

**Fourth and Fifth Reports of the People's
Republic of China under the Convention
Against Torture and Other Cruel, Inhuman
or Degrading Treatment or Punishment -
Part Two : Hong Kong Special
Administrative Region**

Preamble

1. This report, which is the second periodic report of the Hong Kong Special Administrative Region (HKSAR) under the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, forms part of China's combined fourth and fifth under the Convention. It updates the Committee Against Torture on developments since the submission of the initial report (which formed part of China's third) and the Committee's hearing thereof at its 414th, 417th and 421st meetings on 4, 5, and 9 May 2000. It also responds to the Committee's Concluding Observations of 9 May 2000 and the subsequent comments of local observers on the implementation of the Convention in Hong Kong. The latter are presented in summary form but we have sent the Committee's Secretariat full, original copies of comments that were submitted to us in written form. In drafting the report, we have sought to adhere to the Committee's requirements as prescribed in the UN Manual on Human Rights Reporting.

2. The initial report contained detailed information on the laws, policies, and practices that are in place to ensure Hong Kong's compliance with the Convention. Many of those are of long standing and, by nature, tend to remain unchanged – or to change very little – over time. Thus, in accordance with the guidance in the UN Manual on Human Rights Reporting (page 67, final paragraph), we do not propose repeating descriptions/explanations of such matters in this report, considering it sufficient to advise the Committee that the situation remains essentially as previously explained. We believe that this approach is also consistent with Article 19.1 of the Convention.

CONTENT

	<u>Paragraph</u>	<u>Page</u>
Preamble		
Part I		
General Profile of the Hong Kong Special Administrative Region (HKSAR)		
LAND AND PEOPLE	1	1-8
GENERAL POLITICAL STRUCTURE		
Constitutional document	2-4	9-20
System of Government		
Constitutional Development	5-6	
Chief Executive	7-8	
Executive Council	9-10	
Legislative Council	11-14	
District Councils	15-17	
Abolition of the Municipal Councils	18-19	
The structure of the Administration	20-22	
The judicial system of the HKSAR	23-28	
GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED		
Rule of law	29	21-33
Human rights guarantees in the Basic Law	30	
Effect of other human rights instruments in HKSAR law	31-32	
Bill of Rights Ordinance (BORO)	33	
Adoption of laws : effect on the BORO	34-35	
Legal aid	36	
Legal Aid Department	37	
The Duty Lawyer Service	38	
Legal Aid Services Council	39	
Office of The Ombudsman	40-44	
Equal Opportunities Commission	45	
Privacy Commissioner for Personal Data	46	
Complaints and investigations		
The Police	47	
The ICAC	48	
Other disciplined services	49-50	
INFORMATION AND PUBLICITY		
Promotion of public awareness of the human rights treaties	51-52	34-36
Government publications	53	
Reports of the HKSAR in the light of the ICCPR	54	

		<u>Paragraph</u>	<u>Page</u>
Part II	Information in relation to each of the Articles in Part I of the Convention		
Article 1	Defining “torture”	55-61	37-40
Article 2	Legislative, administrative, judicial or other measures to prevent acts of torture	62	40-41
	Instances of the alleged use of torture	63-64	
Article 3	Torture as a ground for refusal to expel, return or extradite	65-66	41-44
	Removal and deportation	67-68	
	Surrenders of fugitive offenders	69-70	
	Remaining Vietnamese refugees and migrants	71	
	Vietnamese illegal immigrants	72	
	Ex-China Vietnamese	73	
Article 4	Making acts of torture offences under the criminal law	74	44
Article 5	Establishment of jurisdiction	75	44
Article 6	Powers of detention	76-77	44-45
Article 7	Prosecution of offenders who are not to be extradited	78	45
Article 8	Extradition arrangements	79-80	45-46
Article 9	Mutual assistance in relation to crimes of torture	81-82	46
Article 10	Education and information on the prohibition of torture		
	General	83	47-48
	Police	84-85	
	Correctional Services Department	86	
	Customs and Excise Department, Immigration Department and Independent Commission Against Corruption	87	

		<u>Paragraph</u>	<u>Page</u>
Article 10	Health care professionals	88	48
Article 11	Review of interrogation rules, instructions, methods and practices for custody and treatment of persons arrested or detained	89	49-55
	The Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Ordinance 2000	90-91	
	Police	92	
	Correctional Services Department	93	
	The Criminal Procedure (Amendment) Ordinance 2004	94-95	
	Prevention of suicides	96	
	Death of an inmate at Siu Lam Psychiatric Centre	97-99	
	Immigration Department	100	
	Customs and Excise Department	101	
	Persons detained in mental hospitals	102-103	
Article 12	Prompt and impartial investigation of acts of torture	104	55
Article 13	Right of complaint		
	General	105	55-62
	Police	106-109	
	Correctional Services Department	110-116	
	Immigration Department	117	
	Customs and Excise Department	118	
	Independent Commission Against Corruption	119-122	
	Avenues for complaint by mental patients	123	
Article 14	Legal redress for victims of torture and an enforceable right to fair and adequate compensation	124	62
Article 15	Statements made as a result of torture shall not be invoked as evidence	125	63

		<u>Paragraph</u>	<u>Page</u>
Article 16	Prevention of other acts of cruel, inhuman or degrading treatment or punishment		
	General	126-130	63-70
	Police disciplinary procedures	131	
	Ill-treatment of children	132	
	Children in institutional care	133	
	Domestic violence	134-140	
	Removal of Mainland children under the Certificate of Entitlement Scheme	141	

Annexes

- 1** The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China
- 2** Hong Kong Bill of Rights Ordinance
- 3** Cap 200 Crimes Ordinance – Schedule 2

Part I

General Profile of the Hong Kong Special Administrative Region

Part I : General Profile of the Hong Kong Special Administrative Region

LAND AND PEOPLE

(a) Population by sex

<u>Sex</u>	<u>Mid 1987</u> (million)	<u>Mid 1992</u> (million)	<u>Mid 1999</u> (million)	<u>Mid 2003</u> (million)	<u>Mid 2004</u> (million)	<u>End-2004</u> [#] (million)
Male	2.9	2.9	3.3	3.3	3.3	3.3
Female	2.7	2.9	3.3	3.5	3.6	3.6
Total	5.6	5.8	6.6	6.8	6.9	6.9

Provisional figures

(b) **Population by age group and sex**¹

		<u>Percentage of total population</u>					
<u>Age</u>	<u>Sex</u>	<u>Mid 1987</u>	<u>Mid 1992</u>	<u>Mid 1999</u>	<u>Mid 2003</u>	<u>Mid 2004</u>	<u>End-2004</u> [#]
Under 15	Male	11.7	10.6	9.1	8.1	7.8	7.7
	Female	10.8	9.9	8.4	7.6	7.3	7.2
15-18	Male	3.3	2.9	2.9	2.6	2.6	2.6
	Female	3.0	2.7	2.7	2.5	2.5	2.5
<i>(0-18)</i>	<i>Male</i>	<i>15.0</i>	<i>13.5</i>	<i>11.9</i>	<i>10.7</i>	10.4	10.3
	<i>Female</i>	<i>13.8</i>	<i>12.6</i>	<i>11.1</i>	<i>10.1</i>	9.8	9.7
19-64	Male	33.1	33.3	32.5	32.3	32.2	32.2
	Female	30.2	31.6	33.6	35.2	35.6	35.8
65 and over	Male	3.4	4.0	4.9	5.4	5.5	5.6
	Female	4.5	5.0	5.8	6.3	6.4	6.4
All age groups	Male	51.4	50.8	49.4	48.4	48.2	48.1
	Female	48.6	49.2	50.6	51.6	51.8	51.9

Provisional figures

¹ Since August 2000, population estimates have been compiled based on "resident population". Formerly, they were based on the "extended de facto" approach, which counted all Hong Kong Permanent and Non-Permanent Residents and visitors at a reference time-point. We have revised the population and related statistics for 1996 onwards on this basis.

(c) **Educational attainment (population aged 15 and above)**^{2 & 6}

<u>Educational attainment</u>	<u>Percentage</u>									
	<u>1986</u>		<u>1991</u>		<u>1996</u>		<u>2003</u>		<u>2004</u>	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
No schooling/ kindergarten	7.0	21.6	7.1	18.5	5.1	13.8	3.4	10.2	3.3	10.0
Primary	30.8	27.7	26.1	24.3	22.7	22.6	19.8	20.9	19.2	20.2
Secondary and above	62.2	50.7	66.8	57.2	72.2	63.6	76.8	68.9	77.5	69.8
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

(d) **Literacy rate**^{3 & 6} 1984:85.7%; 1996:90.4%; 2000:92.4%; 2001:92.7%;
2002:93.0%; 2003:93.1%; 2004:93.2%

(e) **Percentage of population (excluding mutes) aged five and over by usual language/dialect**

<u>Usual language/dialect</u>	<u>Percentage</u>		
	<u>1991</u>	<u>1996</u>	<u>2001</u> ⁴
Cantonese	88.7	88.7	89.2
Putonghua	1.1	1.1	0.9
Other Chinese dialects	7.1	5.8	5.5
English	2.2	3.1	3.2
Others	1.0	1.3	1.2
	100.0	100.0	100.0

² The figures for 1991 are derived from the Population Census taken in that year; those for 1986 and 1996 are derived from the respective By-censuses. Those for 2003 and 2004 are from the General Household Survey.

³ The literacy rate refers to the proportion of persons aged 15 and above with educational attainment at primary or above. The figures are derived from the General Household Survey.

⁴ The figures for 2001 are the latest available.

(f) Crude birth and death rates

	<u>1987</u>	<u>1992</u>	<u>1999</u>	<u>2002</u>	<u>2003</u>	<u>2004</u> [#]
Crude birth rate (per 1,000 population)	12.6	12.3	7.8	7.1	6.9	7.0
Crude death rate (per 1,000 population)	4.8	5.3	5.0	5.0	5.4	5.3

(g) Life expectancy at birth (number of years)

<u>Sex</u>	<u>1987</u>	<u>1992</u>	<u>1999</u>	<u>2002</u>	<u>2003</u>	<u>2004</u> [#]
Male	74.2	74.8	77.7	78.6	78.5	78.6
Female	79.7	80.7	83.2	84.5	84.3	84.6

(h) Infant mortality ratio (per 1,000 live births)

<u>1987</u>	<u>1992</u>	<u>1999</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
7.4	4.8	3.1	2.3	2.3	2.5 [#]

(i) Maternal mortality ratio (number of deaths per 100,000 registered live births)

<u>1987</u>	<u>1992</u>	<u>1999</u>	<u>2002</u>	<u>2003</u>
4.3	5.5	2.0	2.1	4.2 [#]

[#]Provisional figure

(j) Fertility rate

	<u>1987</u>	<u>1992</u>	<u>1999</u>	<u>2002</u>	<u>2003</u> ⁵
General fertility rate (per 1,000 women – excluding foreign domestic helpers – aged 15-49)	47.9	46.3	28.1	26.2	25.2

(k) Percentage of household heads by sex

<u>Sex</u>	<u>1986</u>	<u>1991</u>	<u>1996</u>	<u>2001</u>
Male	73.0	74.3	72.8	71.2
Female	27.0	25.7	27.2	28.8

(l) Unemployment rate (%)⁶

<u>1987</u>	<u>1992</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
1.7	2.0	6.2	4.9	5.1	7.3	7.9	6.8

⁵ The drop in general fertility rate over the period 1987 to 2003 was associated with a number of factors like marriage postponement, postponement of low-order live births, curtailment of high-order births and unfavourable economic climate.

⁶ Figures are averages of the estimates obtained from the General Household Surveys for the four quarters of the year.

(m) Rate of inflation

(i) Composite Consumer Price Index (CPI)⁷

<u>Year</u>	<u>Annual rate of change in CPI (%)</u>
1996	6.3
1997	5.8
1998	2.8
1999	-4.0
2000	-3.8
2001	-1.6
2002	-3.0
2003	-2.6
2004	-0.4

(ii) Implicit price deflators of Gross Domestic Product (GDP)

<u>Deflator year</u>	<u>(2000 = 100)</u>	<u>Annual rate of change (%)</u>
1996	106.9	5.8
1997	113.0	5.7
1998	113.2	0.2
1999	106.6	-5.8
2000	100.0	-6.2
2001	98.1	-1.9
2002	94.6	-3.6
2003	89.6	-5.3
2004	87.1	-2.8

⁷ The Composite CPI is compiled on the basis of the expenditure patterns of about 90% of Hong Kong households with an average monthly expenditure of HK\$4,500 to HK\$65,999 in the base period of October 1999 to September 2000. This approximately corresponds to a monthly expenditure range of HK\$4,200 to HK\$60,400 at 2004 prices.

(n) **Gross Domestic Product**

<u>Year</u>	At current market prices (US\$ Million)	At constant (2000) market prices (US\$ Million) ⁸
1996	156,572	146,434
1997	173,669	153,703
1998	165,249	146,009
1999	160,626	150,744
2000	165,362	165,362
2001	162,828	165,958
2002	160,015	169,175
2003	156,676	174,807
2004	164,612	189,011

(o) **Per capita income**

(Per capita GDP for 1996-2003)

<u>Year</u>	At current market prices (US\$)	At constant (2000) market prices (US\$)
1996	24,329	22,754
1997	26,762	23,686
1998	25,253	22,313
1999	24,313	22,818
2000	24,811	24,811
2001	24,213	24,678
2002	23,577	24,926
2003	23,030	25,695
2004	23,917	27,462

⁸ Using the exchange rate of the respective year to convert the GDP at constant (2000) market prices.

(p) **External debt:** the HKSAR Government does not incur external debts.

(q) **Ethnic composition of the Hong Kong population**

Population by ethnicity in 2001

<u>Ethnicity</u>	<u>Males</u>	<u>Females</u>	<u>Both sexes</u>	<u>% share in total</u>
	('000)	('000)	('000)	(%)
Chinese	3,202	3,163	6,364	94.9
Non-Chinese	83	261	344	5.1
<i>Of which:</i>				
Filipino	7	135	143	2.1
Indonesian	1	49	50	0.8
British	12	7	19	0.3
Indian	9	9	19	0.3
Thai	1	13	14	0.2
Japanese	8	7	14	0.2
Nepalese	7	5	13	0.2
Pakistani	7	4	11	0.2
Others	31	31	61	0.9
Total	3,285	3,423	6,708	100.0

GENERAL POLITICAL STRUCTURE

Constitutional document

2. In accordance with the provisions of Article 31 and sub-paragraph 13 of Article 62 of the Constitution of the People's Republic of China (PRC), and the relevant decisions of the National People's Congress (NPC) adopted at the Third Session of the Seventh NPC on 4 April 1990, the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR) was established on 1 July 1997. The Basic Law of the HKSAR came into effect on 1 July 1997. Among other things, the Basic Law provides that, under the principle of "One Country, Two Systems", the socialist system and policies are not practised in the HKSAR and Hong Kong's previous capitalist system and way of life will remain unchanged for 50 years. A copy of the Basic Law is at **Annex 1**.

3. To fully realise the principle of "One Country, Two Systems", the Basic Law sets out the broad framework of the relationship between the Central Authorities and the HKSAR (Chapter II); the fundamental rights and duties of Hong Kong residents (Chapter III); the political structure (Chapter IV); the economic, financial and social systems of the HKSAR (Chapters V and VI); the conduct of the HKSAR's external affairs (Chapter VII); and the interpretation and amendment of the Basic Law (Chapter VIII).

