

CHAPTER FOUR

ISSUES RAISED BY THE TRANSFER

The Protection of Human Rights

Universality and Indivisibility

4.1 Since its creation in 1991, this Committee has maintained a consistent view that the international consensus on human rights, that human rights are universal and indivisible, is an essential underpinning of the United Nations security regime. In 1995 the Committee defined its view in detail.

4.2 Human rights are the rights we have because we are human beings; they do not belong to us because we are Australian or Burmese, Chinese or American and therefore they cannot be modified or coloured by our nationality, our historical experience or our culture. This principle was declared, but not invented, by the international community in the Universal Declaration of Human Rights in 1948. Since 1948 this Declaration has been defined and elaborated upon by a series of covenants and conventions. The Universal Declaration in conjunction with the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) make up the International Bill of Rights. These documents represent the international consensus on the rights of human beings. They define rights that are universal, inalienable and indivisible - shared by all people of all cultures regardless of race, creed or stage of development. The promotion and protection of human rights as defined by these agreed standards are the obligation of all governments who are members of the United Nations and who therefore adhere to the Charter and the Universal Declaration. Being universal rights, they are not subject to the limitations of national sovereignty nor can governments claim exemption on the basis of international laws on non-intervention. This view has been reaffirmed by the consensus of the international community as recently as 1993 when the World Conference of Human Rights adopted the Vienna Declaration.

4.3 The concept of human rights represents not simply a moral imperative, although it rests upon the inherent dignity of human beings. It is driven by the pragmatic recognition that the abuse of human rights retards development by causing instability and insecurity - oppression, rebellion, war and the outflow of refugees. Such consequences affect the vital interests of neighbouring countries and entitle them to scrutinise the policies of other governments as far as those policies affect the human rights of their citizens.¹

4.4 China's view on this matter as the next sovereign power in Hong Kong is pertinent. Although the agreement of 'one country, two systems' should ensure that Hong Kong's human rights mechanisms and democratic structures will remain in place, doubts have arisen in the last few years about China's commitment to this principle. It was frequently put

1 Joint Standing Committee on Foreign Affairs, Defence and Trade, *Human Rights and Progress towards Democracy in Burma*, October 1995, p. 7.

to the Committee that, regardless of the obligations of the Joint Declaration and the Basic Law, what happened in China ultimately affected what would happen to Hong Kong.

4.5 China's own position on human rights contains a number of ambiguities. On the one hand China is part of the United Nations and as such an adherent to the principles of the Charter and the Universal Declaration on Human Rights. This commitment was reaffirmed at the World Conference on Human Rights in 1993 in the Vienna Declaration, adopted by consensus. China has also participated in consensus resolutions at the UN General Assembly which affirm the importance of the Covenants - Resolution 50/171 calling on states not yet parties to the Covenants to become parties,² Resolution 50/181 on the administration of justice, and Resolution 50/183 on the elimination of all forms of religious intolerance. China's White Paper on Human Rights, November 1991, acknowledges both the importance of the principles and the right of the international community to concern itself with human rights.

It has been a long cherished ideal of mankind to enjoy human rights in the full sense of the term. ... The issue of human rights has become one of great significance and common concern in the world community. ... The Chinese Government has also highly appraised the Universal Declaration of Human Rights considering it the first international human rights document that has laid the foundation for the practice of human rights in the world arena.³

4.6 On the other hand, China has qualified its position by claiming that the Chinese people already enjoy extensive rights and at the same time claiming an exemption on the basis of its stage of development and the preeminence of the right to subsistence. Further, despite the acknowledgment of right of international concern, the White Paper also claims that the issue falls within the 'sovereignty of each country'.⁴ In contradiction of the assertions in the preface to the paper, China has frequently criticised other nations for interference when human rights issues have been raised.⁵

4.7 The Committee disagrees with the Chinese position on this. It believes that human rights are not internal matters for any nation, not for Australia, nor for China, nor for Hong Kong. International scrutiny is an accepted part of standard setting on human rights and is an integral part of the United Nations security arrangements. The Department of Foreign Affairs and Trade outlined this position in its submission to the Committee:

As members of the United Nations, both China and the United Kingdom are bound by the provisions of the United Nations Charter. The Charter clearly establishes the international legal obligation of all

2 China is not a party to either covenant, the ICCPR or the ICESCR, but has ratified the Convention against Torture, Cruel, Inhuman or Degrading Treatment (CAT), the Convention on the Elimination of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CROC) and the Convention on the Elimination of All Forms of Racial Discrimination (ICERD). DFAT, Submission, p. S376.

3 Information Office of the State Council, *Human Rights in China*, November 1991, Beijing China, p. 8.

4 *ibid.*, p. 9.

5 A US educated member of the Preparatory Committee in Hong Kong told the Committee cheerily during its visit that 'Chinese in general, and Beijing in particular, know nothing about human rights. We are greenhorns.'

governments to promote and protect universally recognised human rights and fundamental freedoms for all their citizens. The Charter recognises that the promotion and protection of human rights is ultimately a matter of mutual obligation and common interest for all members of the world community.⁶

4.8 The Committee welcomes the decision of the Australian Government and the Government of the People's Republic of China to continue the dialogue on human rights begun with the Government of the People's Republic of China with the human rights delegations of 1991 and 1992.

4.9 Nevertheless, the Committee believes that, while international scrutiny remains valid, the promotion and protection of human rights are a primary responsibility of the sovereign state and that the most effective means to the improvement of human rights in any country lies in the actions of the state itself. To that end the Committee believes that each nation should be party to the international human rights treaties and should establish internal mechanisms for the implementation of the obligations so incurred.

The Framework for Human Rights in Hong Kong

The International Covenant on Civil and Political Rights (ICCPR)

4.10 Over the last 150 years in Hong Kong, at a macro level, the rights of citizens have been protected by the benign nature of the colonial system, the imposition of orderly and efficient methods of administration through a rule of law and by the backstop of the Parliament in Westminster.

4.11 The United Kingdom ratified the International Covenant on Civil and Political Rights in 1976 and at the same time extended it to Hong Kong. However, Britain placed a number of reservations on the Covenant. These reservations addressed and preserved the colonial status of Hong Kong, covering such matters as the right of self-determination, the nature of custody in prisons, freedom of movement and choice of residence, legal review of orders of deportation, freedom of assembly, association and speech, right of nationality and finally universal suffrage and elected legislatures. In addition, Britain declared that it would not recognise complaints to the Human Rights Committee from states parties which did not subject themselves to similar complaints under Article 41.

4.12 In addition to the ICCPR, the following human rights treaties have been extended to Hong Kong:

- International Covenant on Economic, Social and Cultural rights (ICESCR);
- Convention on the Prevention and Punishment of the Crime of Genocide;
- Convention on the Political Rights of Women;
- Convention relating to the Status of Stateless persons;

6 DFAT, Submission, p. S375.

- Supplementary Convention on the Abolition of Slavery, the Slavery Trade and Institutions and Practices Similar to Slavery;
- Convention on the Reduction of Statelessness;
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage;
- International Convention on the Elimination of All Forms of Racial Discrimination;
- Convention against Torture and All forms of Cruel, Inhuman and Degrading Treatment or Punishment (CAT).

4.13 The assessment of the Australian Department of Foreign Affairs and Trade of the overall human rights standard in Hong Kong was positive:

Hong Kong law provides for the right to a fair public trial, and this is respected in practice. Currently prevailing legal protections and common law traditions govern the process of arrest and detention and ensure substantial and effective legal protections against arbitrary arrest or detention. There have been no reports of political or extrajudicial killings or politically motivated disappearances. The law forbids torture and other extreme forms of abuse and stipulates punishment for those who break the law. In 1993 Hong Kong formally abolished the death penalty.

A well organised police force maintains public order and is under the control of the civilian authorities.

A tradition of free speech and press is observed. Freedom of peaceful assembly and association, freedom of religion and freedom of movement and travel are ensured.

The right of association and the right of workers to establish and join organizations of their own choosing are provided for by the law. The Government does not discourage or impede the formation of unions.

In 1995, the Hong Kong Government adopted legislation banning discrimination on the basis of sex and disability.⁷

4.14 However, the legal framework and the accountability of the government to the people of Hong Kong have been deficient in significant ways. The result locally, as a number of people told the Committee, was that repressive laws remained on the statute books, for a long time discrimination was endemic, political development retarded, police powers unscrutinised and the rights of groups of the poor often unrecognised and unrelieved.⁸ The report refers to the establishment in 1974 of the ICAC to fight corruption at paragraph 5.79.

7 DFAT, Submission, p. S375.

8 For details, see Submission No. 6 from the Hong Kong Human Rights Commission.

Reporting obligations under the ICCPR

4.15 Under Article 40 of the ICCPR Britain, as the governing power, has been obliged to submit reports to the Human Rights Committee in Geneva on the implementation of the Covenant in Hong Kong. According to the Human Rights Committee of the UN, human rights treaties devolve with territories. Under Article 39 of the Basic Law, China has pledged that:

The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and the international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.

