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**Executive Summary**  
**of the Submission of the Democratic Party**  
**to the UN Human Rights Committee**  
**in Respect of Human Rights in Hong Kong**  
**under the International Covenant of Civil and Political Rights**

Hong Kong has been striving for democracy for the past twenty years. From the fight for direct election in the Legislative Council in 1988, to the two mass rallies in 2003 and 2004, Hong Kong people have demonstrated their strong aspiration and desire for universal suffrage. Nevertheless, not only that their demand has not been met, the National People's Congress Standing Committee (NPCSC) of the People's Republic of China has even ruled out the possibility of universal suffrage for the Chief Executive election in 2007 and the Legislative Council election in 2008, through the interpretation of the Basic Law in 2004. This step has not only been criticized as an interference with Hong Kong internal affairs, but also an infringement on the principle of "High Degree of Autonomy" under the Basic Law, and the authority of the HKSAR judiciary.

On the other hand, with increasing Mainland's influence over Hong Kong political situation, the level of freedom of the press and expression that can be enjoyed in Hong Kong has been thrown into serious doubt. Local media have become more prone to exercising self-censorship in their news production whenever sensitive materials concerning the Central Government are involved. The role of the media as an upholder of fundamental human rights is thus substantially weakened.

On the whole, the HKSAR Government has failed to respond to the aspiration of Hong Kong people for democracy, and to safeguard their civil and political rights protected under the Covenant.

**Autonomy**

Despite having delivered the statement that it would not seek another interpretation of the Basic Law except in "*highly exceptional circumstances*" in the 1999 UN hearing, it is regrettable that the HKSAR Government requested the

Standing Committee of the National People's Congress (NPCSC) on its own initiative for making another interpretation in 2005. The negative impact of these incidents of re-interpretations on the local judiciary is immense. The re-interpretation issued in 2005 bypassed possible rulings on the relevant provisions of the Basic Law by local Courts, with the one issued in 1999 even overturned the rulings of the Court of Final Appeal—the highest appellate court in the territory. As a result, the authority and independence of the judiciary is greatly impaired and rule of law of the HKSAR has come under serious threat (details in paragraph 7-13 of the main report).

The re-interpretation issued in 2004 was clearly made for the purpose of furthering the political aims of the Central Authorities to tighten its control over the constitutional development of Hong Kong. In short, the three incidents of re-interpretation, with the likelihood that more might come, have shown that neither the Central Authorities nor the HKSAR Government respected the principle of “High Degree of Autonomy” guaranteed under the Basic Law.

**We urge your Committee to denounce the HKSAR Government for requesting an interpretation of the Basic Law from the NPCSC, and demand the HKSAR Government to solemnly undertake not to make any more request to the Central Authorities for interpretation. We also urge your Committee to consider appointing a special rapporteur to look into past cases and study the procedures of the interpretation of the Basic Law, and in particular, as to how the use of such procedures has impaired the autonomy of HKSAR and weakened the political and civil rights protected by the Covenant.**

### **Universal Suffrage**

Despite the strong aspiration of Hong Kong people for democracy, the re-interpretation of the Basic Law and the decision of the Central Authorities rejected universal suffrage for the elections of the Chief Executive in 2007, and all members of the Legislative Council in 2008 (details in paragraph 15-23 of the main report).

The HKSAR Government turned a deaf ear to the calls of the Hong Kong people for democracy, and put forward a constitutional reform proposal (“the proposal”) which was contrary to the principle of an open and democratic election. The proposal sought to increase the number of seats of the functional constituencies, a system of special franchise conferring power to vote on a limited number of people, resulting in a minority within the community having two votes. The functional constituency has

been criticized by your Committee in your 1995 concluding observation for violating Article 2 of the Covenant, due to the fact it discriminated among voters on the basis of property and functions. The Government also proposed to include District Councillors appointed by the Chief Executive into the Election Committee, a body which is responsible for selecting the Chief Executive. This arrangement again, if put in place, would steer the constitutional development of Hong Kong further away from the goal of full democracy.

Despite persistent calls from the community for improving the proposal either by introducing more democratic components or laying down a timetable or roadmap for future democratization, the Government has taken a hard stance and shown an uncompromising attitude on the proposal, refusing to make any amendments. Its intransigence eventually led to the rejection of the proposal in the Legislative Council.

However, rather than actively engaging the Legislative Council in the discussion of setting up a road map and timetable for universal suffrage after the rejection of the proposal, the Chief Executive chose to appoint a committee, which is mainly composed of pro-establishment members, to discuss the above issues in closed-door meetings. It is indeed worrying that the Government intends to exclude the Legislative Council in the discussion of future constitutional arrangement of the HKSAR (details in paragraph 29-40 and 164-193 of the main report).

**We specially draw the attention of your Committee that the majority of Hong Kong people wish to have universal suffrage not later than 2012. Your committee should request the HKSAR government to submit a supplementary report on its work progress on setting up the roadmap and timetable next year.**

So long as public demand for democracy is not properly addressed, and the principle of “high degree of autonomy” guaranteed under the Basic Law not observed, the cornerstone of Hong Kong’s success—the rule of law, freedom and human rights will all be vulnerable to attacks.

## **Restrictions of Freedom**

### ***(A) Freedom of Expression***

The undue influence exerted by the Central Authorities on the press in the HKSAR has stepped up in the past few years. The launching of the “patriotism

campaign” by the Central Authorities resulted in political attacks against members of the pro-democracy camp by the pro-Beijing camp (details in paragraph 108-114 of the main report). Local media were under political pressure and became polarized. Many have been forced to adopt a pro-Beijing stance. Research and opinion polls have found that more and more people are of the view that local media exercise self-censorship in their work.

The departure of three radio talk-show hosts due to political pressure and threat of violence has also raised fears as to whether freedom of expression has been further suppressed in Hong Kong. What is more worrying is that the Government now intends to re-position the only public broadcaster in the HKSAPR by appointing a committee to review the functions and roles of public service broadcasting. This again raises public concern as to whether the Government seeks to turn the broadcaster into its propaganda agency.

### ***(B) The Right of Privacy***

Two recent Court judgments that the use of the covert surveillance for collecting evidence by law enforcement agencies were in breach of Article 30 of the Basic Law, have thrown the issue of freedom and privacy of communication back into the public light. However, rather than taking immediate actions to introduce legislation regulating covert operations, the Chief Executive issued an “Executive Order”, laying down the conditions and procedures for the agencies to obtain internal administrative authorization to conduct covert activities, as an attempt to comply with Article 30.

The fact that the Government intended to use executive power, rather than through enacting proper legislation, to restrict freedom of the citizens is tantamount to usurping the constitutional function of the Legislative Council. In a recent judicial review case challenging the legality of the Executive Order, the High Court ruled that the Order has only had the effect of an “administrative tool”, but could not be accepted as compliance with the requirement of Article 30 of the Basic Law.

### ***(C) The Freedom of Assembly***

The freedom of assembly has been unduly restricted by the Public Order Ordinance. First it requires that a “notice of no objection” to be issued by the Police before processions of any kind can proceed. Secondly, the Commissioner of Police has discretion to object, or to attach prior conditions to a public procession under

certain circumstances. There is a great potential, however, given the vague wordings of the Ordinance, for the police to abuse their power. The Court of Final Appeal confirmed this view and ruled in a case that the adoption of vague legal concept such as “ordre public” as statutory ground for restricting the right of peaceful assembly could lead to the arbitrary suppression of a fundamental right protected by the Basic Law, and is thus unconstitutional.

In short, violations of fundamental human rights is still commonplace in the HKSAR nowadays. The Government maintains the view that setting up a Human Rights Commission is unnecessary. Progress on introducing legislation against racial discrimination has been extremely slow.

This summary contains only a highlight of the issues of our greatest concern on the human rights situation in Hong Kong. The impact of the Central Authorities on many of the issues is emphasized with the aim of drawing your Committee’s attention to the likelihood of more interventions from China into Hong Kong political affairs in the future. If the principle of “high degree of autonomy” and the rule of law cannot be upheld, the realization of democratic development and the protection of human rights will become illusory.

Democratic Party Spokesman of Human Rights Policy Albert Ho  
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**Submission  
to the United Nations  
Human Rights Committee  
in respect of Human Rights  
in Hong Kong under  
the International Covenant on  
Civil and Political Rights**

**The Democratic Party  
March 2006**



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## **Article 1: High Degree of Autonomy**

### **A. Re-interpretation of Basic Law**

#### ***Backgrounds and Issues Concerned***

- 1. The fact that the Basic Law of HKSAR had been interpreted by the Standing Committee of the National People's Congress (NPCSC) three times since 1999 clearly demonstrated that high degree of autonomy in Hong Kong provided in Article 2 of the Basic Law is severely undermined.**
2. There have been 3 cases of interpretations on the Basic Law of HKSAR by the NPCSC on issues critical to the constitutional development of HKSAR since the change of sovereignty in 1997.
3. The first interpretation on Article 24 of the Basic Law issued on 26 June 1999, overturned the judgment of the Court of Final Appeal of the HKSAR, resulting in the denial of the right of abode of Hong Kong residents' children born in the Mainland.
4. Another interpretation of the NPCSC issued on 8<sup>th</sup> April 2004 followed by its subsequent decision on 26<sup>th</sup> April, ruled out the possibility of having the election of the Chief Executive in 2007, and election of all members of the Legislative Council in 2008 by universal suffrage. The latest interpretation was issued in April 2005, while there was a pending judicial review in Court. The NPCSC interpreted the Basic Law of HKSAR based on Mainland's political system and decided that the term of office of the new Chief Executive would be different from the regular 5 years.
5. The interpretations proved that neither the Central Government nor the HKSAR Government respected the provision of "high degree of autonomy". The Central Government exerted enormous influence on and exercised significant control over Hong Kong domestic affairs, thereby obstructing democratic development in Hong Kong.

#### ***Recommendations***

- 6. Your Committee should consider appointing a Special Rapporteur to look**

**into past cases and study the present procedures of the interpretation of the Basic Law, and in particular, as to how the use of such procedures have impaired the autonomy of HKSAR and weakened the political and civil rights protected by the ICCPR.**

B. Interpretation of the Basic Law in 2005 and the Authority of Courts

*Backgrounds and Issues Concerned*

7. **The HKSAR government has requested the NPCSC on its own initiative for an interpretation on Article 53 of the Basic Law regarding the terms of office of the Chief Executive. The request bypassed possible ruling by the Court on the relevant provision and seriously undermined the authority of the judiciary.**
8. According to Articles 46 of the Basic Law, the term of office of the Chief Executive should be 5 years<sup>1</sup>. However, after the resignation of the former Chief Executive Mr. Tung Chee-hua on 12<sup>th</sup> March 2005, the Hong Kong Government consulted several legal scholars in the Mainland on the issue. On accepting their opinions based on their recollection of the legislative intention of the Basic Law, and their legal analysis based on the Mainland system, the Hong Kong Government hold the view that the term of office of the next Chief Executive should be the remainder of Mr. Tung's term—that is 2 years. In spite of strong oppositions from the legal profession, the HKSAR Government decided to seek interpretation from the Central Government on the Basic Law concerning the term of office of the Chief Executive.
9. A legislator applied for a judicial review on the government's decision to seek an interpretation from the Mainland authority on the Basic Law to allow for a shortened two-year term of office for the next Chief Executive.
10. Foreseeing that its decision on the term of office of the Chief Executive might be challenged, the HKSAR Government delayed the court proceedings, so that the NPCSC could issue an interpretation on the Basic Law, thereby pre-empting the Court from further deliberating on the matter. This move by the HKSAR Government to seek an interpretation of the Basic Law in the course of litigation

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<sup>1</sup> Article 46: The term of office of the Chief Executive shall be five years. He or she may serve for not more than two consecutive terms.

has the effect of interfering with the proper functioning of the courts of HKSAR.