4. Among other matters, the Basic Law provides that -

- (a) the HKSAR shall exercise a high degree of autonomy except in matters such as defence and foreign affairs and enjoy executive, legislative and independent judicial power, including that of final adjudication. The power of final adjudication of the HKSAR shall be vested in the Court of Final Appeal established in the Region;
- (b) the executive authorities and legislature of the HKSAR shall be composed of permanent residents of Hong Kong;
- (c) the laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravenes the Basic Law, and subject to any amendment by the legislature of the HKSAR;
- (d) national laws shall not be applied in the HKSAR except for those listed in Annex III to the Basic Law and that the laws listed therein shall be applied locally by way of promulgation or legislation by the Region. The Standing Committee of the National People's Congress may add to or delete from the list of laws in Annex III after consulting the Committee for the Basic Law of the HKSAR and the HKSAR Government;
- (e) the HKSAR is authorised to conduct relevant external affairs on its own. The HKSAR may on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with foreign states and regions and relevant international

- organisations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields;
- (f) the HKSAR remains a free port, a separate customs territory and an international financial centre. There shall be free flow of capital. The HKSAR issues and manages its own currency;
 - (g) the HKSAR formulates its own policies on the development of education, science, culture, sports, labour and social services, and Hong Kong residents have the freedom of religious belief;
 - (h) Hong Kong residents enjoy a wide range of freedoms and rights and this will be further dealt with under the section of “General Legal Framework Within Which Human Rights Are Protected”; and
 - (i) the provisions of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.

System of Government

Constitutional Development

5. The Basic Law prescribes a blueprint for the HKSAR's constitutional development. It provides that the ultimate aim is the election of the Chief Executive and Members of the Legislative Council by universal suffrage.

6. The Chief Executive of the HKSAR is the head of the Region, and is accountable to the Central People's Government and the Hong Kong Special Administrative Region in accordance with the provisions of the Basic Law. The Executive Council assists him in policy-making. The Legislative Council of the HKSAR is the legislature of the Region - it enacts, amends or repeals laws, approves taxation and public expenditure, and raises questions on the work of the government. District Councils - established in accordance with Articles 97 and 98 of the Basic Law - are consulted on district administration and other affairs. There is an independent judiciary.

Chief Executive

7. The Basic Law provides that the Chief Executive of the HKSAR shall be selected by election or through consultations held locally and be appointed by the Central People's Government. The method for selecting the Chief Executive shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon

nomination by a broadly representative nominating committee in accordance with democratic procedures.

8. Annex I to the Basic Law further provides that –

“If there is a need to amend the method for selecting the Chief Executive for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive. And they shall be reported to the Standing Committee of the National People’s Congress for approval.”

Executive Council

9. The Executive Council assists the Chief Executive in policy-making. Under Article 56 of the Basic Law, except for the appointment, removal and disciplining of officials and the adoption of measures in emergencies, the Chief Executive shall consult the Executive Council before making important policy decisions, introducing bills to the Legislative Council, making subordinate legislation, or dissolving the Legislative Council. The Chief Executive in Council also determines appeals, petitions and objections under those ordinances that confer a statutory right of appeal. If the Chief Executive does not accept a majority opinion of the Executive Council, he shall put the specific reasons on record.

10. The Council normally meets once a week, and its proceedings are confidential, although many of its decisions are made public. It is presided over by the Chief Executive. As provided for in Article 55 of the Basic Law, Members of the Executive Council are appointed by the Chief Executive from among the principal officials of the executive authorities, Members of the Legislative Council and public figures. They are Chinese citizens who are permanent residents of the HKSAR with no right of abode in any foreign country. Their appointment or removal is decided by the Chief Executive. Their term of office shall not extend beyond the expiry of the term of office of the Chief Executive who appoints them.

Legislative Council

11. Article 68 of the Basic Law provides that the Legislative Council of the HKSAR shall be constituted by election. The method for its formation shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage. Annex II to the Basic Law and the relevant decision of the National People's Congress at its Third Session on 4 April 1990 prescribe the composition of the Legislative Council during its first three terms as follows –

<u>Membership</u>	<u>First term</u> 1998-2000 (two years)	<u>Second term</u> 2000-2004 (four years)	<u>Third term</u> 2004-2008 (four years)
(a) elected by geographical constituencies through direct elections	20	24	30
(b) elected by functional constituencies	30	30	30
(c) elected by an election committee	10	6	-
<hr/>			
Total	60	60	60

12. The third Legislative Council Election was held on 12 September 2004. The turnout rates for the geographical constituency and functional constituency elections were 55.6% and 70.1% respectively. The present (third term) Legislative Council assumed office on 1 October 2004.

13. Annex II of the Basic Law provides that, if there is a need to amend the method for forming the Legislative Council after 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Council and the consent of the Chief Executive. And they shall be reported to the National People's Congress for the record.

14. The powers and functions of the Legislative Council are specified in Article 73 of the Basic Law. These include enacting, amending or repealing laws in accordance with the provisions of the Basic Law and legal procedures; examining and approving budgets introduced by the government; approving taxation and public expenditure; receiving and debating the policy addresses of the Chief Executive; raising questions on the work of the government; debating

any issue concerning public interests; endorsing the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court; and receiving and handling complaints from Hong Kong residents.

District Councils

15. The first District Council election was held on 28 November 1999. The total turnout rate for this election was 35.8%. The 18 District Councils came into being on 1 January 2000 by virtue of the District Councils Ordinance. The Councils advise the Government of the HKSAR on district affairs and promote recreational and cultural activities, and environmental improvements within their respective districts. District Councils comprise both elected members and appointed members. Additionally, in the case of District Councils in rural areas, the local Rural Committee Chairmen serve as ex-officio members. The HKSAR is divided into 390 constituencies, each returning one elected member. There are 102 appointed members and 27 ex-officio members.

16. Consequent to the District Councils Review conducted in 2001, the Administration has implemented recommendations to enhance both the role and functions of the District Councils as Government's key advisers on district affairs and their ability to influence the provision, delivery and management of district services and facilities. This helps to ensure that the Government remains responsive to the changing needs of the community.

17. In the light of increase in population in three districts, the number of elected seats in the District Councils were increased from 390 to 400 for the second term District Council commencing on 1 January 2004.

Abolition of the Municipal Councils

18. The two Provisional Municipal Councils were dissolved after the terms of office of the members expired on 31 December 1999, pursuant to the Provision of Municipal Services (Reorganization) Ordinance, which was passed by the Legislative Council in December 1999. With a view to improving co-ordination and efficiency, the Government set up new dedicated agencies to be responsible for food safety, environmental hygiene and leisure and cultural services with effect from January 2000.

19. In a Judicial review of the Ordinance, the High Court ruled that the Provision of Municipal Services (Reorganization) Ordinance (Chapter 552) was consistent with the Basic Law and the ICCPR as applied to Hong Kong.

The structure of the Administration

20. The Chief Executive is the head of the Government of the HKSAR. If the Chief Executive is not able to discharge his duties for a short period, such duties shall temporarily be assumed by the three Secretaries of Departments, namely the Chief Secretary for Administration, the Financial Secretary, or the Secretary for Justice, in that order of precedence. The Government of the

HKSAR comprises a Department of Administration, a Department of Finance, a Department of Justice, and various bureaux, divisions, and commissions.

21. There are currently 11 bureaux, each headed by a Director of Bureau, which collectively form the Government Secretariat. With certain exceptions, the heads of government departments are responsible to the Secretaries of Departments and Directors of Bureaux. The exceptions are the Commissioner of the Independent Commission Against Corruption and the Director of Audit, who function independently and are accountable to the Chief Executive.

22. Following the implementation of the accountability system for principal officials on 1 July 2002, the Chief Secretary for Administration, the Financial Secretary, the Secretary for Justice, and the 11 Directors of Bureaux are no longer civil servants. They are directly responsible to the Chief Executive and are accountable to him for the success or failure of matters falling within the portfolios as assigned to them. They are appointed to the Executive Council. Together with the non-official members of the Executive Council, they assist the Chief Executive in policy-making. Under the accountability system, the civil service continues to remain permanent, meritocratic, professional and politically neutral.

The judicial system of the HKSAR

23. The legal system is firmly based on the rule of law and a Judiciary, which is independent of the executive authorities and the legislature.

24. Article 19 of the Basic Law provides that the HKSAR shall be vested with independent judicial power, including that of final adjudication. The courts of the HKSAR shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by the legal system and principles previously in force in Hong Kong shall be maintained. The courts of the HKSAR shall have no jurisdiction over acts of state such as defence and foreign affairs. The courts of the Region shall obtain a certificate from the Chief Executive on questions of fact concerning acts of state such as defence and foreign affairs whenever such questions arise in the adjudication of cases. This certificate shall be binding on the courts. Before issuing such a certificate, the Chief Executive shall obtain a certifying document from the Central People's Government.

25. The courts of justice comprise the Court of Final Appeal, the High Court (which consists of the Court of Appeal and the Court of First Instance), the District Court, the Magistrates' Court, the Lands Tribunal, the Labour Tribunal, the Small Claims Tribunal, the Obscene Articles Tribunal and the Coroner's Court. The courts hear and determine all criminal trials and civil disputes, whether between individuals or between individuals and Government of the Region.

26. Article 82 of the Basic Law provides that the power of final adjudication of the HKSAR shall be vested in the Court of Final Appeal of the Region, which may as required invite judges from other common law

jurisdictions to sit on the Court of Final Appeal. Article 83 further provides that the structure, powers and functions of the courts of the HKSAR at all levels shall be prescribed by law.

27. All judges and judicial officers must have qualified as legal practitioners in Hong Kong or in a common law jurisdiction and have substantial professional experience. Article 88 of the Basic Law provides that “Judges of the courts of the HKSAR shall be appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors.”

28. Judges have security of tenure. Article 89 of the Basic Law provides that “A judge of a court of the HKSAR may only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive on the recommendation of a tribunal appointed by the Chief Justice of the Court of Final Appeal and consisting of not fewer than three local judges. The Chief Justice of the Court of Final Appeal of the HKSAR may be investigated only for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by the Chief Executive and consisting of not fewer than five local judges and may be removed by the Chief Executive on the recommendation of the tribunal and in accordance with the procedures prescribed in this Law.”

GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

Rule of Law

29. The fundamental basis for the protection of human rights is the rule of law maintained by an independent judiciary (see paragraphs 23 to 28 above).

The principles that inform the rule of law are -

- (a) **the supremacy of the law:** no individual is punishable or can lawfully be made to suffer personally or financially except for a breach of law established before the independent courts. Where, under the law, an official or an authority has discretion to make a decision, that discretion must be exercised legally, fairly and reasonably. Where it does not do so, the decision must be capable of successful challenge before the courts. The Basic Law guarantees the right of Hong Kong residents to institute legal proceedings in the courts against the acts of the executive authorities and their personnel; and
- (b) **equality before the law:** Article 25 of the Basic Law provides that all Hong Kong residents shall be equal before the law. Article 22 provides that all offices set up in the HKSAR by departments of the Central People's Government, or by provinces, autonomous regions, or municipalities directly under the Central Government and personnel of these offices shall abide by the laws of the Region. Article 14 provides

that members of the garrison shall, in addition to abiding by national laws of the PRC, abide by the laws of the HKSAR. Article 35 also provides that Hong Kong residents shall have the right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel. No government authority or official, and no individual, is above the law. All persons, regardless of race, rank, politics, religion or sex, are equal before the law and subject to the same law. Individuals and the HKSAR Government have the same access to the courts to enforce legal rights or defend an action.

Human rights guarantees in the Basic Law

30. Article 4 of the Basic Law provides that the HKSAR shall safeguard the rights and freedoms of residents of the HKSAR and of other persons in the Region in accordance with law. The Basic Law guarantees a wide range of freedoms and rights, including -

- (a) equality before the law;
- (b) freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike;
- (c) freedom of the person; freedom from torture; freedom from arbitrary or unlawful arrest, detention or imprisonment; freedom from arbitrary or

- unlawful search of the body; and right against arbitrary or unlawful deprivation of life;
- (d) freedom from arbitrary or unlawful search of, or intrusion into, one's home or other premises;
 - (e) freedom and privacy of communication;
 - (f) freedom of movement within the HKSAR and freedom of emigration to other countries and regions and freedom to travel and to enter or leave the Region;
 - (g) freedom of conscience; freedom of religious belief and freedom to preach and to conduct and participate in religious activities in public;
 - (h) freedom of choice of occupation;
 - (i) freedom to engage in academic research, literary and artistic creation, and other cultural activities;
 - (j) right to confidential legal advice, access to the courts, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies; right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel;
 - (k) right to social welfare in accordance with law; and
 - (l) freedom of marriage and right to raise a family freely.

Persons in Hong Kong other than Hong Kong residents shall, in accordance with law, enjoy the rights and freedoms of Hong Kong residents prescribed by Chapter III of the Basic Law. In addition, permanent residents of the HKSAR enjoy the rights to vote and to stand for election in accordance with law.

Effect of other human rights instruments in HKSAR law

31. According to Article 39 of the Basic Law -

“The provisions of the ICCPR, the ICESCR and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.

The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.”

32. In general, and as is usual in common law systems, treaties that apply to Hong Kong (including human rights treaties) do not themselves have the force of law in the domestic legal system of Hong Kong. They cannot directly be invoked before the courts as the source of individual rights. However, the courts will, when possible, construe domestic legislation in such a way as to avoid incompatibility with international treaties that apply to Hong Kong. The usual method of giving effect in local law to treaty obligations (when these require some change in existing laws or practice) is to enact specific new

legislation⁹. Where this results in the creation or definition of specific legal rights and where these rights are denied or interfered with (or there is the threat of such action), a remedy will be available in the courts through the ordinary procedures of civil litigation; or the law may provide criminal sanctions.

Bill of Rights Ordinance

33. The Hong Kong Bill of Rights Ordinance (BORO) (Chapter 383 of the Laws of the HKSAR) was enacted in June 1991 specifically to give effect in local law to the provisions of the ICCPR as applied to Hong Kong. It achieves this by setting out a detailed Bill of Rights, the terms of which are almost identical to those of the ICCPR.

Adoption of laws: effect on the BORO

34. Article 160 of the Basic Law provides that the laws previously in force in Hong Kong shall be adopted as laws of the Region except for those which the Standing Committee of the NPC declares to be in contravention of the Basic Law. In February 1997, the Standing Committee considered that three sections

⁹ An example is the Crimes (Torture) Ordinance (Chapter 427 of the Laws of the HKSAR) which was enacted to give effect in Hong Kong to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

of the BORO (relating to the interpretation and application of the Ordinance¹⁰) had an overriding effect over other laws, including the Basic Law. As such, they contravened the Basic Law and could not be adopted.

35. The non-adoption of these sections has no effect on the protection of human rights in the HKSAR in view of the constitutional guarantee in Article 39 of the Basic Law. The substantive protections in Part II of the Ordinance (which are almost identical to the provisions of the ICCPR) are unchanged. So too are the remedies provided under section 6 for contravention of the Ordinance and the binding effect on the Government and all public authorities under section 7. The full text of the BORO as it now stands is at **Annex 2**.

Legal aid

36. Eligible applicants receive legal aid through the provision of the services of a solicitor and a barrister in court proceedings, as necessary, to ensure that any person who has reasonable grounds for pursuing or defending a legal action is not prevented from doing so by lack of means. Publicly funded legal aid services are provided through the Legal Aid Department and the Duty Lawyer Service.

¹⁰ The three sections were -

- (a) Section 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 provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong, and for ancillary and connected matters.”
- (b) Section 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.”
- (c) Section 4: “Interpretation of subsequent legislation - All legislation enacted on or after the commencement date shall, to the extent that it admits of such a construction, be construed so as to be consistent with the International Covenant on Civil and Political Rights as applied to Hong Kong.”

Legal Aid Department

37. The Legal Aid Department provides legal representation to eligible persons in both civil and criminal cases heard in the Court of Final Appeal, the Court of Appeal, the Court of First Instance, the District Court and the Magistrates' Court (for committal proceedings). Civil legal aid is available to proceedings covering major areas of livelihood of the community ranging from family disputes to immigration matters and coroner's inquests. Applicants must satisfy the Director of Legal Aid of their financial eligibility (the means test) and of the justification for legal action (the merits test). The grant of legal aid is not subject to a residence requirement. In criminal cases, the Director has discretion to waive the upper limits of the means test if he considers it in the interest of justice to do so. He also has the same discretion in meritorious applications where a breach of the BORO or the ICCPR as applied to Hong Kong is an issue. Subject to the means test (unless waived by a judge), it is mandatory to grant legal aid to an applicant charged with murder, treason or piracy with violence. For other offences, provided the applicant passes the means test, a judge may grant legal aid notwithstanding that legal aid has been refused on merits by the Director.