4.16 Under Article 13 of the Basic Law the power over foreign affairs relating to the Hong Kong Special Administrative Region is the responsibility of the Central People's Government. Therefore, it would appear to be China's responsibility to fulfil the reporting obligation under Article 40 of the ICCPR.⁹ The Department of Foreign Affairs and Trade listed China's options as:

China could choose to report to the [UN Human Rights] Committee on behalf of Hong Kong. Alternatively, China could permit Hong Kong to report directly to the Committee through the Hong Kong Special Administrative Region, avoiding the assumption of any additional obligations on the part of China. Finally, China could accede to the Covenant.¹⁰

4.17 China clearly has an obligation under the UN treaty (the ICCPR) to continue to report and according to its obligations under its treaty with the UK (the Joint Declaration) and its own law (the Basic Law) to continue the application of the ICCPR in Hong Kong. However, the position of the reporting obligation for Hong Kong after 1997 is not yet clear. Some submissions to this inquiry noted that an official from the Xinhua News Agency, Mr Yeung Wah Ki, the *de facto* Chinese Consul in Hong Kong, has already indicated that China will not be under any obligation to submit periodic reports to the UN Human Rights Committee as China is not a signatory state party.¹¹ However, Amnesty International reported that the International Rights and Obligations Sub-Group of the Joint Liaison Group is still considering the matter.¹²

4.18 The UN Human Rights Committee has declared that after 1 July 1997, it is competent to receive and review reports on Hong Kong. A number of submissions to the inquiry urged that, if China fails to comply with its obligation in this regard, the Committee go ahead with its consideration of the state of implementation of the ICCPR in Hong Kong on the basis of information supplied to the Committee from other sources.

9 There are similar reporting obligations attached to the other human rights treaties to which Hong Kong has acceded.

10 DFAT, Submission, p. S376.

11 Hong Kong Human Rights Commission, Submission, p. S32.

12 Amnesty International, Submission, p. S796.

It should not be possible for a state to escape scrutiny by the treaty bodies simply by its own failure to provide the necessary reports. When a state persistently neglects to provide the necessary reports, the treaty bodies should seek relevant information from other sources, including the UN human rights mechanisms and non-governmental organizations, if this has not already been received, and should proceed to the examination of the state's implementation of the treaty concerned on the basis of this supplementary information. The state could be notified in advance, as is the usual practice, and again be invited to submit its report and attend the examination, but if no response is received the examination should proceed in any event in the usual way with the adoption of conclusions.¹³

4.19 The Committee endorses this proposal. It recommends that:

7. **the Australian Government urge:**
 - a. **the Government of the PRC to ratify the International Covenant on Civil and Political Rights (ICCPR);¹⁴ and**
 - b. **the Government of the HKSAR and the Government of the People's Republic of China to continue to meet the reporting obligations of the former under Article 40 of the ICCPR.**
8. **the Australian Government support, in the appropriate UN forums, the continued consideration of the application of the ICCPR in Hong Kong through either reports from the HKSAR or, in the absence of such reports, from relevant non government organisations.**

The First Optional Protocol

4.20 Although the United Kingdom extended the ICCPR to Hong Kong neither country is a party to the (First) Optional Protocol to that Covenant. This protocol states in part that a 'State Party to the Covenant ... recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol'. The (First) Optional Protocol requires that 'all domestic remedies have been exhausted' before an approach is made to the Committee.

4.21 A number of the submissions¹⁵ suggested that Britain should ratify the (First) Optional Protocol on behalf of Hong Kong to allow its citizens access to the Committee to

13 Amnesty International submission to the 1993 World Conference on Human Rights in Vienna, quoted in Jayawickrama, Submission, p. S357.

14 This recommendation, extended to include the ICESCR, is repeated in Chapter 6. It is placed here as well as it is relevant to and a possible solution for the difficulties relating to the reporting obligation.

15 In particular the President of the International Commission of Jurists and Dr Jayawickrama.

redress abuses of their rights in the absence of other mechanisms; the 'most substantial and enduring protection for human rights'¹⁶ that Britain could offer the people of Hong Kong.

4.22 The British Government has argued that the Protocol is unnecessary or unworkable as a protection on a number of grounds. First, it is not needed as the Bill of Rights Ordinance is 'entirely compatible with the Joint Declaration and the Basic Law and there is no reason why it should not remain in force and fully effective after 1 July 1997'.¹⁷ It has further argued that the Protocol is beyond the provisions of the Joint Declaration, that ratification of it is not irreversible as it can be denounced under Article 12; and, finally, that it would require China as the power responsible for Hong Kong's foreign affairs formally to accept the associated international rights and obligations, something they would not be likely to do.

The Bill of Rights

4.23 The implementation of the ICCPR (1976) in Hong Kong is through the Bill of Rights Ordinance but it was not enacted until June 1991 when it was seen as a confidence building exercise after the Tiananmen Square massacre. The Bill of Rights was designed to reflect the articles of the ICCPR and was described by witnesses to the inquiry as comprehensive in its scope. However, Part III of the Bill of Rights Ordinance also incorporates the reservations placed on the ICCPR by Britain.

4.24 Since 1995, the Bill of Rights has become a matter of dispute between Hong Kong residents and the British on the one hand and the Chinese negotiators on the other. The Chinese objected to the Bill of Rights on the grounds that it was unnecessary and that they had been assured by the British during negotiations for the Joint Declaration that domestic legislation was unnecessary as is the case within Britain itself.¹⁸ The Chinese claimed that it was on this basis, that domestic legislation would remain unchanged, that they agreed to the incorporation of the adherence to the ICCPR and the ICESCR into the Joint Declaration and the Basic Law. Secondly, they objected to what they say is the superior status accorded to the Bill of Rights in Articles 2(3), 3 and 4.

4.25 Dr Jayawickrama argues that if the British negotiators did give these assurances they were misleading. Such assurances do not take account of the differences between Hong Kong and Britain. In Britain, there is no written constitution and therefore it is not possible to incorporate the Covenant effectively into domestic legislation and, moreover, Britain is a party to the European Convention on Human Rights through which British citizens have direct access to the European Court of Human Rights whose judgements are binding on the British Government. Hong Kong citizens did not have this legal redress. Furthermore, Dr Jayawickrama argues, Britain was obliged by the Covenant itself to take the action it did,

16 Jayawickrama, Submission, p. S358.

17 *ibid.*

18 In 1995, the Xinhua News Agency accused the British of using the Bill to 'destroy the rule of law' through weakening the power of the Executive in the HKSAR and they were particularly suspicious of the 'strange articles' and 'queer and absurd' provisions. Jayawickrama, Submission, pp. S324-325. These comments reveal the misunderstanding of what the rule of law entails - the precise and express tabulation of rules to which all, including government officials and the Executive, must adhere. For further discussion, see the final section of Chapter 3 on The Meshing of Systems.

albeit very slowly and after considerable 'pressure, motivation, provocation and even nagging'.¹⁹

One of the principal obligations of a state party to that ICCPR is to ensure that any person whose rights as recognised in that Covenant are violated shall have an effective judicial remedy. Before a person can invoke a judicial remedy, he must be able to point to a law which recognises the right he claims has been violated... [In] Hong Kong it is a well established common law rule that the making of a treaty is an executive act, while the performance of its obligations requires legislative action.²⁰

4.26 At the end of 1995, the Legal Sub-Group of the Preliminary Working Committee recommended repeal of articles of the Bill of Rights which they said were inconsistent with the Basic Law, namely Articles 2 (3), 3 and 4.

Article 2 (3)

In interpreting and applying this ordinance, regard shall be had to the fact that the purpose of this Ordinance is to provide for the incorporation into the law of Hong Kong of the provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong, and for ancillary and connected matters.

Article 3 Effect on pre-existing legislation

(1) All pre-existing legislation that admits of a construction consistent with this Ordinance shall be given such a construction.

(2) All pre-existing legislation that does not admit of a construction consistent with this Ordinance is, to the extent of the inconsistency, repealed.

Article 4 Interpretation of subsequent legislation

All legislation enacted on or after the commencement date shall, to the extent that it admits of a construction, be construed so as to be consistent with the International Covenant on Civil and Political Rights as applied to Hong Kong.

4.27 These articles state the common law rule of interpretation that later laws have an effect on all pre-existing legislation to the extent that pre-existing legislation is inconsistent. Stated simply, 'whenever the legislature makes a new law, it obviously intends that law to have effect'.²¹ Dr Jayawickrama made the point to the Committee that these articles articulate a principle of common law which applies regardless of whether they are specifically stated in legislation or not. Therefore, the repeal, suggested by the PWC and now confirmed by the

19 Jayawickrama, Submission, p. S326.

20 *ibid.*

21 *ibid.*, p. S327.

Preparatory Committee, may be meaningless in terms of whether the courts will continue to apply the principles. He did, however, express the concern that:

Maybe it was intended that, on a selective basis, the common law rule shall not apply. Now, if that is the case, we are certainly going to disturb - to say the least - the existing legal system.²²

4.28 The dispute reveals the minefield of misinterpretation and misunderstanding possible between two different legal systems, and the dangers to Hong Kong's legal system and Hong Kong's autonomy resulting from that misunderstanding.

4.29 While the repeal of the Articles in the Bill of Rights may not affect the courts' interpretation, the threatened repeal of other ordinances is potentially more serious for Hong Kong. After the enactment of the Bill of Rights, the Government of Hong Kong amended or repealed a number of its ordinances to bring them into conformity with that Bill. The Preparatory Committee has proposed reversing those actions. On 23 February 1997, the Standing Committee of the National People's Congress announced details of Hong Kong's existing laws which it considered incompatible with the Basic Law. These laws will cease to be effective from 1 July 1997, according to this decision. They are:

- (i) Trustees (Hong Kong Government) Ordinance;
- (ii) Application of English Law Ordinance;
- (iii) Foreign Marriage Ordinance;
- (iv) Chinese Extradition Ordinance;
- (v) Colony Armorial Bearing (Protection) Ordinance;
- (vi) Secretary of State for Defence (Succession to Property) Ordinance;
- (vii) Royal Hong Kong Regiment Ordinance;
- (viii) Compulsory Service Ordinance;
- (ix) Army and Royal Airforce Legal Services Ordinance;
- (x) British Nationality (Miscellaneous Provisions) Ordinance;
- (xi) British Nationality Act 1981 (Consequential Amendments) Ordinance;
- (xii) Electoral Provisions Ordinance;
- (xiii) Legislative Council (Electoral Provisions) Ordinance;
- (xiv) The Boundary and Electoral Commission Ordinance.

