convinced that this Bill, which is our response to demonstrated public demand, will serve Hong Kong's needs well.

### The Bill

Part I of the Bill defines the terms used in the Bill and provides that the Bill binds the Government.

Part II specifies the various kinds of discrimination to which the Bill applies. These are sex discrimination against women, sex discrimination against men, discrimination on the ground of marital status or pregnancy in the employment field and discrimination by way of victimisation.

Part III relates to discrimination and sexual harassment in the employment field. Clause 10 makes it unlawful for a person to discriminate against prospective or existing employees, both in respect of the terms on which employment is offered and in respect of access to opportunities for promotion, transfer or training. Clause 11 specifies the cases where clause 10 does not apply because a particular sex is a genuine occupational qualification for the job concerned.

Part IV relates to discrimination and sexual harassment in other fields. These other fields include education (clauses 22 to 24) and the provision of goods, facilities, services and premises (clauses 25 to 30).

Part V relates to other unlawful acts relating to discrimination and sexual harassment, in particular where persons engage in practices which result, or may result, in unlawful discrimination (clause 35). It is unlawful for certain persons to instruct, or exercise pressure on, another person to do an act which is unlawful under the Bill (clauses 37 and 38).

Part VI provides for general exceptions from the Bill.

Part VII and Schedule 5 relate to the establishment of the Commission, its functions and powers, in particular in relation to the issuing of codes of practices (clause 61) and its power to conduct formal investigations (clauses 62 to 66).

Part VIII relates to the enforcement of the provisions of the Bill, and in this respect confers jurisdiction on the District Court to entertain claims of unlawful discrimination or sexual harassment in like manner as any other claim in tort (clause 68). The Commission is empowered to issue enforcement notices (clause 69) and to assist claimants and potential claimants (clauses 75, 76 and 77).

Part IX contains miscellaneous provisions, in particular relation to the validity of discriminatory contracts (clause 79).

26 October 1994



## **A note to members of the Bills Committee on the Equal Opportunity Bill re: Disability Discrimination**

This note to members has been prepared to highlight some aspects of Disability Discrimination. The following examples show four specific areas of disability discrimination.

The act of discrimination is the most important factor seen in all of the following scenarios. For the purposes of this Bill the focus is not on the extent or the severity of the disability but on whether there was unfair treatment based in an actual or imputed disability.

### **Direct Discrimination**

Lo Roy was a professional football player, who was taken ill during the off season with what is generally known as a Visceral disease of his kidneys. The lengthy off season saw a complete recovery for Lo Roy and enabled him to return to his peak of physical fitness in time for the new season football tryouts. However, his coach without even seeing him in action again, fired him, saying that his condition was such that he was not a reliable player any more. Lo Roy was discriminated against because of a past (disability) condition and should have been given a chance to try out for a position on the team .

The following cartoon is another clear example of Direct Discrimination.



### **Imputed Disability**

Wong Brenda is an up and coming solicitor in Hong Kong. She came from Malaysia and found many problems finding a position. A senior partner in a prominent firm claimed she had Down's Syndrome and that she would not be presentable enough to act on the firm's behalf. Wong Brenda does not have Down's Syndrome but that comment inferring that she had a disability (imputing that she had a disability) cost her many prospective jobs.

### Indirect Discrimination

Loh Raymond is a Computer Programming Manager with an Advertising Company in Kowloon. The staffing in this company is 20 people. The has decided to move closer to Central. However the firm is moving to a building which is in accessible for Raymond who is a paraplegic and uses a wheelchair.



Indirectly his upper management is discriminating against him, by not moving to a new office space which is accessible they are forcing him to quit his job because he can't get into his building.

Raymond took his dilemma to the upper management who claimed that they could not afford to make any more changes to a new and already expensive building. This could constitute a claim of unjustifiable hardship. The company neglected to observe the needs of its employees therefore discriminating against Raymond indirectly.

### Discrimination against an associate.

Tai Mann lives with his brother Kwok Wai who has cerebral palsy. Kwok Wai is able to manage while Tai Mann is at work, but requires assistance at meal times. Tai Mann has made arrangements with his employer that he can leave work during his lunch break to assist Kwok Wai with his meal. Tai Mann is the only employee who is never offered overtime. When Tai Mann raises this with his employer, the employer says that he won't offer Kwok Wai overtime because he should be at home looking after Kwok Wai.

Tai Mann as he is closely associated to Kwok Wai has been directly discriminated against this direct discrimination on the ground of the disability of an associate because of Kwok Wai's disability. He has been treated less favourably than other employees who are offered overtime. On the other hand if the employer had not Tai Mann offered overtime because his work was not of a satisfactory standard, there would be no disability discrimination.

To: Mrs Betty NEOH / Makung Fax No: 8452444  
(Bill's Committee to Study Equal Opportunities Bill)

From: Ms Mary Wong  
(Alliance for the Promotion of Rights for Grassroots Women)

Date: 25<sup>th</sup> Oct, 94.

Re: Meeting with the Bill Committee (Content)

1. Contemporary unfairness facing with the Grassroot Women i.e. deprivation of opportunities for Grassroots Women to find job.
2. Comment for the effectiveness of the Bill in solving of the problems.
3. Major factors lead to the unfairness.
  - foreign labours
  - lack of child-care services
  - deficits of re-training programs.
4. Other Recommendations
  - increase of child-care services
  - employment scheme of re-trained students.
  - decrease of foreign labours

發文者：爭取基層婦女權益聯盟  
王家寶  
受文者：平等機會條例草案審議委員會  
梁陳詠儀女士  
(圖文傳真機號碼：845 2444)  
日期：一九九四年十月二十五日

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### 與平等機會條例草案審議委員會會晤

本聯盟擬提出的事項如下：

1. 基層婦女現時面對的不公平情況，例如基層婦女的求職機會受到剝奪。
2. 就上述條例草案能否有效解決各項問題提出意見。
3. 造成不公平情況的主要因素：
  - 外地勞工
  - 缺乏幼兒護理服務
  - 再培訓計劃的缺點
4. 其他建議：
  - 增加幼兒護理服務
  - 推行再培訓人士就業計劃
  - 減少輸入外地勞工

爭取保障婦女就業機會 王鳴書

立法局平等機會條例草案諮詢小組一連三

日(十A)十七日至十A三十一日聽取市民及民間

團體對條例草案之意見。我們是一個基層婦女

組織，成員大部份是家庭主婦，也是一個向

諮詢小組發表對草案的意見的團體。我們有

信草案的設立有助保障婦女就業的機會，但需

要政府政策的配合才能真正改善婦女的就業機

會。以下是我們的一些心聲：

我們是一群中年婦女，在六、七十年代投身

社會，為香港社會作出不少貢獻，但隨着經濟

發展，迫使我们從事的工作日益繁重，而

之山積已如小，基礎的工作日趨繁重，而

們可以及在繁重的工作時，卻遇上了種種困難

一、僱主年齡歧視

我們已年屆四十，僱主仍以我們年紀不

合理中，在建築業，在很多的市級例之中，就

算我們的體力、能力卻在次要，但當我們到

出月已的來際年數時，僱主們總會說去推病

是天生有地拒絕聘用。

二、外間苦工季末就業機會

僱主之所以拒絕我們的原因，原因有

近年來多了許多廉價，而且年輕的外間苦工

俾他們選擇聘用。事實上，香港工價工業轉型

，而以上大量製造業外移，非製造業業遂成香

多外移的行業，但可惜於是這些已過時而

NO

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的工作，竟被外北勞工所佔據。所以，政府應  
們更多的同產利權和我們修權也是在於此。因  
為在面上根本原利解了太多的空餘讓我們有  
選擇。

(三) 託兒服務普及

在託兒服務普及之外，中立的觀念，帶出在  
生下孩子後，放棄工作留在家裡照顧孩子，成  
之必然方位，同產的制約，我們選擇以外工作  
的機會。如果，這所能夠求及之物也是很難的  
託兒服務的話，我們便只好繼續待在家中。

中法

中法

以上種種，可見我們政府曾為香港經濟  
付過過半的精力和資源，結果如心何的差別對待  
。所以我們向有關當局提出以下解已要求：

- (一) 馬上落實有關差別年齡此類的法例；
- (二) 減少輸入外北勞工；
- (三) 增加託兒服務；
- (四) 跟進有關到港員工就業後的就業問題。

我們將會繼續跟進以上要求，以謀求一個  
平等就業機會的社會。

爭取基層婦女權益聯盟

一九九四年十月廿一日

聯絡人：郭玉娟 (5677540)

373 20420 4111



Submission of the Movement Against Discrimination (MAD)  
to the Bills Committee on Equal Opportunities Bill

**COMPREHENSIVE ANTI-DISCRIMINATION BILL**

1. We firmly support the enactment of a comprehensive anti-discrimination legislation in Hong Kong for equal opportunities for all.
2. We support the Equal Opportunities Bill (EOB) proposed by Ms Anna Wu in principle and consider that the Government's gradual approach to the issue as piece-meal, and, therefore, unacceptable. The chance to provide adequate legal protection for all minority and disadvantaged groups in Hong Kong is slim if Government's approach is adopted.