The Duty Lawyer Service

38. This Service complements the legal aid services provided by the Legal Aid Department. It operates three schemes that respectively provide legal representation (the Duty Lawyer Scheme), legal advice (the Legal Advice

Scheme) and legal information (the Tel Law Scheme). The Duty Lawyer Scheme offers legal representation to virtually all defendants (juvenile and adult) charged in the Magistracies who cannot afford private representation. It also provides legal representation to persons who are at risk of criminal prosecution as a result of giving incriminating evidence in Coroner's inquests. Applicants are subject to a means test and merits test, based on the "interest of justice" principle in accordance with Article 14 of the ICCPR and Article 11 of the Hong Kong Bill of Rights. The Legal Advice Scheme and the Tel Law Scheme respectively provide members of the public with free legal advice through individual appointments and taped information on the legal aspects of everyday problems.

Legal Aid Services Council

39. The Legal Aid Services Council, an independent statutory body, was established in 1996. Its role is to oversee the provision of legal aid services by the Legal Aid Department and advise the Chief Executive on legal aid policy.

Office of The Ombudsman

40. The Ombudsman - formerly known as the Commissioner for Administrative Complaints (COMAC) - is an independent authority, established under The Ombudsman Ordinance (Chapter 397)¹¹. The Ombudsman investigates and reports on grievances arising from maladministration. "Maladministration" includes such things as inefficient, bad or improper

¹¹ Formerly known as the COMAC Ordinance.

administrative decisions, acts, recommendations or omissions. Members of the public can complain directly to The Ombudsman, who can also initiate investigations on her own volition and may publish investigation reports of public interest. Additionally, The Ombudsman is empowered to investigate complaints of non-compliance with the Code on Access to Information.

41. The enactment of The Ombudsman (Amendment) Ordinance 2001 enables the independent status of The Ombudsman and enables her to carry out her functions more effectively. The Ombudsman is entrusted with full autonomy and statutory powers to conduct its own administrative and financial business. The Ordinance also makes it clear that The Ombudsman is not a servant or agent of the Government.

42. Subject to The Ombudsman Ordinance, The Ombudsman may obtain any information and documents from such persons as she thinks fit. She may summon any person to provide information relating to her investigations and may enter any premises of the organisations under her jurisdiction to conduct investigations. She also has sufficient means with which to ensure that her recommendations are heard and acted upon.

43. After investigating a complaint, The Ombudsman is empowered to report her opinion and reasons, together with a statement of any remedy and recommendation that is considered necessary, to the head of the organisation affected. If the recommendation is not acted upon within a reasonable timeframe, The Ombudsman may report the matter to the Chief Executive. She

may also do so if she believes that there has been a serious irregularity or injustice done. Such reports are bound by law to be laid before the Legislative Council.

44. With the exceptions of the Police and the Independent Commission Against Corruption (ICAC), The Ombudsman has jurisdiction over all Government departments of the HKSAR and major statutory bodies. Complaints against these two departments are handled by discrete, dedicated bodies (see paragraphs 47 and 48 below). However, complaints of non-compliance with the Code on Access to Information by the Police and the ICAC are still subject to The Ombudsman's jurisdiction.

Equal Opportunities Commission

45. The Equal Opportunities Commission (EOC) was established under the Sex Discrimination Ordinance (SDO) in May 1996 and started full operation in September that year. The Commission is responsible for conducting formal investigations, handling complaints, encouraging conciliation between parties in dispute, providing assistance to aggrieved persons in accordance with the SDO, the Disability Discrimination Ordinance (DDO) and the Family Status Discrimination Ordinance (FSDO). It undertakes research programmes and public education to promote equal opportunities in the community. The Commission is also empowered to issue codes of practice to provide practical guidelines to facilitate public compliance with the laws on equal opportunities. Accordingly, it issued Codes of Practice on Employment in relation to the SDO

and the DDO in December 1996. It issued a similar code in relation to the FSDO in March 1998. The Code of Practice on Education under the DDO was issued in July 2001 to assist educational establishments in fulfilling the requirements of the DDO.

Privacy Commissioner for Personal Data

46. The Personal Data (Privacy) Ordinance (PDPO) provides for statutory control of the collection, holding and use of personal data in both the public and private sectors. Its provisions are based on internationally accepted data protection principles. It applies to personal data to which access is reasonably practicable whether they are in computerised, manual (for example, paper file), or audio-visual form. To promote and enforce compliance with its provisions, the Ordinance provides for an independent statutory authority - the Privacy Commissioner for Personal Data - with appropriate powers of investigation and enforcement. His responsibilities also include promoting awareness and understanding of the Ordinance, publishing codes of practice on how to comply with the Ordinance, and examining proposed legislation that may affect the privacy of individuals in relation to personal data.

Complaints and investigations

The Police

47. The Complaints Against Police Office (CAPO) investigates complaints about the conduct and behaviour of members of the police force. The CAPO's

investigations are monitored and reviewed by the Independent Police Complaints Council (IPCC). The IPCC is an independent civilian body comprising non-official members appointed by the Chief Executive from a wide spectrum of the community and include Members of the Legislative Council and the Ombudsman or her representative.

The ICAC

48. The Independent Commission Against Corruption Complaints Committee - established in 1977 - monitors and reviews the handling by the ICAC of non-criminal complaints against the ICAC and officers of the ICAC. Again, this is an independent committee appointed by the Chief Executive. The Committee comprises mainly of members of the Executive and Legislative Councils and a representative of the Ombudsman. Complaints against the ICAC or its officers can be made direct to the Committee as well as the ICAC at any of its offices. The investigation of such complaints is handled by a special unit of the Operations Department of the ICAC. When the unit has completed its investigation of a complaint, its conclusions and recommendations are submitted to the Committee for consideration.

Other disciplined services

49. Other disciplined services departments maintain clear guidelines and procedures for handling complaints. For example, the Correctional Services Department (CSD), which runs HKSAR's prisons, has a Complaints Investigation Unit to manage its internal grievance redress system for staff,

prisoners, and members of the public. These persons may also direct their complaints to the Ombudsman. The existing complaint channels are considered effective in view of the number and the nature of complaints handled.

50. The Immigration Department applies complaints procedures set out in the Immigration Service Standing Orders made by the Director of Immigration under the authority of the Immigration Service Ordinance. Complaints about abuse of authority or maltreatment by service members can be made to the Director of Immigration and are investigated promptly in accordance with the procedures in the Standing Orders. To ensure that all complaints are properly handled, a Complaints Review Working Party examines the results of investigations, conduct reviews and recommends follow-up action whenever necessary. Persons who consider that they have been improperly treated or that their cases have been mismanaged also have access to the Ombudsman. If there is prima facie evidence that a member of the Immigration Service has committed a criminal offence, the Immigration Service will immediately report the matter to the police for further investigation. Disciplinary procedures against Immigration Service staff are also governed by the Immigration Service Ordinance and the Immigration Service Standing Orders. Under section 8 of the Immigration Service Ordinance (Chapter 115), unlawful or unnecessary exercise of authority resulting in loss or injury to any person is a disciplinary offence.

INFORMATION AND PUBLICITY

Promotion of public awareness of the human rights treaties

51. The Home Affairs Bureau of the HKSAR Government is responsible for promoting public awareness of the rights and obligations stipulated in the human rights treaties applicable to Hong Kong. Following the enactment of the BORO in 1991, the Committee on the Promotion of Civic Education (CPCE) under the Home Affairs Bureau established a Human Rights Education Sub-Committee to promote public understanding of the BORO and respect for human rights as set out in the various treaties. Human rights have been one of the major emphases of the CPCE's work. Recently, the CPCE has increased its efforts to promote a public understanding of the Basic Law, which provides the constitutional guarantees for human rights protection in the Region. A Basic Law Promotion Steering Committee - chaired by the Chief Secretary for Administration - was established in January 1998 to guide promotional strategy.

52. In 2002, the Bureau established a joint NGO/Government forum, the Committee on the Promotion of Racial Harmony, to advise Government on the promotion of inter-racial respect and tolerance and matters relating to the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee is serviced by the Race Relations Unit, also established in 2002 under the auspices of the Home Affairs Bureau.

Government publications

53. The Central People's Government of the People's Republic of China is obliged to submit reports in respect of the HKSAR under various human rights treaties (but see paragraph 54 below in relation to the ICCPR). Draft reports are prepared by the Home Affairs Bureau and the Health, Welfare and Food Bureau of the HKSAR Government. The Bureaux consult the Legislative Council and non-governmental organisations on the state of the implementation of these treaties in Hong Kong. They address their views in the reports, which they table before the Legislative Council - and publish in bound, bilingual format - after the Central People's Government has submitted them to the United Nations. Copies are deposited in public libraries and posted on the Internet for public inspection.

Reports of the HKSAR in the light of the ICCPR

54. In November 1997, the Central People's Government of the People's Republic of China announced that, in line with the Joint Declaration and the Basic Law, and considering that China was not yet a signatory to the two Covenants, it would make reference to the provisions of the two Covenants as applied to Hong Kong and transmit reports on the HKSAR to the United Nations. China subsequently ratified the ICESCR in 2001 and the HKSAR's reports form part of China's reports under that Covenant¹². The Government of

¹² China's first report was submitted to the United Nations in June 2003 and was heard in April 2005.

the HKSAR is responsible for preparing the reports on the Region in relation to the ICCPR for transmission to the United Nations.

Part II: Information in relation to each of the Articles in Part I of the Convention

Article 1: defining “torture”

55. The position is as explained in paragraphs 1 to 6 of the initial report, where we discussed the definition of ‘torture’ in section 3 of the Crimes (Torture) Ordinance (Chapter 427)¹.

56. In paragraph 33 of the concluding observations of May 2000, the Committee expressed the concern that “the reference to ‘lawful authority, justification or excuse’ as a defence for a person charged with torture, as well as the definition of a public official in the Crimes (Torture) Ordinance, (Chapter 427), are not in full conformity with article 1 of the Convention”. And, in paragraph 37, the Committee recommended that “the necessary steps be taken to ensure that torture, as defined in article 1 of the Convention, is effectively prosecuted and appropriately sanctioned”.

57. The position is as explained in paragraphs 4 to 6 of the initial report, where we advised the Committee that, for the purpose of the Ordinance (section 3(5)), “lawful authority, justification or excuse” meant –

- (a) in relation to pain or suffering inflicted in Hong Kong, lawful authority, justification or excuse under the law of Hong Kong;
- (b) in relation to pain or suffering inflicted outside Hong Kong –
 - (i) if it was inflicted by a public official acting under the law of Hong Kong or by a person acting in an official capacity

¹ Chapter 427 gives effect in domestic law to the relevant provisions of the Convention.

under that law, lawful authority, justification or excuse under that law;

- (ii) in any other case an authority, justification or excuse which is lawful under the law of the place where it is inflicted.

58. We went on to address local concerns about the consistency of this defence with Article 1.1 of the Convention. Thus, we considered that they were so consistent as they were simply an attempt to give effect to the second sentence of Article 1.1-

“[Torture] does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”.

That is, the defence was intended to cover matters such as the reasonable use of force to restrain a violent prisoner. It was not intended - nor would the courts be asked to interpret them as authorising - conduct intrinsically equivalent to torture as defined in Article 1.1².

59. That remains our position and, with respect to the view taken by the Committee, we find it difficult to see how a provision that is essentially a paraphrase of the Article 1.1 might be considered inconsistent with the Convention. NGOs and other commentators have attempted to point out where the alleged deficiency lies but their objections have not sustained analysis³. That said, we have taken due note of the Committee’s concerns

² We reiterated this explanation in paragraph 12 of our initial report (in relation to Article 2 of the Convention), adding that neither "exceptional circumstances" nor "superior orders" could be invoked in the law of Hong Kong as a justification for torture.

³ For example, the Law Society of Hong Kong pointed to the distinction between the test for torture in Article 1.1 -“...severe pain or suffering...” (our emphases) – and the final sentence of the article “...It does not include pain or suffering...” Thus the exclusion in the final sentence is of pain or suffering that is not severe and therefore not torture as defined in the Convention. But that distinction is clearly incorporated in the Ordinance through section 3(5).

and are continuing our dialogue with local commentators with an open mind as to the outcome.

60. Section 2(1) of the Crimes (Torture) Ordinance defines ‘public official’ as including “any person holding in Hong Kong an office described in the Schedule”. The Schedule lists the following -

- “1. An office in the Hong Kong Police Force. (Amended L.N. 362 of 1997)
2. An office in the Customs and Excise Department.
3. An office in the Correctional Services Department.
4. An office in the Independent Commission Against Corruption
5. An office in the Immigration Department. ”

But section 3 of the Interpretation and General Clauses Ordinance (Chapter 1) uses instead the term ‘public officer’ which it defines as including -

“...any person holding an office of emolument under the Government, whether such office be permanent or temporary”.

Effectively, therefore, the term ‘public officer’ includes all civil servants and is therefore wider in scope than ‘public official’. Commentators have asked why the Crimes (Torture) Ordinance does not use the more inclusive term.

61. The aim of the Ordinance is to cover the officials normally involved in the custody or treatment of individuals under any form of arrest, detention or imprisonment. It is vastly unlikely that, for example, clerks, swimming pool attendants, or landscape architects would find themselves in a position to commit acts of torture (as defined in Article 1) in the course of their duties. That said, the use in the section 2(1)

definition of the word ‘includes’ means that the term does *not* prevent the courts from holding other persons, such as a nurse in a government mental hospital, to be a ‘public official’ (or a "person acting in an official capacity") according to the circumstances.

Article 2: legislative, administrative, judicial or other measures to prevent acts of torture

62. The situation remains essentially as explained in paragraphs 7 to 18 of the initial report. Since then, there have been no more reports of torture as defined in the Crimes (Torture) Ordinance. However, there have been some related developments that are discussed below.

Instances of the alleged use of torture

63. In paragraph 34 of the 2000 concluding observations, the Committee expressed the concern that –

“...there are as yet no prosecutions under the Crimes (Torture) Ordinance, despite circumstances brought to the attention of the Committee justifying such prosecutions.”

The reasons for the lack of prosecutions are those that we have explained on previous occasions. The position remains that torture is a particularly serious offence that carries a maximum sentence of life imprisonment. For an act to qualify as torture, there must be evidence that severe pain and suffering were intentionally inflicted by the authorities acting in their official capacities. So far, no cases have met those criteria on the strength of the evidence. And, as indicated above, there have been no cases where torture has even been alleged since 1998 (see paragraphs 14 to 16 of the

initial report).

64. The Government does not condone or tolerate the use of any excessive force by Police officers, who are trained to treat all persons - including detainees and arrested persons as individuals - with humanity and respect, and to act within the law at all times. Officers who fail to comply with these requirements will be subject to disciplinary action and/or criminal proceedings as appropriate.

Article 3: torture as a ground for refusal to expel, return or extradite

65. In paragraph 36 of the 2000 concluding observations, the Committee noted with concern that “the practices in the Hong Kong Special Administrative Region relating to refugees may not be in full conformity with article 3 of the Convention”. In paragraph 40, it recommended that “laws and practices relating to refugees be brought into full conformity with article 3 of the Convention”. At the time, we found this perplexing as the issue had not been discussed at the hearing and the concluding observations did not indicate where the deficiency lay. However, there have since been several claims involving Article 3.1. And, in 2004, our Court of Final Appeal (CFA) had the opportunity to consider the standards applicable in the screening of such claims in the case of *Secretary for Security vs Sakthivel Prabakar*⁴.

66. Following the CFA judgment in that case, we put in place administrative procedures for assessing torture claims under Article 3.1 and are confident that those procedures will fully meet the high standards

⁴ [2005] 1 HKLRD 289, CFA.

of fairness laid down by the CFA. As at 31 March 2005, some 58 Article 3-related claims were under consideration. These involved 73 persons who could be subject to deportation/removal cases and one person who could be subject to surrender. These claims are being assessed in accordance with the new procedures.

Removal and deportation

67. It should be noted that Hong Kong's obligations under Article 3.1 will only arise where persons who do not enjoy the right to stay in Hong Kong are to be removed or deported to places where there are substantial grounds for believing that they would be in danger of being subjected to torture. Where they are to be removed or deported to places to which no claims of torture relate, Article 3.1 will not be engaged.