4.30 A second appendix listed Hong Kong laws and auxiliary laws which are stated to be incompatible with the Basic Law. They will not be adopted as laws of the HKSAR according to the decision. They are:

- (i) the definition of permanent resident in Article 2 of the Immigration Ordinance and stipulations on Hong Kong's permanent residents in Appendix One of the Ordinance;
- (ii) all the provisions made to implement the British Nationality Ordinance in Hong Kong;
- (iii) the provisions on elections contained in the Urban Council Ordinance;
- (iv) the provisions on elections contained in the Regional Council Ordinance;
- (v) the provisions on elections contained in the District Board Ordinance;
- (vi) Auxiliary Sections A and C of the Corrupt and Illegal Practices Ordinances;

22 Jayawickrama, Transcript, 10 February 1997, p. 210.

- (vii) the provisions on the implementation of the Bill of Rights (dealt with above);
- (viii) the provisions in the Personal Data (Privacy) Ordinance which override other laws in Article 3 (2);
- (ix) the major revisions made to the Societies Ordinance since 17 July 1992;
- (x) the major changes made to the Public Order Ordinance since 27 July 1995.

4.31 The proposed changes fall into two categories: those perceived to be colonial laws and those that were part of Governor Patten's reforms. The most serious changes as far as the rights and liberties of Hong Kong citizens are concerned appear to be those affecting the Bill of Rights, those affecting the electoral system and those affecting the rights of association and assembly.

4.32 Significant groups both within Hong Kong and internationally have condemned the moves. They complain that there has been a lack of consultation or explanation as to how the particular laws offend against the Basic Law. The changes have also been condemned for the impact that they will have on the rights and freedoms of Hong Kong people. It is difficult to see how any of the laws affecting rights which have been scheduled for change have breached the Basic Law, especially where that Law specifically guarantees rights as laid down in the ICCPR. Governor Patten's reforms of the Public Order Ordinance and the Societies Ordinance were specifically designed to bring those ordinances into line with the ICCPR and therefore the Basic Law.

4.33 The announcement of the proposed changes were made while the Committee was in Hong Kong. The reaction of significant groups within Hong Kong at that time was that the decision was at best regrettable and unnecessary, at worst provocative and legally unsound. The Hong Kong Bar Association put the view to the Legco that the reinstatement of draconian colonial laws was 'legally groundless and serving only to cause confusion'.²³

4.34 Mr Tung Chee Hwa, the Chief Executive designate, defended the proposals on the grounds that they were needed to make the ordinances consistent with the Basic Law and to get the right balance between individual rights and social order for the good of the whole community and that they were minimal and technical changes that could be reviewed by the first elected legislature in Hong Kong in 1998.²⁴

4.35 However there was little support evident for that view at the time of the announcement. Ms Audrey Eu, QC, representing the Bar Association, stated that:

- Mr Tung failed to illustrate how the Societies Ordinance was actually in breach of Article 23 of the Basic Law;
- the existing law should only be declared to be in contravention of the Basic Law to the extent of the inconsistency;
- neither the National People's Congress Standing Committee nor the Preparatory Committee has the power to make law for the territory;

23 Exhibit No. 4, *South China Morning Post*, 25 January 1997, p. 4.

24 Exhibit No. 4, *South China Morning Post*, 24 January 1997, p. 1.

- the proposals would bring the territory to a standstill after the handover as many unregistered societies would become unlawful and there would be a large number of legal challenges when the Special Administrative Region came into effect; and finally
- the reasons given for the changes were vague, imprecise and non-legal.²⁵

4.36 The Liberal Party Chairman, Mr Allen Lee Peng-fei, wrote to Mr Tung stating his opposition to the proposed changes as unnecessary.²⁶

4.37 On 19 January 1997, the Democratic Party released a press release on the proposals saying:

These recommendations are thoroughly bad. They will do grave damage to the already fragile public and international confidence in the handover. Our laws must not take away rights from the people of Hong Kong - but rather must protect individual rights and freedoms as the Bill of Rights does today. Under BL 160, the only justification for repealing a law is that it contravenes the Basic Law. This is not a matter of personal preference - Beijing cannot strike out a Hong Kong law simply because Chinese leaders do not like it: they must demonstrate that a law contravenes the Basic Law.²⁷

4.38 The editorial of the South China Morning Post extended this argument to a concern for the future balance in law-making between Hong Kong and Beijing and the very basis of the common law itself:

One of the strengths of the current legal system is the clarity of the law making process and the principles of the law. This will no longer be the case if these proposals go through. ... It is vitally important that Hong Kong remains part of the common law, and this means recognising that the most recent laws take precedence over laws drafted earlier. Reviving outdated laws which lay unused on the statute books overturns this principle.²⁸

4.39 Professor Michael Davies of the Hong Kong Chinese University feared that the move indicated a hostile attitude towards human rights protection by the post 1997 administration.²⁹ Most people argued that there was no social disorder that required such draconian legislation. Even at the height of feeling during the aftermath of the Tiananmen Square massacre the huge demonstrations in Hong Kong were orderly. If anything the proposals illustrate the gap in understanding and approach between the two systems and underline the need for enforcement of the principle of 'one country, two systems'.

4.40 The Committee recommends that:

25 Exhibit No. 4, *South China Morning Post*, 25 January 1997, p. 4.

26 *ibid.*

27 Exhibit No. 20.

28 Exhibit No. 4, *South China Morning Post*, 21 January 1997, p. 16.

29 *ibid.*

9. **the Australian Government express to the Government of the HKSAR its concerns with the proposed changes to the Bill of Rights Ordinance, the Boundary and Election Commission Ordinance, the Electoral Provisions Ordinance, the Societies Ordinance and the Public Order Ordinance.**

Human Rights Commission

4.41 There has developed within the UN human rights system and increasingly within this region a series of national institutions whose function is to promote and protect the human rights embodied in the international treaties. The assumption underlying this development is that human rights are best addressed by effective domestic remedies and that legislation in itself is insufficient to the task. In many societies the courts are difficult and/or expensive to access, particularly by those who most often need redress, the poor or the uneducated. For the individual, the Human Rights Commissions receive complaints, investigate and mediate; for the whole society they monitor compliance and they have a capacity to educate, review policy, identify areas of deficiency and recommend changes. Such institutions are independent of government.

4.42 In this region, Indonesia, the Philippines, India, Australia and New Zealand have already developed national institutions and a number of countries have commissions either planned or under consideration: Papua New Guinea, Sri Lanka, Pakistan, Thailand, Mongolia, Nepal, the Solomon Islands and Fiji. These institutions maintain contact and have begun to meet regularly to discuss their work and exchange information of mutual benefit.

4.43 Amnesty International reported to the Committee that in 1994 they had assessed the safeguards for human rights in Hong Kong and found that there was a lack of a sufficiently accessible, affordable, speedy and effective complaints mechanism. Groups within Hong Kong have pressed the British administration to establish such an institution. In 1992 it was one of the recommendations of the ICJ report, *Countdown to 1997*. The UN Human Rights Committee itself, Amnesty International and the coalition of ten major NGOs in Hong Kong known currently as the Human Rights Commission and a number of individual commentators have all pressed for a commission. The response has been negative.

4.44 The Committee recommends that:

10. **the Australian Government urge the Government of the HKSAR to establish a Human Rights Commission and offer the technical assistance of the Australian Human Rights and Equal Opportunity Commission to that end.**

Rights and Freedoms

4.45 In a formal sense, in terms of the legal structures and democratic processes, the protection of human rights in the colony of Hong Kong has been minimal. Britain extended the ICCPR to Hong Kong in 1976 but did not advertise its existence or provide any education on rights for citizens and did not implement the Covenant in local law until 1991.³⁰ The fact that Hong Kong has been seen as a haven for dissidents from the mainland and has the

30 Hong Kong Human Rights Commission, Submission, p. S30.

reputation as a free and open city is a testament to the application of British methods of government and administration in the absence of legal imperatives.

4.46 Nevertheless, the Human Rights Commission, a coalition of 10 human rights NGOs in Hong Kong, have, in their report on the state of human rights in Hong Kong, identified a number of problems:

- Excessive power of the law enforcement agencies involving police brutality, intimidation and humiliation, arbitrary detention and invasions of privacy through the use of electronic surveillance and personal files on political activists;
- Discrimination against women, particularly in relation to employment, and problems associated with domestic violence;
- A lack of rights for Vietnamese asylum seekers in Hong Kong, involving questions of personal liberty, the right to a hearing and the education of children;
- Inadequacies in the protection of privacy in relation to access to personal records;
- Concern about the continued freedom of the press and the right to assembly, given the continued existence of laws which might be used to restrict it - Emergency Regulations Ordinance, Telecommunications Ordinance (Section 3), the Crime Ordinance (Sections 2 and 9) and the Official Secrets Act;
- The lack of a right, guaranteed under the ICCPR, to political participation.³¹

4.47 Many of these concerns were affirmed by the Hong Kong Journalists Association which concluded in its 1996 annual report that 'the liberalisation of the most contentious of security-related laws, for example, is incomplete, and, in their present form, they represent a highly dangerous hostage to fortune'.³² The majority of groups which put submissions to or gave evidence before the Committee expressed concern that basic rights, tenuously accorded at the present time, were likely to decline after the transition. They cited the record of the People's Republic of China towards these rights for their own citizens over the last 50 years, the lack of understanding of the nature of the rights or the outright hostility of PRC spokesmen towards the maintenance of these rights in Hong Kong in the future.