11. The interpretation severely undermined the principle of “One Country, Two Systems”. While the constitution of China provided for a by-election arrangement on various occasions, the HKSAR system found no words referring to such an arrangement in the Basic Law. The interpretation of the Basic Law by the NPCSC bore the same effect as incorporating constitutional concepts of the Mainland system into the Basic Law of the HKSAR, thereby seriously weakening Hong Kong’s autonomy.
12. The interpretation also has adverse effects on the rule of law of the HKSAR. The interpretation of Article 53 of the Basic Law was mainly based on the recollection of Mainland legal scholars on the legislative intention of the Basic Law. The application of Mainland legal methods to arbitrarily interpret the Basic Law to further the political aims of the Central Authority despite the plain and clear wordings in the Basic Law, threatens the rule of law of the HKSAR. For if plain and clear wordings of the Basic Law can still be subject to interpretation by the Central Authority at its convenience, the rights under the ICCPR as entrenched in the Basic Law will become illusory.
13. Interpretation of the Basic Law by the Mainland Government out of political expedience may in due course be issued at the expense of the rights of Hong Kong people guaranteed under the ICCPR. There is nothing to prevent the Mainland Government from interpreting any other Articles of the Basic Law in the manner she likes in the future.

#### Progress

14. In March 2006, the HKSAR government submitted the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Bill 2006. Following the NPCSC interpretation of Basic Law, the bill proposed to add a by-election system of the Chief Executive in the local legislation.

#### Recommendations

15. **Your Committee should denounce the HKSAR Government for seeking an interpretation of the Basic Law from the NPCSC, thus seriously impairing “high degree of autonomy” and the rule of law in the HKSAR. Your**

**Committee should also urge the HKSAR Government to solemnly undertake not to make any request to the Central Authority for any interpretation of the Basic Law in the future.**

C. Interpretation of Basic Law in 2004 and Constitutional Development

Background and Issues Concerned

16. **The interpretation of the Basic Law in 2004 not just ruled out the possibility of having the elections of the Chief Executive in 2007 and all Legislative Council members in 2008 by universal suffrage, but also provided a mechanism for the NPCSC to exercise total control over the constitutional development of HKSAR.**
17. According to Articles 45 and 68 of the Basic Law, the selection of the Chief Executive and all members of Legislative Council should ultimately be by universal suffrage. Annex I and Annex II of the Basic Law provide for the procedures to make amendment on the methods of selecting the Chief Executive and all members of the Legislative Council after 2007<sup>2</sup>.
18. Instead of paving the way for all elections to be held by universal suffrage, the NPCSC promulgated its interpretation on the Basic Law Annex I and II on 6<sup>th</sup> April 2004<sup>3</sup>.

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<sup>2</sup> Basic Law Annex I states, “If a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People’s Congress for approval.”. Basic Law Annex II states, “With regard to the forming of Legislative Council and its procedures for voting on bills and motions after 2007, if there is a need to amend, such amendments must be made with the endorsement of a two-thirds majority of all members of Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People’s Congress for record.”.

<sup>3</sup> The Interpretation by the NPCSC of Article 7 of Annex I and Article 3 of Annex II to the Basic Law:

- ✧ subsequent to the year 2007” & “after 2007” includes the year 2007;
- ✧ “if there is a need” to amend means they may be amended or remain un-amended;
- ✧ The Chief Executive shall make a report to NPCSC as regards whether there is a need to amend, and the NPCSC make a determination in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress;
- ✧ If no amendment needed, existing methods in Annexes I and II still apply.

19. On 26<sup>th</sup> April 2004, the NPCSC made the decision that<sup>4</sup>:
- the election of the third Chief Executive in 2007 shall not be by means of universal suffrage;
  - the election of the members of the Legislative Council in 2008 shall not be by means of universal suffrage for all its members; and etc.
20. Both the interpretation of Basic Law and the decision were clearly against the will of the majority of Hong Kong people, who support universal suffrage for both elections as soon as possible. They also stripped the power of the HKSAR Government for proposing any amendment concerning the implementation of universal suffrage for the two elections in 2007 and 2008.
21. The “decision” of the NPCSC required that for the Legislative Council election in 2008, the proportion of seats of the geographical constituencies and functional constituencies must remain unchanged. As all geographical constituencies seats are returned directly, limiting their proportion in the Legislative Council means that the democratization of the Legislative Council election will be forced to come to a halt.
22. The NPCSC also imposed a requirement on the Chief Executive through the interpretation, stating that the Chief Executive shall submit a report to the NPCSC whenever the HKSAR Government seeks to amend the selection methods of the Chief Executive and all members of the Legislative Council. The NPCSC will then decide if this will be allowed, based on the actual situation of HKSAR and the principle of gradual and orderly progress. This additional requirement has gone beyond what is originally stipulated in the Basic Law (Annex I and Annex II), that the HKSAR only needs to report amendments on the Chief Executive election to the NPCSC for approval, and amendments on the Legislative Council election for the record.
23. The interpretation set up a mechanism for the NPCSC to exercise total control

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<sup>4</sup> “The Decision” :

- ✧ the election of the third Chief Executive to be held in the year 2007 shall not be means of universal suffrage;
- ✧ the election of all the members of the Legislative Council in the fourth term in the year 2008 shall not be by means of universal suffrage;
- ✧ the ratio between members returned by functional constituencies and members returned by geographical constituencies through direct elections (30:30) is to remain unchanged;
- ✧ the procedures for voting on bills and motions in the Legislative Council are to remain unchanged.

over the constitutional development of the HKSAR. No advancement towards a more democratic electoral system could be made without prior approval from the Central Authorities. In view of the disparity of democratic development between Mainland China and the HKSAR, the need for any amendments to the constitutional arrangement of the HKSAR to be in accordance with the “gradual and orderly progress” means indefinitely dragging out the democratic constitutional development of the HKSAR.

*Recommendations:*

24. **Your Committee should urge the Government to respect the fundamental rights guaranteed to all Hong Kong people under Article 1 of the ICCPR, and that the NPC of the People’s Republic of China should not intervene in the constitutional democratic development of the HKSAR, other than by lawful procedures as expressly provided in the Basic Law.**

D. The Interpretation and Freedom of Speech in the Legislative Council

*Background and Issues Concerned*

25. The Chairperson of the Legislative Council banned a motion which was to be moved by a democrat legislator to condemn the decision of the NPCSC for rejecting universal suffrage in the HKSAR, impairing the autonomy of the region and for restricting the rights and power of the Legislative Council.
26. In late April 2004, former Democratic Party chairman Martin Lee attempted to move an amendment to a motion which “strongly condemned” the NPCSC over its decision to rule out universal suffrage in the HKSAR. However, the president of the Legislative Council Rita Fan rejected the motion in her ruling, for it was “out of order for the Legislative Council to debate the amendment involving accusatory expressions against the acts of NPCSC”<sup>5</sup>. The decision was made after Chairman Fan received a letter containing a similar point from the Secretary for Justice. The ruling of the Chairman was criticized for severely restricting free speech and undermined the rights and power of the Legislative Council.

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<sup>5</sup> The ruling can be found in the website of the Legislative Council. [http://www.legco.gov.hk/yr03-04/english/pre\\_rul/pre0430cb3-ref-e.pdf](http://www.legco.gov.hk/yr03-04/english/pre_rul/pre0430cb3-ref-e.pdf)

27. In early May 2004, The Chairman also exercised her veto on another motion moved by another Legislative Council member of the Democratic Party Albert Ho. The motion denounced the NPCSC for not conforming to the basic principle of ‘one-country, two-systems’ and a high degree of autonomy<sup>6</sup>.
28. Representatives of the Central Authority subsequently criticized the legislators’ attempt to move the motions as “an act to challenge the position of the NPCSC as the standing organ of the country’s highest authority”, as “against the Chinese constitution and the Basic Law of Hong Kong” and having “exceeded the duties and power given to the Legislative Council under the Basic Law”. It reiterated that the ruling of the NPCSC “could not be questioned or challenged”.

Recommendations:

29. **We urge your Committee to expressly disapprove of the decision of the Chairperson of the Legislative Council for inappropriately restricting freedom of speech of Legislative Councillors and thus impairing the independence of the Legislature of the HKSAR.**

E. The Fifth Report of the Constitutional Development Task Force

Background and Issues Concerned

30. **The Fifth Report of the Constitutional Task Force (the “task force”) which contained constitutional reform proposal for the HKSAR and published by the Government in 2005 runs contrary to the principle of an open and democratic election, and has been criticized as a rollback in democracy. The Chief Executive and members of the task force refused to listen to public opinion and consider the viability of other proposals. The intransigence of the Government finally led to the rejection of the reform proposal in the Legislative Council.**
31. The task force published its Fifth Report which laid out the methods of electing the Chief Executive in 2007 and forming the Legislative Council in 2008. However, being constrained by the interpretation of the Basic Law provisions and the decision made by the NPCSC on 26<sup>th</sup> April 2004, the proposal outlined

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<sup>6</sup> The ruling can be found in the website of the Legislative Council [http://www.legco.gov.hk/yr03-04/english/pre\\_rul/pre0507cb3-ref-e.pdf](http://www.legco.gov.hk/yr03-04/english/pre_rul/pre0507cb3-ref-e.pdf).



in the report failed to advance constitutional development in the direction towards universal suffrage for the two elections. Please find details of the electoral system of the HKSAR in the part discussing Article 25 of the ICCPR.

32. Regarding the Chief Executive election, the proposal only sought to double the size of the election committee to 1600 members, without substantially widening the base of participation of the community. As for the Legislative Council election, although the total number of seats will be increased from 60 to 70, the ratio of directly elected seats to that of functional constituencies remains half to half. The functional constituencies election of the Legislative Council allows some voters to have more than one vote. This arrangement was criticized by your Committee for failing to comply with Articles 25 and 26 of the International Covenant on Civil and Political Rights in your last concluding observation.
33. Despite the calls from the community for improving the proposal by, for example, substantially enlarging the electoral base of the functional constituencies to enhance its representatives, the Government has taken a hard and uncompromising attitude on the proposal and refused to make any amendments. The Government also turned a deaf ear to the request of the majority of Hong Kong people and pro-democracy Legislative Councillors to set a timetable and a roadmap for introducing universal suffrage in the HKSAR.
34. With the obvious shortcomings of the proposal and the refusal of the Chief Executive to accede to the requests of the pro-democracy legislators, the proposal was eventually voted down by the Legislative Council.