68. Claimants who have failed to establish their claims will be removed from Hong Kong in accordance with our laws. Claimants whose claims are established will not be removed to places where there are substantial grounds for believing that they would be in danger of being subjected to torture. However, removal to places where they may be admitted without the danger of being subjected to torture may be considered. If subsequent changes in conditions of a place are such that a claim of a person established earlier in respect of that place can no longer be substantiated, his removal to that place may be considered.

Surrender of fugitive offenders

69. The position as explained in paragraphs 19 to 20 of the initial report is essentially the same. As at end 2004, we had signed a total of 13 bilateral agreements on the surrender of fugitive offenders.

70. Where claims are made by fugitives under Article 3.1 in respect of their surrender to the requesting jurisdictions concerned, their claims will be assessed to ascertain whether their surrender would entail any breach of the CAT. The Chief Executive shall take into account the determination of such claims and other relevant factors when considering whether the fugitives concerned should be surrendered to the requesting jurisdictions.

Remaining Vietnamese refugees and migrants

71. In January 1998, the issue of Vietnamese asylum seekers came to a close, following the decision to permit the remaining Vietnamese refugees and migrants – as persons who were unlikely to be accepted for overseas resettlement or for return to Vietnam – to apply for settlement in Hong Kong. The last remaining refugee centre was closed in June 2000.

Vietnamese illegal migrants

72. The position remains essentially as explained in paragraphs 35 to 36 of the initial report. As at 31 December 2004, there were 214 such migrants in the territory.

Ex-China Vietnamese

73. We explained the position of persons in this category in paragraph 37 of the initial report. In April 2000, the Court of First Instance found in favour for the Government in the judicial review proceedings initiated by 116 families against removal to Mainland China. The families appealed but the appeal was later withdrawn by consent. The Government subsequently reviewed the situation and allowed the remaining 396 Ex-China Vietnamese to apply for stay in Hong Kong. As at 31 December

2004, all except one who had gone missing had been granted stay in Hong Kong.

Article 4: making acts of torture offences under the criminal law

74. The position is essentially as explained in paragraphs 38 and 39 of the initial report, which reaffirmed the prohibition of torture under the Crimes (Torture) Ordinance (Chapter 427) and advised the Committee of the prohibition of aiding and abetting in section 89 of the Criminal Procedure Ordinance (Chapter 221). Any attempts to commit torture are prohibited under section 159G of the Crimes Ordinance (Chapter 200).

Article 5: establishment of jurisdiction

75. As explained in paragraph 40 of the initial report, section 3 of the Crimes (Torture) Ordinance provides that the offence of torture is committed, whether the conduct take place in Hong Kong or elsewhere. The nationality of the perpetrator or the victim is immaterial. The courts of the HKSAR have full jurisdiction in conformity with this Article.

Article 6: powers of detention

76. The position remains essentially as explained in paragraphs 41 to 44 of the initial report. But commentators have called on us to implement recommendations made by the Law Reform Commission in its 1992 Report on Arrest. Those recommendations concerned the introduction of legislative amendments to -

- (a) institute continuous review of the need for detention;

- (b) set a clear time limit for detention without charges;
- (c) provide for the appointment of Custody Officers; and
- (d) provide for regular review of police detention.

77. The position is that, in 1998-99, the Police, the Immigration Department, the Customs and Excise Department, and the Independent Commission Against Corruption instituted a system whereby designated Custody Officers and Review Officers ensure the proper treatment of persons in detention and keep the need for their further detention under continuous review. The recommendation concerning a statutory time limit on the length of detention without charge is under consideration. The Commission's recommendations concerning the taking of intimate and non-intimate samples, and the tape-recording and video-taping of interviews are discussed further in paragraphs 91 and 100 below, in relation to Article 11 of the Convention.

Article 7: prosecution of offenders who are not to be extradited

78. The position is as explained in paragraph 45 of the initial report.

Article 8: extradition arrangements

79. The position remains essentially as explained in paragraphs 46 to 48 of the initial report. But commentators have asked why there are as yet no formal surrender of fugitive offenders arrangements between the Mainland and the HKSAR. Formal discussions on such arrangements began in March 1999. Because of the differences between the respective legal systems and the complexity of the issues involved, the discussions

must be conducted with particular care and attention to details and cannot, therefore, be expected to reach a swift conclusion. We will advise the Committee of any developments when it hears the present report.

80. In March 2000, the two sides initiated discussions on the arrangements for the transfer of sentenced persons. These have centred on the main principles and provisions enshrined in the Transfer of Sentenced Persons Ordinance and the agreements on transfer of sentenced persons that we have signed with other jurisdictions. These include, for example, the conditions for transfer, procedures for transfer, retention of jurisdiction and continued enforcement of sentence. At the time of finalising this report, the discussions were still underway, again because of the differences in the legal and judicial systems and the complexity of the issues.

Article 9: mutual assistance in relation to crimes of torture

81. The position remains essentially as explained in paragraphs 49 to 51 of the initial report. As at 31 December 2004, we had signed 17 bilateral agreements on mutual legal assistance in criminal matters.

82. Some commentators have asked why there is no agreement between the Mainland and the HKSAR on mutual legal assistance in criminal matters. The position is that - in criminal investigations - the police authorities of both sides do, in fact, provide mutual assistance in accordance with Interpol practice.

Article 10: education and information on the prohibition of torture

General

83. The position remains broadly as explained in paragraphs 52 to 58 of the initial report, though there have been some developments as explained below. However, we take the opportunity to mention that the ‘Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ - issued by the Office of the United Nations High Commissioner for Human Rights (the Istanbul Protocol) – has been distributed to relevant bureaux and departments (including particularly those discussed below).

Police

84. In paragraph 39 of the 2000 concluding observations, the Committee recommended “the continuation and intensification of preventive measures, including training for law enforcement officials”. The position remains largely as explained in paragraph 52 of the initial report. Additionally, however, frontline officers periodically attend induction and continuation training designed to remind them of the importance of using minimum force during arrest actions and observing the ‘Rules and Directions for the Questioning of Suspects and the Taking of Statement’s’. Examples of the topics covered include the Hong Kong Bill of Rights Ordinance, the Crimes (Torture) Ordinance, the use of force, the handling and questioning of suspects, cautioned statements, and the care and custody of prisoners.

85. Commentators have said that we should explain in this report what training, if any, Police officers receive in handling cases of domestic violence, abuse of the elderly, and child abuse. Police officers do indeed

receive such training on a regular basis. However, we do not believe that the forms of violence and abuse entailed in such cases constitute torture as defined in Article 1.1 of the Convention. To the extent that they might conceivably fall within the ambit of the treaty, they might be considered as a form of cruel or inhuman treatment or punishment. We therefore address the question in paragraphs 138 and 139 below in relation to Article 16, though we have reservations about doing so because these things concern the acts of persons in their capacity as private individuals. As such, it is our view that they fall outside the scope of the Convention.

Correctional Services Department

86. The Prisons Ordinance (Chapter 234) and its subsidiary legislation expressly provide that prisoners must be treated with kindness and humanity. The Department has incorporated these requirements in its ‘Vision, Mission and Value Statement’, which states that all persons in its custody have the right to correct and fair treatment with dignity. Staff training strongly emphasises the prohibitions against the cruel and degrading treatment or punishment of persons under custody. Essentially, therefore, the position is as explained in paragraph 53 of the initial report.

Customs and Excise Department, Immigration Department and Independent Commission Against Corruption

87. The position is essentially as explained in paragraphs 54 to 56 of the initial report.

Health care professionals

88. The position is essentially as explained in paragraphs 57 and 58 of the initial report.

Article 11: review of interrogation rules, instructions, methods and practices for custody and treatment of persons arrested or detained

89. In paragraphs 59 to 84 of the initial report, we advised the Committee of our intention to improve existing practices and legislation relating to the powers of the law enforcement agencies to stop and search, arrest, and detain a person. We discussed the rules and practices of the disciplined services, including the measures taken to detect signs of physical abuse/torture, to prevent suicides by persons in custody, and the protections afforded to persons detained in mental hospitals. We explained the controlled circumstances in which health professionals administered electro-convulsive therapy to patients with severe depressive illness and as an adjunct to neuroleptic treatment when response to medication had been unsatisfactory. In this chapter, we take this opportunity to inform the Committee of the progress made since the submission of our initial report.

The Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Ordinance 2000

90. In paragraph 59 of the initial report, we informed the Committee of a programme of improvements – initiated in 1997 - in relation to the powers of law enforcement agencies to stop, search, arrest and detain a person. The programme was on the basis of recommendations put forward by a working group formed to examine proposals advanced by the Law Reform Commission, with a view to improving existing safeguards against possible abuses of power.

91. In this connection, the Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Ordinance 2000 was enacted in June 2000 and came into operation on 1

July 2001. It empowers the Police, the Customs and Excise Department, and the Independent Commission Against Corruption to take intimate and non-intimate samples from suspects for forensic purposes, and provides for the establishment of a DNA database. Since then, these measures have contributed to the detection and investigation of serious crimes. But the Ordinance also provides for safeguards against possible abuses of power. Among others, these include the requirement that, the taking of non-intimate samples from a suspect in police detention or in custody must be authorised by officers at the rank of superintendent or above. The taking of intimate samples requires –

- (a) the authorisation by officers at the rank of superintendent or above;
- (b) the approval by a magistrate; and
- (c) the written consent by the suspect.

We will continue to take appropriate steps to implement the working group's recommendations. In so doing, we will take into account developments since the working group's report. In this process, we will seek to strike a careful balance between-

- the need to ensure that law enforcement agencies have the necessary powers to discharge their statutory duties;
- the need to guard against possible abuse of powers; and
- the rights of individuals.

Police

92. The situation remains essentially as explained in paragraph 60 of

the initial report.

Correctional Services Department

93. In 2001, the Legislative Council enacted the Rehabilitation Centres Ordinance (Chapter 567) and its subsidiary legislation and the Department started operating rehabilitation centres in July 2002. The centres provide an additional sentencing option for the courts to deal with young offenders aged between 14 and under 21, who are in need of short-term residential rehabilitation. The Department's programme comprises a two phase process –

- (a) **phase I:** an initial detention period of two to five months' regimented training in a penal institution; and
- (b) **phase II:** a period of one to four months' subsequent accommodation in a half-way house setting. Discharged offenders are subject to one year's statutory supervision by aftercare officers of the Department.

The Criminal Procedure (Amendment) Ordinance 2004

94. The Ordinance came into effect in July 2004. It provides for a revised scheme for prisoners who –

- (a) have been detained at Executive discretion;
- (b) have been serving mandatory life sentences for murder committed when the prisoner was aged under 18; or
- (c) have been serving discretionary life sentences since the commencement of, or any time before the commencement of, the provisions which previously provided for the determination of the minimum terms to be served by such prisoners.

95. The Ordinance now requires the Secretary for Justice to apply to the court for a determination by a judge in respect of each prescribed prisoner. The judge hearing such an application must determine the minimum term that the prescribed prisoner must serve for the relevant offence. Where the prescribed prisoners are serving sentences for murder committed when they were under 18 years old, and subject to the consent of the prescribed prisoners, the judge will have discretion as to whether to –

- (a) make a determination of the minimum terms as above mentioned;
- or
- (b) give a determinate sentence as an alternative to determining a minimum term.

Prevention of suicides

96. In early 2004, the Correctional Services Department conducted a review of the mechanism and strategies for the detection and prevention of suicide in custody. The review resulted in the institution of several improvement measures, including early screening of inmates for suicidal tendencies, enhanced supervision of those assessed as being at high risk of suicide, and modifications to the fittings in prison accommodation to make suicide attempts more difficult. The Department will review the effectiveness of these measures on a regular basis.

Death of an inmate at Siu Lam Psychiatric Centre

97. In late 2001, an inmate of the Siu Lam Psychiatric Centre was found dead. A task group appointed by the Commissioner of Correctional Services to study the circumstances of the incident recommended improvements in relation to nursing practices and the control of medical

drugs at all penal institutions. Out of 34 recommendations, 32 have been implemented. The remaining two recommendations were that we should conduct a review of the Centre's staffing levels and seek comments from external associations on the Centre's services. The Department is pursuing this.

98. In 2002, the Coroner's Court examining the case reached an open verdict. The Police also carried out a thorough investigation and had found no evidence of foul play. At a joint meeting of the Legislative Council Panels on Security and Health Services on 17 July 2003, independent medical experts gave their views on the probable cause of death and the needle marks found on the inmate's body. They took the view that the probable cause of death was diabetic ketoacidosis.

99. Under the present legal framework, all inmates committed to the custody of the Correctional Services Department are placed under the medical charge of officers seconded from Department of Health. In-house nursing care is provided by Correctional Services officers with nursing qualifications, under the directions of the medical officers. The system has worked well and, having considered the findings of the task group, the Coroner's Court and the independent experts, we have concluded that there is no immediate need for changes beyond those arising from the task group's recommendations.

Immigration Department

100. The situation remains largely as explained in paragraphs 67 to 68 of the initial report. However, we take the opportunity to inform the Committee that the Immigration Department video-records its interviews and questioning during their investigative work subject to the consent of

the suspects. At present, all immigration investigation offices and major control points are equipped with video-recording facilities.

Customs and Excise Department

101. The position is as explained in paragraph 69 of the initial report. But Customs offices are now equipped with video recording facilities, on a need basis. Such facilities will be provided in all new customs offices.

Persons detained in mental hospitals

102. The position regarding the protection of the rights of persons detained in mental hospitals remains essentially as explained in paragraphs 73 to 80 of the initial report. The only developments of note have been that –

- (a) in 2001, the Judiciary and the Hospital Authority formulated administrative arrangements to ensure that mental patients could have access to a judge or magistrate, if required, before their compulsory detention in a mental hospital; and
- (b) in 2003, the Chief Executive delegated to the Secretary for Health Welfare and Food the power to order the transfer of a mentally disordered person detained in the Correctional Services Department's psychiatric centre to a mental hospital under section 52B of the Mental Health Ordinance (Chapter 136).

Neither of these developments entailed amending legislation.

103. The pattern of application in the past five years has been –

	2000-01	2001-02	2002-03	2003-04	2004-05
Number of Patients receiving ECT	194	175	153	110	137
Number of treatments	1 395	1 387	1 266	828	945
Average number of treatments per patient	7.2	7.9	8.3	7.5	6.9

Article 12: prompt and impartial investigation of torture

104. As explained in paragraph 63 above in relation to Article 2, there have been no cases, or even allegations, of torture in the period under report. Any claim or suspicion of torture having occurred in Hong Kong would be subject to immediate investigation through the complaints mechanisms described in paragraphs 105 to 122 below in relation to Article 13⁵. Assertions of torture occurring in other jurisdictions would be handled as explained above in relation to Articles 3, 8, and 9.

Article 13: right of complaint

General

105. The position is essentially as explained in paragraphs 85 to 101 of the initial report. However, we take the opportunity to update the statistical information therein and to inform the Committee of recent developments.

⁵ Paragraphs 85 to 101 of the initial report described matters relating to complaints mechanisms under the section on Article 12, whereas they should properly have been addressed in Article 13. This was due to an editorial error in the preparation of that report.

Police

106. In paragraph 38 of the 2000 concluding observations, the Committee recommended that “continued efforts be made to ensure that the Independent Police Complaints Council becomes a statutory body, with increased competence”. Local commentators have echoed that call. We are taking steps to convert the IPCC into a statutory body and are drafting legislation to that purpose. Inter alia, this will empower the IPCC to oblige the CAPO to submit for its examination statements and videotapes taken during investigations of complaints. Consultations conducted in March 2002 indicated that this proposal enjoyed public support.

107. We think it important to explain that our system does not, as some commentators appear to believe, rely exclusively on the good faith of serving members of the Police Force. The CAPO operates independently of all operational and support formations of the Police. And the Independent Police Complaints Council (IPCC) closely monitors and reviews CAPO’s investigations of complaints against the police. The IPCC is an independent civilian body comprising non-official members from a wide spectrum of the community, including members of the Legislative Council and the Ombudsman or her representative. It is serviced by its own full-time secretariat.