Free Speech and a Free Press

4.48 The accordance of the rights to free speech, right to assembly and association are pivotal to a free society and, in conjunction with a freely and fairly elected legislature and an independent judiciary, are fundamental to accountability. The Australian Department of Foreign Affairs and Trade told the Committee that Hong Kong was an important regional media hub and that a number of international news organisations have based their regional operations in Hong Kong: the *Asian Wall Street Journal*, the *International Herald Tribune*, the *Financial Times*, *USA Today International*, the *Asia Times*, the *Nihon Keizai*, the *Asahi Shimbun*, *Time* and *Newsweek*. Rights to a free press and free speech are guaranteed by the

31 *ibid.*, pp. S23-S29.

32 Exhibit No. 19, The Hong Kong Journalists Association, *China's Challenge: Freedom of Expression in Hong Kong*, 30 June 1996, p. 3.

Basic Law in Chapter III and, in Article 39 of that Chapter, China has pledged that the ICCPR will remain in force.

4.49 The Hong Kong Journalists Association argued that, despite the guarantees, threats to these rights already existed in Hong Kong through constitutional changes, legislative intentions and informal censorship. The creation of the Provisional Legislature undermined free expression as 'freedom of expression receives the greatest degree of protection if it is allowed to operate within a democratic political environment'.³³ China's intentions to repeal aspects of the Bill of Rights and to reinstate the Societies Ordinance and the Public Order Ordinance in their 1991 form, especially in conjunction with Article 23 of the Basic Law, certainly create the means to control dissent, if the future Government should choose to do so. Finally, the intention of the Chinese authorities in relation to these rights, judged by official statements, is confusing.

4.50 The interpretation of what constitutes press freedom as far as Chinese officials are concerned is very different from what constitutes press freedom in western democracies. In 1996, Mr Lu Ping, the Director of the Hong Kong and Macau Office, stated that Hong Kong journalists would not be allowed to write about independence for Hong Kong or Taiwan. His rather Orwellian explanation was that:

I don't hope to give you any dream that after 1996 Hong Kong will be allowed to be engaged in (promotion of) Taiwan independence or 'two Chinas'. Independence for Hong Kong is absolutely impossible. No matter if it is advocacy of 'two Chinas' or one China and one Taiwan, or advocacy of independence for Hong Kong, Taiwan and Tibet, this is a different issue from press freedom. ... They can criticise the [Chinese] government. They can object to our policies. They can say anything they like but if it led to action they have to be careful.³⁴

Mr Lu has also commented that:

To advocate for independence and to report objectively are two different things. ... If someone advocates, it is not a matter of press freedom; it is an action.³⁵

4.51 This and similar statements from Chinese officials reveal a gulf of understanding.³⁶ The Hong Kong Journalists Association made the point that peaceful advocacy is the very stuff of press freedom and that free speech and debate on the value of policy alternatives is the essence of the democratic system. The HKJA also expressed grave concern about the pressure being brought to bear on journalists in Hong Kong by the 'blacklisting' and punishment of 'active' journalists,³⁷ the harassment and detention of Hong

33 *ibid.*, p. 4.

34 Quoted in Jayawickrama, Submission, pp. S346-S347.

35 Exhibit No. 19, Hong Kong Journalists Association, *op. cit.*, p. 14.

36 Other statements by Qian Qichen, the Chinese Foreign Minister and Zhang Junsheng, the Director of the Hong Kong branch of Xinhua seeking to define the proper, patriotic attitude of Hong Kong journalists are quoted in Exhibit No. 19, pp. 14-15; and in Peacock, Submission, pp. S219-237 and Democratic Party, Submission, pp. S694-S696.

37 The Association's annual report cited the cases of *U-Beat*, *The Apple Daily*, *Next Magazine's* Tse Ming-chong, *Open Magazine's* Jin Zhong and the columnist Paul Lin. Exhibit No.19, pp. 17-19.

Kong journalists working on the mainland³⁸ and the lecturing and intimidation of Hong Kong journalists by Xinhua officials.³⁹

4.52 Hong Kong journalists are also very aware of the harsh treatment meted out to journalists and dissidents in China. In 1996, there were 14 journalists in prison in China: Yang Hong, Yu Dongyue and Sun Weibang (arrested in 1989); Chen Yanbin and Zhang Yafei (1990); Wu Shishen, Ma Tao and Liu Jingsheng (1992); Xi Yang, Samdrup Tsering, Tempa Kelsang and Gao Yu (1993). The dissident, Wei Jingsheng, arrested in 1979, released in 1993 was rearrested in 1994 and sentenced to 14 years.⁴⁰ The effect in Hong Kong has been a steady increase in self-censorship.⁴¹

This kind of interference and threatening behaviour towards the free operation of the Hong Kong media ... has been instrumental in creating a climate of fear among local journalists and is an inducement to self-censorship, an insidious but nevertheless growing threat to freedom of expression in Hong Kong.⁴²

38 Xi Yang was arrested and sentenced to 12 years in gaol for the alleged theft of state secrets after publishing interest rate changes. *ibid.*, p. 7.

39 *ibid.*, p. 17. Xinhua is the unofficial Chinese 'embassy' in Hong Kong.

40 *Index on Censorship*, 1997, Vol 26 No 1 January/ February 1997, Issue 174, pp. 100-101.

41 During the visit, the processes of self-censorship exercised by both owners and journalists in Hong Kong were characterised as 'commercial decisions'.

42 Exhibit No. 19, Hong Kong Journalists Association, *op. cit.*, p. 6.

Academic Freedom

4.53 During the inquiry, the Committee also canvassed matters of academic freedom. Professor Wesley-Smith noted that the Vice-Chancellor of the University of Hong Kong had 'loudly expressed support for complete academic freedom' and that academic freedom was protected under the Basic Law. He believed that his own Department of Law would be 'zealous in protecting its academic freedom'. However, he also speculated that 'little accommodations' may well be made and that the next five years would reveal the extent of that process.⁴³ During the course of hearings the Committee heard of one such 'accommodation' in the form of the non-renewal of a contract for one University of Hong Kong academic whose qualifications were not in doubt and whose reputation was outstanding but whose advocacy for Hong Kong's rights had been prominent.⁴⁴ Further evidence drew attention to reports of the removal of anti-Beijing slogans on the campus of the University of Hong Kong in August 1996.⁴⁵

4.54 Of greater concern were suggestions in March by China's Foreign Minister that the text books of Hong Kong would be rewritten as they contradicted the Constitution of the territory, did not conform to history or reality and would not suit the changes.⁴⁶ This view appeared to gain support, albeit in a modified way, from the Chief Executive, Mr Tung Chee Hwa.⁴⁷

Right to Assembly and Associations (NGOs)

4.55 Rights to free association affect a large part of the civil society of Hong Kong. Amnesty International described the Patten reforms to the Societies Ordinance and the Public Order Ordinance, intended to make them consistent with the Bill of Rights, as a 'belated attempt by the Hong Kong authorities to offer some sort of sound legislative framework for the operation of NGOs in Hong Kong'.⁴⁸ The proposed repeal of those reforms has raised some concerns about the continued tolerance of NGOs in Hong Kong. However, some legal commentators suggested that so long as the Bill of Rights remains in place and, despite the repeal of Articles 2(3), 3 and 4, the common law interpretation of the 'later law' would require the reinstatement of the reforms in order to maintain consistency.

4.56 Another concern was the possible use of Article 23. In relation to the rights of free speech, assembly or association, this article poses problems of interpretation and possible implementation. The Democratic Party noted that the terms theft of state secrets, sedition and subversion were offences unfamiliar or, in the case of the last, unknown to the common law.⁴⁹ The concern is that the Government of the HKSAR, especially the Provisional Government, will seek to draft laws similar to those of the PRC on these matters. These laws are very broad in scope, classifying verbal criticism of the government as subversion. They are used to curb dissent. Article 23 is one of the internal contradictions of the Basic Law as it is contradicted by the rights defined in Chapter III and by the stated adherence to the ICCPR in that Chapter. Such laws would breach the ICCPR, especially the guarantees of

43 Wesley-Smith, Transcript, 30 January 1997, p. 121.

44 Jayawickrama, Transcript, 10 February 1997, pp. 212-213.

45 Peacock, Submission, p. S232.

46 Associated Press, 11 March 1997.

47 Reuters, 12 March 1997.

48 Simpson, Transcript, 30 January 1997, p. 154.

49 Democratic Party, Submission, p. S688.

freedom of expression. The last provision of the article prohibits ties with foreign political organisations or bodies. Such a prohibition, depending on the interpretation of the word political, could affect such international organisations as Amnesty International, the International Commission of Jurists and Asia Watch and the contacts of the trade unions with the ILO or other confederations of unions and a myriad of human rights NGOs in Hong Kong.⁵⁰

4.57 On 8 April 1997, the Chief Executive designate, Mr Tung Chee Hwa, announced more detail of the proposals to wind back the ordinances covering civil liberties in Hong Kong, the Bill of Rights Ordinance, the Societies and the Public Order Ordinance. The announcement was made in the form of a consultation document, *Civil Liberties and Social Order*. It represented the decisions of the Executive Council selected by the Chief Executive to operate from 1 July. Public comment was to be made on the document by 30 April 1997.