#### *Progress Made on the Matter*

35. The Chief Executive has put the issue of constitutional development before the Committee on Governance and Political Development (the “CGPD”) under the Commission on Strategic Development deliberately to work out a roadmap for universal suffrage prior to the discussion of the timetable. The CGPD planned to spend half a year only to discuss “basic principles and concepts” relating to universal suffrage. According to its schedule, the CGPD will not start the discussion of the time-table before 2007. We are deeply concerned that the CGPD is being used by the Government as a tool to delay the discussion of a time-table for universal suffrage.

36. It is regrettable that the Secretary for Constitutional Affairs refused to attend the meeting of the Panel on the Constitutional Affairs of the Legislative Council to discuss about universal suffrage, while in favour of having closed-door meetings on the issue in the CGDP, which is mainly composed of pro-establishment appointed members. It is indeed worrying that the Government intends to exclude the Legislative Council in the discussion of future constitutional arrangement of the HKSAR.

### Recommendations

37. **We draw the attention of your Committee that the majority of Hong Kong people wish to have universal suffrage not later than 2012<sup>7</sup>.**
38. **Your Committee should urge the Government to respect the will of Hong Kong people and that of their chosen representatives in the Legislative Council. The Government should provide a timetable and roadmap acceptable to the people for the election of the Chief Executive and the whole Legislative Council by universal suffrage in Hong Kong. Your Committee should also request the HKSAR government to submit a report on its working progress on the roadmap and timetable next year.**

## Article 2: Realization of Rights by all Appropriate Means without Discrimination

### A. Democratic Representation in District Affairs

#### Backgrounds and Issues Concerned

39. The Committee expressed its concern in its 1999 concluding observations that the abolition of the Municipal Councils would further diminish the opportunity of HKSAR residents to take part in the conduct of public affairs, and urged the HKSAR government to reconsider the abolition. However, **the Government gave no second thought on the issue and dissolved the Municipal Councils, trimming the 3-tier electoral system down to 2-tier, thus reducing democratic representation of HKSAR residents in public affairs.**

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<sup>7</sup> According to the opinion polls conducted by the Chinese University of Hong Kong, 59% of the respondents supported the government proposals when it was first introduced, the level of support was later dropped to below 50%. On the other hand, about 70% of the respondents considered that universal suffrage should be implemented by 2012, and 65% of them considered that the Government should set a timetable for attaining universal suffrage.

40. Moreover, the Government failed to fulfill its promise given to Legislative Councillors when passing the legislation to abolish the Municipal Councils to devolve the powers and duties of the two former Municipal Councils to the District Councils. The Government conducted two reviews in 1998-99 and 2000-01, yet made no plans to upgrade the role and functions of the District Councils for the purpose of taking up the duties of the two former Municipal Councils.

#### Recommendations

41. Your Committee should urge the Government **to devolve the duties of the two former Municipal Councils to the District Councils**, so as enhance the role of elected District Councillors in handling affairs on the district level.

### B. Binding Effects of the Hong Kong Bill of Rights

#### Background and issues concerned

42. The Hong Kong Bill of Rights Ordinance (BORO), which provides for the incorporation of provisions of the ICCPR into the law of Hong Kong, binds only the Government, all public authorities and any person acting on behalf of the Government or a public authority. The ordinance does not apply to inter-citizen disputes.

43. **The limited applicability of the BORO denies the right of individuals to full protection of the rights guaranteed under the ICCPR.** It contravenes article 2 of the ICCPR which binds state parties:

- to respect and to ensure all individuals the rights recognized in the Covenant;
- to take necessary steps to adopt measures as may be necessary to give effect to the rights recognized in the Covenant; and
- to ensure that any person whose rights are violated shall have an effective remedy.

#### Recommendations:

44. **Your Committee should urge the HKSAR Government to amend the BORO and extend its binding effect to inter-citizen disputes, so as to ensure that**

**rights recognized in the ICCPR are protected by local law in all circumstances.**

### C. Human Rights Commission

#### Background and issues concerned

45. **The HKSAR Government has refused to establish a Human Rights Commission despite repeated calls from Legislative Councilors<sup>8</sup>, non-governmental organizations and various UN Committees.** The Government claimed that the proposed commission is unnecessary given the various mechanisms and laws already in place to protect human rights. The Government has identified the BORO, the presence of an independent judiciary, an Ombudsman, the Equal Opportunities Commission (EOC) and the Privacy (Personal Data) Commissioner Office (PCO) as proof of the argument.
46. The existing mechanism is full of loopholes because all the institutions named have their weaknesses and restrictions:
- Firstly, the BORO only binds the Government and public bodies. There is a lack of implementation mechanism and conciliation procedures for the BORO. Cases of violation of human rights can only be dealt with through legal means. However, the time-consuming and expensive legal procedures deter many people from seeking relief in courts.
  - Secondly, the terms of reference of EOC does not cover all types of discrimination, but is only limited to the three areas, namely, sex, disability and family status, on which legislations have been enacted.
  - Thirdly, the Ombudsman and the PCO do not have litigation power and mandate to look into cases involving the BORO. They also do not provide for any conciliation services. The Ombudsman has the mandate to identify problems of public bodies but not to enforce redress measures.
47. Therefore, the “safeguards” against violation of human rights as identified by the Government fall far short of the standards as would be expected of if a Human Rights Commission were in place. The setting up of such a body would also give full effect to the Paris Principle.

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<sup>8</sup> The Home Affairs Panel of the Legislative Council passed a motion on June 2005, urging the administration “to establish a human rights institution with a broad mandate for the purposes of promoting the protection and education of human rights and monitoring the implementation of the various United Nations human rights treaties.”

Progress Made on the Matter

48. A Government representative stated in the meeting of Legislative Council on July 2005 that the Administration will conduct a study on the possibility of establishing a human rights institution and the need to carry out institutional reforms. Yet, a timetable indicating when such study will be completed has not been provided.

Recommendations:

49. **Your Committee should urge the HKSAR Government to report the results of the study on the establishment of a human rights institution next year and to set a timetable indicating when the body will be formed.**

D. The Review of the Equal Opportunities Commission (EOC)

Background and Issues Concerned

50. The EOC is one of the most major institutions responsible for protecting human rights in Hong Kong. **However, a number of incidents in 2003 undermined public confidence in the body, especially as to its autonomy and credibility. These incidents revealed the intention of the HKSAR Government to restrict the power of the EOC through manipulating the appointment of the EOC Chairperson and other means.**
51. The first scandal involved the former EOC Chairperson Michael Wong Kin-chow, whose decision to terminate the employment contract of an expert in racial discrimination raised great public concern. The Government appointed an independent panel to probe into the incident, giving in to the pressure of the Legislative Council and the public. However, the independence of the panel of inquiry appointed by the Secretary of Home Affairs was thrown into doubt, in particular for the fact that the Secretary of Home Affairs himself was involved in the scandal.
52. The problems with the appointment system can also be evidenced by the level of commitment of the Chairperson to the promotion of the value of equal opportunities. As opposed to his predecessor Ms Anna Wu, who displayed great

devotion to promoting the value, Mr. Wong showed little commitment to fulfilling this obligation and even called for downsizing and reducing the expenditure of the EOC. The current Chairperson Mr. Tang Yee-bong has also shown little commitment to the promotion of equal opportunities by declaring that he is also responsible for enforcing the three ordinances against discrimination.

53. The process through which the Government appoints the EOC Chairperson lacks transparency, and the criteria for selection remains unknown. Past appointments indicated the tendency of the Government to pick candidates who were pro-Government in their thinking, rather than those who demonstrated genuine ability to promote human rights. We are concerned that the current appointment system would allow the Chief Executive to appoint EOC Chairperson with a hidden agenda. Measures should be taken to enhance the transparency and openness of the appointment process. For instance, the position of the EOC Chairperson should be filled by open recruitment. A nomination committee should also be established to provide check and balance on the power of the Government in the appointment of the EOC Chairperson.

#### Recommendations

54. **Your Committee should urge the HKSAR government to enhance the transparency and openness in the appointment of the EOC chairperson, to safeguard the autonomy of the EOC and to enhance its accountability to the public.**

#### E. Introduction of the National Security Bill

#### Background and Issues Concerned

54. The Government's attempt to introduce the National Security Bill (the "Bill") based on Article 23 of the Basic Law in 2003 has caused great unease in the society. **The proposed legislation contained provisions which constituted a blatant infringement on the human rights and freedom of Hong Kong people, and did not conform to The Johannesburg Principles.**
55. Activities proscribed by Article 23 of the Basic Law are closely related to fundamental human rights, such as freedom of expression, of the press and of

association. However, the Government attempted to hastily push the Bill through in the Legislative Council without proper and extensive public consultation. Not only that the Government made no reference to the legislative timetable when it first issued the consultation document, but that it also did not issue a “White Bill” as has been customary for introducing important and complex Bills. **The way the Government handled the introduction of legislation of such controversial nature clearly revealed not only its disrespect to public opinion, but also its intention to sacrifice the freedom of Hong Kong people in the name of national security.**

56. In fact, with regard to the actual provisions, Article 23 stipulated that “the HKSAR shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.” **It should be noted that some of the above-mentioned acts are already prohibited under existing law, such as the Crimes Ordinance, the Official Secrets Ordinance and the Society Ordinance.** Although certain provisions of these legislations are out-dated or would require review so as to modernize their contents, they themselves are suffice to fulfill the requirement of Article 23. **The need to introduce new legislation under Article 23 is thus highly questionable.**
57. Although the Government finally withdrew the Bill in September 2003, it did not give any account as to how the Bill is to be processed in the future, and how any public consultation is to be conducted on the subject. Up until now, no legislative timetable has been set for the Bill.

#### Recommendations

58. Your Committee should urge the Government to reconsider if there is a genuine need to re-introduce legislation under Article 23 of the Basic Law, taking into account the fact that existing legislations already cover most of the prohibited activities stated in Article 23. The Government should review the content of these legislations and make adaptations where necessary, **on condition that fundamental human rights and freedoms must not be compromised in any way whatsoever.**

58. In the event that the Government insists to go ahead with the proposed legislation, then it must conduct extensive public consultation, particularly re-examining the views and submissions of community groups, professional bodies and other interested groups. **The Government should also issue a White Bill, setting out the actual provisions in legal language, so that the public know exactly what the Government is proposing.**
59. Your Committee should also urge the Government to **fully respect the will of the people** on this matter; and in the case where it insists on introducing the Bill, it should aim at **a minimum level of legislation** and ensure that the content is consistent with fundamental human rights and freedoms as stipulated in the ICCPR.