108. There are effective checks and balances to ensure that complaints are handled thoroughly, fairly and impartially. The CAPO prepares detailed investigation reports on complaints received. These are then submitted to the IPCC, which rigorously examines them. Where IPCC members have doubts about a particular investigation, they may invite the

complainants, complainees, and witnesses to interviews. The Council can also ask CAPO to submit for its reference document or information relevant to a complaint. In discharging their duties, members of the IPCC may observe the CAPO's investigations in person, on either a surprise or a scheduled basis. If the IPCC is not satisfied with the results of an investigation, it can ask the CAPO to clarify any doubts or to reinvestigate the complaint. It may also bring the case to the personal attention of the Chief Executive, together with recommendations as to its disposition. Clearly, therefore, the IPCC has adequate means to ensure that investigations are conducted properly and effectively.

109. Over the years, we have introduced numerous measures to improve the credibility and transparency of the system. In particular, the Observers Scheme and the IPCC Interviewing Witness Scheme have improved the IPCC's ability to monitor CAPO investigations. Other measures have included the establishment of a special IPCC panel to monitor serious complaints and appointing retired members of the IPCC and other community leaders as Lay Observers of CAPO investigations.

Correctional Services Department

110. All complaints from prisoners are referred to the Department's Complaints Investigation Unit (CIU). The Unit is vested with independent investigative authority - delegated by the Commissioner of Correctional Services - to handle all complaints within its purview expeditiously, thoroughly and impartially. All allegations of criminal offence will be reported, without delay, for investigation by the Police.

111. The CIU handles cases referred to it by both internal and external stakeholders. It deals with complaints according to the Prison Rules

(Chapter 234A) and the Department's Standing Orders and Procedures, in the spirit of its statement of Vision, Mission and Values⁶. Complainants are normally interviewed by CIU investigators on the day following receipt of their complaints. The CIU service is certified under the ISO 9001:2000 quality management system and its modus operandi - which takes full account of the United Nations Standard Minimum Rules for the Treatment of Prisoners - is governed by the Department's Complaints Handling Manual.

112. In 2004, the CIU received a total of 204 complaints from inmates and members of the public. During the year, the Department's Complaints Committee examined 199 complaints - including cases brought forward from the previous year) - of which four were substantiated.

113. All investigation reports are examined by the Department's Complaints Committee, which either confirms their findings or directs that other courses of action be taken. The Committee is chaired by a civilian directorate officer who is independent of the uniformed stream and its members comprise, among others, the Prison Chaplain and the Assistant Commissioner of the Quality Assurance Division. The composition of the

⁶ The statement is as follows –
“Vision - Internationally acclaimed Correctional Service
Mission- As an integral part of the Hong Kong criminal justice system, we detain persons committed to our custody in a decent and healthy environment, and provide comprehensive rehabilitative services in a secure, safe, humane and cost effective manner, so as to enhance the physical and psychological health of prisoners, protect the public and help reduce crime.
Values - Integrity - We value honesty, humility, uprightness and personal responsibility.
Professionalism - We take pride in our profession and are committed to continuous improvement in efficiency, competence and quality of service.
Humanity - We recognize that all persons have the right to correct and fair treatment with dignity, whether they are members of the public, members of staff or persons in our custody.
Discipline - We respect the rule of law, orderliness and harmony.
Economy - We optimize the use of resources and emphasize sustainability.”

membership is intended to ensure the impartiality and transparency of the system. This two-tier mechanism allows dissatisfied complainants the opportunity to have their complaints re-examined. Any appeals beyond the Committee are handled by the Commissioner of Correctional Services.

114. The Committee's decisions are subject to scrutiny by external bodies such as the judiciary (through judicial review or civil claims), the Ombudsman, or Justices of the Peace. Cases are expected to be completed within the target response time of 18 weeks⁷. The parties concerned are informed of the outcome in writing.

115. As explained in paragraph 104 of the initial report, all prisoners are informed of the avenues of complaint available to them through induction sessions, information booklets, notices posted at prominent places in institutions, and during interviews with officers of the Department. Avenues for the redress of prisoner's grievances include channels, such as members of the Legislative Council, the Ombudsman, visiting Justices of the Peace, and the Independent Commission Against Corruption. Prisoners from other jurisdictions may also complain to their respective Consulates General. Rule 47C of the Prison Rules (Chapter 234A) provides that letters from prisoners to the 'specified persons'⁸ - as defined in Rule 1A - are not to be read.

116. The rules governing avenues of complaint remains as explained in paragraph 108 of the initial report.

⁷ The target is prescribed in the Department's Complaints Handling Manual.

⁸ Rule 1A defines 'specified person' as comprising the Chief Executive, a member of Executive Council, a member of Legislative Council, a member of District Council, a visiting justice, the Ombudsman or the Commissioner of the Independent Commission Against Corruption.

Immigration Department

117. The situation remains essentially as explained in paragraphs 118 and 119 of the initial report.

Customs and Excise Department

118. The position remains essentially as explained in paragraph 120 of the initial report. There were 224 complaints of assault received in the reporting period of 1998 - 2004. All were found unsubstantiated after police's investigations.

Independent Commission Against Corruption (ICAC)

119. In paragraph 96 of the initial report, we stated that the Independent Commission Against Corruption Complaints Committee was chaired by the convenor of the Executive Council. The then Chairman has since retired. The current incumbent is a member of the Executive Council.

120. In paragraph 98 of the initial report, we said that, in 1997, there were 30 complaints against the ICAC and its officers; 19 of those contained more than one allegation, there being a total of 76 allegations. Most (47%) alleged misconduct on the part of ICAC officers. Another 33% alleged neglect of duties. The remaining 20% alleged abuse of power or related to ICAC procedures. Corresponding figures for the period 1998 to 2003 are as follows –

Year	No. of complaints	Total no. of allegations	Category of allegation (%)			
			Misconduct	Abuse of power	Neglect of duties	Inadequacy of ICAC procedures
1998	25	54	56	20	18	6
1999	37	110	56	23	21	0
2000	44	116	19	59	22	0
2001	26	92	25	48	24	3
2002	38	111	31	45	20	4
2003	29	70	34	25	10	1
2004	21	53	17	19	17	0

121. In paragraph 99 of the initial report, we explained that nine of the 32 complaints considered by the ICAC Complaints Committee in 1997 contained allegations that were found to be either substantiated or partially substantiated. The corresponding figures for the period 1998 to 2004 are as follows –

Year	No. of complaints considered	No. either substantiated or partially substantiated
1998	26	6
1999	30	7
2000	29	10
2001	26	5
2002	26	10
2003	35	10
2004	22	7

122. Commentators have called for the establishment of an independent department to handle complaints against all the disciplinary forces. Our view is that the existing systems described above work well and that there is no need to replace them.

Avenues for complaint by mental patients

123. The position remains as explained in paragraphs 125 to 127 of the initial report. The numbers of complaints received from mental patients by the Hospital Authority in the past five years are set out in the table below. As stated in paragraph 128 of the initial report, complainants who are dissatisfied with the outcome of the investigations conducted by the Hospital Authority may seek a review by the Public Complaints Committee of the Hospital Authority or by the Ombudsman.

The total number of complaints received from mental patients by the Hospital Authority				
2000-01	2001-02	2002-03	2003-04	2004-05
204	168	150	132	182

Article 14: legal redress for victims of torture and an enforceable right to fair and adequate compensation

124. The position remains as explained in paragraphs 129 to 134 of the initial report.

Article 15: statements made as a result of torture shall not be invoked as evidence

125. The position is essentially as explained in paragraphs 135 to 137 of the initial report. The number of Police Video Interview Rooms has increased from 11 in 1996 to 70 as at 31 December 2004. Every major divisional police station has at least one such facility and the Customs and Excise Department has 18. These measures have served to increase the transparency of the statement taking process and the admissibility of confession statements in the courts.

Article 16: prevention of other acts of cruel, inhuman or degrading treatment or punishment

General

126. In paragraphs 140 to 158 of the initial report, we advised the Committee that, to a large extent, the legislative and administrative provisions discussed in the earlier parts of the report in relation to torture applied equally to conduct that fell short of torture but might constitute cruel, inhuman or degrading treatment or punishment. The position is essentially as explained there and it remains the case that all persons acting in a public capacity must act in accordance with the rule of law. Measures are in place to ensure that any cruel, inhuman or degrading treatment or punishment committed by, at the instigation of, or with the consent or acquiescence of, any public official - or by anyone acting in an official capacity - is subject to criminal or disciplinary sanctions.

127. However, in paragraph 35 of the 2000 concluding observations, the Committee expressed concern that “not all instances of torture and

other cruel, inhuman or degrading treatment or punishment are covered by the Crimes (Torture) Ordinance”. And, in paragraph 37, the Committee recommended that “efforts be made to prevent other acts of cruel, inhuman or degrading treatment or punishment, in accordance with the provisions of the Convention”.

128. As we explained at the hearing of our initial report, the provisions of the Convention enjoy the force of law through –

- (a) Article 28 of the Basic Law, which prohibits the torture of any resident;
- (b) the Hong Kong Bill of Rights Ordinance (Chapter 383), Article 3 of which gives effect to Article 7 of the ICCPR on torture or cruel, inhuman or degrading treatment or punishment; and
- (c) the Crimes (Torture) Ordinance (Chapter 427): see paragraph 55 above in relation to Article 1 of the Convention.

As we also explained at the 2000 hearing, the Hong Kong Courts will construe domestic legislation in such a way as to ensure compatibility with our international obligations, including those imposed under the Convention.

129. While the overall position remains broadly as explained in paragraphs 143 to 156 of the previous report, there have been developments and innovations since then as discussed below. Essentially, and as pointed out in paragraph 143 of the initial report, acts of the kind envisaged in Article 16 are comprehensively prohibited in such statutes as –

- (a) Article 3 of the Hong Kong Bill of Rights Ordinance: per

paragraph 128(b) above;

- (b) the Offences against the Person Ordinance (Chapter 212), which contains provisions on wounding or inflicting grievous bodily harm, assault occasioning actual bodily harm;
- (c) the Crimes Ordinance (Chapter 200) Parts VI and XII of which contain provisions to protect children from sexual abuse and prohibit child sex tourism by giving extra-territorial effect to 24 offences listed in Schedule 2 of the Ordinance (reproduced at **Annex 3**); and
- (d) the Criminal Procedure Ordinance (Chapter 221): Part IIIA makes special provisions for the treatment of child witnesses and other vulnerable groups ; and
- (e) the Prevention of Child Pornography Ordinance (Chapter 579), which protects children against sexual exploitation.

130. For these reasons, we respectfully maintain the view that the requirements of the Convention are fully met within the body of our laws. However, we are open to persuasion and, if the Committee is in a position to identify the specific areas where it considers that our laws are deficient as regards the Convention (the 2000 concluding observations were not specific in that regard), we will certainly review the position, acting as necessary on our findings.

Police disciplinary procedures

131. The position remains essentially as explained in paragraph 142 of the initial report.

Ill-treatment of children

132. In broad terms, the position remains as explained in paragraphs 143 to 147 of the initial report. However, in October 2003, in order to fulfil the obligation under Article 37(d) of the Convention on the Rights of the Child, we initiated a legal representation service for children and juveniles involved in care or protection proceedings and who were deprived of their liberty and detained in a gazetted place of refuge⁹. The scheme is provided through the Duty Lawyer Service¹⁰ as soon as practicable after the children or juveniles in question have been taken to a place of refuge. We completed a review of the scheme in February 2005, concluding that it was generally working well. On the basis of the review, we have decided to expand the scope of service to cover more cases where children or juveniles are likely to be deprived of their liberty but are not immediately to be detained in a place of refuge.

Children in institutional care

133. The position is essentially as explained in paragraph 149 of the initial report. Justices of the Peace and the Social Welfare Department's 'Agency Officers' visit homes run by NGOs on both a scheduled and surprise basis. They and the Department's District Social Welfare Officers are empowered to receive complaints and to make investigations.

Domestic violence

134. Commentators have argued that domestic violence - which includes spouse battering, child abuse, and the abuse of the elderly - are forms of cruel or inhuman treatment and that the Government is obliged to

⁹ Under section 34E of the Protection of Children and Juveniles Ordinance (Cap. 213) (PCJO).

¹⁰ See paragraph 38 in Part I of this report.

address in the spirit of the Convention. We have pointed out that these forms of abuse do not fall within the scope of Article 16, which – inter alia – requires that acts of cruel or inhuman treatment (and so forth) be –

“committed by, or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity.”

In response, it has been asserted that failure to provide protection is a form of acquiescence for the purposes of Article 16. We reject that view. But since the matter has been raised, we take this opportunity to put our position on record in the paragraphs that follow.

135. Our strategy for tackling domestic violence includes preventive measures (such as publicity, community education, and nurturing social capital), support services (such as family services, housing assistance, financial assistance, and child care), and specialised services and crisis intervention, such as – inter alia - Family and Child Protective Services Units, a Family Crisis Support Centre, and refuge centres for women.

136. There are laws in place that prohibit physical assault, murder, rape, and so forth, most notably the Crimes Ordinance (Chapter 200) and the Offences Against the Person Ordinance (Chapter 212), and the provisions against blackmail – which contains an element of menace and therefore of mental violence - in the Theft Ordinance (Chapter 210). The Domestic Violence Ordinance (Chapter 189) protects married or cohabitating couples and their children from domestic violence. There is also legislation in place to protect children from abuse.

137. Of course, domestic violence does occur in Hong Kong, as it does in all societies. A particularly serious one that occurred in 2004 gave

rise to considerable public concern and is discussed below for the Committee's information, though we maintain that it does not fall within the scope of the Convention.

The Tin Shui Wai murder case

138. In April 2004, a woman living in the Tin Shui Wai¹¹ and her two daughters were killed by her husband. The woman, who arrived from the Mainland in January 2004, had been admitted to a shelter prior to the tragedy. On the day of the tragedy, she left the shelter and sought help from the local police station. Commentators say that the tragedy highlights the need to provide training to social workers and the police on the handling of domestic violence and other family problems. The position is as follows -

- (a) **social welfare response:** the Social Welfare Department is well aware of the need for such training and, between April 2001 and March 2004, organised over 70 training programmes on domestic violence. Over 3,500 participants took part. Among others, the trainees included social workers, clinical psychologists, police officers, teachers, and medical staff. The programmes were in the form of workshops, seminars and lectures conducted by local overseas trainers. The trainers included experienced practitioners and academics with ample experiences in the area. The training covered risk assessment, intervention skills, case/group work techniques, and multi-disciplinary collaboration in the handling of cases involving violence. Repeated emphasis was placed on victim safety.

¹¹ Tin Shui Wai is a new town in the Northwestern New Territories.

After the Tin Shui Wai tragedy, the Director of Social Welfare appointed a panel to review the provision and delivery process of family services in Tin Shui Wai where the deceased lived and to propose improvements. The panel submitted its report in November 2004, proposing a number of improvements, including - among others - strengthening professional training in managing family violence. In addition to the training programmes already in place, the Social Welfare Department will further strengthen this area of training, with particular emphasis on crisis management, risk assessment, gender sensitivity, early detection, and different approaches to intervention and treatment; and

- (b) **Police response:** police officers receive ongoing training on the handling of domestic violence at various stages throughout their career. Immediately after the tragedy, Police reviewed their handling procedures and made improvements to the training - and access to information - of frontline officers. The measures had regard to the need to foster better communications among the frontline officers of stakeholders departments, such as the Social Welfare Department, the Police, and local NGOs.

139. Commentators have asked why we have not made it compulsory to report cases of elderly abuse and for the abusers to seek counselling. The position is that abuse of the elderly usually involves complex and long-term family relationship problems. The abusers are usually close relatives or family members of the victims and the latter are often reluctant to involve them in legal proceedings. We therefore think it likely that compulsory reporting could discourage elderly people from seeking help. Against this background, our priorities are to –

- raise community and professional awareness of the problems;
- facilitate the early identification of abuse;
- empower elderly people to protect themselves. By ‘empowerment’, we mean helping elderly people to understand their rights to survival, freedom and personal safety, restoring their self-esteem and ability to make their own decisions, to take better care of themselves, and so forth; and
- encourage victims of elder abuse and their family/friends to seek early assistance.