4.58 The document contains a number of contradictions and non-sequiturs. In its conclusion, it repeats the rhetoric of the commitment of the HKSAR to the principle of 'one country, two systems', the importance of civil liberties, the guarantees of rights and freedoms in the Basic Law and the continued application of the ICCPR to Hong Kong. However, the document proposes changes that will obviously undermine all those commitments and guarantees, reducing the right of assembly, inhibiting free association and political organisation. It does this in the name of balance.⁵¹

4.59 The proposals recreate the situation of pre 1992 when there were inconsistencies between the Societies Ordinance and the Public Order Ordinance and the ICCPR.⁵² Therefore, while it promotes the changes as concomitant with the 'rule of law',⁵³ it ignores the necessity in any rule of law system for consistency between the law and the constitution, something which the proposed changes appear to be intent on violating. There is no logic to the claim that 'the rule of law will prevail'⁵⁴ when the proposed changes offend its very concepts.

4.60 Moreover, the document also freely admits that Hong Kong has already a high reputation as a stable and orderly society not least under the reformed laws since 1992.⁵⁵ There is no threat to 'national security, public safety and public order'⁵⁶ in Hong Kong. Yet the document claims that Hong Kong is 'extremely vulnerable to external forces' and that the continued prosperity of Hong Kong is at stake if stability is not maintained⁵⁷ but the statistics for economic growth over the last five years, since the Patten reforms, would suggest that liberty has not been incompatible with stability and that liberty and international access have been the bedrock of prosperity. Repression not liberty could undermine confidence and therefore destroy the prosperity of Hong Kong.

50 Jayawickrama, Submission, p. S350.

51 Exhibit No. 32, p. 18.

52 The Basic Law guarantees the ICCPRs continued application in Hong Kong so that reverting to the 1992 laws would also be inconsistent with the Basic Law, the Hong Kong constitution.

53 The consultation document pronounces that 'We are determined to uphold the rule of law'. Exhibit No. 32, p. 8.

54 *ibid.*, p.9.

55 *ibid.*, p.7.

56 *ibid.*, p.8.

57 *ibid.*, p.7.

4.61 The Committee views these proposed changes with grave concern. They are unnecessary. Furthermore, the Committee believes that, rather than preserve the current stability of Hong Kong, the proposed changes to the laws will create unrest and instability and undermine international confidence in Hong Kong, not because there will be international interference in Hong Kong but because rights and freedoms that people in Hong Kong have come to expect will be taken away from them.

4.62 The Committee endorses and reiterates recommendations made by the Refugee Council of Australia in its submission. It recommends that:

11. the Australian Government:

- a. promote with the Government of the HKSAR the value of retaining freedom of expression and association;**
- b. express its concern over the vague and broad nature of Article 23 (regarding subversion); and**
- c. monitor, and as necessary, make timely representations to the HKSAR administration if freedoms of the press, speech or assembly are at risk of being eroded.**

Freedom of Religion

4.63 Religious freedom is guaranteed by the Basic Law (Article 32 and Article 141). These guarantees are extensive and comprehensive. The Christian Council of Hong Kong spoke confidently to the Committee about the intentions of the authorities post 1 July to abide by these assurances. Members of the Council had been represented on the Selection Committee for the Chief Executive and they believed that the choice was a good one for Hong Kong. They did have some difficulties with the Provisional Legislature and had chosen not to be part of the Selection Committee for the purpose of selecting that body.

4.64 Confidence was inspired by the promises of separation of the two systems, the determination of the Christian Churches to keep political and religious matters separate, their understanding of and sympathy with Chinese pride in the transfer of sovereignty and their acceptance of the equal significance of collective rights and individual rights. They believed that to date they had had good dialogue with Chinese officials and been able to maintain effective links with church members working in China on a wide variety of projects.

4.65 However, some warnings were sounded by other religious groups. The Christian Institute of Hong Kong recognised the encompassing nature of the constitutional guarantees but questioned the capacity of the Basic Law to ensure continuing religious freedom. The record of religious freedom in China was not promising. Many of the faithful were harassed and persecuted. It was put to the Committee that religious freedom was interlinked with continuing freedom of speech and freedom of assembly and association. These were problematic because of a lack of accountability and the dominance of the HKSAR Government by business interests and the direct influence of China on this government.⁵⁸

58 Exhibit No. 23, The Hong Kong Christian Institute, *Religious Freedom in Post 1997 Hong Kong*, pp. 2-3.

The Protection of Labour

4.66 In Hong Kong unemployment is low, 2.4 per cent in 1996-97, and in some sectors there is a shortage of labour, necessitating the importation of labour. For example the Government of Hong Kong reported to the Human Rights Committee in its third periodic report on the ICESCR that 17, 000 workers were imported for the new airport project. This was in addition to a scheme allowing 25,000 foreign workers into Hong Kong for selected industries on the condition that the foreign workers do not undercut the local workers. The Government also reported that retraining schemes for the better matching and placement of local workers affected by disabilities, accidents or economic restructuring, were instituted under the *Employees Retraining Ordinance, 1992*.

4.67 The other category of foreign workers in Hong Kong are the foreign domestic helpers (FDH). At the time of the third periodic report there were 150,000 FDH in Hong Kong of whom 90 per cent were from the Philippines.⁵⁹ They work under contract mainly to private families who are responsible for their fares home. The standard contract is for two years. They have two weeks to leave Hong Kong on the termination of their contracts. Foreign domestic helpers come under the same labour regulations as other workers in Hong Kong.⁶⁰

4.68 There are no legislative restrictions on working hours for workers in Hong Kong apart from women and young persons. There are 11 statutory days holidays a year. The *Factories and Industrial Undertakings Ordinance* and the 27 sets of subsidiary legislation govern accidents and diseases in the work place. Monetary compensation and some medical expenses are paid for total incapacity and death, although complaints are made about the adequacy of this.⁶¹

4.69 Hong Kong is also party to a number of ILO Conventions. There is no legislative prohibition on the right to strike, although the Governor in Council may order a cooling off period.⁶² Article 18 of the Bill of Rights guarantees the right to form and belong to trade unions and this is implemented by the *Employment Ordinance* and the *Trade Unions Ordinance*. Part IVA of the *Employment Ordinance* protects workers involved in industrial action from discrimination. Collective bargaining is voluntary. Among salaried employees and wage earners only 20.9 per cent belong to trade unions.

4.70 Evidence was presented to the Committee that despite the impressive statistics of prosperity in Hong Kong (a GDP per capita of US\$23,247 - one of the highest in the world), there existed considerable poverty and exploitation. There was a vast gap between the rich and the poor. The Committee was told that 15 per cent earned in the order of US\$16,000 per month. However, 400,000 workers earned only US\$650, well below the median wage of US\$1,240. A further 600,000 people in Hong Kong live below the poverty line with only US\$200 per month.

59 The Department of Foreign Affairs and Trade quoted a figure of 200,000 Filipino, Thai and Indonesian domestics. Transcript, 13 November 1996, p. 89.

60 Exhibit No. 1(d), *Third Periodic Report in Respect of Hong Kong under Articles 2 and 6 of the International Covenant on Economic, Social and Cultural Rights*, pp. 11-21.

61 *ibid.*, p. 29.

62 To date a measure that has never been exercised. *ibid.*, p. 21.

4.71 The reforms to the *Societies Ordinance* in 1992, which the Provisional Government threatens to overturn, made association freer, in line with the Bill of Rights and the ICCPR. Previously societies had to be registered before they were lawful and the grounds for registration were too widely drawn. Since the reforms, societies simply have to notify their existence.⁶³ The reversal of these reforms is likely to impact adversely on the trade union movement.

4.72 Moreover, since 1991, the trade unions have had representatives in the Legislative Council which has allowed them to lobby government directly on labour issues. This is not so for the Provisional Legislature.⁶⁴ Not only will association be more problematic under the proposed changes to the *Societies Ordinance* but strike action and other union activity is likely to be more difficult under the reversals to the *Public Order Ordinances* and the possible use of Article 23 of the Basic Law.

4.73 The Committee recommends that:

12. the Australian Government encourage the Australian Council of Trade Unions, through its international branch, to:

- a. **maintain contacts with unions in Hong Kong to monitor the continuing rights of association of workers in Hong Kong; and**
- b. **make representations to the International Labour Organisation where it is perceived that these rights are being eroded.**

Policing

4.74 The United Kingdom Government's Fourth Periodic Report to the UN under Article 40 of the ICCPR in respect of Hong Kong noted that the *Police Force Ordinance* was amended in 1992 to bring it into line with the Bill of Rights. Some changes were made to arrest and detention procedures through amendments to the Ordinance; other changes were made through guidelines and regulations, internal administrative directions. The Democratic Party submission to the Committee believed these changes still to be insufficient to protect the rights of the individual in police custody.⁶⁵

4.75 The Human Rights Commission and the Democratic Party raised concerns about the current methods of policing in Hong Kong. These were problems that required legal reform and, with the transfer imminent, they viewed the need for such legislation as urgent. The complaints were outlined in detail in the submission of the Human Rights Commission to the UN Human Rights Committee in October 1995. They included a claim of increasing brutality on the part of police in the detention and interrogation of people,⁶⁶ a lack of

63 Exhibit No. 1(a), *Fourth Periodic Report by Hong Kong under Article 40 of the International Covenant on Civil and Political Rights*, p. 143.