**SEX DISCRIMINATION**

3. Coverage of Government's Sex Discrimination Bill restrict its mandate on gender discrimination and sexual harassment. Restrictions on employment for female on age and family responsibilities have not been taken care of. Sexual orientation as a cause of discrimination is serious in Hong Kong even after the decriminalization of homosexuality and hence should be protected by the Bill.

**DISABILITIES DISCRIMINATION**

4. The definition of disability is another concern as whether those other than defined at present under the Disabilities Allowance should be included and hence protection and service provision catered for. People with chronic illness, AIDS and HIV positive are areas of neglect in this aspect.

**QUOTAS AND AFFIRMATIVE ACTION**

5. In order to provide equal work opportunities, we think that the LegCo should seriously consider the setting of quotas for employment to ensure sufficient employment of people with disabilities and affirmative actions can be undertaken to redress the grievances.

**RACIAL DISCRIMINATION**

6. Racial discrimination is a denied fact in Hong Kong and many people are hostile towards foreign domestic workers and other migrant workers. In order to ensure that foreign workers are not treated as second-class citizens, immigration policy should not be excluded from scrutiny and must be sanctioned under the EOB. The sexual harassment issue has to be addressed more positively as most of the migrants are ignorant of existing protection.

**RELIGIOUS DISCRIMINATION**

7. Religious discrimination is another aspect of neglect as employment advertisements and promotions are based, not on individual merits but on religious background. This situation, unfortunately, also happens in government subvented educational, medical and social services agencies. The fostering of respect of different religious and other beliefs among the people needed to be promoted.

#### **UNION MEMBERSHIP & SPENT CONVICTION**

8. We also support the protection of trade union members and people with spent convictions for equal opportunity in employment and other aspects of life.

#### **POWER OF EQUAL OPPORTUNITIES COMMISSION (EOC)**

9. We differ from the government's position to restrict power of the Equal Opportunities Commission to handle complaints and taking on a judicial function to handle tribunals specializing in dealing with equal opportunity matters. The EOC should have the power to handle all kinds of discrimination issues and not to confine itself to age and disability discrimination.

#### **ANTI-DISCRIMINATION GUIDELINES**

10. We welcome the suggestion in developing a set of guidelines for the employers and business sector in the elimination of discrimination and sexual harassment in the work place. But as it is only an agreement with no enforcing power, it is inadequate. Similar employment practices have to be developed and announced for everybody to observe in employment and other forms of dealings to be backed up by legislation. Such guidelines must be carefully studied and should be announced as early as possible, to be refined later on, so that the legislation can be enforced sooner.

#### **EXEMPTION PERIOD**

11. The exemption of a 5-year period from the enforcement of a sex discrimination bill for establishments with under 50 people is too long a period of time. A period of 2 years should be sufficient.

#### **GOVERNMENT INITIATION**

12. We would like to see the government and subvented sectors to take the lead in ensuring equal opportunities for all. The government, as the largest employer in Hong Kong, must take active measures to do so.



## 反歧視大聯盟向平等機會條例草案審議委員會提交的意見書

### 全面的反歧視條例草案

1. 我們堅決支持在香港制定一項全面的反歧視法例，使人人機會平等。
2. 我們原則上支持胡紅玉女士提出的平等機會條例草案，並認為政府對此事所採取的漸進處理手法流於零碎，故此不可接受。倘採用政府的做法，為本港各類少數及處境不利的人士提供足夠法律保障的機會，便會相當渺茫。

### 性別歧視

3. 政府提出的性別歧視條例草案的保障範圍只限於禁止對性別的歧視及性騷擾。至於婦女在就業方面因年齡及家庭責任而受到的限制，則未有顧及。即使同性戀已非刑事化，性傾向所引致的歧視，在香港仍屬嚴重，故條例草案應提供這方面的保障。

### 身體殘障歧視

4. 身體殘障的定義是另一值得關注的事項，我們有必要考慮應否擴大其涵蓋範圍，以納入一些在現行領取傷殘津貼的條件規定以外的身體殘障，並為該類人士提供保障及服務。長期病患者、愛滋病人及愛滋病毒帶菌者，在這方面皆是備受忽略的一群。

### 配額及正面措施

5. 為確保人人均有平等工作機會，我們認為立法局應認真考慮設立就業配額，以確保身體有殘障的人士能獲得足夠就業機會；同時亦可採取正面措施，以消除其所受不公平對待。

### 種族歧視

6. 雖然種族歧視在香港備受否認，但事實上不少港人對海外家庭傭工及其他外地勞工態度並不友善。為確保外地勞工不致被當作二等公民看待，現行的入境政策應予詳細檢討，而任何種族歧視的行為均須根據平等機會條例草案的規定加以制裁。鑑於大部分外地勞工對現有的有關保障一無所知，故當局應以更積極的方式對付該等人士遭受性騷擾的問題。

## 宗教歧視

7. 宗教歧視是另一個受到忽略的問題。某些招聘廣告及機構的事晉升，以宗教背景作非個人表現為遴選準則。不幸的是，情況在政府資助的教育、醫療及社會服務機構內，屢見不鮮。因此，有關方面必須進行推廣工作，促進人們對各種宗教及他信仰的尊重。

## 職工會會員身分及已喪失時效的定罪

8. 我們亦支持為職工會會員及具有已喪失時效的定罪的人士提供保障，使他們在就業和生活的其他方面均享有平等機會。

## 平等機會委員會的權力

9. 根據政府的建議，平等機會委員會的權力只限於處理投訴，以及負有司法職能，以審裁處形式專責處理有關男女機會平等方面的事宜，我們對此不表認同。平等機會委員會應有權處理一切與歧視有關的問題，而不應只限於處理性別及身體殘障方面的歧視。

## 反歧視指引

10. 我們歡迎政府建議為僱主及工商界制定一套指引，以消除在工作地點發生的歧視及性騷擾。但由於有關指引只屬協議性質，並非強制執行，故實際上並不足夠。當局必須制定及公布類似的僱傭守則，並立法規定任何人士在僱傭及有關事務方面均須遵守。有關方面須對此等指引詳加研究，並應盡早公布，以便稍後作出修訂，使其內容更趨完善，有關法例亦得以早日實施。

## 豁免限期

11. 僱員人數少於五人的機構在履行性別歧視條例草案的規定方面，獲得五年的豁免限期，為時未免太長，兩年限期應已足夠。

## 政府發揮帶頭作用

12. 我們希望政府及資助機構率先採取行動，確保人人享有平等機會，而政府作為全港最大的僱主，實責無旁貸，必須在這方面採取積極的措施。

~~港督彭定康先生：~~

現今香港經濟蓬勃及科技發達，人人爭取人權平等及各種福利，我們聾人所遇到的不公平情況仍然存在。我們強烈要求政府關注以下各點：

(一) 統一手語

我們聽覺上有問題，引致說話能力有限，除了書寫之外，只靠手語才可與人溝通。現時手語仍未受重視，聾人學校不倡手語，不積極研究統一手語，甚至禁止以手語教學，無形中等於我們應用的語言權利被剝奪；更且沒有在專上及大學設手語課程，有志進修之聾人，惟向海外求學，但經濟能力有限，即令聾人受教育機會受到削減，因此我們要求：

