

Hong Kong Christian Institute's Submission to the
Legco Panel on Home Affairs

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1. Need to Establish a Human Rights Commission

1.1 National human rights institutions have long been a concern of the United Nations. The original concern of the United Nations dates back to 1946 when the issue was first addressed by the Economic and Social Council. The council asked member states to consider "the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights."

1.2 At the moment, 48 countries have statutory national human rights institutions to monitor human rights. In the Asia-Pacific region alone, there are already nine countries with such institutions—Australia, Fiji, India, Indonesia, Mongolia, Nepal, New Zealand, the Republic of Korea and Thailand. In Europe, 21 countries have such institutions; and in Africa, the number is five, and there are 13 in the Americas.

1.3 Hong Kong has both domestic and international obligations to establish a Human Rights Commission. Domestically, Article 39 of the Basic Law states: "The provisions of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region."

1.4 Just like other international covenants and declarations, both the ICCPR and ICESCR oblige governments to provide adequate remedies for victims of human rights violations. Governments must take all necessary steps to give effect to human rights. Since a commission can be an effective human rights monitoring mechanism if it is independent and has adequate resources, it is imperative that a Human Rights Commission be established as soon as possible with the necessary independence and resources.

1.5 The Hong Kong Christian Institute (HKCI) strongly feel that the Hong Kong government must fulfil its international obligations and establish a Human Rights Commission. This will constitute an important statement by and to the people of Hong Kong. It will demonstrate that Hong Kong recognises and seeks to achieve the values of fairness, equal opportunity and tolerance. HKCI therefore urges the Panel on Home Affairs to ask the government to establish an independent, statutory Human Rights Commission to monitor human rights in Hong Kong.

2. Inadequacy of Existing Ordinances

2.1 The scope of application of the Bill of Rights is too narrow. Section 7 of the Hong Kong Bill of Rights Ordinance states that the 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.

2.2 The ICESCR has still not been enacted into domestic legislation. In its concluding observations, the U.N. Committee on Economic, Social and Cultural Rights has shown its deepest concern for the covenant's status in Hong Kong's domestic legal order. Thus, the authorities should remedy this flaw in local human rights legal protection and enshrine the ICESCR in domestic legislation. In addition, those ordinances which violate the ICESCR should be amended as soon as possible.

2.3 Moreover, the Legal Aid Ordinance should be amended so that the waiver scheme, which can waive the upper limit of financial eligibility in meritorious cases involving a possible breach of the Hong Kong Bill of Rights Ordinance or an inconsistency with the ICCPR, can be extended to any litigation related to the ICESCR.

3. Urgent Need for Legislation to Prohibit Racial Discrimination

3.1 According to the report to the U.N. Committee on the Elimination of Racial Discrimination by the non-governmental Hong Kong Human Rights Commission, new immigrants from mainland China, ethnic minorities and migrant workers in Hong Kong systematically face discrimination based on their colour, race, ethnicity, nationality, class and gender. These groups are crucial to upholding the community's prosperity, and yet they are clearly denied the same fundamental rights as other members of society. Studies furthermore show that racial discrimination is widespread in Hong Kong in such areas as immigration, housing, employment, education, politics and access to social security and commercial establishments.

3.2 After many years of campaigning and with support from the U.N. committee, we are happy that the Hong Kong government finally admits that there is a need to enact laws to prohibit racial discrimination and that it promised earlier this year that there will be a public consultation on the legislation. However, we are extremely disappointed that the Home Affairs Bureau has decided to postpone the process due to the present political climate. HKCI therefore strongly urges the Panel on Home Affairs to demand that the government draft and enact a Racial Discrimination Ordinance (RDO) as soon as possible to provide the necessary legal mechanisms to combat racial discrimination.

4. Recommendations

4.1 A Human Rights Commission should be established to monitor all human rights. It should have the powers to receive complaints, investigate proactively, conciliate, adjudicate, provide legal advice and legal aid, bring legal proceedings and issue enforcement notices and court orders and monitor both the public and private spheres. It should furthermore have the power to review all government policies and make binding recommendations. Lastly, a Human Rights Commission should engage in public education on human rights.

4.2 The Bill of Rights should be amended so that it includes private parties as well.

4.3 The government should set a timetable for the establishment of a Human Rights Commission.

4.4 The government should promote education on the ICESCR, ICCPR, International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) among members of the public and the advisory and statutory boards and committees.

4.5 The government should ensure that sufficient government resources are allocated to fully implement the human rights covenants in Hong Kong.

4.6 The government should draft and enact legislation outlawing racial discrimination, and this law should extend protection to new immigrants from mainland China, ethnic minorities and migrant workers in Hong Kong.