64 Chen Yiu-tong, a member of the pro-China Federation of Trade Unions, is on the Provisional Legislature. He is a member of the Legco elected under the labour functional constituency.

65 Democratic Party, Submission, p. S680.

66 Statistics on the level of complaints are provided in Hong Kong Human Rights Commission, Submission, p. S89.

legislation to regulate police in the questioning and treatment of suspects and inadequate investigative procedures⁶⁷ where complaints had been made.

Military

4.76 Amnesty International raised questions in relation to the role of the People's Liberation Army (PLA) in Hong Kong after the transfer: one issue related to states of emergency and the other to the accountability of the PLA soldiers to Hong Kong courts. If a state of emergency is declared, Hong Kong people will come under mainland law, thereby losing the autonomous jurisdiction of Hong Kong's courts and all protection from the region's human rights legislation. Furthermore, Hong Kong courts will have jurisdiction over the PLA only for offences committed by off-duty soldiers, not for offences committed while soldiers are on duty.⁶⁸

We have many other concerns about the way in which the Bill of Rights may be circumvented. But given the role of the PLA in civil life generally in the PRC we would be concerned about the scope this may offer for human rights violations.⁶⁹

4.77 The Committee recommends that:

- 13. the Australian Government, within its dialogue with the Government of the People's Republic of China on human rights matters, seek clarification of the role of, criteria for and procedures under which the People's Liberation Army will give assistance to the HKSAR for the maintenance of public order or for disaster relief under Article 14 of the Basic Law.**

Right of Abode

4.78 Even at this late stage the question of citizenship rights within Hong Kong after 1 July 1997 remains unresolved. The matter continues to be discussed in the Joint Liaison Group. It is a complicated issue likely to affect significant groups of current residents of Hong Kong.

67 Complaints are heard by Complaints Against Police Office (CAPO) which is an internal department of the police force. Only a limited number of the cases that go to CAPO are further scrutinised by the independent monitoring body, the Independent Police Complaints Council (IPCC). *ibid.*, pp. S33-37 and Democratic Party, Submission, pp. S679-S681.

68 Amnesty International, Submission, p. S799.

69 Simpson, Transcript, 30 January 1997, p. 152.

Right of Abode in the UK

4.79 At the outset it should be noted that Hong Kong residents have enjoyed broadly based rights of abode within Hong Kong itself⁷⁰ but variable status in relation to their rights of abode in the United Kingdom. Prior to 1962, citizens of Commonwealth countries had unrestricted rights to enter and reside in the United Kingdom. This access was cut by the *Commonwealth Immigrants Act of 1962*, which restricted right of abode in the United Kingdom to those who were born in the UK or who had passports issued by the British Government, as distinct from the government of the colony. The *British Nationality Act 1981* divided citizenship of the UK into three categories:

- (i) full British citizenship;
- (ii) British Dependent Territory Citizens (BDTC); and
- (iii) British Nationals Overseas (BNO).

4.80 This act defined the majority of Hong Kong citizens - 3.2 million people - as British Dependent Territory Citizens (BDTC). Almost all of the BDTCs are of Chinese descent. Approximately 11,000⁷¹ are not. Some provision was made for BDTCs by the Hong Kong (British Nationality) Order 1986, under the *Hong Kong Act 1985* which gave these people entitlement to register as British Nationals (Overseas) BNO. This category provided that these BNOs might travel on British travel documents but have no right of abode in the United Kingdom. On 4 February 1997, the British Home Secretary, Michael Howard, announced:

I have carefully reviewed the position of the solely British ethnic minorities in Hong Kong, in the light of expressions of concern, in both Houses of Parliament here and in Hong Kong, that their nationality status will be uncertain after 30 June 1997. It is clear that the assurances which they have been given over a number of years have not allayed this concern. I, therefore, intend to make provision enabling them to apply for registration as British citizens, giving them the right of abode in the United Kingdom, after 30 June 1997. I expect that the great majority of them will continue to reside in Hong Kong where they have right of abode.⁷²

4.81 In 1990, in response to the Tienanmen Square massacre, Britain had also offered British citizenship to 50,000 heads of households,⁷³ their spouses and their children under 18, affecting an estimated 225,000 people, the British Nationality Select Scheme.⁷⁴ In 1992 the ICJ was critical of the arrangements made by the British Government in respect of Hong

70 Hong Kong has been home to a very large and continuing inflow of people from mainland China during times of troubles and has openly accepted the residency of a wide variety of people from the wider region and the world. It is in many respects both a Chinese city and an international city in terms of the diversity of its residents.

71 This number was quoted in the 1992 ICJ report (Exhibit No. 2); however, in submissions to the Committee the current figure is stated to be 7,000-8,000. See DFAT, Submission, p. S388, and Refugee Council of Australia, Submission, p. S770.

72 From document incorporated in Transcript, 10 February 1997, p. 216.

73 This decision encompassed key people in the civil service selected largely at the discretion of the Governor.

74 The material in the preceding three paragraphs is taken from Exhibit No. 2, ICJ, op. cit., pp. 60-61.

Kong people. They argued that, as Britain had not allowed Hong Kong people a right of self-determination, they had an obligation to offer to all BDTC who wished to avail themselves of it 'residence in the UK itself or in third countries acceptable to them'.⁷⁵ Despite an eligibility category of somewhere between 2.8 and 3.2 million people, the ICJ believed that quite small numbers would be likely to be 'within the capacity of the UK to absorb'.⁷⁶

4.82 British expatriates, 17,000 in number, could continue to work in Hong Kong, but from 1 July they would have to apply for work visas as ordinary foreign nationals.⁷⁷

Right of Abode in Hong Kong

4.83 The BDTC category will cease on 30 June 1997. Hong Kong is to become a Special Administrative Region of the People's Republic of China but it is to have a special status in recognition of its history and development based on the principle of 'one country, two systems'. This special status includes separate immigration controls within the Region. Article 24 of the Basic Law sets out a definition of residency rights for Hong Kong citizens after 1 July 1997. Permanent resident status confers right of abode ie unconditional right of residence and right to travel on an SAR passport. Under Article 24 permanent residency is conferred on Chinese citizens, Chinese nationals and persons not of Chinese nationality under specific conditions. It states:

Residents of the Hong Kong Special Administrative Region ('Hong Kong residents') shall include permanent residents and non-permanent residents.

The permanent residents of the Hong Kong Special Administrative Region shall be:

- (1) Chinese citizens born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;
- (2) Chinese citizens who have ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the Hong Kong Special Administrative Region;
- (3) Persons of Chinese nationality born outside of Hong Kong of those residents listed in categories (1) and (2);
- (4) Persons not of Chinese nationality who have entered Hong Kong with valid travel documents, have ordinarily resided in Hong Kong for a continuous period of not less than seven years and have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region;

75 *ibid.*, p. 62.

76 *ibid.*, p. 63.

77 Exhibit No. 4, *South China Morning Post*, 18 January 1997, p. 5. There are 450,000 expatriates in Hong Kong.

- (5) Persons under 21 years of age born in Hong Kong of those residents listed in (4) before or after the establishment of the Hong Kong Special Administrative Region; and
- (6) Person other than those residents listed in categories (1) to (5), who, before the establishment of the Hong Kong Special Administrative Region, had the right of abode in Hong Kong only.

The above mentioned residents shall have the right of abode in the Hong Kong Special Administrative Region and shall be qualified to obtain, in accordance with the laws of the Region, permanent identity cards which state their right of abode.

The non-permanent residents of the Hong Kong Special Administrative Region shall be persons who are qualified to obtain Hong Kong identity cards in accordance with the laws of the Region but have no right of abode.

4.84 Article 24 appears to be inclusive. However, according to Article 9 of the Chinese Nationality Law, people holding foreign passports and having foreign right of abode are considered to have lost their Chinese nationality. Given that it is estimated that up to 20 per cent of Hong Kong's population has immediate right of abode elsewhere, understandable anxiety developed in relation to the right of abode for large numbers of Hong Kong people.

4.85 A flexible interpretation of the Chinese Nationality Law was announced by Lu Ping in a speech on 12 April 1996. He stated that Hong Kong residents of Chinese descent who were born in Chinese territory, including Hong Kong, will be considered Chinese nationals. Such people, if they possess a foreign passport, can choose to declare in favour of their foreign nationality, in which case they will henceforth be treated as foreign nationals. All Hong Kong emigrants with foreign passports will also be treated as Chinese nationals unless and until they make a declaration in favour of their foreign nationality. The significance is that China will not recognise rights to consular protection from foreign governments for those with foreign passports if they have not made the declaration. This included passports under the British Nationality Scheme.⁷⁸

4.86 Concern continued over two main issues - the time frame with regard to returning migrants and the status of permanent residency and the right of abode in relation to deportations.

4.87 On the question of the time frame in which people who had left Hong Kong had to return to make their declarations some confusion was apparent. Initially, statements by Chinese officials suggested a hard line: it appeared that those who returned to Hong Kong before 30 June 1997 could retain their permanent status but those who returned after that date would have to live in Hong Kong for seven years to regain their permanent status. The loss of permanent residency would affect the person's right of abode, ie their right to unconditional stay in Hong Kong and travel on an SAR passport.