1. 政府帶頭研究統一手語
2. 設立手語課程
3. 設立手語翻譯考試制度

(二) 平等就業機會

聾人在就業方面的困難，大多數均與其聽覺障礙及言語表達有關，解決之道亦須針對溝通障礙。譬如在職業訓練方面，絕大部份課程沒有提供手語翻譯，使聾人遭遇極大的學習困難和限制其科目選擇，實際上是沒有給予聾人均等的機會。在求職的時候，由於缺少手語翻譯和懂得聾人情況的就業輔導員從旁支援，許多僱主或公司人事部都不願意花時間與聾人溝通，並拒絕聾人的求職申請，剝奪了聾人的就業機會。有些僱主甚至懷疑聾人的技能和學識，祇讓聾人做些低薪的非技術工作，使聾人沒有機會發揮所長，更談不上升職機會。我們希望政府有關當局採取以下措施協助聾人充份就業：

1. 設立正規聾人手語翻譯職位，在職業訓練課程和職業再培訓計劃中為聾人提供手語翻譯。
2. 設立懂手語的就業輔導員職位，協助聾人求職和適應工作環境及有關職務要求，包括擔當手語翻譯，向工友及督導人員講解聾人的需要和教導簡單手語，輔導聾人有關職業的知識。是項輔導服務在聾人就職初期尤為重要，以後可以逐漸減少。本服務亦是對有意聘用聾人的僱主的有力支援，可以減輕其後顧之憂。
3. 政府應以身作則每年擴大聘用聾人公務員的比例，並要求受政府資助的公共機構採取積極措施聘用聾人。
4. 政府應設立基金撥款資助聾人及其他有特別需要人士開設自僱工場，自力更生。
5. 委任聾人團體代表參與有關聾人就業和職業培訓的決策組織和諮詢組織。

### (三) 平等資訊權

聾人在表面上雖然與聽覺健全人士毫無分別，但是由於聽覺受損，與健聽社群溝通遇到不少障礙，尤其在其掌握公共資訊方面，更感困難重重。環顧現時香港的發展，電視雖已成為重要傳訊媒介，各電視節目製作機構仍漠視聾人的需要，沒有在重要節目中加上中文字幕或手語傳譯，而政府當局亦未有採取積極措施改善情況，以致不少聾人生活在一個隔離的社區，無法獲知重要的社會消息及公民應有的資訊，因而被剝奪了全面投入社會和平等發展的機會。

我們要求有關局正視本港聾人獲取電視資訊的權利，立即切實執行下列四項要求：

1. 鑑於電子傳媒的普及化和影響廣泛，政府當局應從速鼓勵和強制電視台（例如作為發牌條件），在所有新聞報導、時事資訊和公民節目內加配中文字幕或手語傳譯。
2. 政府當局應以身作則，貫徹保障傷殘人士資訊權利的政策，在所有由政府新聞處、香港電台電視部和其他政府部門製作的節目或宣傳短片內，加配中文字幕或手語傳譯。
3. 政府當局應仿效外國，透過立法程序，確保電視加配中文字幕措施能落實執行，例如英國政府在1991年頒佈的廣播法中，規定電視台逐步在節目中配上字幕，以符合在1998年有半數或以上的節目配有字幕的要求。
4. 政府當局應成立監察委員會，其中最少有一半成員為聾人代表，以監察及協調上述措施的運作及執行情況，確保聽覺障礙人士獲取電視資訊的權利。

### (四) 最後我不能容忍歧視廣泛地存在於這個社會，我們要求儘快制訂全面平等機會法例及設立獨立人權委員會。

我們相信社會上每個人在生活的不同層面上都應享有平等的機會。我們強烈要求政府支持透過立法禁止不同形式的歧視，包括基於性別（包括性騷擾）、婚姻狀況、懷孕、年齡、種族、缺陷、性傾向、宗教或政治信仰、已喪失效力的刑事定罪或工會會員身份而對任何人士的歧視。

我們強烈要求政府支持成立具備以下功能的人權委員會：

1. 推廣人權意識及進行公眾教育；
2. 研究和檢討現存法例和政策就保障人權的不足之處，並作出具體建議；
3. 透過調解方式解決與人權問題有關的糾紛；
4. 為涉及人權問題的訴訟提供法律或財政援助。

香港聾人協進會  
九四年十月二日

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NO

九龍佑寧堂 懷智訓練中心

弱智人士福利關注組

對平等機會條例草案的回應

致各位立法局議員：

立法局議員胡紅玉提交之平等機會條例草案，廣泛保障社会上各界免受歧視，其中包括弱智人士界別。本年初七月底，政府亦同時草擬弱能收視法案，建議內容及保障範圍略近平等機會條例草案一殘疾收視之部份。

原明報

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本關注組就法案內容，提出以下取向：

一、法例之全面性

1.1 法例不單保障弱智人士，還廣泛保障社会上其他之界別／範疇，例如：婦女、年齡歧視、種族……等，充份肯定人人平等的原則。

二、平等機會委員會之功能、權力及架構

胡議員之法案中有闡述：

第一選擇：人權及平等社會委員會的範疇

第二選擇：沿用現有法院和審裁處制度

2.1 本英社組認為第一選擇最有效，快捷處理歧視個案。此種投訴透過人權及平等機會委員會負責調查或訟裁；無法成功調解投訴，則由附屬之平等機會審裁處以非正式及融和之氣氛，進行裁決。

2.2 反之，第二選擇，令歧視個案投訴者需經過冗長之排期程序，加上法院之訴訟程序所需費用龐大、費時；而且需在正視、平等、敵對的情況下進行，令中訴者望而却步。

2.3 人權及平等機會委員會及恆員關注處理投訴，其功能應包括宣傳/教育、行有失歧視問題進行研究，藉以消除歧視。

2.4 委員會成員，應在立法局確認，以確保委員會之公平及獨立性。

2.5 不能/或沒有能力為自己中訴之弱能人士，可由其家人、有失組織、所屬社工、委任人 (Appointee)，協助提出中訴，確保弱智及弱能人士之平等權利。

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三、法例該保障被歧視對象之家人

3.1 特別是弱能人士、肢體任殘人士、精神

痾康復者、失明、失聰人士、其家人也

有往成為歧視行為之受害者，我們建議

法例對他們也提供適當保障，如准許他

們以受害者身份提出訴訟及獲得賠償。

四、對法例保障範圍之意見及豁免事項

4.1 就業方面（為謀求平等或滿足特別需要

而實行的措施）

工作能提高弱能人士對自己之價值，肯

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定其尊嚴。政府應為有工作能力的弱能

人士提供機會及公平之工作待遇。

例如：(i) 積極鼓勵公司、機構、政府部

門聘用少量限額(定)給合適的弱能人

士，並提供免稅額、補償資助予僱主。

(ii) 弱能人士該享有正常勞工法例、退休

金之保障。弱能人士工作表現與正常僱

員一樣，應該獲得同工同酬的待遇及保

障。

NO



### 4.2 就業豁免事項

i) 法例賦予之豁免，為免僱主濫用，建議制訂有法律效力之豁免遵守以視法例的細則，讓委員會進行調查或仲裁時有指引可循。

ii) 法例座清楚界定巨大困難 (Unjustifiable Hardship)

法例中提及若伤残人士無法勝任工作或若使其執行有欠職程，僱主必須提供支援服務或設施，因而導致僱主遇到

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巨大困難，宜儘量解釋，更被僱主濫用。

iii) 因部份伤残/弱能人士在工作上，需要一些器材及設施輔助，若不清楚界定，僱主容易濫用。

### 4.3 公共交通工具方面

i) 地下鐵路座置升降機予有需要之人士，包括行動不便之弱能人士。

ii) 地下鐵路在車站設立適合弱智人士使用之洗手間。

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總而言之，在公共交通設計方面，應配合殘人士使用。

五、弱能一詞的全面性

法案中弱能只為一詞，包括範圍甚廣，能包括眾多弱能人士，本失症組深表支持。

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NO

不總結

無論平等機會條例草案之內容及保障範圍

／範疇如何廣泛，如果能夠合一有責權，

功能廣泛之執行機制，整條法例的條文方

能體現！

此致

立法局會議平等機會條例草案委員會

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九龍估價署 懷智訓練中心

弱智人士福利關注組

敬啟

一九九四年十月二十八日

／附件送／

1. 香港社會服務聯會復康部

2. 各家長會

3. 衛生福利司

4. 康復專員

5. 各大報館

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《公平等机会條例草案回應》

一 法例之全面性

二 平等机会委员会之功能、架構、權力

三 法例該保障被歧視对象的家人

四 对法例保障範圍的意見及豁免事項

五 弱能人士的全面性

六 总结

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NO

Joint Council for the Physically and Mentally Disabled  
(Rehabilitation Division, Hong Kong Council of Social Service)

Task Group on Anti-Discrimination Legislation for Disabled Persons

**Preliminary Recommendations on  
Equal Opportunities Legislation for Disabled Persons**

1. **Objectives of the Legislation**

- 1.1 While the proposed legislation contains provisions to cover discrimination on the ground of disability, the main objectives should be to promote full participation of disabled persons in society and to ensure disabled persons enjoy equal opportunities as their able-bodied counterparts in all aspects of life.
- 1.2 The legislation should not only outlaw negative actions (discrimination and harassment) against disabled persons but also encourage positive measures aimed at bringing about equal opportunities and full participation. It should set out obligations and targets in general and make provisions to allow the future Equal Opportunities Commission or other enforcement mechanisms to set specific targets aimed at the elimination of existing discrimination within a certain period of time, for example, to make our public transport system fully accessible.
- 1.3 The legislation should clearly specify that any laws contradictory to it should be repealed automatically.