#### F. Complaints against the Police

##### Background and Issues Concerned

60. **The mechanism through which the public make complaints against the police has long been criticized for operating behind closed door—with the entire chain of procedures, from receiving complaint cases, conducting investigations, to determining appropriate penalty for misconduct, still being largely in the hands of the Complaints Against the Police (CAPO).** Though your Committee expressed concern about the credibility and transparency of the complaint mechanism in its 1999 concluding observations, not much has been achieved in terms of correcting the shortcomings of the system.
61. Though CAPO operates independently of all operational and support formations of the Police, it remains a component of the organizational structure of the Hong Kong Police Force. Officers of CAPO will therefore be moved to other positions within the structure, and their vacancies will be filled by those who had previously worked in other formations of the Police Force. The impartiality and credibility of a complaint system as such is questionable.
62. The Independent Police Complaints Council (IPCC) at the moment can only monitor and review CAPO's investigations of complaints against the police, but not taking the complaints directly from the public and investigate into them on its own initiative.



63. Though the Government has long pledged to convert the IPCC into a statutory body, not much progress has been made on the matter. **Up until now, the body remains a non-statutory body which does not have independent investigative power over public complaints against the police.**

#### Recommendations

64. Your Committee should urge the Government to **introduce a truly independent police complaint mechanism, which allows CAPO being completely detached from the organizational structure of the police force, and gives IPCC statutory status and independent investigative power as soon as possible**, so that it can take and deal with complaints against the police on its own initiative, thus ensuring proper oversight of any abuse of power and misconduct of the latter.

### **Article 3: Equal Rights of Men and Women**

#### A. The Women's Commission

##### Background and Issues Concerned

65. **The Women's Commission established in 2001 does not have the authority and function expected of a body as recommended by the United Nation.** The Women's Commission plays the role of an advisory body, rather than a body which coordinates women-focused policy. Structurally the Women's Commission comes under the Health, Welfare and Food Bureau, but not the Chief Executive or the Chief Secretary of Administration. Therefore the Women's Commission does not have the power to influence other bureaux and departments in the process of policy making and implementation in terms of ensuring that they take the gender perspective into account. The resources allocated to the Women's Commission is very limited and is only enough for the purpose of holding forums or providing public education programmes.

66. Gender mainstreaming is one of the major tasks facing the Women's Commission in recent years. It developed a checklist to evaluate the implications of various policies and programmes launched by Governmental departments on the issue of gender equality. However, even if cases of violation of the principle are discovered, the Women's Commission has no authority to require the departments

to review and modify their policies and programmes. The Women's Commission can only provide training to civil servants who are willing to attend.

### Recommendations

- 67. Your Committee should urge the HKSAR Government to enhance the status of the Women's Commission by providing it with sufficient power and resources to develop and coordinate women-related policies with other Governmental departments, so as to promote equal rights between men and women.**

### B. Equal Pay for Work of Equal Value

#### Background and Issues Concerned

68. Your Committee urged the HKSAR to adopt positive measure to overcome discrimination against women and ensure equal pay for work of equal value in your 1996 concluding observations. Although the Government has since been conducting researches on the issue, no measures have yet been adopted to rectify the problem. Income inequality between men and women continues to be a serious problem.
69. According to the 2005 statistics, the women's median monthly income stood at HK\$8000, 27% lower than then men's median income, which was HK\$11,000. The disparity is largely due to the problem of occupational sex segregation. Payments of female dominated- occupations tend to lag behind those of male-dominated occupations, even when the working conditions were comparable.

### Recommendations

- 70. Your Committee should urge the HKSAR Government to introduce legislation on "equal pay for work of equal value", so as to eliminate income disparity on the ground of sex.**

## C. Participation of Women in Advisory Committee

### Background and Issues Concerned

71. Although the participatory rate of women in advisory and statutory bodies has been on the increase over the years, the percentage of women in these bodies progress has remained low. Among 5600 individual members in 500 public advisory and statutory bodies, only 22.6% of them are women in 2005. This is lower than both the Government's gender benchmark and the international norm of 30% to 35%. There are also criticisms that women from the grassroots were rarely appointed into these bodies.

### Recommendations:

72. Your Committee should urge the Government **to raise the gender benchmark and to open up more non-official posts for women participation.**

## Article 7: No Torture or Inhuman Treatment

### A. Situations of Asylum Seekers

### Background and Issues Concerned

73. **Hong Kong does not have a refugee policy.** Asylum seekers have to submit their application to the Office of the United Nations High Commissioner for Refugees (UNHCR) to lodge their claims for refugee status. The UNHCR office in Hong Kong processed 670 cases involving claims for refugee status in 2004. Asylum seekers can also file torture claims to the HKSAR Government to contest deportation.

74. The review of the claims of asylum seekers can last for months or years. However, during the period of review, **they are prohibited from working.** While UNHCR provides refugees and asylum seekers with allowances of small amount to meet their basic needs, torture claimers and those appealing against the decision of the UNHCR are not entitled to any welfare benefits. **Many asylum claimers live in utmost hardship** and some even become street-sleepers.

75. The status and rights of the asylum seekers to stay in the HKSAR are unclear. They may be charged for overstaying or be issued with a form of recognizance. In November 2005, in a court case where the Government imposed restrictions on a torture claimer's freedom of movement, requiring him to only stay at the address stated on his recognizance form and to confine his movement to the Hong Kong Island, the High Court ruled that the Government's restriction was beyond the power granted to it by the law.

### Recommendations

76. **Your Committee should urge the HKSAR Government to establish a clear mechanism to process asylum claims and to ensure that the basic needs of asylum seekers are provided for.**

## Article 10: Right of Persons Deprived of Their Liberty

### Overcrowded Prisons

#### Background and Issues Concerned

77. The prisons in Hong Kong have always been overcrowded. They hold a population of prisoners beyond their designed capability. By the end of 2005, it was estimated that the prison occupancy rate was 106%. **If no measures are taken to overcome the problem of lack of space, the occupancy rate will hit as high as 112% by 2015.**

78. Another problem with the prisons in Hong Kong is that many of the facilities have worn out. One third of the penal institutions currently in use were originally architecture built for use of other purposes, but later being converted into prisons.

79. Overcrowding will continue to be a problem for prisons in Hong Kong in the foreseeable future, and this is especially the case for female penal institution. Yet, the Government's plan to redevelop the prisons is going ahead in a rather slow pace.

#### Recommendation

80. Your Committee should urge the Government **to speed up the implementation of**

**the penal institutions redevelopment projects** so as to ease overcrowding problems, especially for female institutions.

#### **Article 14: Equality before Courts and Rights to Fair and Public Hearing**

##### A. Accessibility of the Legal System

###### Background and Issues Concerned

81. **Long delay and excessive costs involved in civil proceedings remains an obstacle for the underprivileged in the society to fight for their legitimate rights through legal means.** The waiting time for civil fixture list cases and civil running list cases, counted from setting down to hearing, in the Court of First Instance in 2004 was a staggering 239 days and 116 days respectively, while the latter was double the time needed for dealing with cases of the same category in the previous year.
82. **The unpredictable cost and amount of time involved in civil cases, together with the complexity of the procedures, has often deterred individuals from relying on the court system to resolve disputes.** This is highly unsatisfactory as access to the legal system should not be a privilege only for those who are capable to finance their claims.

###### Recommendations

83. **Your Committee should urge the Government to allocate sufficient resources to the Judiciary to avoid unreasonable delay and lengthy court proceedings and litigation,** and to implement as soon as possible recommendations in the “Civil Justice Reform”, including the simplification of the civil litigation procedures, so as to increase the efficiency and effectiveness of the civil system

##### B. Legal Aid

###### Background and Issues Concerned

84. In order to qualify for legal aid, the financial resources of the applicant should not exceed the upper financial limit, which now stands at HK\$155,800. This limit represents an applicant's monthly disposable income multiplied by 12 plus his

disposable capital. Although some allowable deductions have been made from the applicant's gross income, including rent, rates and the statutory personal allowances for his own living expenses and his dependants, **the threshold for applying for legal aid is still too high for many people. The calculation of personal allowance based on 35-percentile household expenditure also fails to give the full picture of all the financial burden on many of the applicants, for instance education expenses on their children who might be studying abroad.**

85. There are quite a few categories of cases still falling outside the scope of legal aid. **Many of these cases, such as election petition and defamation, and cases which may have minimal impact on personal interests but which have far-reaching effect on the general public, are still not covered by the scheme.**

#### Recommendations

86. **Your Committee should urge the Government to constantly review the criteria used for the “means test” so as to enable easy access to legal services by needy people.**
87. The Government should also extend the scope of Legal Aid Scheme to cover cases like election petition and defamation, and cases which may have minimal impact on personal interests but which have far-reaching effect on the general public, so as to make it a system genuinely upholding justice and protecting human rights.

#### C. Unrepresented Parties

##### Background and Issues Concerned

88. The number of unrepresented parties in court cases has increased over the years. **Litigants going to court without legal representation is most common among the middle class, many of whom do not qualify for obtaining legal aid due to the strict “means test”, but who lack adequate financial resources to hire lawyers to help with their cases.**
89. The Resource Centre for Unrepresented Litigants currently only provides assistance confined to procedural matters, and thus is of little help to those who needs legal advice for preparing their cases.

### Recommendations

90. **Your Commission should urge the Government to improve and upgrade the services provided by the Resources Centre for Unrepresented Litigants, such as providing legal advice or related services, to unrepresented litigants to help them with their cases.**

### Article 17: Protection of Privacy, Family, Home, Correspondence, Honour and Reputation

#### A. Telecommunication Ordinance

### Background and Issues Concerned

91. Section 33 of the Telecommunication Ordinance (the “Ordinance”) gives the power to the Hong Kong SAPR Chief Executive to order the interception of telecommunication messages whenever he considers it to be in the public interest. **The power is, however, not subject to any kind of legislative control or other independent oversight.**
92. The Court confirmed the above view in a recent judicial review case, ruling that section 33 of the Ordinance was inconsistent with Article 30 and 39 of the Basic Law, and Article 14 of the Bill of Rights, all of which expressly stated that the freedom and privacy of communication of Hong Kong residents shall be protected by law.
93. Indeed, as the UN Human Rights Committee rightly pointed out in its 1999 concluding observations, the Interception of Communications Ordinance which was passed in 1997, has still not yet been brought into effect. **This is still the case until now.**

### Progress Made on the Matter

94. The Government has initiated procedures on introducing a new legislation regulating behaviour of interception of communication by law enforcement agencies. The bill has been gazetted and tabled for deliberation in the Legislative Council.

### Recommendations

95. Please refer to the recommendations stated in the next section “Interception of Communication and Covert Surveillance”

#### B. Interception of Communications and Covert Surveillance

##### Background and Issues Concerned

96. The courts in Hong Kong have ruled in two cases that **the use of the covert surveillance for the purpose of collecting evidence by law enforcement agencies were in breach of Article 30 of the Basic Law**, which stipulates that “the freedom and privacy of communication of Hong Kong residents shall be protected by law...” **Until now, there is no legislation regulating covert operations.**

97. Following the court rulings, the Chief Executive has issued the “Law Enforcement (Covert Surveillance Procedures) Order” (the “Order”), laying down the conditions and procedures for law enforcement agencies to obtain internal authorization to conduct activities of covert surveillance, as an attempt to comply with Article 30 of the Basic Law. **The fact that the Government intended to use executive power, rather than through enacting proper legislation, to restrict freedom of the citizens is tantamount to usurping the constitutional function of the Legislative Council.**

98. In a recent judicial review case challenging the legality of the Order, the High Court ruled that the Order has only had the effect of an “administrative tool”, but could not be accepted as a compliance with the requirement of Article 30 of the Basic Law.