140. Abusers do, in fact, receive individual compulsory counselling if they are placed under the supervision of a probation officer by order of a court. The supervising probation officers are also social workers and provide counselling to abusers in the normal course of their duties. However, we are currently examining the feasibility and implications of adopting other modes of compulsory counselling.

Removal of Mainland children under the Certificate of Entitlement Scheme

141. We explained the scheme and the reasons for introducing it in paragraph 31 of the initial report, in relation to Article 3. Commentators have reiterated the accusation that such removals constitute cruel and inhuman treatment. This view is unfounded for the reasons given in paragraphs 31 and 32 of the initial report¹².

¹² In the initial report, we discussed this in relation to Article 3. But we consider it more appropriate to address the issue under Article 16 as our interlocutors have alleged cruel and inhuman treatment.

**THE BASIC LAW
OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION OF
THE PEOPLE'S REPUBLIC OF CHINA**

Contents

Decree of the President of the People's Republic of China

The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China

Preamble	6
Chapter I General Principles	7
Chapter II Relationship between the Central Authorities and the Hong Kong Special Administrative Region	9
Chapter III Fundamental Rights and Duties of the Residents.....	13
Chapter IV Political Structure	17
Section 1 - The Chief Executive	17
Section 2 - The Executive Authorities	21
Section 3 - The Legislature	23
Section 4 - The Judiciary	26
Section 5 - District Organizations	29
Section 6 - Public Servants	30
Chapter V Economy	32
Section 1 - Public Finance, Monetary Affairs, Trade, Industry and Commerce	32
Section 2 - Land Leases	35
Section 3 - Shipping	35
Section 4 - Civil Aviation	36
Chapter VI Education, Science, Culture, Sports, Religion, Labour and Social Service	39

Chapter VII	External Affairs	43
Chapter VIII	Interpretation and Amendment of the Basic Law	46
Chapter IX	Supplementary Provisions	48
Annex I	Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region	49
Annex II	Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures	51
Annex III	National Laws to be Applied in the Hong Kong Special Administrative Region	53
	Decision of the National People’s Congress on the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China	54
	Decision of the National People’s Congress on the Establishment of the Hong Kong Special Administrative Region	55
	Decision of the National People’s Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region	56
	Decision of the National People’s Congress Approving the Proposal by the Drafting Committee for the Basic Law of the Hong Kong Special Administrative Region on the Establishment of the Committee for the Basic Law of the Hong Kong Special Administrative Region Under the Standing Committee of the National People’s Congress.....	58
	Appendix : Proposal by the Drafting Committee for the Basic Law of the Hong Kong Special Administrative Region on the Establishment of the Committee for the Basic Law of the Hong Kong Special Administrative Region Under the Standing Committee of the National People’s Congress	59

Decision of the Standing Committee of the National People’s Congress on the English Text of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China.....	60
Decision of the Standing Committee of the National People’s Congress on the Addition to or Deletion from the List of National Laws in Annex III to the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China	61
Decision of the Standing Committee of the National People’s Congress on the Addition to the List of National Laws in Annex III to the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China	62
The Interpretation by the Standing Committee of the National People’s Congress of Articles 22(4) and 24(2)(3) of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China	63
The Interpretation by the Standing Committee of the National People’s Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China	66
Decision of the Standing Committee of the National People’s Congress on Issues relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region in the Year 2007 and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2008	69
Interpretation of Paragraph 2, Article 53 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China by the Standing Committee of the National People’s Congress	73
Decision of the Standing Committee of the National People’s Congress on the Addition to the List of National Laws in Annex III to the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China	75

**Decree of the President of
the People's Republic of China**

No. 26

I hereby promulgate the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, including Annex I, Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region, Annex II, Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures, Annex III, National Laws to be Applied in the Hong Kong Special Administrative Region, and designs of the regional flag and regional emblem of the Hong Kong Special Administrative Region, which was adopted at the Third Session of the Seventh National People's Congress of the People's Republic of China on 4 April 1990 and shall be put into effect as of 1 July 1997.

(Signed)
Yang Shangkun
President of
the People's Republic of China

4 April 1990

**THE BASIC LAW
OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF
THE PEOPLE'S REPUBLIC OF CHINA**

**Adopted on 4 April 1990 by the Seventh National People's Congress of the
People's Republic of China at its Third Session**

Preamble

Hong Kong has been part of the territory of China since ancient times; it was occupied by Britain after the Opium War in 1840. On 19 December 1984, the Chinese and British Governments signed the Joint Declaration on the Question of Hong Kong, affirming that the Government of the People's Republic of China will resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997, thus fulfilling the long-cherished common aspiration of the Chinese people for the recovery of Hong Kong.

Upholding national unity and territorial integrity, maintaining the prosperity and stability of Hong Kong, and taking account of its history and realities, the People's Republic of China has decided that upon China's resumption of the exercise of sovereignty over Hong Kong, a Hong Kong Special Administrative Region will be established in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China, and that under the principle of "one country, two systems", the socialist system and policies will not be practised in Hong Kong. The basic policies of the People's Republic of China regarding Hong Kong have been elaborated by the Chinese Government in the Sino-British Joint Declaration.

In accordance with the Constitution of the People's Republic of China, the National People's Congress hereby enacts the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, prescribing the systems to be practised in the Hong Kong Special Administrative Region, in order to ensure the implementation of the basic policies of the People's Republic of China regarding Hong Kong.

Chapter I : General Principles

Article 1

The Hong Kong Special Administrative Region is an inalienable part of the People's Republic of China.

Article 2

The National People's Congress authorizes the Hong Kong Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law.

Article 3

The executive authorities and legislature of the Hong Kong Special Administrative Region shall be composed of permanent residents of Hong Kong in accordance with the relevant provisions of this Law.

Article 4

The Hong Kong Special Administrative Region shall safeguard the rights and freedoms of the residents of the Hong Kong Special Administrative Region and of other persons in the Region in accordance with law.

Article 5

The socialist system and policies shall not be practised in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years.

Article 6

The Hong Kong Special Administrative Region shall protect the right of private ownership of property in accordance with law.

Article 7

The land and natural resources within the Hong Kong Special Administrative Region shall be State property. The Government of the Hong Kong Special Administrative Region shall be responsible for their management, use and development and for their lease or grant to individuals, legal persons or organizations for use or development. The revenues derived therefrom shall be exclusively at the disposal of the government of the Region.

Article 8

The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region.

Article 9

In addition to the Chinese language, English may also be used as an official language by the executive authorities, legislature and judiciary of the Hong Kong Special Administrative Region.

Article 10

Apart from displaying the national flag and national emblem of the People's Republic of China, the Hong Kong Special Administrative Region may also use a regional flag and regional emblem.

The regional flag of the Hong Kong Special Administrative Region is a red flag with a bauhinia highlighted by five star-tipped stamens.

The regional emblem of the Hong Kong Special Administrative Region is a bauhinia in the centre highlighted by five star-tipped stamens and encircled by the words "Hong Kong Special Administrative Region of the People's Republic of China" in Chinese and "HONG KONG" in English.

Article 11

In accordance with Article 31 of the Constitution of the People's Republic of China, the systems and policies practised in the Hong Kong Special Administrative Region, including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents, the executive, legislative and judicial systems, and the relevant policies, shall be based on the provisions of this Law.

No law enacted by the legislature of the Hong Kong Special Administrative Region shall contravene this Law.

Chapter II: Relationship between the Central Authorities and the Hong Kong Special Administrative Region

Article 12

The Hong Kong Special Administrative Region shall be a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People's Government.

Article 13

The Central People's Government shall be responsible for the foreign affairs relating to the Hong Kong Special Administrative Region.

The Ministry of Foreign Affairs of the People's Republic of China shall establish an office in Hong Kong to deal with foreign affairs.

The Central People's Government authorizes the Hong Kong Special Administrative Region to conduct relevant external affairs on its own in accordance with this Law.

Article 14

The Central People's Government shall be responsible for the defence of the Hong Kong Special Administrative Region.

The Government of the Hong Kong Special Administrative Region shall be responsible for the maintenance of public order in the Region.

Military forces stationed by the Central People's Government in the Hong Kong Special Administrative Region for defence shall not interfere in the local affairs of the Region. The Government of the Hong Kong Special Administrative Region may, when necessary, ask the Central People's Government for assistance from the garrison in the maintenance of public order and in disaster relief.

In addition to abiding by national laws, members of the garrison shall abide by the laws of the Hong Kong Special Administrative Region.

Expenditure for the garrison shall be borne by the Central People's Government.

Article 15

The Central People's Government shall appoint the Chief Executive and the principal officials of the executive authorities of the Hong Kong Special Administrative Region in accordance with the provisions of Chapter IV of this Law.

Article 16

The Hong Kong Special Administrative Region shall be vested with executive power. It shall, on its own, conduct the administrative affairs of the Region in accordance with the relevant provisions of this Law.

Article 17

The Hong Kong Special Administrative Region shall be vested with legislative power.

Laws enacted by the legislature of the Hong Kong Special Administrative Region must be reported to the Standing Committee of the National People's Congress for the record. The reporting for record shall not affect the entry into force of such laws.

If the Standing Committee of the National People's Congress, after consulting the Committee for the Basic Law of the Hong Kong Special Administrative Region under it, considers that any law enacted by the legislature of the Region is not in conformity with the provisions of this Law regarding affairs within the responsibility of the Central Authorities or regarding the relationship between the Central Authorities and the Region, the Standing Committee may return the law in question but shall not amend it. Any law returned by the Standing Committee of the National People's Congress shall immediately be invalidated. This invalidation shall not have retroactive effect, unless otherwise provided for in the laws of the Region.

Article 18

The laws in force in the Hong Kong Special Administrative Region shall be this Law, the laws previously in force in Hong Kong as provided for in Article 8 of this Law, and the laws enacted by the legislature of the Region.

National laws shall not be applied in the Hong Kong Special Administrative Region except for those listed in Annex III to this Law. The laws listed therein shall be applied locally by way of promulgation or legislation by the Region.

The Standing Committee of the National People's Congress may add to or delete from the list of laws in Annex III after consulting its Committee for the Basic Law of the Hong Kong Special Administrative Region and the government of the Region. Laws listed in Annex III to this Law shall be confined to those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the Region as specified by this Law.

In the event that the Standing Committee of the National People's Congress decides to declare a state of war or, by reason of turmoil within the Hong Kong Special Administrative Region which endangers national unity or security and is beyond the control of the government of the Region, decides that the Region is in a state of emergency, the Central People's Government may issue an order applying the relevant national laws in the Region.

Article 19

The Hong Kong Special Administrative Region shall be vested with independent judicial power, including that of final adjudication.

The courts of the Hong Kong Special Administrative Region shall have jurisdiction over all cases in the Region, except that the restrictions on their jurisdiction imposed by the legal system and principles previously in force in Hong Kong shall be maintained.

The courts of the Hong Kong Special Administrative Region shall have no jurisdiction over acts of state such as defence and foreign affairs. The courts of the Region shall obtain a certificate from the Chief Executive on questions of fact concerning acts of state such as defence and foreign affairs whenever such questions arise in the adjudication of cases. This certificate shall be binding on the courts. Before issuing such a certificate, the Chief Executive shall obtain a certifying document from the Central People's Government.

Article 20

The Hong Kong Special Administrative Region may enjoy other powers granted to it by the National People's Congress, the Standing Committee of the National People's Congress or the Central People's Government.

Article 21

Chinese citizens who are residents of the Hong Kong Special Administrative Region shall be entitled to participate in the management of state affairs according to law.

In accordance with the assigned number of seats and the selection method specified by the National People's Congress, the Chinese citizens among the residents of the Hong Kong Special Administrative Region shall locally elect deputies of the Region to the National People's Congress to participate in the work of the highest organ of state power.

Article 22

No department of the Central People's Government and no province, autonomous region, or municipality directly under the Central Government may interfere in the affairs which the Hong Kong Special Administrative Region administers on its own in accordance with this Law.

If there is a need for departments of the Central Government, or for provinces, autonomous regions, or municipalities directly under the Central Government to set up offices in the Hong Kong Special Administrative Region, they must obtain the consent of the government of the Region and the approval of the Central People's Government.

All offices set up in the Hong Kong Special Administrative Region by departments of the Central Government, or by provinces, autonomous regions, or municipalities directly under the Central Government, and the personnel of these offices shall abide by the laws of the Region.

For entry into the Hong Kong Special Administrative Region, people from other parts of China must apply for approval. Among them, the number of persons who enter the Region for the purpose of settlement shall be determined by the competent authorities of the Central People's Government after consulting the government of the Region.

The Hong Kong Special Administrative Region may establish an office in Beijing.

Article 23

The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.

Chapter III : Fundamental Rights and Duties of the Residents

Article 24

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 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;
- (5) Persons under 21 years of age born in Hong Kong of those residents listed in category (4) before or after the establishment of the Hong Kong Special Administrative Region; and
- (6) Persons 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.

Article 25

All Hong Kong residents shall be equal before the law.

Article 26

Permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election in accordance with law.

Article 27

Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike.

Article 28

The freedom of the person of Hong Kong residents shall be inviolable.

No Hong Kong resident shall be subjected to arbitrary or unlawful arrest, detention or imprisonment. Arbitrary or unlawful search of the body of any resident or deprivation or restriction of the freedom of the person shall be prohibited. Torture of any resident or arbitrary or unlawful deprivation of the life of any resident shall be prohibited.

Article 29

The homes and other premises of Hong Kong residents shall be inviolable. Arbitrary or unlawful search of, or intrusion into, a resident's home or other premises shall be prohibited.

Article 30

The freedom and privacy of communication of Hong Kong residents shall be protected by law. No department or individual may, on any grounds, infringe upon the freedom and privacy of communication of residents except that the relevant authorities may inspect communication in accordance with legal procedures to meet the needs of public security or of investigation into criminal offences.

Article 31

Hong Kong residents shall have freedom of movement within the Hong Kong Special Administrative Region and freedom of emigration to other countries and regions. They shall have freedom to travel and to enter or leave the Region. Unless restrained by law, holders of valid travel documents shall be free to leave the Region without special authorization.

Article 32

Hong Kong residents shall have freedom of conscience.

Hong Kong residents shall have freedom of religious belief and freedom to preach and to conduct and participate in religious activities in public.

Article 33

Hong Kong residents shall have freedom of choice of occupation.

Article 34

Hong Kong residents shall have freedom to engage in academic research, literary and artistic creation, and other cultural activities.

Article 35

Hong Kong residents shall have the right to confidential legal advice, access to the courts, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies.

Hong Kong residents shall have the right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel.

Articles 36

Hong Kong residents shall have the right to social welfare in accordance with law. The welfare benefits and retirement security of the labour force shall be protected by law.

Article 37

The freedom of marriage of Hong Kong residents and their right to raise a family freely shall be protected by law.

Article 38

Hong Kong residents shall enjoy the other rights and freedoms safeguarded by the laws of the Hong Kong Special Administrative Region.

Article 39

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

The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.

Article 40

The lawful traditional rights and interests of the indigenous inhabitants of the "New Territories" shall be protected by the Hong Kong Special Administrative Region.

Article 41

Persons in the Hong Kong Special Administrative Region other than Hong Kong residents shall, in accordance with law, enjoy the rights and freedoms of Hong Kong residents prescribed in this Chapter.

Article 42

Hong Kong residents and other persons in Hong Kong shall have the obligation to abide by the laws in force in the Hong Kong Special Administrative Region.

Chapter IV : Political Structure

Section 1: The Chief Executive

Article 43

The Chief Executive of the Hong Kong Special Administrative Region shall be the head of the Hong Kong Special Administrative Region and shall represent the Region.

The Chief Executive of the Hong Kong Special Administrative Region shall be accountable to the Central People's Government and the Hong Kong Special Administrative Region in accordance with the provisions of this law.

Article 44

The Chief Executive of the Hong Kong Special Administrative Region shall be a Chinese citizen of not less than 40 years of age who is a permanent resident of the Region with no right of abode in any foreign country and has ordinarily resided in Hong Kong for a continuous period of not less than 20 years.

Article 45

The Chief Executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government.

The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

The specific method for selecting the Chief Executive is prescribed in Annex I "Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region".