2. **Disabled Persons and Aggrieved Parties**

- 2.1 The term "disability" should be clearly and broadly defined to cover all disabled persons including people with chronic illness and people with HIV/AIDS.
- 2.2 As family members and carers of disabled persons might become victims of discrimination, they should also be protected.

We suggest that all victims of discrimination on the ground of disability should be protected by the legislation and should be able to take appropriate actions as necessary

3 **Discriminator**

3.1 The legislation should bind all types of organizations, including government, public and private bodies, as well as individuals.

4. **Areas of Discrimination**

4.1 The legislation should cover all areas including, but not limit to, employment (employment opportunities, transferral, promotion and salary etc.), services provided by public and private bodies, insurance, accommodation, access, transportation, establishment of rehabilitation facilities etc.

4.2 Existing Discrimination - the legislation should promote equal opportunities through the removal of existing discrimination in different areas including access and transport.

5. **Code of Practice**

5.1 Codes of practice should be derived for different trades and for different groups of disabled persons.

5.2 The codes of practice should cover unjustifiable hardship, inherent requirement of a job and reasonable accommodation.

5.3 Positive actions to promote equal opportunities for different disability groups should also be developed for reference of concerned parties.

5.4 The legislation should have provision of sanctions for non-compliance of code of practice.

6. **Representation**

6.1 Any interested parties, individuals or non-governmental organizations, should be allowed to represent victims of discrimination, with the latter's consent, in filing complaints with the Equal Opportunities Commission and in bringing up cases to courts.

6.2 If the victims of discrimination are incapable of giving consent due to their mental incapacity, their relatives or concerned parties might, on behalf of the victims, file complaints with Equal Opportunities Commission. In litigation cases, court's approval for the mentally incapacitated victims to be represented by their relatives or concerned parties is required.

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7 **Class Action**

- 7.1 Class Action should be permitted
- 7.2 Both victims of discrimination or concerned parties (such as relatives or non-governmental organizations) should be allowed to bring up class action.

8. **Legal Assistance**

- 8.1 Legal assistance should be provided for both individual cases and class action. A liberal test should be adopted for making decision on the provision of legal aid.
- 8.2 The possibility of providing legal assistance to organizations such as NGOs for bringing up class actions should be considered.

9. **Enforcement**

- 9.1 The legislation should provide for sanctions on violation of legislative provisions.

10. **Equal Opportunities Commission (EOC)**

- 10.1 The EOC should have power of adjudication. It is recommended that a tribunal should be set up under the EOC.
- 10.2 Procedures for filing complaints, conducting formal investigation, issuing enforcement notice etc. should be simple, informal and non-technical. The EOC should be allowed to draw up its own procedures.
- 10.3 The EOC should have an advisory committee with wide representation from disabled and rehabilitation community and other interested parties.
- 10.4 The EOC should have the power to issue code of practice and propose regulations.
- 10.5 The EOC should promote equal opportunities and set targets for removal of existing discrimination through taking practical and available steps within reasonable timeframe.

- 10 6 The EOC should have the monetary support to provide legal assistance to victims or concerned parties in litigation of discriminatory cases, especially those cases not eligible for legal aid
- 10 7 Monetary support should be available for the EOC to bring up individual cases or class action to the court
- 10 8 Apart from the annual report and reports of formal investigation, the EOC should also disclose relevant information of conciliation cases it handles for public educational purposes and to increase transparency

11. **Confidentiality**

- 11.1 The identity of victims of discrimination should be properly protected so as to respect the victims' privacy and dignity and to encourage them to stand out and make complaints.

October 20, 1994



香港復康聯會  
(香港社會服務聯會復康部)

立法消除歧視弱能人士工作小組  
就保障弱能人士平等機會的法例提出的初步建議

1. 法例目的

- 1.1 雖然擬議法例所載條文是就基於身體殘障的歧視訂立保障，但主要目的應在於促進弱能人士全面參與社會，並確保弱能人士與健全人士一樣在生活各方面，享有平等的機會。
- 1.2 法例除應把對弱能人士的負面行爲（如歧視及騷擾等）定爲不合法外，更應訂立正面的措施，促進人人享有平等機會，並鼓勵弱能人士全面參與社會。法例應在整體上列明有關的責任和目標，並訂立條文使日後的平等機會委員會或其他執行組織，可制定具體目標，以期在某段時限內消除現有的歧視情況，例如讓弱能人士可全面使用本港的公共交通設施。
- 1.3 法例須清楚訂明任何與其規定不符的法律，均會自動撤銷。

2. 弱能人士及受屈各方

- 2.1 「身體殘障」一詞的定義應明確而涵蓋廣泛，以納入所有弱能人士，包括長期病患者及愛滋病毒帶菌者與愛滋病患者在內。
- 2.2 由於弱能人士的家屬和照顧者可能受到歧視，因此亦須爲其提供保障。

我們建議，所有基於身體殘障而受歧視的人士應受法例保障，並在需要時，可以提出有關的訴訟。

3 歧視者

- 3.1 法例應把一切類型的組織（包括政府、公共及私營機構）及個人均納入約制範圍內。

4. 歧視的範疇

- 4.1 法例應涵蓋所有範疇，包括但不限於僱傭（就業機會、調職、晉升及薪金等等）、公共及私營機構所提供的服務、保險、居停地方、進出地方、交通工具及設立復康設施等等。

- 4.2 現有的歧視一法例應透過消除現時在各區範圍如進出地方、使用交通工具的歧視情況，提供人人機會平等。

## 5. 守則

- 5.1 對於不同行業及各類弱能人士，應制定各套不同的適用守則。
- 5.2 有關守則應就不合理的辛勞、工作的固有要求及合理的居停地方等事宜作出規定。
- 5.3 應為各類弱能人士制訂促進平等機會的積極措施，以供其他有關人士或團體參考。
- 5.4 法例應訂有條文對不履行守則的行為加以制裁。

## 6. 代表

- 6.1 任何有關人士或團體、個人或非政府組織，只要得到受歧視者的同意，應獲准代表當事人，向平等機會委員會提出申訴，以及把案件提交法院審理。
- 6.2 如受歧視者因智能不全未能給予所需同意，其親屬或有關人士或團體可代表受歧視者向平等機會委員會提出申訴。如涉及法庭訴訟，法院可給予批准，讓智能不全人士的親屬或有關人士或團體可代表其進行訴訟。

## 7. 集體訴訟

- 7.1 應准許提出集體訴訟。
- 7.2 受歧視者或有關人士或團體（例如其親屬或非政府組織）應獲准以集體方式提出訴訟。

## 8. 法律協助

- 8.1 應為個別及集體的訴訟提供法律協助。在決定是否給予法律援助時，應採取一個較寬鬆的評審方式。
- 8.2 當局應考慮可否為某些組織（例如非政府的組織）提供法律協助，以便其提出集體訴訟。