##### Progress Made on the Matter

99. Responding to the controversies, the Government has initiated procedures swiftly on introducing new legislation regulating clandestine operations by law enforcement agencies. The bill has already been gazetted and tabled for deliberation in the Legislative Council. Nevertheless, the proposed bill has met criticism for the following shortcomings:

- The adoption of a loosely-defined three-tier authorization system, under



which authorization for those operations, either by judges or senior departmental officials, is to be determined by the “level of intrusion” into private lives. For operations involving “less-intrusive” covert surveillance, authorization can be easily obtained by “senior” departmental officers.

- The use of equivocal concept “public security” as a justification for granting authorization has also raised fears as to the possibility of abuse by authorizing authority.
- There is no arrangement made in the proposal for notifying the targeted person that his communications have been intercepted or that he has been a target of covert surveillance. This will make a challenge on the legality of these operations by those targeted persons highly unlikely since they will not be informed of any operations.
- The draft legislation provides for a panel of judges to authorize interception of communications and the more intrusive forms of covert surveillance. However, those judges will be appointed by the Chief Executive, and will have to undergo integrity checks. Fears are raised as to whether the checks could be used to manipulate which judges are selected, and worse, to filter out politically unacceptable judges who refuse to authorize covert operations.

### Recommendations

100. Your Committee should urge the Government **to respect the legislative power solely conferred on the Legislative Council. This is especially important when legislations going to the fundamental rights guaranteed to all Hong Kong people under the Basic law have to be introduced.**

101. Your Committee should also urge the Government to clarify many of the ill-defined concepts in the new legislation, and by including a notification system where victims of those operations will be informed of when, where, and to what extent they had been monitored, so that they can seek remedies if those operations turned out to be illegal or improperly carried out. Safeguards as such are important for achieving a right balance between the need to conduct covert operations in the interests of law and the need to protect privacy and prevent abuse. The decision of whether to notify the victims of covert operations can be left with the judiciary to decide, so that any such notification would not affect law enforcement.

102. Lastly, we are of the view that performing integrity checks on judges before their

appointment is tantamount to “political screening”, and might give the executive branch overreaching powers to install politically reliable judges to approve covert operations. Hence, **the appointment of judges who will be responsible for authorizing interception of communication and covert surveillance should be an issue left for the judiciary to decide, not the Chief Executive**, so as to ensure and respect the independence of the judiciary.

## **Article 19: Freedom of Opinion and Expression**

### **A. Self-censorship of the Media**

#### **Background and Issues Concerned**

103. **Numerous incidents in the past few years have revealed the situation that local media are now more prone to exercising self-censorship, especially when controversies concerning the Central Government are involved. This has become at least the perception of the general public and is confirmed by the results of public opinion poll. The function of press to oversee the Government is not working as effectively as the Government has claimed.**

104. Public opinion polls conducted by the University of Hong Kong found that the percentage of people who are satisfied with press freedom in Hong Kong declined from 78% in 1997 to 58% in 2005. The number of people who feel that local media exercise self-censorship has also been increasing since 2002. In 2005, 48% of those polled believed self-censorship had been exercised, comparing with only 37% of the interviewees who held contrary views. Overall, the general impression of the public is that self-censorship has become a common practice in the HKSAR.

105. There have been a few incidents involving press freedom in the past few years:

- Two most popular radio programme hosts and critics of the Government, namely Albert Cheng King-hon and Wong Yuk-man were intimidated by triad elements, including a notorious businessman who claimed to be representing an official of the National Security Bureau of the Central Government. They were forced to resign successively under the intimidation and pressure from the Commercial Radio. Mr. Allen Lee, Deputy of the National People’s Congress, who was hired by the

Commercial Radio to take the place of Albert Cheng, also resigned abruptly after he disclosed in a public hearing of the Legislative Council, when he received a mysterious telephone call from a former Chinese Senior Official “paying regards” to his family members. The intimidation on Mr. Albert Cheng and Mr. Wong Yuk-man were reported to the Police, but there has not been any outcome in the police investigation.

- Subsequent to the forced resignation of Albert Cheng, Wong Yuk-man and Allen Lee, as aforesaid, the Commercial Radio had made attempts to post more “acceptable” hosts to the previously more popular programme “Tea Cup in the Storm”. However, there was a series of reshuffle of the new programme hosts by the management of the Commercial Radio in order to find those who were really “acceptable” at last it appears that, popularity of the programmes is sacrificed, as a survey pointed out that the audience of the “Tea-cup in the Storm” had reduced by more than 50%.
- There is also evidence showing that more local newspapers are becoming more cautious and conservative in reporting and / or criticizing on issues concerning the Central Government, and to a lesser extent. One obvious example is that there were scarce if not nil report in local press concerning the Falun Gong:
  - In 2005, the contract to use a convention hall in a 5-star hotel for an international conference hosted by Epoch Times (which is closed associated with the Falun Gong) was suddenly terminated one day before the event.
  - The office of Epoch Times was attacked by several unknown persons armed with rods and hammers, resulting in the serious damage to the computers and printing appliances of the newspaper.

106. Media analysts pointed out that Hong Kong media which are owned by businesses with commercial interests in Mainland, or those who wish to enter the Mainland market for business opportunities, were more prone to exercising self-censorship when handling issues which the Central Government considered detrimental to its stability, such as the issue of Falun Gong. The Public Opinion Program of the Hong Kong University also found that 62% of the public believed that local media had shown lots of reservations when criticizing the Central Government.

### Recommendations

107. **We urge your Committee to express concerns over the situations that local news media are prone to exercising self-censorship and are unable to enjoy the freedom of expression without fear or reserve.**

#### B. Intervention from the Mainland Official on Press Freedom

### Backgrounds and Issues Concerned

108. **The “patriotism campaign” launched by Central Government resulted in public attacks against pro-democracy politicians. The news media were under stress and became polarized in the debate and many adopted a pro-Beijing line.**

109. After the abrupt withdrawal of the Hong Kong government’s national security legislation in September 2003, the defeat of pro-government candidates in the November 2003 district council elections, a historic massive demonstration (where over 500 000 people attended) in 2004 for universal suffrage, the Central Government launched a patriotism campaign, about one month before the sudden issuance of an interpretation of Basic Law by the NPCSC which denied universal suffrage of the two elections in 2007 and 2008. Some journalist analysts pointed out that the aim of the campaign was to dampen the public expectations of rapid progress to universal suffrage.

110. The state-run mainland news agency, Xinhua, released a statement saying Hong Kong should be governed by Hong Kong people, with patriots forming the main body of the ruling elite. It also alleged that a small number of people were engaging in activities against patriotic principles.

111. Pro-Beijing supporters in Hong Kong went further and named those they considered to be unpatriotic, including the chairman of the Hong Kong Alliance for Support of Patriotic Democratic Movements of China, Szeto Wah, who has long led the campaign to strive for reversing the official verdict on the 1989 pro-democracy movement in China. The former chairman of the Democratic Party, Martin Lee Chu-ming was also openly attacked by China’s Deputy Minister on account of his family background. Mr. Lee’s visit to Washington to testify before a Senate Committee was also condemned as unpatriotic in the campaign, with the

Hong Kong Government echoing the view by suggesting that Mr. Lee's move to testify in the US was "inappropriate".

112. The objective of the patriotism campaign was to single out several categories of potential opponents who are politically labeled or stigmatized as unpatriotic:

- Those opposed to the Central Government, e.g. members of the Hong Kong Alliance in Support of the Democratic Movements in China.
- Those advocate the secession of Taiwan, e.g. advocated that the voices of the Taiwanese people should be respected.
- Those allying with foreign governments to oppose the Chinese Government, e.g. those politicians who frequently went to lobby the foreign governments to sanction or criticize China.

113. The patriotism debate occupied extensive space in the media. It was found that in addition to the several traditional Pro-Beijing newspapers, many newspapers abandoned its neutral stance and adopted a more pro-Beijing position. Among the 14 newspapers in Hong Kong, only one newspapers remained supportive of the pro-democracy camp. This newspapers faced boycott on its advertising space by influential property developers. A research found that apart from the two English newspapers, only two other Chinese newspapers took a neutral stance in the patriotism debate.

### Recommendations

114. **Your Committee should remind the HKSAR Government of its obligations to protect press freedom in Hong Kong even in the face of pressure from top officials of the Central Government. The HKSAR Government should also seek promise from the Central Government to guarantee press freedom in Hong Kong.**

### C. Raid on News Agencies by ICAC

#### Background and Issues Concerned

115. **The search and seizure of journalistic material by the ICAC under the Interpretation and General Clauses Ordinance indicated a lack of respect from law enforcement agencies for press freedom.**

116. After the release in the local press of the name of a woman under the Independent Commission against Corruption (ICAC) witness protection program, the (ICAC) officers raided the office of seven newspapers and seized certain journalistic material in July 2004. This issue immediately aroused grave public concern and was criticized by the media as threatening Hong Kong's press freedoms.
117. In August 2004, the Court of First Instance ordered the setting aside of two search warrants against Sing Tao Daily regarding the case. The court also imposed stringent conditions for any law enforcement agencies to seek search warrants, e.g., it should be the last resort and for public interest only, etc.
118. Although ICAC's appeal was dismissed on technical grounds, the Court of Appeal expressed a contrary opinions in that it affirmed that ICAC acted lawfully in seeking search warrants. In spite of the controversies generated from courts, ICAC decided to take the comments of the Court of Appeal as their reference but refuse to go to the Court of Final Appeal to clarify authorities' power of search and seizure of journalist materials.
119. Press groups urged government to amend the General Clauses Ordinance to provide more protection to Journalist material but administration refuse.

#### Recommendation

- 120. Your Committee should remind the HKSAR Government of the significance of protecting press freedom and urge law enforcement agencies of the Government to avoid unnecessary raid on news agencies. Your Committee should also urge the Government to look into the needs to review the relevant legislation.**

#### D. Broadcasting services of Radio Television Hong Kong (RTHK)

#### Background and Issues Concerned

- 121. The announcement of the government administration on the change of RTHK programs, as well as the appointment of a committee to review the functions and roles of the RTHK aroused concern that the government might turn the broadcaster into its propaganda agency.**

122. The Radio Television Hong Kong (RTHK) is the only government-owned public broadcaster that offers alternative viewpoints from the two commercial radio broadcasters (Commercial Radio and Metro) and the terrestrial television stations (Asia Television and Television Broadcasts). In the past, RTHK has been the target of attack by pro-Beijing politicians. They argued that a government-funded broadcaster should promote government policies and refrain from always criticizing the Government.

#### Progress Made on the Matter

123. After the Chief Executive Donald Tsang's comments on the role of RTHK in his election Campaign, that RTHK should not run certain programs, the government minister responsible for RTHK announced the scrapping of the program. Members of the Legislative Council and staff of the RTHK expressed their concern about the implication of announcing the program change by the Administration, instead of the station director, which might signify an interference with the editorial independence of RTHK. There is also concern that the Administration will gradually scrap news and current affair programs which always carry public views criticizing the government. Moreover, every act or policy to diminish the station's function to provide a platform for free and unfettered expression of views is unacceptable.