Article 46

The term of office of the Chief Executive of the Hong Kong Special Administrative Region shall be five years. He or she may serve for not more than two consecutive terms.

Article 47

The Chief Executive of the Hong Kong Special Administrative Region must be a person of integrity, dedicated to his or her duties.

The Chief Executive, on assuming office, shall declare his or her assets to the Chief Justice of the Court of Final Appeal of the Hong Kong Special Administrative Region. This declaration shall be put on record.

Article 48

The Chief Executive of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

- (1) To lead the government of the Region;
- (2) To be responsible for the implementation of this Law and other laws which, in accordance with this Law, apply in the Hong Kong Special Administrative Region;
- (3) To sign bills passed by the Legislative Council and to promulgate laws;

To sign budgets passed by the Legislative Council and report the budgets and final accounts to the Central People's Government for the record;
- (4) To decide on government policies and to issue executive orders;
- (5) To nominate and to report to the Central People's Government for appointment the following principal officials: Secretaries and Deputy Secretaries of Departments, Directors of Bureaux, Commissioner Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration and Commissioner of Customs and Excise; and to recommend to the Central People's Government the removal of the above-mentioned officials;
- (6) To appoint or remove judges of the courts at all levels in accordance with legal procedures;
- (7) To appoint or remove holders of public office in accordance with legal procedures;
- (8) To implement the directives issued by the Central People's Government in respect of the relevant matters provided for in this Law;

- (9) To conduct, on behalf of the Government of the Hong Kong Special Administrative Region, external affairs and other affairs as authorized by the Central Authorities;
- (10) To approve the introduction of motions regarding revenues or expenditure to the Legislative Council;
- (11) To decide, in the light of security and vital public interests, whether government officials or other personnel in charge of government affairs should testify or give evidence before the Legislative Council or its committees;
- (12) To pardon persons convicted of criminal offences or commute their penalties; and
- (13) To handle petitions and complaints.

Article 49

If the Chief Executive of the Hong Kong Special Administrative Region considers that a bill passed by the Legislative Council is not compatible with the overall interests of the Region, he or she may return it to the Legislative Council within three months for reconsideration. If the Legislative Council passes the original bill again by not less than a two-thirds majority of all the members, the Chief Executive must sign and promulgate it within one month, or act in accordance with the provisions of Article 50 of this Law.

Article 50

If the Chief Executive of the Hong Kong Special Administrative Region refuses to sign a bill passed the second time by the Legislative Council, or the Legislative Council refuses to pass a budget or any other important bill introduced by the government, and if consensus still cannot be reached after consultations, the Chief Executive may dissolve the Legislative Council.

The Chief Executive must consult the Executive Council before dissolving the Legislative Council. The Chief Executive may dissolve the Legislative Council only once in each term of his or her office.

Article 51

If the Legislative Council of the Hong Kong Special Administrative Region refuses to pass the budget introduced by the government, the Chief Executive may apply to the Legislative Council for provisional appropriations. If appropriation of public funds cannot be approved because the Legislative Council has already been

dissolved, the Chief Executive may, prior to the election of the new Legislative Council, approve provisional short-term appropriations according to the level of expenditure of the previous fiscal year.

Article 52

The Chief Executive of the Hong Kong Special Administrative Region must resign under any of the following circumstances:

- (1) When he or she loses the ability to discharge his or her duties as a result of serious illness or other reasons;
- (2) When, after the Legislative Council is dissolved because he or she twice refuses to sign a bill passed by it, the new Legislative Council again passes by a two-thirds majority of all the members the original bill in dispute, but he or she still refuses to sign it; and
- (3) When, after the Legislative Council is dissolved because it refuses to pass a budget or any other important bill, the new Legislative Council still refuses to pass the original bill in dispute.

Article 53

If the Chief Executive of the Hong Kong Special Administrative Region is not able to discharge his or her duties for a short period, such duties shall temporarily be assumed by the Administrative Secretary, Financial Secretary or Secretary of Justice in this order of precedence.

In the event that the office of Chief Executive becomes vacant, a new Chief Executive shall be selected within six months in accordance with the provisions of Article 45 of this Law. During the period of vacancy, his or her duties shall be assumed according to the provisions of the preceding paragraph.

Article 54

The Executive Council of the Hong Kong Special Administrative Region shall be an organ for assisting the Chief Executive in policy-making.

Article 55

Members of the Executive Council of the Hong Kong Special Administrative Region shall be appointed by the Chief Executive from among the principal officials of the executive authorities, members of the Legislative Council and public figures. Their appointment or removal shall be decided by the Chief Executive. The term of office of members of the Executive Council shall not extend beyond the expiry of the term of office of the Chief Executive who appoints them.

Members of the Executive Council of the Hong Kong Special Administrative Region shall be Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country.

The Chief Executive may, as he or she deems necessary, invite other persons concerned to sit in on meetings of the Council.

Article 56

The Executive Council of the Hong Kong Special Administrative Region shall be presided over by the Chief Executive.

Except for the appointment, removal and disciplining of officials and the adoption of measures in emergencies, the Chief Executive shall consult the Executive Council before making important policy decisions, introducing bills to the Legislative Council, making subordinate legislation, or dissolving the Legislative Council.

If the Chief Executive does not accept a majority opinion of the Executive Council, he or she shall put the specific reasons on record.

Article 57

A Commission Against Corruption shall be established in the Hong Kong Special Administrative Region. It shall function independently and be accountable to the Chief Executive.

Article 58

A Commission of Audit shall be established in the Hong Kong Special Administrative Region. It shall function independently and be accountable to the Chief Executive.

Section 2: The Executive Authorities

Article 59

The Government of the Hong Kong Special Administrative Region shall be the executive authorities of the Region.

Article 60

The head of the Government of the Hong Kong Special Administrative Region shall be the Chief Executive of the Region.

A Department of Administration, a Department of Finance, a Department of Justice, and various bureaux, divisions and commissions shall be established in the Government of the Hong Kong Special Administrative Region.

Article 61

The principal officials of the Hong Kong Special Administrative Region shall be Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country and have ordinarily resided in Hong Kong for a continuous period of not less than 15 years.

Article 62

The Government of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

- (1) To formulate and implement policies;
- (2) To conduct administrative affairs;
- (3) To conduct external affairs as authorised by the Central People's Government under this Law;
- (4) To draw up and introduce budgets and final accounts;
- (5) To draft and introduce bills, motions and subordinate legislation; and
- (6) To designate officials to sit in on the meetings of the Legislative Council and to speak on behalf of the government.

Article 63

The Department of Justice of the Hong Kong Special Administrative Region shall control criminal prosecutions, free from any interference.

Article 64

The Government of the Hong Kong Special Administrative Region must abide by the law and be accountable to the Legislative Council of the Region: it shall implement laws passed by the Council and already in force; it shall present regular policy addresses to the Council; it shall answer questions raised by members of the Council; and it shall obtain approval from the Council for taxation and public expenditure.

Article 65

The previous system of establishing advisory bodies by the executive authorities shall be maintained.

Section 3 : The Legislature

Article 66

The Legislative Council of the Hong Kong Special Administrative Region shall be the legislature of the Region.

Article 67

The Legislative Council of the Hong Kong Special Administrative Region shall be composed of Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country. However, permanent residents of the Region who are not of Chinese nationality or who have the right of abode in foreign countries may also be elected members of the Legislative Council of the Region, provided that the proportion of such members does not exceed 20 percent of the total membership of the Council.

Article 68

The Legislative Council of the Hong Kong Special Administrative Region shall be constituted by election.

The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage.

The specific method for forming the Legislative Council and its procedures for voting on bills and motions are prescribed in Annex II: “Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures”.

Article 69

The term of office of the Legislative Council of the Hong Kong Special Administrative Region shall be four years, except the first term which shall be two years.

Article 70

If the Legislative Council of the Hong Kong Special Administrative Region is dissolved by the Chief Executive in accordance with the provisions of this Law, it

must, within three months, be reconstituted by election in accordance with Article 68 of this Law.

Article 71

The President of the Legislative Council of the Hong Kong Special Administrative Region shall be elected by and from among the members of the Legislative Council.

The President of the Legislative Council of the Hong Kong Special Administrative Region shall be a Chinese citizen of not less than 40 years of age, who is a permanent resident of the Region with no right of abode in any foreign country and has ordinarily resided in Hong Kong for a continuous period of not less than 20 years.

Article 72

The President of the Legislative Council of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

- (1) To preside over meetings;
- (2) To decide on the agenda, giving priority to government bills for inclusion in the agenda;
- (3) To decide on the time of meetings;
- (4) To call special sessions during the recess;
- (5) To call emergency sessions on the request of the Chief Executive; and
- (6) To exercise other powers and functions as prescribed in the rules of procedure of the Legislative Council.

Article 73

The Legislative Council of the Hong Kong Special Administrative Region shall exercise the following powers and functions:

- (1) To enact, amend or repeal laws in accordance with the provisions of this Law and legal procedures;
- (2) To examine and approve budgets introduced by the government;
- (3) To approve taxation and public expenditure;
- (4) To receive and debate the policy addresses of the Chief Executive;
- (5) To raise questions on the work of the government;
- (6) To debate any issue concerning public interests;
- (7) To endorse the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court;
- (8) To receive and handle complaints from Hong Kong residents;

- (9) If a motion initiated jointly by one-fourth of all the members of the Legislative Council charges the Chief Executive with serious breach of law or dereliction of duty and if he or she refuses to resign, the Council may, after passing a motion for investigation, give a mandate to the Chief Justice of the Court of Final Appeal to form and chair an independent investigation committee. The committee shall be responsible for carrying out the investigation and reporting its findings to the Council. If the committee considers the evidence sufficient to substantiate such charges, the Council may pass a motion of impeachment by a two-thirds majority of all its members and report it to the Central People's Government for decision; and
- (10) To summon, as required when exercising the above-mentioned powers and functions, persons concerned to testify or give evidence.

Article 74

Members of the Legislative Council of the Hong Kong Special Administrative Region may introduce bills in accordance with the provisions of this Law and legal procedures. Bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by members of the Council. The written consent of the Chief Executive shall be required before bills relating to government polices are introduced.

Article 75

The quorum for the meeting of the Legislative Council of the Hong Kong Special Administrative Region shall be not less than one half of all its members.

The rules of procedure of the Legislative Council shall be made by the Council on its own, provided that they do not contravene this Law.

Article 76

A bill passed by the Legislative Council of the Hong Kong Special Administrative Region may take effect only after it is signed and promulgated by the Chief Executive.

Article 77

Members of the Legislative Council of the Hong Kong Special Administrative Region shall be immune from legal action in respect of their statements at meetings of the Council.

Article 78

Members of the Legislative Council of the Hong Kong Special Administrative Region shall not be subjected to arrest when attending or on their way to a meeting of the Council.

Article 79

The President of the Legislative Council of the Hong Kong Special Administrative Region shall declare that a member of the Council is no longer qualified for the office under any of the following circumstances:

- (1) When he or she loses the ability to discharge his or her duties as a result of serious illness or other reasons;
- (2) When he or she, with no valid reason, is absent from meetings for three consecutive months without the consent of the President of the Legislative Council;
- (3) When he or she loses or renounces his or her status as a permanent resident of the Region;
- (4) When he or she accepts a government appointment and becomes a public servant;
- (5) When he or she is bankrupt or fails to comply with a court order to repay debts;
- (6) When he or she is convicted and sentenced to imprisonment for one month or more for a criminal offence committed within or outside the Region and is relieved of his or her duties by a motion passed by two-thirds of the members of the Legislative Council present; and
- (7) When he or she is censured for misbehaviour or breach of oath by a vote of two-thirds of the members of the Legislative Council present.

Section 4: The Judiciary

Article 80

The courts of the Hong Kong Special Administrative Region at all levels shall be the judiciary of the Region, exercising the judicial power of the Region.

Article 81

The Court of Final Appeal, the High Court, district courts, magistrates' courts and other special courts shall be established in the Hong Kong Special Administrative Region. The High Court shall comprise the Court of Appeal and the Court of First Instance.

The judicial system previously practised in Hong Kong shall be maintained except for those changes consequent upon the establishment of the Court of Final Appeal of the Hong Kong Special Administrative Region.

Article 82

The power of final adjudication of the Hong Kong Special Administrative Region shall be vested in the Court of Final Appeal of the Region, which may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal.

Article 83

The structure, powers and functions of the courts of the Hong Kong Special Administrative Region at all levels shall be prescribed by law.

Article 84

The courts of the Hong Kong Special Administrative Region shall adjudicate cases in accordance with the laws applicable in the Region as prescribed in Article 18 of this Law and may refer to precedents of other common law jurisdictions.

Article 85

The courts of the Hong Kong Special Administrative Region shall exercise judicial power independently, free from any interference. Members of the judiciary shall be immune from legal action in the performance of their judicial functions.

Article 86

The principle of trial by jury previously practised in Hong Kong shall be maintained.

Article 87

In criminal or civil proceedings in the Hong Kong Special Administrative Region, the principles previously applied in Hong Kong and the rights previously enjoyed by parties to proceedings shall be maintained.

Anyone who is lawfully arrested shall have the right to a fair trial by the judicial organs without delay and shall be presumed innocent until convicted by the judicial organs.

Article 88

Judges of the courts of the Hong Kong Special Administrative Region shall be appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors.

Article 89

A judge of court of the Hong Kong Special Administrative Region may only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive on the recommendation of a tribunal appointed by the Chief Justice of the Court of Final Appeal and consisting of not fewer than three local judges.

The Chief Justice of the Court of Final Appeal of the Hong Kong Special Administrative Region may be investigated only for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by the Chief Executive and consisting of not fewer than five local judges and may be removed by the Chief Executive on the recommendation of the tribunal and in accordance with the procedures prescribed in this Law.

Article 90

The Chief Justice of the Court of Final Appeal and the Chief Judge of the High Court of the Hong Kong Special Administrative Region shall be Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country.

In the case of the appointment or removal of judges of the Court of Final Appeal and the Chief Judge of the High Court of the Hong Kong Special Administrative Region, the Chief Executive shall, in addition to following the procedures prescribed in Article 88 and 89 of this Law, obtain the endorsement of the Legislative Council and report such appointment or removal to the Standing Committee of the National People's Congress for the record.

Article 91

The Hong Kong Special Administrative Region shall maintain the previous system of appointment and removal of members of the judiciary other than judges.

Article 92

Judges and other members of the judiciary of the Hong Kong Special Administrative Region shall be chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions.

Article 93

Judges and other members of the judiciary serving in Hong Kong before the establishment of the Hong Kong Special Administrative Region may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before.

The Government of the Hong Kong Special Administrative Region shall pay to judges and other members of the judiciary who retire or leave the service in compliance with regulations, including those who have retired or left the service before the establishment of the Hong Kong Special Administrative Region, or to their dependants, all pensions, gratuities, allowances and benefits due to them on terms no less favourable than before, irrespective of their nationality or place of residence.

Article 94

On the basis of the system previously operating in Hong Kong, the Government of the Hong Kong Special Administrative Region may make provisions for local lawyers and lawyers from outside Hong Kong to work and practise in the Region.

Article 95

The Hong Kong Special Administrative Region may, through consultations and in accordance with law, maintain juridical relations with the judicial organs of other parts of the country, and they may render assistance to each other.

Article 96

With the assistance or authorization of the Central People's Government, the Government of the Hong Kong Special Administrative Region may make appropriate arrangements with foreign states for reciprocal juridical assistance.

Section 5: District Organizations

Article 97

District organizations which are not organs of political power may be established in the Hong Kong Special Administrative Region, to be consulted by the government of the Region on district administration and other affairs, or to be responsible for providing services in such fields as culture, recreation and environmental sanitation.

Article 98

The powers and functions of the district organizations and the method for their formation shall be prescribed by law.

Section 6: Public Servants

Article 99

Public servants serving in all government departments of the Hong Kong Special Administrative Region must be permanent residents of the Region, except where otherwise provided for in Article 101 of this Law regarding public servants of foreign nationalities and except for those below a certain rank as prescribed by law.

Public servants must be dedicated to their duties and be responsible to the Government of the Hong Kong Special Administrative Region.