## 9. 法例執行

9.1 法例應訂明對違反規定的行為加以制裁。

## 10. 平等機會委員會

- 10.1 平等機會委員會（以下簡稱「該委員會」）須有仲裁權；該委員會之下應設立一個審裁處。
- 10.2 提出申訴、進行正式調查、發出執行通知等程序，應盡量定得簡單、非正式和不涉及技術性的規定。該委員會應獲准制訂其工作程序。
- 10.3 該委員會應設有一個具廣泛代表性的顧問委員會，成員須包括弱能人士、復康界人士及其他關注團體的代表在內。
- 10.4 該委員會應有權頒布守則及擬議規例。
- 10.5 該委員會應採取務實可行的措施，致力促進平等機會，並制訂目標，以求在合理時限內消除現時的各種歧視情況。
- 10.6 該委員會應有財政上的支持，俾能在涉及歧視的個案訴訟中，向受歧視者或有關人士與團體提供所需法律協助，特別是一些未符資格申請現有法律援助者。
- 10.7 該委員會應有財政上的支持，以便把個別或集體訴訟的案件提交法院審理。
- 10.8 除了提交年報及正式調查的報告書外，該委員會亦應披露由其作出調停的個案資料，以便教育市民，並提高本身的透明度。

## 11. 資料保密

- 11.1 受歧視者的身份應適當加以保密，除以示尊重其私穩及個人尊嚴外，亦可鼓勵其挺身而出，提出申訴。

一九九四年十月二十日

# 香港十分一會

## HONG KONG TEN PERCENT CLUB

九龍中央郵箱72207號 Kowloon Central Post Office 72207

電話 Tel No. 3148726

致立法局平等機會法案委員會：

香港十分一會乃成立於一九八六年，於一九九二年正式在社團註冊處登記註冊；本會宗旨在爭取同性愛權益及同性愛社群之凝聚。一九九一年成功爭取男同性愛行為非刑事化。

今日我們就立法局議員胡紅玉女仕所提出之私人法案「平等機會法案1994」，作出回應及支持，並強烈要求該法案通過之最後形式能包括性傾向或性取向的條文，消除有關歧視。

本會早於九四年一月，已舉行同志歧視個案聽證會；當日聽證會資料相當充實，堪作參考：

### 制度化歧視案例

- 同志組織Horizons（同志熱線）曾向政府申請捐款享有稅務免除優惠；稅務官員回覆謂同志組織未能提高公眾道德水平；並不符合會慈善組織資格，未能享有捐款免稅優惠。（同志熱線乃本港唯一提供同志自我認知及情緒困擾輔導等服務，故本質上應歸納為慈善組織。）
- 某些壽險公司在保單上要求申請人填上性傾向。從精算學角度，個人之性取上實不足構成保金上之差異。
- 隱含性歧視現象存在個人就業方面：以現時不健全有關不公平解僱法例，歧視性傾向僱主只需給予足夠解僱通知而毋需補償。
- 現時社會並沒有任何社會設施供同志使用；而本港曾有同志團體向政府申請地方作辦公用途時，答覆為「沒有地方適合你們」，言詞間帶有歧視語調。
- 公民學習課程及社工專業訓練亦未能提供足夠有關同性愛知識的教育。
- 同志配偶在稅務上亦被剝削如異性愛配偶般應有的權利。

# 香港十分一會

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### 個人被歧視案例

- 街上男女同志如打扮比較中性，或做一些較易被察覺的舉動如牽手，途人中會有人高呼侮辱。
- 曾有社區中心在聘請社工時，對於考慮僱用同性愛者會加以刁難，甚至不予錄用。
- 正如異性愛性行為之合法年齡對男女標準有異，男同性愛行為在法律上，亦更有多重標準，而法律中亦沒有女同性愛行為標準的存在。
- 據我們理解，執法人員視公寓或酒店為公眾地方，但若在此有異性間性行為則屬合法，但同性則否。
- 曾有同志被業主發現其身份後，以一個月通知終止租約。
- 曾有酒店拒絕租房給兩名同性伴侶。
- 一些公眾場合，曾對同志顧客作不禮貌對待，甚至拒絕進入。
- 有一中學音樂教師，當校方發現其同性愛者身份後，立即終止僱用。理由為對同性學生作性騷擾，而據事主謂實情為其學生主動作出行為而被該教師拒絕。

### 警權濫用

- 曾有警務人員，在同一段時間內，有系統地計對同志光顧之夜店進行搜查，向同志顧客查閱身份證；同性愛者經常在街上遭警方中途截查，言談得悉警員截查理由只為其貌似同性愛者及在同性愛者聚集地方途經。
- 曾有同性愛者在同性愛聚集地區之公廁內步出時，被警員截查搜身後更被插贓嫁禍。

基於當日聽證會，獲悉同志被歧視個案累累，我們以以下理由支持平等機會法案獲得通過：

- 該法案著眼消除包括因性取向所遭受的歧視；

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- 性取向法案中的明確定義是包括異性愛、男／女同性愛及雙性愛；
- 實際配偶(Defacto spouse)在法案中定義是包括同性或異性伴侶；
- 法案中關於消除因弱能而遭受歧視的條文，是適用於愛滋病患者及HIV+人士；
- 法案表明不能單獨因為愛滋病患者或HIV+身份而以傳染病及保護公共衛生理由加以歧視；
- 法案保障因性取向而在受僱機會（包括工作申請人、僱員、佣金經紀、合約僱員、合伙人、專業及行業團體、執業資格評核團體、職業介紹所）中遭受歧視的人士；
- 法案保障因性取向而在其他方面（包括教育、進入地方、使用交通、商品與服務、住所租住、土地買賣、會所會員資格、申請表格、法律與政府行政執行）遭受歧視的人士；
- 法案保障因性取向而在工作、教育、住所、商品與服務提供中遭受侵擾的情況；
- 法案明文禁止就因性取向而遭受公開詆毀／中傷／嘲笑／蔑視／仇視，並提出恐嚇或實際身體／財產損害等嚴重情況可加以檢控並罰款壹萬圓；

立法局在政治經濟考慮下應支持法案附有同性愛消除歧視之理由：

1. 經濟學者貝加G. Becker指出歧視小眾將使社會上工作分配違反經濟利益；產品價格將無理提高，削弱競爭力；
2. 經濟學者舒爾芝Schultz之人力資本Human Capital理論指出專門訓練乃提高生產力的主要因素。被歧視同志將因工作情緒低落或提早離職，使僱主投入訓練成本無法收回；
3. 被歧視同志將會有消費意慾及能力減弱的情況。以宏觀經濟角度，邊際消費傾向Marginal Propensity to

# 香港十分一會

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Consume之減少將抑壓乘數效果Multiplier Effect，不利財政政策。

4. 九七年後如特區政府推翻／修訂已通過的平等會法例，亦需依從正確手續。另根據基本法，九七年後難有機會提出類以法案；
5. 據悉政府行政只著眼男女平等及康復服務之推行，並未考慮同志權益；
6. 平等機會法案1994假如能通過成為法例，同志在因性取向遭受視則可循民事程序提出訴訟。由法院裁判之案件將成案例，保障日後同志權益。假如獨立人權委員會能成功爭取成立，更可監察及保障法案之執行，亦可作出裁定及調解，加深保障同志權益；

## 總結

我們想引述當年男同性愛行為非刑事化時，前布政司霍德的總結辯論：

「支持動議非等於支持同性戀  
自由社會應納不同道德範疇」



香港論衡  
HK MONITOR

DOCUMENT

*Allen Ho Leung*

MEMO

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From: Sung Lap-Kung  
Chairman of Hong Kong Monitor  
To: Members of the Bills Committee to study the Equal  
Opportunities Bill  
Re: Issues to be discussed in the coming public hearings  
Date: Oct. 24, 1994

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We would like to comment on

1. the general philosophy of the Bill from the perspective of the necessity of social enlightenment through public discourses on the right-oriented issues related to public affairs;
2. the reasons why we support the comprehensive approach of the Bill rather than the government's package which we regard as a piecemeal one;
3. the potential danger of bypassing the process of public discourses leading to a social consensus related to some controversial areas such as the right of marriage and adoption of child between homosexual individuals, the right for education in general schools of children with AIDS, etc;
4. the issue of localization of the civil servants in relation to racial discrimination;
5. the problematic relationships between complaint, conciliation, adjudication and court proceedings.

We believe that a reasonable "freezing period" for the general public to have more times to reach a general consensus with regard to those controversial areas (as mentioned above at point No.3), will be appropriate.