124. On January 2006, the government appointed a committee to review the public broadcasting service in Hong Kong. One of the major tasks of the committee is to review functions and roles of RTHK, the sole public-funded broadcaster. However, RTHK was allegedly kept in dark about the review. There has also been public demand that the Government should adopt the policy of digitization of the broadcaster such that certain channels can be open to serve as public channels.

#### Recommendations

**125. Your Committee should affirm that the editorial independence of RTHK should be maintained and RTHK should continue its function to provide a platform for free and unfettered expression of views for all sectors of the public. The government should also adopt the digitization of broadcasters with a view to provide certain channels to be run by NGOs and public channels.**

## Article 21: Right of Peaceful Assembly

### A. Protest of Korean Farmers during the Sixth Ministerial Conference in Hong Kong

#### Background and Issues Concerned

126. The arrest of Korean protesters during the WTO sixth Ministerial Conference in Hong Kong in December 2005 **raised concern as to the police's high-handed use of the Public Order Ordinance to place undue restrictions on civil society activities in Hong Kong**—an issue which has already been brought into question by the United Nations.
127. The night before the last day of the WTO conference, the police took action to detain about 1000 protesters in the site of their demonstrations. In the early morning, the police started to effect arrest of all the protesters, who are mostly Korean farmers, women, and also some other observers including Hong Kong residents.
128. After the protest, most of the detainees were put into different police stations. However, the police did not have enough interpreters particular those who speak Korean. There was almost a complete breakdown in communication between the police and the detainees. The NGOs responsible for organizing the protesters sent out a teams of lawyers to pay legal visits to the detainees, but most were denied access on the ground that the lawyers could not provide the names of the detainees they wish to visit, whereas even the police did not know where the location of the detainees after names were provide to them.
129. Except 14, all the 1000 detainees were released from police custody at about the time of expiration of 48 hours from that time of initial detention. There were complaints from the detainees that hundreds of them were kept in an open car park for over 8 hours over the night without provision of blankets. There was another complaint that over 200 Korean women were kept in 8 buses for over 10 hours before they were taken to police station, where they had access to toilet facilities. Of the 14 who were continued to be detained, charges were initially laid, but subsequently dropped except 3 persons who are now facing trial in Court.



130. In a public discussion on the handling of the protests during the WTO conference, the police admitted that tear-gas and plastic bullets were used at various times to control the protests. There were allegation from the organizations participated that there was no prior warning given to the protesters before devices such as tear-gas and plastic bullets were used, or at least no warning in the language that could be understood by the protesters were given. Further, there were suggestion that such measure were unnecessary and had constituted an excessive use of force against the protestors who were mostly involved in a peaceful demonstration.

### Recommendations

**131. Your Committee should urge the Government to follow proper guidelines and procedures for arrest and to ensure humane treatment for the arrested persons and have an overall review of the whole process of handling the large scale demonstration in this event. The result of which should be made public for scrutiny and discussions.**

### B. The Public Order Ordinance

#### Background and Issues Concerned

132. The current law requires organizers of public processions of more than 30 people to “notify” the police at least 7 days in advance, and that processions cannot proceed unless a “notice of no objection” is issued by the Commissioner of Police. **In effect, the notification system operates as an “approval system”, giving the police a veto over protests.** The Public Order Ordinance gives the Police Commissioner discretion to object, or to attach prior conditions, to a public procession if he deems it necessary in the interests of national security or public order (*ordre public*), or the protection of the rights and freedoms of others.

133. Given the vague wordings of the Ordinance, there is a risk for the police to abuse their power. Under the statutory regime, the police can restrict the right of peaceful assembly on the basis of applying the legal concept known as *ordre public*, which is an imprecise and illusive concept. As such, the present regime could lead to the arbitrary suppression of a fundamental right of assembly and procession protected by the Basic Law.

**134. This view has been confirmed by the Court of Final Appeal in a case in 2005,**

**where it was held that while the concept of *ordre public* had a rightful place in the Basic Law, it was not sufficiently precise to belong in a statutory regime.** The term *ordre public*, which was included in the Public Order Ordinance as a ground for restricting the right of peaceful assembly, gives too wide and vague discretion to the commissioner of police, and is thus unconstitutional and should be removed from the law. There are now pending appeal to the Court mounting challenges to the other statutory ground, namely, national security, which would have exceedingly vague meaning and have many give unnecessarily wide discretion to the police.

### Recommendations

135. The Democratic Party believes that demonstrations in all sorts of assemblies and processions held in a peaceful and orderly manner, is a fact of life in an open and pluralistic society like Hong Kong and it could help resolve tensions and conflicts in the community. **The current scheme of allowing police to interfere and restrict such freedom is therefore highly unsatisfactory.** The Government should have a **comprehensive review of the Public Order Ordinance** and strive to come up with more carefully drafted provisions which better safeguard the right to protest.

136. We also ask your Commission to urge the Government to fully respect the ruling of the Court of Final Appeal, that is, **to take speedy action to remove the term *ordre public* from the Public Order Ordinance.** The Commissioner of Police should exercise the discretion conferred on him by the Ordinance in a prudent manner, **ensuring that future protests are only interfered with when it is absolutely necessary.**

## Article 22: Right to Freedom of Association

### A. Right to Join Trade Unions

#### Background and Issues Concerned

137. **Section 17(2) and 17(6) of the Trade Union Ordinance, which post restrictions on participation of trade unions, was found violate Article 3 of Convention No. 87 of the International Labour Organization (ILO).** This was the investigation conclusion of the ILO Committee on Freedom of Association in

response to a complaint made by the Hong Kong Confederation of Trade Unions in 1998.

138. While Article 3 of Convention No. 87 provides for the right of trade unions to “elect their representatives in full freedom” without any interference or restrictions from public authorities, section 17(2) of the Trade Union Ordinance requires that an officer of a trade union must be “engaged or employed in a trade, industry or occupation with which the trade union is directly concerned” and section 17(6) provides that anyone contravening section 17(2) is liable to a fine of \$1,000 and to six months imprisonment.

#### Progress Made on the Matter

139. In the supplementary information of the “First report of the HKSAR of the PRC in the light of the ICCPR”, the HKSAR government stated in 1999 that they were reviewing the occupational requirement for trade union officers. However, nothing has yet been done to repeal the provisions concerning occupational requirement.

#### Recommendations

140. The Democratic Party is of the view that the provisions for the occupational requirement for trade union officers is unjustified and imposes an unnecessary restriction for employees to join the trade unions and such provisions should be repealed. **We urge your Committee** to express concern over the right to join trade unions as provided for in Article 22 of the ICCPR and **urge the HKSAR Government to respect views of the ILO and repeal restrictions on trade union membership.**

#### B. Right to Protection from Anti-union Discrimination

#### Background and Issues Concerned

141. **The Employment Ordinance provides insufficient protection against employers’ anti-union discrimination.** This is mainly due to the difficulties in prosecution, such as the harsh request of the ordinance on employees, to prove that the intention of the employer dismissing the employee is to discriminate the unionist. Moreover, remedies are not enough to compensate for the employees dismissed due to his/her participation in labour union. Section 32N of the Employment Ordinance which provides reinstatement of employees dismissed on

the ground of discrimination is also difficult to execute as prior mutual consent of employee and employer is required for reinstatement.

### Progress Made on the Matter

142. There were two successful anti-union discrimination prosecutions last year. The judge in one of the cases expressed the view that labour laws in Hong Kong lagged behind those of other countries. However, the Government refuses to take any actions to improve the current situation.

### Recommendations

**143. Your Committee should urge the Government to introduce anti-union discriminatory measures so as to protect rights guaranteed by Article 22 of the ICCPR.**

## Article 23: The Family

### A. Family Violence

#### Background and Issues Concerned

**144. Hong Kong does not have a comprehensive policy to protect people from domestic violence. Moreover, there are many loopholes in the Domestic Violence Ordinance (the “DVO”).**

145. A family of four were killed in a domestic violence tragedy which took place in the remote district of Tin Shui Wai in 2004. The case revealed the loopholes and inadequacies of the DVO, that-

- The DVO allows the court to grant an injunction and the “power of arrest” only when actual bodily harm was caused to the applicant or the child concerned. Psychological abuse, however, is excluded from protection.
- The DVO only applies to members belonging to the “matrimonial home”. Other family members, such as brothers and sisters, parents in law, are not covered.
- Although the DVO allows the court to grant an injunction to prohibit perpetrators from using violence against the applicant or the child/children

living together, the injunction will only be valid for 6 months. It is sceptical if many of these cases would be settled within this short period of time. The victims of violence in these cases would continue to be in fear of more violence when their family problems remained unresolved.

#### Progress Made on the Matter

146. The Government appointed a three-person panel to review family services in the remote district of Tin Shui Wai, and adopted some of the measures proposed by the panel for handling domestic violence. However, the number of incidents of domestic violence continued to rise, and an increase of 41% of cases of this kind was recorded last year.

147. Although the Chief Executive undertook in his policy address last year to provide more resources for social services, education campaigns and to launch a pilot scheme counseling men who had assaulted their partners, a comprehensive policy against domestic violence is still not in place until now.

#### Recommendations

**148. Your Committee should urge the HKSAR Government to formulate comprehensive and effective measures to fight against domestic violence, and to review the DVO with the aim to step up protection for victims of domestic violence.**

### B. Split Families

#### Background and Issues Concerned

**149. The immigration policies of the HKSAR Government and the Central Authorities have created many split families and put them in hardship.**

- Hong Kong residents' children and spouses in the Mainland have to apply for one-way-permits to enter Hong Kong on an individual basis in different queues, instead of on the family basis.
- Hong Kong residents' spouses in the Mainland have to wait for more than 6 years before they become eligible for submitting their application for family reunification in Hong Kong, while the time needed for their children to get their permits to enter Hong Kong is not as long. Many children therefore

have to leave their mother in the Mainland and come to Hong Kong alone. Very often, the father of these children do not have time to look after them.

- Under the current system, if a Hong Kong resident passed away, his spouse in the Mainland would not be allowed to apply for one-way-exit-permit. She can only stay in Hong Kong with a two-way permit on a temporary basis. Moreover, she is neither eligible for working nor receiving social security assistance in Hong Kong. These arrangements very often drive families into economic hardship. In many of these cases, the living spouses are forced to send their children to the residential home for children.

150. There is now a daily quota of 150 one-way-exit-permits to be granted to Hong Kong residents' spouses and children in the Mainland by the Mainland Authorities. The quota, however, have not been not fully utilized. Although there is room for relaxing the criteria for allowing reunification of families, the HKSAR Government and the Mainland Authorities show no intention to improve the system, leaving the unused quota wasted and thus unnecessarily prolonging the waiting time for family reunification.

