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香港人權監察  
HONG KONG HUMAN RIGHTS MONITOR

香港上環孖沙街二十號金德樓4樓  
4/F Kam Tak Building, 20 Mercer Street, Sheung Wan, Hong Kong  
電話 Phone: (852) 2811-4488 傳真 Fax: (852) 2802-6012  
電郵地址 Email: [contact@hkhrm.org.hk](mailto:contact@hkhrm.org.hk) 網址 Website: <http://www.hkhrm.org.hk>

9 November 2006

C/o Ms. Miss Flora Tai (Clerk, Panel on Home Affairs)  
Honourable Chairperson and Members,  
The Panel on Home Affairs,  
Legislative Council

**By fax: 2509 9055**

**Examination of the Existing Human Rights Protection Mechanisms**

**For Discussion under Agenda Item III  
Panel on Home Affairs  
Meeting on Friday, 10 November 2006**

We are writing to propose that your Panel examine the current human rights promotion and protection mechanisms for Hong Kong and to consider the establishment of a Human Rights Commission for Hong Kong. We sincerely urge your Panel to

consider working on this topic under Agenda Item III in your meeting tomorrow. We are sorry for this short notice because we have just learned from the LegCo's website that your Panel will meet tomorrow.

The international community has recognized the importance of National Human Rights Institutions (NHRIs)<sup>1</sup> in the promotion and protection of human rights for over more than a decade. NHRIs have been first endorsed by the United Nations Economic and Social Council in 1946 as an important mechanism for bridging government and civil society efforts in the promotion of human rights.<sup>2</sup> Since then, the UN has been calling upon States to establish and strengthen the NHRIs in member state's countries in the General Assembly every year.<sup>3</sup>

National Human Rights Institutions (NHRIs) are independent bodies that promote and monitor the states' implementation of and compliance with its international obligations of human rights protection. They are normally responsible for both the protection and promotion of human rights by dealing with human rights complaints, making recommendations to government, promoting conformity of national laws and practices with international standards, conducting inquiries and publicizing human rights in the community. In the One-Country-Two-System context of Hong Kong, rather than a "National" one, we should aim at a Hong Kong one.

In 1993, *the Vienna Declaration* affirms the constructive and important role of NHRIs for the promotion and protection of human rights and recognizes that each state has the right "to choose the framework that is best suited to its particular needs at the national level."<sup>4</sup>

The Paris Principles, which was released by the Geneva Centre for Human Rights in 1991, and subsequently endorsed by the 1992 Commission on Human Rights and the

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<sup>1</sup> In the One-Country-Two-System context of Hong Kong, the concept of "National" should be read as if it refers to the Hong Kong SAR.

<sup>2</sup> Office of the High Commissioner for Human Rights, "Fact Sheet No. 19, National Institution for the Protection and Promotion of Human Rights," (April 1993), available at <http://www.unhcr.ch/html/menu6/2/fs19.htm>

<sup>3</sup> See for example, Commission on Human Rights, "Report of the Secretary-General 59<sup>th</sup> session: Effective Functioning of Human Rights Mechanisms: National Institutions and Regional Arrangements," (December 31, 2002), (E/CN.4/2003/110).

<sup>4</sup> Vienna Declaration and Programme of Action, United Nations World Conference on Human Rights, UN GAOR, UN (Doc. A/CONF157/23(1993)), Article 36.

1993 Vienna Conference, set forth the basic standards of competence, responsibility, composition, and method of operation for NHRIs.<sup>5</sup>

Nevertheless, the performance of the existing mechanisms is far from satisfactory. Given the jurisdictional limitation, the previous appointment scandals and various operational defects, the EOC has been awarded a “C” grade in the accreditation by the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights.<sup>6</sup> Neither the Equal Opportunities Commission, nor any other existing independent statutory body, for example the Office of the Ombudsman and the Office of Privacy Commissioner, satisfies the Paris Principles.

In view of the severe defects of the institutional framework of human rights promotion and protection in Hong Kong, the Monitor urges the Panel to review the powers, functions and the operation of those independent statutory bodies and advise the HKSAR Government on the enhancement of human rights promotion and protection.

At the same time, the treaty bodies of the United Nations have been expressly urging the Hong Kong Colonial Government and then the HKSAR Government to set up a human rights commission since 1995 (a total of nine times). It can be observed from the concluding observations that the demand from the UN on the HKSAR Government for the establishment of a NHRI there has been escalated.<sup>7</sup>

We thereby further propose the Panel examines whether a Human Rights Commission should be established in Hong Kong for the purpose of promoting and protecting human rights enshrined under the Basic Law and the international human rights treaties which are applicable to Hong Kong.

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<sup>5</sup> “The Principles relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights” (1991), General Assembly resolution 48/134, Annex, available at <http://www.ohchr.org/english/law/parisprinciples.htm> [hereinafter the Paris Principles].

<sup>6</sup> *National Human Rights Institutions Forum*, “National: List of Institutions,” available at <http://www.nhri.net/NationalDataList.asp?MODE=1&ID=2>.

<sup>7</sup> United Kingdom of Great Britain and Northern Ireland, including Hong Kong, (CCPR/C/79/Add.57, 9 November 1995), paragraph 22; United Kingdom of Great Britain and Northern Ireland, including Hong Kong, (CCPR/C/79/Add.117, 12 November 1999), paragraph 9; United Kingdom of Great Britain and Northern Ireland, including Hong Kong, (E/C.12/1/Add.10, 28 November 1996), paragraph 14(c); Hong Kong, China (E/C.12/1/Add.58, 21 May 2001), paragraph 32; Hong Kong, China (A/55/44, 1 February 2000), paragraph 143; Hong Kong, China (A/54/38, 4 May 1999), paragraph 280; Hong Kong (E/C.12/1/Add.107, 13 May 2005), paragraph 41; Hong Kong (unedited version – CRC/C/15/Add.271, 30 September 2005), paragraph 17; Hong Kong (CCPR/C/HKG/CO/2, 30 March 2006), paragraph 8.

For your information, the Hong Kong Human Rights Monitor has already conducted a study on the above two issues and we are adding the finishing touches to the report. We will be able to submit the research report for your Panel's perusal in your next meeting and we would be happy to present it to the Panel if the Panel's agenda will be able to accommodate this. Irrespective of our report, we still strongly urge the Panel to discuss the above issues as soon as possible.

Please do not hesitate to contact me if you have any questions on our proposals. Thank you for your kind attention.

Yours Sincerely,

[signed]

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Law Yuk-kai  
Director  
Hong Kong Human Rights Monitor