(香港論衡便箋)

發文者：香港論衡主席

宋立功

受文者：平等機會條例草案審議委員會各議員

(經辦人：梁陳詠儀女士)

事 涉：擬於即將舉行的公聽會上討論的事項

日 期：一九九四年十月二十四日

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我們希望就下述方面提出意見：

1. 鑑於有必要藉著市民對在公共事務上與權利攸關的事宜進行討論，以啓導公眾認識社會權利，我們會就此角度討論條例草案的基本理念；

2. 我們支持條例草案全面立法的形式，而不贊同政府提出零碎片面的法例；

3. 通過大眾議論，社會人士或可就若干具爭議性的範疇，例如同性戀人士結婚及領養兒童的權利、愛滋病童在一般學校接受教育的權利等，達致一致意見，反之，未經市民充分討論而作決定，可能導致不利的後果。

4. 公務員本地化所涉及的種族歧視問題。

5. 投訴、調解、仲裁及法庭訴訟彼此之間錯綜複雜而又難於處理的關係。

我們認為，定立一個合理的「凍結期」，讓市民有更多時間就具爭議性的範疇（如上文第 3 點所述）達致一致意見，是個合宜的做法。

Draft of Statement to Bills Committee by the Hong Kong Association of  
Business and Professional Women.

The Hong Kong Association of Business and Professional Women is mainly concerned with Parts II III VIII XI and XIII of the Bill. We nevertheless welcome the comprehensive nature of this bill recognising that in all forms of discrimination half of those discriminated against are women who in many cases suffer double discrimination. We are against all forms of discrimination and support legislation which penalises those who practice it.

We know that this bills committee is charged with scrutinising the Equal Opportunities Bill (EOP). We hope we will be forgiven if on occasion we refer to the Government's Sex Discrimination Bill (SDB) for comparison. We have not had the opportunity to study the SDB in detail and hope to have the opportunity in the future to make detailed comments on it to the committee charged by the Legislative Council to deal with it. Our immediate comments are:

- Not only does the SDB fail to deal with all forms of discrimination but it is far less comprehensive in the way it deals with effects of sex discrimination.
- It is based on the English model which is much older and less well respected internationally than the Australian model upon which the EOB is based. The Australian Act is in fact based upon actual experience gained in the implementation of the English Act and has a more solid practical foundation.
- The Government has said that the employment provisions of the SDB will not take effect until after the commission promulgates detailed codes of practices. This signals another lengthy delay.
- The employment provisions will not apply to businesses with five or fewer employees for 5 years from the time when the above mentioned codes come into effect..

We intend to deal with some of the Bills' provisions which we particularly welcome by reference to views expressed by our members and to comments included in our submissions on the Green Paper on Equal Opportunities for Women and Men. We will also deal with some areas which we regret are missing from this Bill. For convenience we deal with these matters in the order which they appear in the Bill. If a section is not mentioned it is because we do not have anything we particularly wish to say about it and members may assume we approve the section.

## Areas which we particularly welcome

### Part II

#### 1. **Section 10 -12 Discrimination on the grounds of sex, marital status and pregnancy.**

1.0 We are pleased that these sections deal with indirect as well as direct discrimination. This will mean that where a requirement or condition is imposed which normally applies to men rather than women a woman will be able to allege that she has been discriminated against.

1.2 We approve the wide ambit of these sections. However we deplore the Government's decision to exclude any form of discrimination except employment on the grounds of pregnancy and marital status and the excessive number of exemptions located in Schedule 4 Part of the SDB.

1.3 We agree that the burden of proof should be on the discriminator to justify why the condition or requirement imposed was reasonable in the circumstances. It should not be for the aggrieved persons themselves to convince the court or tribunal that such conduct was unreasonable in the circumstances, once they have given sufficient evidence that such conduct did in fact occur.

1.4 We also consider it appropriate to employ gender neutral terms such as "person", "discriminator" and "aggrieved person" so that assumptions of an essentially sexist nature do not form the basis of equal opportunities legislation in Hong Kong.

#### 2. **Section 13 (1) (a) (b) Discrimination in Offer of Employment**

It will no longer be lawful for a woman to be refused an offer of employment on the grounds that she is a woman is married or is pregnant. We acknowledge that despite these provisions the situation will not change overnight. The culture of appointing male managers and female clerks will continue. However we anticipate that the very fact that employers will receive applications from both sexes for all jobs will promote greater awareness that there are well qualified and able candidates of both sexes available for most jobs.

#### 3. **Section 13 (1) (c) & 13 (2) (a) Terms and Conditions of Employment.**

Where women and men are employed doing the same jobs, we know that women are often paid less than men. This applies particularly in lower paid unskilled jobs. We have received many complaints at middle management level that women do not receive the same benefits as men particularly where housing and medical insurance are concerned. We note with concern that the Government Bill permits some fringe benefits to be withheld on the grounds of marital status in relation to Government employees (see Schedule 4 Part 2)

#### **4. Section 13 (2) (b) Opportunities for Promotion.**

Many women in middle management find that they are unable to progress any further. In spite of the few high profile women in Hong Kong at the top, the "glass ceiling" is still an unfortunate reality for most women. Statistics show that the proportion of women managers as a percentage of women in employment is far lower than for men. There are many well qualified women who are currently not being considered for top jobs. Not only does this cause a hardship to the woman concerned but it prevents younger women from having the necessary role models to which they can aspire. We believe that this section goes a long way towards addressing this particular problem.

#### **5. Section 15 Partnership**

Although in most cases the number of women entering the professions now equals or exceeds men, the number of women partners in most firms remains low. This cannot be entirely accounted for by the fact that women came later into the field. Young men are now being offered partnerships at an early age and there are sufficient qualified women of similar age.

#### **6. Section 25 Clubs**

Women in Hong Kong are seriously disadvantaged by the discriminatory practices of Clubs. They are prevented from full membership of some social and recreational clubs and barred from parts of others at certain times. Much of the business of Hong Kong is conducted outside the office in such clubs. Women are therefore excluded from important discussions and decisions. Clubs are also an important place for making business contacts which gives men an advantage. We urge legislators to allow this provision to stand as it is.

#### **7. Section 27 Discrimination in the administration of laws and government programmes.**

This section would make it unlawful for the Government to discriminate against women in the "small house policy". We welcome this provision and regret that the government has specifically excluded it from the SDB.

#### **8. Section 28 Eligibility to Vote and to be appointed to advisory bodies.**

In our submission on the Green Paper we referred to the rights of women to stand and vote in rural elections. We urged the Government to introduce legislation to outlaw discriminatory practices allowed by the Heung Yee Kuk Ordinance. We support in particular those parts of this section which deal with this problem. We are sorry that the Government has not specifically mentioned this provision in the SDB.

#### **9. Sections 29- 32 Sexual Harassment**

We believe that not only does harassment occur on a personal level between individuals but often a work environment can be created in which such harassment is prevalent for example by the affixing of posters in the office or by sexually suggestive remarks becoming the norm. We applaud the widening

of the scope of harassment to include situations where a hostile or intimidating work environment has been created (section 29.3(b))

### **Part III**

#### **10. Sections 43-58 Discrimination on Grounds of Family Responsibility or Family Status.**

We make the same comments regarding the provisions of this section as we make about the identical provisions in Part II of the Bill. However we specifically mention that in all areas of employment women are discriminated against because they have children. It is always assumed that they are the persons responsible in the family for caring for the needs of those children. This is a vicious circle. If a woman cannot get a well paid job because she has family responsibilities, it is the women who must give up work if the family cannot afford for the man to do so. In some cases the man may be more suited to take this role and in many cases he is deprived of playing a full and equal part in the bringing up of his family because he is forced to become the sole provider. We welcome provisions which address such inequality.

### **Part VIII**

#### **11. Section 164 Discrimination on Account of Age.**

This provision is of considerable importance to women and does not appear in the Government's Bill.

#### **12. Section 165 Employment**

This section has particular implications for women. Many are unable to return to the job market after a break to have their families on the grounds that they are too old and will have great difficulty in finding employment particularly in the lower skilled markets. A cursory glance at many job adverts indicates that for some jobs, employees are required to be under 30. We have heard from other women's organisations that once a woman receptionist reaches 30 she is liable to be demoted to a "less visible" position such as a cleaner.

### **Part XI**

#### **13. Section 225 Advertisements**

This provision is particularly needed in Hong Kong which is possibly the only developed country which still allows discriminatory job advertisements. We agree that criminal and not merely civil sanctions should be employed in this instance to act as an effective deterrent.