### Recommendations

**151. Your Committee should urge the HKSAR Government and the Mainland Authorities to work together on coordinating and streamlining the existing immigration policies of the two places, so as to allow split families to re-unify as soon as possible. The HKSAR Government should also assume the duty of assessing the application for and granting permits to members of split families, a task which is currently performed by the Mainland Authorities.**

## Article 24: Rights of Children

### Child Abuse

#### Backgrounds and Issues Concerned

**152. Hong Kong lacks a mandatory reporting system for child abuse. Many child abuse cases, therefore, have gone unnoticed.** Some social services organization estimated that 50% of child sexual abuse cases in Hong Kong are never reported to the relevant authorities. Moreover, it is estimated that 1.3 million children will

be at risk of abuse if they are not given any education or training to raise their consciousness and level of self-protection.

### Recommendations

**153. Your Committee should urge the HKSAR Government to introduce a mandatory reporting system for child abuse cases. Moreover, the Government should set up a “Children Commission” and appoint a Children Commissioner, who will be responsible for looking into children's issues, and to ensure that the principles contained in the United Nations Convention on Rights of the Child being strictly observed.**

### **Article 25: Right to Participate in Public Life**

#### A. Election of the Chief Executive in HKSAR

### Background and Issues Concerned

**154. The Chief Executive election is a ‘small circle election’ which can easily be manipulated or even controlled by the Central Government. Past experience has clearly demonstrated that only people blessed by the Central Government were able to be candidates, although they might not win the confidence and support of Hong Kong people.**

155. The Chief Executive was elected by a small circle of 800 members in the Election Committee, which is composed of 800 members selected from 4 categories of person or organizations. Moreover, to be a candidate of the Chief Executive election, one must obtain 100 nominations out of 800 members of the Election Committee. The small-circle nature of the Election Committee and the high threshold for nomination enables the Central Government not only to control the election outcome, but also the primary process of nomination by excluding any one from participating.

156. Although the size of the Election Committee has increased from 400 to 800 since the return of sovereignty in 1997, the candidate number of 3 was already the largest in 1997. The Central Authorities exercised its control over the Chief Executive election by ways such as showing support for a particular candidate well before nominating, and exerting pressure on Election Committee members to

refrain from nominating people not acceptable to the Central Government. In both the 2002 election and the 2005 by-election, the candidate who had the blessing from Beijing managed to obtain nearly or over 700 open nominations, thereby excluding other candidates from obtaining the necessary 100 nominations. No vote of confidence is required to confirm the successful election of the Chief Executive.

157. The community has long criticized the Election Committee for being unrepresentative and urged for direct election of the Chief Executive. Mass rallies were held in 2003, 2004 and 2005 with the aim of pushing for the election of the Chief Executive to be by democratic system of 1-person-1-vote.

158. We are also concerned about the discrimination against political parties under section 31 of the Chief Executive Election Ordinance. Members of political parties must withdraw his/her membership if he/she is elected as the Chief Executive. This restriction on the civil and political rights of the public should be abolished immediately.

#### Progress Made on the Matter

159. The HKSAR government published a very conservative proposal regarding the method of electing the Chief Executive in 2007. The proposal merely increased the number of the Election Committee from 800 to 1600, while the electorate base for various sub-sectors of the Election Committee remain unchanged. Moreover, members appointed by the Chief Executive to the District Boards will become members of the Election Committee and participate in the Chief Executive election. Such an arrangement is an affront to natural justice.

160. Despite popular demand for universal suffrage, the Government still refused to democratize the Election Committee and to provide a timetable and roadmap for full democracy in the future. The Government would rather maintain the status quo of the method for election of the Chief Executive in 2008, regardless of the provision of the Basic Law stipulating that the ultimate aim is to have the Chief Executive elected by universal suffrage.

#### Recommendations:

161. Your Committee should urge the Government **to provide the public with a**



**timetable and a roadmap on when and how the ultimate aim of having the Chief Executive elected by universal suffrage can be accomplished.**

162. Your Committee should also urge the Government **to amend the Chief Executive Election Ordinance, repealing the restrictions that Chief Executives elected should not be members of political party.**

#### B. Election of the Legislative Council in HKSAR

##### Background and Issues Concerned

163. **The small electoral size of the functional constituencies, which represent the views and interests of the business community and elites, discriminate voters' rights in the election on the basis of property.**

164. Your Committee stated in your concluding observations in 1995 that the Hong Kong electoral system clearly violated Article 2, 25 and 26 of the Covenant, for the reason that only twenty of the sixty seats in the Legislative Council were returned by direct election. Moreover, the concept of functional constituencies, which gave undue weight to the views of business community, discriminated among voters on the basis of property and functions.

165. In the 2000 and 2004 Legislative Council elections, 30 seats of the geographical constituencies were returned by over 3 million electors, while the other 30 seats were returned by 175,000 and 200,000 electors in the functional constituencies. The electorate size for 12 of the functional constituencies are less than 1000 and about 1/3 are returned by corporate votes. In the 2004 election, while there were 3 million people belonging to the labour sector, only 519 organization representatives were entitled to vote for the 3 seats of the labour functional constituency.

166. Under the current system, voters of the functional constituencies have two or even three votes in the Legislative Council election, while ordinary citizens have only one vote. The unjust nature of the functional constituencies is particularly amplified by the existence of corporate votes in some sectors where influential businessmen can control where the corporate votes go by appointing different authorised representatives to vote on behalf of the corporate electors, namely the companies they own. This allows influential businessmen who own more than one

company to control multiple votes. Hong Kong people do not have equal rights to participate in the Legislative Council election under the current system.

*Progress Made on the Matter*

167. Despite persistent calls from pro-democracy Legislative Councillors and the public, the Government made no progress in abolishing the functional constituencies. In 2000, after dissolving the Urban Council and Regional Council, the Government refused to replace the 2 seats made vacant with directly elected seats. Instead, it filled the vacancy by introducing two new functional constituency seats for the catering sector and for the district council.
168. Public opinion is that all seats of the Legislative Council should be returned by universal suffrage. However, the Government shows no intention to abolish functional constituencies and introduce universal suffrage in the Legislative Council. The ratio of directly elected seats to functional constituency seats in the Legislative Council will remain the same in the 2008 election as in the 2004 election.
169. While the Government made no proposal as to how to achieve the ultimate aim of elections by universal suffrage stipulated in the Basic Law, the public have put forward many suggestions on the improvement of the current system. These suggestions include replacing the 30 functional constituency seats with 30 geographical constituency seats to be returned by proportional representation, enlarging the electorate size of the functional constituencies to include all individuals belonging to each sector, and decreasing the number of functional constituency seats in stages as a transitional step towards universal suffrage.
170. The Government did not respond to any of these suggestions directly. Instead, it set up the Commission on Strategic Development headed by the Chief Executive, and attempted to use it as a tool to delay the discussion of timetable for universal suffrage in the Legislative Council.
171. In a meeting of the Committee on Governance and Political Development under the Commission on Strategic Development, the Government highlighted the bicameral systems in Canada, United Kingdom and Ireland, and argued that the arrangement of having seats of the upper houses returned by the appointment system received no criticism from the UN Human Rights Committee. We are

deeply concerned that the HKSAR Government would adopt a bicameral system in Hong Kong for the purpose of retaining functional constituencies, where substantial power, such as veto power, would be vested in the business community through occupying seats in the functional constituencies.

Recommendations:

172. **Your Committee should denounce the Government for failing to act on the recommendations concerning the functional constituencies made by your Committee in the 1995 and 1999 concluding observations, and urge the Government to improve the current electoral system so that every individual has equal rights to participate in the Legislative Council election.**
173. **Your Committee should also urge the Government to consult the public on the schedule of replacing functional constituency seats with directly elected seats, and include public opinion in its proposal on the method of 2012-2016 Legislative Council election before submitting it to the NPCSC.**

C. Election of the District Councils

Background and Issues Concerned

174. **The Government reinstated appointed seats in the District Council in 1999. The appointment system distorts the representation of the district election and undermines Hong Kong people's right of public participation. The failure of the Government to enhance the role and functions of the District Council discouraged public participation in the election, and as a result, hindered democratic development in Hong Kong.**
175. Among 529 members in the 18 District Councils, 400 are directly elected by more than 2 million people, while 102 are appointed by the Chief Executive. These appointed District Councillors, together with the other 27 ex-officio members, are carefully distributed among the 18 District Councils, with the aim to counter the power of pro-democracy members.
176. The fact that the District Councils were rendered bodies having only a consultative role on district issues by the Government creates enormous difficulties for District Councillors to actively participate in district affairs, and

discourages many capable persons from developing their careers in politics by participating in the District Council elections. When the HKSAR Government proposed to dissolve the former Urban Council and Regional Council in 1999, both responsible for managing facilities and services at the district level, it promised that part of their duties and roles would be taken up by the District Councils. However, the Government did not fulfill its promise. The Government conducted two reviews during 1998-99 and 2000-01 but made no plans to enhance the role and functions of the District Councils.

#### Progress Made on the Matter

177. In the Fifth Report of the Constitutional Development, the Government proposed to reduce the number of appointed seats in District Councils from 102 to 68 in year 2008, and to decide subsequently whether all appointed seats should be removed by 2012 or by 2016. However, the Government made it clear that this proposal on the reform of the District Council would be considered only if Legislative Council passed the whole of the Government's conservative constitutional reform proposal contained in the Fifth Report.

#### Recommendations:

**178. Your Committee should urge the Government to remove all appointed seats and ex-officio seats in the District Councils so that all District Councillors are to be elected by universal suffrage.**

**179. Your Committee should also urge the Government to devolve the powers and duties taken up by the two former Municipal Councils to the District Councils so that elected District Councillors can genuinely participate in district affairs.**

#### D. Accountability of the HKSAR Government

#### Background and Issues Concerned

**180. Due to the lack of a democratic system for the election of the Chief Executive and for all Legislative Councillors, the Government need not to be accountable to the general public and to Legislative Councillors who are directly elected by the public.**

181. The former Chief Executive Tung Chee-hua established the “Accountability System for Principal Officials” in 2002. Under this system, the Chief Secretary for Administration, the Financial Secretary, the Secretary for Justice, and other 11 Directors of Bureaux are no longer civil servants but are politically appointed officials.

182. The Principal Officials are accountable only to the Chief Executive, rather than to the general public or their representatives in the constitutional framework—Legislative Councillors. Under this undemocratic Accountability System, error-prone ministers can stay unpunished, Principle Officials can ignore public discontents and introduce policies against the will of the people. Principal Officials can also refuse to answer questions or attend meetings in the Legislative Council. One recent example is when the Secretary for Chief Administration refused to attend the Panel on Planning, Lands and Works of the Legislative Council to discuss the project on the “West Kowloon Cultural District”.

Recommendations:

183. Your Committee should urge the Government **to hold itself accountable to the Legislative Councillors who are directly elected by the general public for monitoring the Government.**

E. The Advisory Committee System

Background and Issues Concerned

184. **The appointment of members into the advisory and statutory bodies by the Government based on factors such as political affiliation limits the channels for participation of the democrats.**

185. There are more than 500 advisory and statutory bodies in Hong Kong, all of which play an important role in the decision-making and the implementation of Government’s policies. These bodies include advisory committees, public bodies, appeal boards and public corporations. All of the 5,600 members of these bodies are appointed by the Chief Executive and Government Officials.