78 See paragraph 4.79.

4.88 This stipulation requiring emigrants to return before 30 June appeared to be outside the Basic Law which does not require residence at the time of the transfer, but for seven continuous years residence before or after that date, Article 24 (4), or, more simply, Chinese citizenship or nationality, Article 24 (1), (2) and (3). Moreover, it raised the prospect of thousands of emigrants from Hong Kong seeking to return on or before 30 June 1997 to comply with the requirement. In December 1996, an announcement from the Hong Kong and Macau Office indicated that there would be a period of grace of six to 10 months for people to return to Hong Kong.⁷⁹

4.89 In April 1997 the Hong Kong and Macau Office released a further statement that emigrants who have taken foreign nationality would be able to retain their permanent residency if they return to the territory within 18 months of the handover. Hong Kong residents who hold overseas nationality and who are continuously absent from Hong Kong for three years will lose their right of abode. However, the statement said that those who reside in or return to the territory before 1 July 1997 would be granted right of abode. The question of right of abode had not been agreed by the British and Chinese negotiators by the Joint Liaison Group in its March meeting.⁸⁰ Detailed regulations would be worked out by the Government of the HKSAR.

4.90 Statements by Lu Ping early in 1996 also raised concerns that even those who had permanent resident status could still be deported. Whereas permanent residency at present confers right of abode which in turn protects people from deportation, Lu Ping appeared to interpret permanent residency differently. He proposed that foreign nationals who are permanent residents could be deported if they 'ran foul of the law'.⁸¹ It was put to the Committee that such statements revealed a different understanding of key concepts in the rule of law. It was a mixing of government policy and law so that if China perceived that encouraging the return of emigrants was a desirable policy they did not hesitate to 'interpret' the law to mean what they wanted it to mean. Either the terms of the law were ignored or they were sufficiently vague as to allow for broad interpretation.

4.91 The Committee recommends that:

- 14. the Australian Government seek clarification from the Governments of the HKSAR and the PRC on the question of the right of abode, in particular on how the declaration of foreign nationality is to be implemented, and subsequently advise affected Australians of their position.**

79 Exhibit No. 4, *The Sydney Morning Herald*, 9 December 1996, p. 9.

80 Exhibit No. 4, Agence France Press, 14 April 1997.

81 Exhibit No. 4, Agence France Press, 19 April 1996.

Dissidents

4.92 The outflow of refugees into Hong Kong has always been part of its experience: whenever there was economic disaster, rebellion or political upheaval in China - in the 1850s, the 1930s, the 1940s, the 1960s and 70s - people who wished to escape gained asylum in Hong Kong or safe passage through Hong Kong to elsewhere in the world. After Tienanmen Square hundreds of students and pro-democracy activists moved out through Hong Kong. Some remain. In October 1996 the Chinese Government reacted angrily to the escape into exile of Mr Wang Xizhe. The Chinese Foreign Minister, Mr Qian Qichen, warned that 'In the future, Hong Kong should not hold those political activities which directly interfere in the affairs of the mainland of China'.⁸²

4.93 Questions were raised with the Committee about the possibility of providing asylum to these people before the transfer. The numbers are unclear but are believed to be small. The figure of 40 people who might seek places abroad was most often quoted to the Committee.⁸³ Australia has declined to offer places to those seeking asylum, on the basis that our contribution so far has been considerable and that first responsibility rests elsewhere, particularly where Britain is the former colonial power.

4.94 The Committee supports the Refugee Council of Australia's recommendation on this matter and therefore the Committee recommends that:

15. the Australian Government:

- a. monitor the situation of the dissidents and other individuals at risk and as appropriate make representations on their behalf to the Government of the HKSAR; and**
- b. give special consideration to applications from known dissidents should any apply for asylum.**

Vietnamese Asylum Seekers

4.95 From the end of the Vietnam war in 1975 there was an outflow of asylum seekers into the region - into Thailand, Malaysia, the Philippines, Indonesia and Hong Kong.⁸⁴ The first wave of this outflow, mainly from South Vietnam, reached its peak in 1979. Into Hong Kong alone, the numbers rose from 3,743 people arriving in 1975 to 68,700 arriving in 1979. Over the whole period from 1975 to September 1996, 210,283 Vietnamese and ethnic Chinese Vietnamese arrived in Hong Kong.

4.96 Throughout the eighties the numbers of people continued to be significant, but it was perceived that many of these people were seeking economic betterment rather than escaping from persecution. The numbers from the north of Vietnam as opposed to the south increased during the eighties and dominated in the 1990s, although in the years 1990 and 1992 ethnic Chinese from south Vietnam made up the majority of the boat people into Hong Kong. The question of ethnicity has significance for the repatriation process; it appears that

82 Exhibit No. 4, *The Australian*, 17 October 1996, p. 10.

83 The Committee was told that not all dissidents wished to leave Hong Kong. Many whose profile is not high believe that they will remain safe so long as they are not politically active.

84 These five are the countries of first asylum.

most challenges to applications for repatriation by the Vietnamese Government are based on the non-Vietnamese ethnicity of the detainee.

4.97 Prior to June 1988, all boat arrivals in Hong Kong were classified as refugees and therefore eligible for resettlement. Since 1988 in Hong Kong and 1989 throughout the region a process of screening has been in place to determine refugee status. In 1989, the Hong Kong policy was incorporated into a wider regional policy, known as the Comprehensive Plan of Action (CPA).⁸⁵ The CPA was the outcome of an international conference on Indochinese refugees attended by 70 governments and brokered by the United Nations High Commissioner for Refugees (UNHCR). It involved agreements between the first asylum countries, the refugee recipient countries and Vietnam and Laos. Its principles were:

- discouragement of clandestine departures, and those organising such departures;
- establishment of regular, legal departure programs, the Orderly Departures Program (ODP);⁸⁶
- institution of regional refugee status determination procedures, in accordance with international standards and criteria;
- resettlement of those who arrived in first asylum camps before the cut-off dates and those determined to be refugees under the CPA screening process;
- return of the non-refugees to their camps.⁸⁷

4.98 The CPA lasted from June 1989 to June 1996.⁸⁸ In that time in Hong Kong 60,173 people had been screened: 6,898 (11.5 per cent) had been screened in, ie, declared to be refugees, 53,275 (88.5 per cent) had been screened out. On review, a further 2,828 were screened in and UNHCR through its own mandate screened in a further 1,559. At the end of the process almost all asylum seekers left camps in Indochina; however quite a large number remained in Hong Kong. In June 1996 when the CPA officially ended there were 15,000 Vietnamese in the camps in Hong Kong who had been screened out, ie, determined as non refugees, 750 still awaiting determination and 1,315 screened in refugees for whom resettlement places had not been found.⁸⁹

85 The screening process in Hong Kong consisted of the provision of interpreters, the right to a hearing and the right to an appeal. In Hong Kong there was pre-screening counselling by a UNHCR representative and a representative of the Australian Jesuit Refugee Service, an interview by a Hong Kong Immigration official, a confirmation interview and decision by a second Immigration official, review by a more senior Immigration official plus a right of appeal within 28 days of the notification of a decision to the Refugee Status Review Board. Judicial review was also open to those who had had a negative decision. DIMA, Submission, p. S591.

86 At the time of writing, there had been 98 groups consisting of 9,923 Vietnamese people repatriated under ORP.

87 Refugee Council of Australia, Submission, p. S744 and DIMA, Submission, p. S590.

88 Overall, the CPA (1989-1996) resulted in the global resettlement of over 125,000 Indochinese from all five countries of first asylum. DIMA, Submission, p. S592. A much larger number of Vietnamese have been resettled if the figures are calculated back to 1975. Mr Assadi, UNHCR Regional Representative, put the figure for Hong Kong alone at 250,000 arrivals over twenty years, 200,000 resettled and 50,000 returned. Assadi, Transcript, 17 February 1997, p. 238.

89 Refugee Council of Australia, Submission, p. S743-S745.

4.99 These figures were changing rapidly as the repatriation processes were conducted with a view of closing the camps before the handover of Hong Kong to China on 1 July 1997. China had made it clear that it did not want any Vietnamese asylum seekers left in the territory by the time of the transfer.⁹⁰ At the beginning of this inquiry the figure quoted for the remaining screened out Vietnamese in the camps was approximately 11,100.⁹¹ By February 1997, the figure was estimated at 6,991.⁹² At the end of March, it was 4,000 people of whom 2,627 had received approvals from Hanoi.⁹³ It is a figure that changed weekly.

The High Island Detention Camp and the Screened out.

4.100 Those screened out have been maintained in detention camps pending repatriation or decisions on appeals. The Committee visited High Island Detention Camp during its visit and is most grateful to the staff of the Department of Immigration for their time in briefing the members and allowing members to see the facilities. High Island is only one of many camps that have existed in Hong Kong over the years but it is now the last of the large camps since the closure of Whitehead.

4.101 It is situated in a remote and isolated part of the New Territories. It was established in 1989 and had had a maximum capacity of 7,000. It was meant to be a temporary structure and, therefore, had no proper sewerage system and a temporary fence. At the time of the visit it contained 3,700 people, 2,600 North Vietnamese separated from 1,100 South Vietnamese. Medical and dental services were available and NGOs provided some schooling and other social services.⁹⁴ Huts of 250 people were 'self-governing'; they elected their leaders and organised their own cooking. The average stay was 5 years and 25 to 30 per cent of the inmates were under 14 years of age, the oldest 65 years. Demonstrably, many of the younger detainees were born in the camps.