### **Part XIII**

#### **14. Section 235 Application of the Rules of Evidence**

Notwithstanding anything we will say regarding the enforcement procedure we believe this is an important provision and Courts hearing this type of case

at first instance should adopt an inquisitorial rather than an adversarial procedure and allow evidence such as relevant statistics be adduced in such proceedings to uncover hidden forms of discrimination

#### **15. Section 242 Effect on pre-existing legislation**

We hope that this section will impose a liability on the Government to see that the composition of the Functional Constituencies does not unfairly discriminate against women. It should be made aware that current proposals discriminate against the large group of women who are not working and will therefore be deprived of a second vote. This section will also mean that so called "protective legislation" will be repealed. A measure which we welcome. We regret that the Government Bill exempts all such legislation

#### **Provisions which we would like to have seen included.**

#### **16. Woman's Commission.**

We much regret the Governor's refusal to allow Anna Wu to introduce the Human Rights Commission Bill which was intended to be complimentary to this Bill.

We wish the Commission to have a specific mandate to undertake research. This is required for example to reform the voting system and to ensure a better representation of women at all levels of Government.

The Commission should act as catalyst for text book revision and for gender education of teachers and career counselors. It should encourage the teaching of self esteem and assertiveness courses which will enable students to repel unwanted advances.

It should advise government and other agencies on legislation and other services for women including health, wife battering and the provision of child care facilities.

It should give advice to women who wish to bring complaints under the legislation and act as a conciliator in the first instance. It should be able to fund test cases.

It must act as the organisation responsible for the monitoring, initiation and implementation of changes required by the extension of CEDAW to Hong Kong.

We would be content for such a Commission to be part of a Human Rights Commission. We would ask Members to amend the Bill to include such a Commission.

#### **17. Equal Opportunities Tribunal**

We regret that neither Bill proposes such a tribunal. We believe that a

tribunal composed of a legally qualified Chairman together with an employee representative and a trade union representative can deal more effectively with employment cases. A differently composed but similarly constituted Tribunal could deal with other types of cases. This would give the tribunal instant expertise in these matters and obviate the need to appoint new Judges who would not in any event have the expertise required. We do not believe the District Court is a suitable venue for such cases. Judges would find difficulty in adopting new procedures. Cases would take far too long to reach court and would be too expensive. We are very concerned that the SDB appears to envisage that employment cases will be dealt with by the existing Labour Tribunal which has a large backlog of cases to deal with already and has a reputation for being an employer's Tribunal. We ask members to consider amending the EOB so as to provide for an Equal Opportunities Tribunal.

### **18. Affirmative Action**

Although the Bill specifically excludes affirmative actions from the definition of discrimination (section 37), we believe that in some areas affirmative action is required.

An amendment to section 28 should require the government to appoint a certain number of women to Public Bodies and Advisory Committees. Such a provision could automatically lapse once such bodies have 40% women members.

An amendment to section 29 is required to ensure women get places on government retraining schemes. Currently they are often discriminated against on grounds of their age as well as their sex.

Section 20 should be amended so as to require discrimination in favour of girls seeking education places at tertiary education institutions in non traditional subjects such as engineering.

### **19. Equal Pay for Work of Equal Value**

Many women are employed in low paid unskilled occupations. Wages are low simply because the sort of work they do is traditionally done by women. Unless a provision allowing equal pay for work of equal value is introduced such women will have no hope of being paid a proper rate for the job.

We thank members for the opportunity you have given us to appear before you and ask that we be given an opportunity to make further comments on any amendments you may propose to make to the Bill.

香港商業及專業婦女協會向條例草案審議委員會提交的意見書擬稿

香港商業及專業婦女協會主要關注條例草案第II、III、VIII、XI及XIII部。基於本會理解到在各種歧視的形式中，受歧視者半數是女性，而且泰半更受到雙重歧視，我們對草案全面立法的形式，極表歡迎，本會的立場是反對所有形式的歧視，並支持立法把歧視者加以懲罰。

本會知道這個審議委員會的職責，是審議平等機會條例草案，但為作比較，我們偶然亦會在意見書內提及政府所提出的性別歧視條例草案，如有不便之處，尚祈見諒。本會未有機會對性別歧視條例草案進行詳細研究，希望日後可向立法局有關的委員會就此條例草案詳述意見。本會對該草案的初步意見如下：

- 性別歧視條例草案不僅未能針對各種形式的歧視，即使在消除性別歧視的作用上，亦遠遠不夠全面。
- 此條例草案是以英國的模式為基礎，與平等機會條例草案所依據的澳洲模式比較，前者較為守舊，在國際間所獲得的評價亦較遜色。事實上，澳洲的反歧視法是根據英國有關法令的實施經驗而制訂，故具有更穩固的實踐基礎。
- 政府表示性別歧視條例草案內有關僱傭的條文須待平等機會委員會頒布詳細的實務守則後才生效，這意味了有關條文會再耽誤一段長時間，始會正式付諸實行。
- 在上述實務守則實施後五年內，僱傭條文不適用於只有五名或以下僱員的機構。

本會打算在此論述兩項草案內一些我們歡迎的條文，以表達會員的各項見解，並重申我們就男女平等機會綠皮書所提交的意見書內所載意見。我們對條例草案未能顧及某些範疇感到遺憾，在此亦會加以論述，提出本會意見。為方便起見，現按此等事項在草案中的編排次序逐一陳述。那些本會並無特別意見的草案條文，在此將不予贅述，議員可推定本會贊成有關條文。

**本會尤表歡迎的範疇**

**第II部**

1. 第10至12條：基於性別、婚姻狀況或懷孕的歧視。



1.0 這些條文除了針對直接歧視外，可能兼顧到間接歧視的情況。本會對此感到欣慰。根據條文的規定，沒有人對女性施以一項通常只適用於男性的要求或條件，受影響的婦女便可指稱受到歧視。

1.2 本會對此等條文涵蓋範圍廣泛，深表贊同。反之，在性別歧視條例草案中，政府決定只在僱傭範疇內納入對基於懷孕及婚姻狀況而受歧視的保障，其他歧視範疇並不適用，而且草案附表 4 第 2 部<sup>1</sup>又載列過多的例外情況，本會對此深感遺憾。

1.3 本會贊同應由歧視者承擔舉證責任，證明在有關情況下提出該條件或要求乃屬合理。只要受屈人士已提出充分證據，證明此等歧視行為確實發生，其理應毋須負上舉證責任，使法院或審裁處信服該等行為在有關情況下並不合理。

1.4 本會亦認為，草案中採用不標明性別的字眼，例如「人士」、「歧視者」及「受屈人士」等用詞是恰當的做法。這樣的立法措辭方式，可使本港的平等機會法例，不致建基於一些本質上帶有性別偏見的假設之上。

## **2. 第 13(1)(a)(b) 條：在聘用方面的歧視**

根據條例草案的規定，基於任何人士為女性、已婚或懷孕而拒予聘用，即屬違法。本會體察到儘管訂立此等條文，現時的不公平情況亦不會一下子遽然改變，社會上依然會起用男性擔當管理工作，文書職務則交由女性擔任。然而，本會期望，當僱主逐漸了解所有種類的工作，均有男女兩性的求職者申請此一事實，假以時日便會確認到，大多數的工作都可從男女求職者中，找到合乎資格的勝任人選。

## **3. 第 13(1)(c) 條及第 13(2)(a) 條：僱用條款及條件**

據本會所知，現時儘管女性與男性受僱擔任相同的工作，女性獲得的薪酬通常較男性為少，特別是那些低薪的非技術職位。本會曾接獲不少女性中層管理人員的投訴，指稱未能享有與男同事一樣的福利，尤以房屋及醫療保險方面為甚。本會關注到，在政府提出的條例草案中訂有例外情況，准許某類附帶福利可基於政府僱員的婚姻狀況而不予提供(見該草案附表 4 第 2 部)。

#### 4. 第13(2)(b)條：升職機會

許多身居管理層的女性，每每感到在事業上無法更上一層樓。儘管香港亦有少數女性在事業上成就顯赫，但不幸的是，對大部分婦女而言，這種「無形上限」確實存在。統計數據顯示，就業婦女當中，任職管理階層者所佔比例遠較男性為低。當下的情況是，許多女性雖然在資歷上勝任高層工作，但卻未獲提拔。此種情況不僅對其本人造成困擾，更使年青女性失去可資學習模倣的典範，本會認為有關條文將可大大有助消除這種不公平現象。