186. According to “The Paris Principles” of 1991, autonomy/independence and

pluralism ought to be ensured in the composition of the regional and national institutions. These institutions should include representatives from various sections of civil society who are actively involved in the promotion and protection of human rights. However, the appointment of members of the statutory and advisory bodies in Hong Kong does not conform with The Paris Principles. The selection of chairpersons and members of these institutions is largely based on their political affiliation and their deference to the Administration, rather than solely on their ability and potential to play the particular role.

187. The number of democrats appointed to the statutory and advisory bodies is far less than those belonging to pro-government parties. The Administration has also appointed a large proportion of members of the Election Committee for the Chief Executive Election to these institutions. Among the 800 Election Committee members, 390 (48.8%) were appointed to those advisory and statutory bodies.

188. Under the “six-year rule” and “six-board rule”, a non-official member of an advisory committee should not serve for more than six years in that particular committee, or as a member of more than six boards/committees at the same time. However, it was found in 2005 that 18.1% of the total non-official posts were taken up by appointed members who had been serving in the same post for over six years. 461 of the posts were even occupied by appointed members who had been serving in the same post for over 10 years.

*Recommendations:*

**189. Your Committee should urge the Government to hold members of different views and political stance in advisory and statutory committees, and to ensure that only the most capable and suitable persons are appointed.**

**Article 26: Right to Equal Protection before the Law**

A. The Proposed Legislation against Racial Discrimination

*Background and Issues Concerned*

190. The HKSAR Government decided to introduce legislation prohibiting race discrimination and published a consultation paper on the proposed bill.

191. **The Government's proposal falls short of providing comprehensive protection for victims of racial discrimination.** According to the consultation paper, **immigrants from the Mainland will be excluded from the proposed bill.** The Government argued that new arrivals from the Mainland are mainly of the same ethnic origin as local Chinese and that therefore any discrimination against them would be a form of social, rather than racial, discrimination. New immigrants from the Mainland are thus not within the scope of protection anticipated in the bill.
192. There is a large number of new arrivals from the Mainland in the HKSAR. The 2001 Population Census found that there were 266,577 new arrivals from the Mainland who had been residing in Hong Kong for less than 7 years. The number was about 4% of the total population of the HKSAR. Due to the differences in culture, political system, languages etc. between the HKSAR and the Mainland, new arrivals can be easily distinguished in the community and are thus prone to being discriminated. Their experiences are similar to many ethnic minority groups in many ways. The Government should therefore include the protection of the Mainland new arrivals from discrimination in the proposed legislation together with other ethnic minorities.
193. The Government proposed a grace period of three years for the enforcement of the proposed legislation in the field of employment for employers who have less than six employees. As most enterprises in Hong Kong are small and medium in size, the exemption means many employees of ethnic minorities would not be protected from discrimination in the grace period.
194. It is proposed in the Government's consultation paper that the scope of protection against racial discrimination of the proposed bill should be wide enough to cover 7 fields, namely (1) employment, (2) education, (3) goods, facilities, services and premises, (4) advisory and statutory bodies; (5) pupillage and tenancy in barristers' chambers; (6) clubs, and (7) Government. However, some of the rights provided in the International Convention on the Elimination of All Forms of Racial Discrimination (ICEARD) are not mentioned in Government's proposal. These include the right to equal participation in cultural activities, and the right of access to any place or service intended for the use by the general public.
195. Moreover, the consultation paper was written in English and Chinese only and has not translated into the other languages spoken by major ethnic minority groups.

The information on the Government's proposal available to the ethnic minorities is limited to some simple information in propaganda leaflets. It is dubious whether people of the ethnic minorities are fully consulted about the proposal.

#### Progress Made on the Matter

**196. There is little progress on the matter since the Government completed its consultation in February 2005. The Government have also not set a timetable for tabling the bill in the Legislative Council for deliberation.**

#### Recommendations

**197. Your Committee should urge the HKSAR Government to extend the scope of protection of the proposal bill in compliance with the ICEARD, so as to provide comprehensive protection for ethnic minority groups and concerned parties. The Government should also set a timetable for tabling the Race Discrimination Bill in the Legislative Council for deliberation.**

### B. Age Discrimination

#### Background

198. Despite persistent calls from the public and concerned groups for the introduction of legislation against age discrimination, the HKSAR Government has always insisted that raising public consciousness through education and enhancing employability of different age groups through re-training are sufficient means to tackle the problem of age discrimination, and thus refused to legislate.

#### Recommendation

**199. Your Committee should urge the Government to work on the introduction of legislation against age discrimination.**

### C. Discrimination on the Ground of Sexual Orientation

#### Background and Issues Concerned

200. Your Committee expressed concerns in your 1999 concluding observations that



no legislative remedies were available to individuals in respect of discrimination on the grounds of sexual orientation and urged the HKSAR government to enact related legislation.

201. The Government is at the moment conducting a survey collecting public opinions on the issue of sexual orientation discrimination. Although **the Government has not proposed a timetable for the introduction of legislation against sexual orientation discrimination**, the mere possibility of introducing such a legislation has already aroused concerns from both supporters and critics of the legislation

202. In fact, discrimination against same sex partners can be easily discerned in many of the Government's policies and services. For instance, the Crimes Ordinance provides that sodomy with a homosexual under 21 years of age is punishable with life imprisonment, while the age of consent for heterosexuals and lesbians concerning the act is only 16 years of age.

203. **In a judicial review case sought by a 20-year-old gay person last year, the High Court ruled that the current law on the age of consent discriminated against homosexuals and violated the Basic Law and the Bills of Rights Ordinance. The Government is now seeking appeal against the judgment and has not proceeded with amending the Ordinance in question.**

#### Recommendations

204. **Your Committee should urge the HKSAR Government to show commitment in the introduction of legislation against discrimination on grounds of sex-orientation, and to provide a detailed proposal and timetable for the legislation. Moreover, your Committee should urge the Government to respect the Court's judgment and amend the relevant provisions of the Crimes Ordinance which discriminate against homosexuals as soon as possible.**

## **Special Issue: Hong Kong Residents Encountering Problems in the Mainland**

### **A. Hong Kong People in the Mainland**

#### **Background and Issues Concerned**

205. Contacts between Hong Kong and the Mainland are increasing, and the number of Hong Kong people working, travelling and doing business in the Mainland has been on the rise, with increasing occasions on which they need help when encountering problems such as those relating to medical cases, law and order, commercial activities or other disputes in the Mainland. **However, many of these people cannot get proper and timely assistance when their personal safety and property are at stake.**

206. Currently Office of the Government of HKSAR in Beijing, the Economic and Trade Office of the Government of the HKSAR in Guangdong and other offices to be established in the Mainland (the “Offices”) are responsible for helping Hong Kong people residing or working in the Mainland. This is especially so for the Office of the Government of HKSAR in Beijing, which has one of its mission as to “provide practical assistance to Hong Kong residents in distress in the Mainland”. **However, the Offices have not taken an active role in protecting the security and interests of Hong Kong residents, especially those detained by the Mainland law enforcement agencies.**

207. There are quite a number of incidents involving Hong Kong residents who have been put into custody or under arrest in the Mainland for a long period. The time for bringing them to court for trial, however, remains unknown. For many of the cases, it is highly doubtful that Mainland law enforcement agencies have acted in accordance with the law, especially with regard to detaining people for an indefinite period without laying any charges on them. **However, the Office of the Government of HKSAR in Beijing often only assumes the role as a “messenger” for the relevant authorities in the Mainland and the family members of the detained person, in terms of passing on messages of both sides to the other party, yet refusing to directly intervene into the cases even when flagrant injustice has been done to the detained person.**

208. It is indeed regrettable that the Government has not tried its utmost to assist those who have encountered serious problems in the Mainland. What is more

unacceptable is that when the family of the detained person sought help from the Government, **it has always evaded its responsibility under the pretext of “one country two systems” and “ inappropriateness to intervene into matters belonging to the Mainland jurisdiction”.**

209. Another problem which Hong Kong people frequently encounter, especially those who are under arrest and would be tried under the Mainland jurisdiction, is that either they do not have means to get access to legal services, or that they cannot afford to pay for legal representation for their cases. **The Legal Aid Scheme at the moment does not apply to Hong Kong residents in the Mainland, and this is so even if they pass both the “means” and “merit” tests under the scheme.**

#### Recommendations

210. Your Committee should urge the Government to exploit more effectively the functions of the Office of the Government of HKSAR in Beijing, the Economic and Trade Office of the Government of the HKSAR in Guangdong and other offices to be established in the Mainland, and to **enhance their intermediary roles, so as to more efficiently and appropriately assist Hong Kong people who encounter problems in the Mainland.**

211. The Government should develop closer communication and coordinating mechanisms with provincial/municipal governments progressively, with a view to enabling Hong Kong residents to receive proper assistance and support as soon as possible when they encounter difficulties in the Mainland.

212. The Government should discuss with the Mainland Authorities ways to improve the notification mechanism about the arrest of Hong Kong people in the Mainland. **For cases involving the detainment of Hong Kong residents in the Mainland, the Government should raise the issue to the highest level with the Mainland Authorities.** The Government should appoint officials solely responsible for dealing with cases of detained Hong Kong residents, and seek advice of legal experts to see what support it could provide its own people under Chinese laws. The appointed officials should be allowed to visit the detained persons so that they can have the most up-to-date information on the investigation of the cases and take necessary follow-up actions.

213. Your Commission should also urge the Government **to study the possibility of extending the scope of Legal Aid Scheme so that it covers Hong Kong residents in the Mainland**, and to cooperate with non-governmental organizations to provide legal assistance to those who have run into problems.

B. The Case of Ching Cheong—the Detained Hong Kong-based Newspaper Reporter

*Background and Issues Concerned*

214. Hong Kong-based journalist Ching Cheong was put in custody under residence surveillance in Beijing by the Chinese Authorities since the end of April 2005. The Ministry of Foreign Affairs in China claimed that Ching was involved in spying for unidentified foreign intelligence agencies. However, it was not until early June that the National Security Bureau formally notified Ching's family that Ching was detained in Beijing.

215. **Since Ching's arrest, his wife was refused direct contact with her husband and his legal representative in China.** According to the Mainland legislation, the Hong Kong Government also has no right to visit any detained person in the Mainland.

*Progress Made on the Matter*

216. **The Mainland Authorities have refused to reveal more information on Ching's case, thus the actual circumstances surrounding his case remains a mystery up until now, and no charges has yet been laid on him.** The latest news is now that the Prosecution Department has returned his case back to the National Security Bureau for further investigation.

*Recommendation*

217. Your Committee should urge the Government to follow closely any progress made in Ching's case, and to liaise with the Mainland Authorities to let the couple get in touch and to allow officials to check on Ching's safety. **The Government should also demand the Mainland Authorities to allow Ching to have the freedom to choose his own legal representative, and to ensure maximum transparency in the proceedings of the case.**

218. China, being a signatory of the ICCPR, should realize that individual freedom, easy access to legal service and freedom of communication are all important rights stipulated in the Covenant. **Hence the Chinese Government should do its best to fulfill its duty under the Covenant to protect the civil and political rights of the people.**