4.102 The description which Ms Margaret Piper gave the Committee of the Whitehead detention camp which she visited just before it closed in October 1996 fits exactly with the High Island Camp:

[The camp] sprawls over many hectares and is divided into discrete sections. Each section is surrounded by high wire fences topped with rolls of barbed wire. To move from one section to the next requires going through a thorough security check. ... Inside each section are a number of huts in which are found the platforms for which Hong Kong has become notorious. Each family is allocated a bunk approximately 2 metres by 2 metres, separated by only about 1 metre from those above and below. ... There is no grass and no view of either the outside world or the neighbouring section.⁹⁵

Repatriation

90 *ibid.*, p. S745.

91 DIMA, Submission, p. S593.

92 DFAT, Transcript, 17 February 1997, p. 229.

93 Exhibit No. 4, *Agence France Press*, 25 March 1997.

94 Services had declined in recent years as an encouragement to people to accept repatriation.

95 Refugee Council of Australia, Submission, p. S749.

4.103 The people in these camps were awaiting repatriation or in some cases awaiting the outcome of court challenges to the decisions on their status.⁹⁶ Repatriation took place under the UNHCR voluntary repatriation program or the Hong Kong Government's orderly return program (ORP). The repatriation schemes offered guarantees of security from persecution, monetary and other assistance⁹⁷ and monitoring by UNHCR after they returned. For repatriation to take place the Government of Vietnam has to clear each case. This has slowed the repatriation process, especially in relation to some people who were ethnic Chinese not Vietnamese.

4.104 Complaints were received by the Committee that the repatriation process was flawed by corruption, maltreatment of asylum seekers and an inability to monitor returnees properly. On this question, Ms Piper, the Director of the Refugee Council of Australia, who accompanied one plane of returnees back to Vietnam, reported on briefings by UNHCR monitors that:

They reinforced stories of people experiencing financial difficulties and adjustment problems, and of discrimination because they had left the country, but confirmed that anything amounting to persecution in a Convention sense was very rare. Most of their work was that of a social worker rather than a protection officer...⁹⁸

4.105 Mr Assadi, the Regional Representative for UNHCR, and former Secretary to the CPA, made a similar point when he told the Committee that:

We realise that life for some people is difficult from an economic and social standpoint, and we are not saying that they are going back to paradise. But the thing that we needed to satisfy ourselves on, which is political persecution, has not been there.⁹⁹

4.106 According to Mr Assadi, the monitoring of Vietnamese returnees was more extensive than any ever undertaken by UNHCR. There are 14 UNHCR monitors in Vietnam and they have visited 1 in 5 returnees in every part of the country. Their visits are on the basis of a priority list determined by the concerns of the returnee him or her self or by the judgement of the vulnerability of the person judged by UNHCR officers. Mr Assadi assured the Committee that all specific allegations were investigated and that a general investigation of the CPA had been conducted to consider the accusations of corruption. Where corruption had been detected, it had been cases of asylum seekers bribing officials to grant them status which was not deserved.¹⁰⁰ However, Mr Assadi did not rule out 'genuine human mistakes'. In particular, he believed that the processes in Hong Kong were 'clean' and that the officials

96 A number of cases were pending at the time of the visit, including a writ of Habeas Corpus covering 3,000 - 4,000 people who Vietnam had not cleared and therefore the writ contended that Hong Kong had no right to detain longer. *ibid.*, p. S757.

97 Monetary assistance comprises: US\$200 per person and US\$175 per child from UNHCR plus a grant of US\$240 from the Vietnamese government after they return. The money from UNHCR is not available if they do not volunteer. As well, Australia and the United States, in two programs the Special Assistance Category (SAC) and the Resettlement Opportunities for Vietnamese Refugees (ROVR), have offered a limited number of places under the humanitarian category for those who voluntarily return to Vietnam. *ibid.*, p. S753.

98 *ibid.*, p. S755.

99 Assadi, Transcript, 17 February 1997, p. 241.

100 *ibid.*, p. 242.

were 'very conscientious'.¹⁰¹ Amnesty International, Caritas and International Social Services all reported 'no evidence of ill treatment by Vietnamese authorities'.¹⁰²

4.107 Again the Committee endorses the recommendations made to it by the Refugee Council of Australia. The Committee recommends that:

16. the Australian Government:

- a. encourage the Government of Vietnam to devote additional resources to providing clearances for the Vietnamese who remain in Hong Kong;**
- b. urge the administration of the HKSAR to regularise the status of the asylum seekers who remain;**
- c. give consideration to assisting those in the residual population who have links to Australia through the provision of humanitarian resettlement if the position of those people in Hong Kong deteriorates to the point where their rights are being violated; and**
- d. support a role for UNHCR in monitoring the residual screened out population.**

Vietnamese Refugees in Hong Kong - the Screened in

4.108 Perhaps the most difficult cases are the refugees who have been screened in, declared to be refugees, but who have not yet been placed and are unlikely to be placed. This group of approximately 1,300 people are generally long stayers in Hong Kong. They are people nobody wants; they fall into four categories - drug addicts, people with extensive criminal records, people with intellectual and mental disabilities and the old and the senile. The group is housed at Pillar Point, an hour from central Hong Kong or they have merged into the Hong Kong community. Pillar Point is an open centre from which people can come and go.

4.109 Although as refugees they cannot be forcibly returned to Vietnam, a very small number has volunteered to return (6 in the last two years). In the case of the old or the senile one solution does seem to lie with repatriation where there are relatives who might be able to care for returning refugees. Vietnam is reluctant but not opposed to taking them, but the Refugee Council noted the difficulty of obtaining informed consent.¹⁰³

4.110 It would appear, at the time of writing this report, that all the people from the detention camps will not be repatriated nor will all refugees be placed by 1 July 1997. The process of negotiation on the screened out will continue beyond 1 July. The most likely outcome for those released into the community will be de facto integration. This, however, is

101 *ibid.*

102 DIMA, Submission, p. S595.

103 Refugee Council of Australia, Submission, p. S748.

a very unpopular option in Hong Kong. What their official status will be under those circumstances is unresolved.¹⁰⁴

4.111 The Committee recommends that:

17. the Australian Government:

- a. urge the Government of the United Kingdom to accept responsibility for the residual screened-in refugees and determine resettlement places for them prior to the transfer;**
- b. urge the Government of the HKSAR to assume responsibility for some of the residual refugees;**
- c. urge UNHCR to play an active role in monitoring the welfare of these people should they remain in the territory; and**
- d. reconsider any cases who have links to Australia that have previously been rejected for resettlement.**

The Singapore Model

4.112 The most often quoted scenario for Hong Kong that was put to the Committee was the Singapore model. Singapore had full self government by 1959, joined the federation of Malaysia 1963-65, then became an independent republic in 1965. By comparison, there was no directly elected legislature in Hong Kong until 1985. Nevertheless, Singapore, with obvious similarities to Hong Kong, is a predominantly Chinese city state which has achieved remarkable success, stability, prosperity and social order; however many believe this has been at the expense of democratic and human rights and the true principles of the rule of law. The Committee was told that China admires and finds congenial Singapore's approach and has consulted regularly with officials and politicians on the secrets of Singapore's success. The comparability of China and Singapore might be doubtful given that the differences in size are so vast, but the possibility that Hong Kong might fit the model is more feasible. Certainly the moves to dismantle the democratic legislature in favour of an appointed one and the proposals to undo the rights enshrined in legislation would indicate an intention to emulate Singapore's style.

104 *ibid.*

Conclusion

4.113 The transfer of Hong Kong has raised again the debate on human rights in this region. Particularly in the arguments between Britain and China, the transfer has highlighted a gulf in understanding of human rights, attributed variously to differences in culture, or stages of development, or historical experience. It is a debate about whether human rights are universal or culturally specific, about whether individual or collective rights have greater importance, about whether there is an Asian way in relation to the application of rights, or whether a lack of economic development is a sufficient reason to delay civil and political rights.¹⁰⁵ Deng Xiaoping appeared to recognise the importance of the place of human rights in modern and developed societies when he coined the phrase and enunciated the principle 'one country, two systems' as the policy to govern the transfer of Hong Kong.

4.114 Hong Kong crosses the boundaries of this debate. It is an Asian city which has prospered with an open system of administration, and, in the last few years, with successful and peaceful, if embryonic, democratic processes. The British Government delayed the introduction of democracy on the argument of Hong Kong's lack of readiness for representative institutions and a similar argument is often put forward by the Chinese¹⁰⁶ to overturn belated gains. As an international city, a city of diverse experience and sophisticated people and a highly developed economy, the claim to concessions or delay in relation to the application of civil and political rights has little validity. If anything, Hong Kong's political development is already lagging well behind the demands of its economic system. The advocates of increased rights in Hong Kong, and they are many if the elections and surveys are to be believed, do so from a stand point of genuine commitment to ideals which they espouse as part of the natural outcome of their legal training and their political experience. The Committee believes that the experience of Hong Kong to date belies the view that Asia is different when it comes to democratic aspirations or an appreciation of the importance of human rights to the achievement of human dignity or social cohesion and harmony.

105 This is not the place to examine this question in detail. It is a complex debate and one which this Committee has addressed in part in its 1994 report, *A Review of Australia's Efforts to Promote and Protect Human Rights*, and expects to examine in a further inquiry later in this year.

106 China argues in its White Paper on human rights, *Human Rights in China*, that 'the evolution of the situation in regard to human rights is circumscribed by the historical, social, economic and cultural conditions of various nations and involves a process of historical development'. The paper puts the view that the right to development must take precedence over the civil and political rights. In seeking to reduce the rights of Hong Kong citizens, it would appear that China is trying to keep Hong Kong in line with China's standards on human rights regardless of Hong Kong's 'state of development'.