#### 5. 第15條<sup>2</sup>：合夥經營

雖然在大多數情況下，現時晉身各類專業的女性人數與男性相若，甚至過之，但大多數公司的女合夥人，數目仍然偏低。這種現象不能純粹以女性較遲晉身各類專業為理由作解釋。事實上，男性即使年紀輕輕，亦獲提拔為合夥人者屢見不鮮，反之，不少年紀相若的女性，雖然資歷足夠，卻未獲賞識。

#### 6. 第25條：會社

目前香港某些會所的做法帶有歧視成份，令本港女性的權利受到嚴重損害。有部分社交及康樂性質的會社拒絕女性申請成為正式會員，亦有部分會社不准女性在某些場合參與其某類活動。現時，香港不少的商務活動，已轉移在辦公室以外的地方進行，該類會社更是主要場所之一。基於種種的限制，女性被摒諸局外，不能參與一些重要的業務討論和決定。另外，由於會社亦是商務酬酢的主要場合，男性可在此廣結朋友，建立業務聯繫，這點對於男性不啻是一種優勢。本會促請議員支持此項條文現時的各項建議規定。

#### 7. 第27條：在法律及政府計劃的執行上的歧視

按此條文規定，政府在「丁屋政策」中如歧視女性，即屬違法，本會對此表示贊成，遺憾的是，政府在性別歧視條例草案中，卻特別把此項政策列為例外情況，不在適用範圍內。

8. **第28條：就諮詢團體的投票資格及委任該等團體的歧視**

在本會就綠支書所提交的意見書中，我們曾提及女性在鄉事選舉中參選及投票的權利，並促請政府立法將鄉議局條例所容許的歧視做法定為違法行爲。對於條文中針對此問題而訂定的部分，尤爲支持。反之，政府在性別歧視條例草案內並無特別就此作出規定，實屬遺憾。

9. **第29至32條：性騷擾**

本會認爲，性騷擾除了在人際交往的層面上發生外，在工作環境中此等騷擾亦比比皆是，例如在辦公室張貼不雅海報及使用性挑逗的字眼等等。把性騷擾的適用範圍擴展至包括製造在性方面具有敵意或威嚇性的工作環境(見草案第29(3)(b)條)，本會對此大力贊成。

**第III部**

10. **第43至58條：基於家庭責任或家庭崗位的歧視**

本會對此部條文的意見，與對條例草案第II部內對等的條文所給予的意見一樣。不過，本會特別要提出，在工作上各個方面，女性都會因爲育有子女而遭受歧視。社會向來的觀念是女主內，認爲婦女的责任是照顧家中子女生活所需。這種觀念形成了一個惡性循環，假如女性因要照顧家庭而無法找到一份優薪工作，而男戶主爲賺取生計又不能放棄其工作，在兩者必須作出取捨的情況下，放棄工作的必定是女性。有時擔當照顧子女的责任，男性可能更爲勝任，但在許多情況下，男性由於被逼成爲家庭的經濟唯一支柱，因此他與妻子合力將子女撫育成人的平等機會被剝奪。我們歡迎改善這種不平等現象的條文。

**第VI部**

11. **第164條：基於年齡的歧視**

此條文對於女性極爲重要，但卻未有納入政府提出的條例草案內。

## 12. 第165條：就業方面

此條文對女性的影響尤其重大。許多女性因為照顧家庭而暫停工作一段時間後，便無法再找到工作，原因是她們年紀太大，要覓得一二半職極其困難，特別是一些母須太高技能的工作。縱觀許多招聘廣告，有些工作規定僱員的年齡必須在30歲以下。我們從其他婦女團體得悉，女接待員一旦年滿30歲，便可能要降職擔任諸如清潔工人這類「不大需要見人」的職位。

## 第XI部

### 13. 第225條：廣告

香港特別需要設有此一條文，理由是香港可能是先進國家當中唯一仍然容許刊登帶有歧視成份的招聘廣告的地方。我們同意要在這方面產生有效的阻嚇作用，單靠民事制裁並不足夠，而應採取刑事制裁的方法。

## 第XIII部

### 14. 第235條：證據規則的適用範圍

不論本會對於執行此條文的程序有何意見，本會相信這條文是重要的，而法院在聆訊此類個案時，首先應採取審問式而不是辯論式的訴訟程序，而且應容許在此類訴訟當中援引諸如有關的統計數字作為呈堂證據，以揭發種種隱藏的歧視情況。

### 15. 第242條：對先前法例產生的影響

本會希望此條文會將責任加諸政府，使其確保功能組別的組合，並不會不公平地歧視女性。有一點必須指出，目前有關功能組別的建議，歧視大批沒有工作的女性，剝奪她們第二個投票權。此外，引入此條文亦表示所謂「保護法例」將會廢除，這是本會所歡迎的一項措施。但政府提出的條例草案將該等法例全部豁免，本會對此甚表遺憾。

本會希望條例草案加入的條文

## 16. 婦女委員會

總督拒絕讓胡仁三議員提交旨在補足此條例草案的人權委員會條例草案，本會對此深感遺憾。

本會希望婦女委員會具有進行研究工作的特定權力，藉此推展諸如改革投票制度及確保女性在政府各個層面更有代表性等工作。

委員會應促進教科書的修訂工作，以及促使當局向老師和職業輔導員灌輸性別教育的知識。委員會應提倡講授關於自尊及自我肯定的課程，使學生懂得拒絕別有用心的挑逗。

委員會應就與婦女有切身關係的法例及服務，向政府及其他機構提供意見，範圍包括保健、防止虐妻、兒童護理設施等等。

委員會應向有意根據法例提出投訴的女性給予意見，而且首先應充當調停者。委員會應具備財力資助一些試驗案件。

委員會應負責監察、倡導及推行把《消除對婦女一切形式歧視公約》引用至香港後所需的種種改變。

本會希望這個委員會能夠成為人權委員會的一部分，並要求議員修訂條例草案，將這個委員會包括在內。

## 17. 平等機會審裁處

上述兩項條例草案均無建議設立平等機會審裁處，本會對此感到遺憾。本會認為應成立有關的審裁處，由符合資格的法律界人士擔任主席，另外由一位勞方代表及一位工會代表參與，關於就業的個案交由此審裁處審理，將更為事半功倍。其他種類的個案應由另一個組織近似但成員不同的審裁處審理。這樣組成的平等機會審裁處已即時具備適當的專門知識，因此無需另委根本毫無所需專門知識的法官審理案件。本會相信由地方法院審理這類案件並不恰當，理由是法官對於採取新的訴訟程序感到難以適應，另外案件排期聆訊需時太久，而且法律訴訟費用不菲。性別歧視條例草案似乎預期與就業有關的個案由現存的勞資關係審裁處審理，本會對此甚為關注，因為勞資關係審裁處目前已積壓了大量個案有待處理，而且該審裁處一向被認為偏袒資方。本會要求議員修訂平等機會條例草案，加入設立平等機會審裁處的條文。

## 18. 正面措施

條例草案對歧視作出解釋時，特別將正面措施排除在外(條例草案第37條)。但本會相信在某些方面，採取正面措施是必須的。

草案第28條應予修訂，以規定政府必須委任某一數目的女性加入公共團體及諮詢委員會，倘若某團體的女性成員佔全體成員的40%，該項規定即告自動失效。

草案第29條須予修訂，以確保政府的再培訓計劃為婦女提供足夠學額，目前婦女經常因年齡及性別而在這方面受到歧視。

草案第20條應予修訂，以規定專上教育機構優先考慮報讀工程學系等「非傳統學科」的女生。

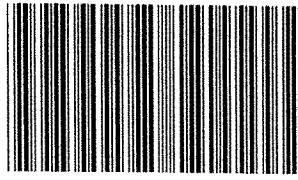
## 19. 同等重要的工作，同等水平的酬勞

大量婦女目前擔任非技術性的職位，入息微薄。她們的工資低微純粹是因為該等工作在傳統上是由女性擔任的，除非政府當局引入條文，規定若工作的重要性相同，其工資的水平亦必須相同，否則該等婦女實難望賺取合理的工資。

本會有機會與議員會晤，發表意見，為此我們深表感激，本會懇請議員再次給予機會，就議員對條例草案提出的任何修訂建議發表意見。

### 譯者註：

- \* 1：原文漏去部次，應為附表4第2部。
- \* 2：原文誤引為草案第15條，正確應為第16條。



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