Article 100

Public servants serving in all Hong Kong government departments, including the police department, before the establishment of the Hong Kong Special Administrative Region, may all remain in employment and retain their seniority with pay, allowances, benefits and conditions of service no less favourable than before.

Article 101

The Government of the Hong Kong Special Administrative Region may employ British and other foreign nationals previously serving in the public service in Hong Kong, or those holding permanent identity cards of the Region, to serve as public servants in government departments at all levels, but only Chinese citizens among permanent residents of the Region with no right of abode in any foreign country may fill the following posts: the Secretaries and Deputy Secretaries of Departments, Directors of Bureaux, Commissioner Against Corruption, Director of Audit, Commissioner of Police, Director of Immigration and Commissioner of Customs and Excise.

The Government of the Hong Kong Special Administrative Region may also employ British and other foreign nationals as advisers to government departments and, when required, may recruit qualified candidates from outside the Region to fill professional and technical posts in government departments. These foreign nationals shall be employed only in their individual capacities and shall be responsible to the government of the Region.

Article 102

The Government of the Hong Kong Special Administrative Region shall pay to public servants who retire or who leave the service in compliance with regulations, including those who have retired or who have left the service in compliance with regulations before the establishment of the Hong Kong Special

Administrative Region, or to their dependants, all pensions, gratuities, allowances and benefits due to them on terms no less favourable than before, irrespective of their nationality or place of residence.

Article 103

The appointment and promotion of public servants shall be on the basis of their qualifications, experience and ability. Hong Kong's previous system of recruitment, employment, assessment, discipline, training and management for the public service, including special bodies for their appointment, pay and conditions of service, shall be maintained, except for any provisions for privileged treatment of foreign nationals.

Article 104

When assuming office, the Chief Executive, principal officials, members of the Executive Council and of the Legislative Council, judges of the courts at all levels and other members of the judiciary in the Hong Kong Special Administrative Region must, in accordance with law, swear to uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China.

Chapter V: Economy

Section 1: Public Finance, Monetary Affairs, Trade, Industry and Commerce

Article 105

The Hong Kong Special Administrative Region shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property.

Such compensation shall correspond to the real value of the property concerned at the time and shall be freely convertible and paid without undue delay.

The ownership of enterprises and the investments from outside the Region shall be protected by law.

Article 106

The Hong Kong Special Administrative Region shall have independent finances.

The Hong Kong Special Administrative Region shall use its financial revenues exclusively for its own purposes, and they shall not be handed over to the Central People's Government.

The Central People's Government shall not levy taxes in the Hong Kong Special Administrative Region.

Article 107

The Hong Kong Special Administrative Region shall follow the principle of keeping the expenditure within the limits of revenues in drawing up its budget, and strive to achieve a fiscal balance, avoid deficits and keep the budget commensurate with the growth rate of its gross domestic product.

Article 108

The Hong Kong Special Administrative Region shall practise an independent taxation system.

The Hong Kong Special Administrative Region shall, taking the low tax policy previously pursued in Hong Kong as reference, enact laws on its own concerning types of taxes, tax rates, tax reductions, allowances and exemptions, and other matters of taxation.

Article 109

The Government of the Hong Kong Special Administrative Region shall provide an appropriate economic and legal environment for the maintenance of the status of Hong Kong as an international financial centre.

Article 110

The monetary and financial systems of the Hong Kong Special Administrative Region shall be prescribed by law.

The Government of the Hong Kong Special Administrative Region shall, on its own, formulate monetary and financial policies, safeguard the free operation of financial business and financial markets, and regulate and supervise them in accordance with law.

Article 111

The Hong Kong dollar, as the legal tender in the Hong Kong Special Administrative Region, shall continue to circulate.

The authority to issue Hong Kong currency shall be vested in the Government of the Hong Kong Special Administrative Region. The issue of Hong Kong currency must be backed by a 100 percent reserve fund. The system regarding the issue of Hong Kong currency and the reserve fund system shall be prescribed by law.

The Government of the Hong Kong Special Administrative Region may authorize designated banks to issue or continue to issue Hong Kong currency under statutory authority, after satisfying itself that any issue of currency will be soundly based and that the arrangements for such issue are consistent with the object of maintaining the stability of the currency.

Article 112

No foreign exchange control policies shall be applied in the Hong Kong Special Administrative Region. The Hong Kong dollar shall be freely convertible. Markets for foreign exchange, gold, securities, futures and the like shall continue.

The Government of the Hong Kong Special Administrative Region shall safeguard the free flow of capital within, into and out of the Region.

Article 113

The Exchange Fund of the Hong Kong Special Administrative Region shall be managed and controlled by the government of the Region, primarily for regulating the exchange value of the Hong Kong dollar.

Article 114

The Hong Kong Special Administrative Region shall maintain the status of a free port and shall not impose any tariff unless otherwise prescribed by law.

Article 115

The Hong Kong Special Administrative Region shall pursue the policy of free trade and safeguard the free movement of goods, intangible assets and capital.

Article 116

The Hong Kong Special Administrative Region shall be a separate customs territory.

The Hong Kong Special Administrative Region may, using the name “Hong Kong, China”, participate in relevant international organizations and international trade agreements (including preferential trade arrangements), such as the General Agreement on Tariffs and Trade and arrangements regarding international trade in textiles.

Export quotas, tariff preferences and other similar arrangements, which are obtained or made by the Hong Kong Special Administrative Region or which were obtained or made and remain valid, shall be enjoyed exclusively by the Region.

Article 117

The Hong Kong Special Administrative Region may issue its own certificates of origin for products in accordance with prevailing rules of origin.

Article 118

The Government of the Hong Kong Special Administrative Region shall provide an economic and legal environment for encouraging investments, technological progress and the development of new industries.

Article 119

The Government of the Hong Kong Special Administrative Region shall formulate appropriate policies to promote and co-ordinate the development of various trades such as manufacturing, commerce, tourism, real estate, transport, public utilities, services, agriculture and fisheries, and pay regard to the protection of the environment.

Section 2: Land Leases

Article 120

All leases of land granted, decided upon or renewed before the establishment of the Hong Kong Special Administrative Region which extend beyond 30 June 1997, and all rights in relation to such leases, shall continue to be recognized and protected under the law of the Region.

Article 121

As regards all leases of land granted or renewed where the original leases contain no right of renewal, during the period from 27 May 1985 to 30 June 1997, which extend beyond 30 June 1997 and expire not later than 30 June 2047, the lessee is not required to pay an additional premium as from 1 July 1997, but an annual rent equivalent to 3 per cent of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter, shall be charged.

Article 122

In the case of old schedule lots, village lots, small houses and similar rural holdings, where the property was on 30 June 1984 held by, or , in the case of small houses granted after that date, where the property is granted to, a lessee descended through the male line from a person who was in 1898 a resident of an established village in Hong Kong, the previous rent shall remain unchanged so long as the property is held by that lessee or by one of his lawful successors in the male line.

Articles 123

Where leases of land without a right of renewal expire after the establishment of the Hong Kong Special Administrative Region, they shall be dealt with in accordance with laws and policies formulated by the Region on its own.

Section 3: Shipping

Article 124

The Hong Kong Special Administrative Region shall maintain Hong Kong's previous systems of shipping management and shipping regulation, including the system for regulating conditions of seamen.

The Government of the Hong Kong Special Administrative Region shall, on its own, define its specific functions and responsibilities in respect of shipping.

Article 125

The Hong Kong Special Administrative Region shall be authorized by the Central People's Government to continue to maintain a shipping register and issue related certificates under its legislation, using the name "Hong Kong, China".

Article 126

With the exception of foreign warships, access for which requires the special permission of the Central People's Government, ships shall enjoy access to the ports of the Hong Kong Special Administrative Region in accordance with the laws of the Region.

Article 127

Private shipping businesses and shipping-related businesses and private container terminals in the Hong Kong Special Administrative Region may continue to operate freely.

Section 4: Civil Aviation

Article 128

The Government of the Hong Kong Special Administrative Region shall provide conditions and take measures for the maintenance of the status of Hong Kong as a centre of international and regional aviation.

Article 129

The Hong Kong Special Administrative Region shall continue the previous system of civil aviation management in Hong Kong and keep its own aircraft register in accordance with provisions laid down by the Central People's Government concerning nationality marks and registration marks of aircraft.

Access of foreign state aircraft to the Hong Kong Special Administrative Region shall require the special permission of the Central People's Government.

Article 130

The Hong Kong Special Administrative Region shall be responsible on its own for matters of routine business and technical management of civil aviation, including the management of airports, the provision of air traffic services within the flight information region of the Hong Kong Special Administrative Region, and the discharge of other responsibilities allocated to it under the regional air navigation procedures of the International Civil Aviation Organization.

Article 131

The Central People's Government shall, in consultation with the Government of the Hong Kong Special Administrative Region, make arrangements providing air services between the Region and other parts of the People's Republic of China for airlines incorporated in the Hong Kong Special Administrative Region and having their principal place of business in Hong Kong and other airlines of the People's Republic of China.

Article 132

All air service agreements providing air services between other parts of the People's Republic of China and other states and regions with stops at the Hong Kong Special Administrative Region and air services between the Hong Kong Special Administrative Region and other states and regions with stops at other parts of the People's Republic of China shall be concluded by the Central People's Government.

In concluding the air service agreements referred to in the first paragraph of this Article, the Central People's Government shall take account of the special conditions and economic interests of the Hong Kong Special Administrative Region and consult the government of the Region.

Representatives of the Government of the Hong Kong Special Administrative Region may, as members of the delegations of the Government of the People's Republic of China, participate in air service consultations conducted by the Central People's Government with foreign governments concerning arrangements for such services referred to in the first paragraph of this Article.

Article 133

Acting under specific authorizations from the Central People's Government, the Government of the Hong Kong Special Administrative Region may:

- (1) renew or amend air service agreements and arrangements previously in force;
- (2) negotiate and conclude new air service agreements providing routes for airlines incorporated in the Hong Kong Special Administrative Region and having their principal place of business in Hong Kong and providing rights for over-flights and technical stops; and
- (3) negotiate and conclude provisional arrangements with foreign states or regions with which no air service agreements have been concluded.

All scheduled air services to, from or through Hong Kong, which do not operate to, from or through the mainland of China shall be regulated by the air service agreements or provisional arrangements referred to in this Article.

Article 134

The Central People's Government shall give the Government of the Hong Kong Special Administrative Region the authority to :

- (1) negotiate and conclude with other authorities all arrangements concerning the implementation of the air service agreements and provisional arrangements referred to in Article 133 of this Law;
- (2) issue licences to airlines incorporated in the Hong Kong Special Administrative Region and having their principal place of business in Hong Kong;
- (3) designate such airlines under the air service agreements and provisional arrangements referred to in Article 133 of this Law; and
- (4) issue permits to foreign airlines for services other than those to, from or through the mainland of China.

Article 135

Airlines incorporated and having their principal place of business in Hong Kong and business related to civil aviation functioning there prior to the establishment of the Hong Kong Special Administrative Region may continue to operate.

Chapter VI : Education, Science, Culture, Sports, Religion, Labour and Social Services

Article 136

On the basis of the previous educational system, the Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on the development and improvement of education, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the system of academic awards and the recognition of educational qualifications.

Community organizations and individuals may, in accordance with law, run educational undertakings of various kinds in the Hong Kong Special Administrative Region.

Article 137

Educational institutions of all kinds may retain their autonomy and enjoy academic freedom. They may continue to recruit staff and use teaching materials from outside the Hong Kong Special Administrative Region. Schools run by religious organisations may continue to provide religious education, including courses in religion.

Students shall enjoy freedom of choice of educational institutions and freedom to pursue their education outside the Hong Kong Special Administrative Region.

Article 138

The Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies to develop Western and traditional Chinese medicine and to improve medical and health services. Community organizations and individuals may provide various medical and health services in accordance with law.

Article 139

The Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on science and technology and protect by law achievements in scientific and technological research, patents, discoveries and inventions.

The Government of the Hong Kong Special Administrative Region shall, on its own, decide on the scientific and technological standards and specifications applicable in Hong Kong.

Article 140

The Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on culture and protect by law the achievements and the lawful rights and interests of authors in their literary and artistic creation.

Article 141

The Government of the Hong Kong Special Administrative Region shall not restrict the freedom of religious belief, interfere in the internal affairs of religious organizations or restrict religious activities which do not contravene the laws of the Region.

Religious organizations shall, in accordance with law, enjoy the rights to acquire, use, dispose of and inherit property and the right to receive financial assistance. Their previous property rights and interests shall be maintained and protected.

Religious organizations may, according to their previous practice, continue to run seminaries and other schools, hospitals and welfare institutions and to provide other social services.

Religious organizations and believers in the Hong Kong Special Administrative Region may maintain and develop their relations with religious organizations and believers elsewhere.

Article 142

The Government of the Hong Kong Special Administrative Region shall, on the basis of maintaining the previous systems concerning the professions, formulate provisions on its own for assessing the qualifications for practice in the various professions.

Persons with professional qualifications or qualifications for professional practice obtained prior to the establishment of the Hong Kong Special Administrative Region may retain their previous qualifications in accordance with the relevant regulations and codes of practice.

The Government of the Hong Kong Special Administrative Region shall continue to recognize the professions and the professional organizations recognized prior to the establishment of the Region, and these organizations may, on their own, assess and confer professional qualifications.

The Government of the Hong Kong Special Administrative Region may, as required by developments in society and in consultation with the parties concerned, recognize new professions and professional organizations.

Article 143

The Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on sports. Non-governmental sports organizations may continue to exist and develop in accordance with law.

Article 144

The Government of the Hong Kong Special Administrative Region shall maintain the policy previously practised in Hong Kong in respect of subventions for non-governmental organizations in fields such as education, medicine and health, culture, art, recreation, sports, social welfare and social work. Staff members previously serving in subvented organizations in Hong Kong may remain in their employment in accordance with the previous system.

Article 145

On the basis of the previous social welfare system, the Government of the Hong Kong Special Administrative Region shall, on its own, formulate policies on the development and improvement of this system in the light of the economic conditions and social needs.

Article 146

Voluntary organizations providing social services in the Hong Kong Special Administrative Region may, on their own, decide their forms of service, provided that the law is not contravened.

Article 147

The Hong Kong Special Administrative Region shall on its own formulate laws and policies relating to labour.

Article 148

The relationship between non-governmental organizations in fields such as education, science, technology, culture, art, sports, the professions, medicine and health, labour, social welfare and social work as well as religious organizations in the Hong Kong Special Administrative Region and their counterparts on the mainland shall be based on the principles of non-subordination, non-interference and mutual respect.

Article 149

Non-governmental organizations in fields such as education, science, technology, culture, art, sports, the professions, medicine and health, labour, social welfare and social work as well as religious organizations in the Hong Kong Special Administrative Region may maintain and develop relations with their counterparts in foreign countries and regions and with relevant international organizations. They may, as required, use the name “Hong Kong, China” in the relevant activities.

Chapter VII : External Affairs

Article 150

Representatives of the Government of the Hong Kong Special Administrative Region may, as members of delegations of the Government of the People's Republic of China, participate in negotiations at the diplomatic level directly affecting the Region conducted by the Central People's Government.

Article 151

The Hong Kong Special Administrative Region may on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with foreign states and regions and relevant international organizations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields.

Article 152

Representatives of the Government of the Hong Kong Special Administrative Region may, as members of delegations of the People's Republic of China, participate in international organizations or conferences in appropriate fields limited to states and affecting the Region, or may attend in such other capacity as may be permitted by the Central People's Government and the international organization or conference concerned, and may express their views, using the name "Hong Kong, China".

The Hong Kong Special Administrative Region may, using the name "Hong Kong, China", participate in international organizations and conferences not limited to states.

The Central People's Government shall take the necessary steps to ensure that the Hong Kong Special Administrative Region shall continue to retain its status in an appropriate capacity in those international organizations of which the People's Republic of China is a member and in which Hong Kong participates in one capacity or another.

The Central People's Government shall, where necessary, facilitate the continued participation of the Hong Kong Special Administrative Region in an appropriate capacity in those international organizations in which Hong Kong is a participant in one capacity or another, but of which the People's Republic of China is not a member.

Article 153

The application to the Hong Kong Special Administrative Region of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Region, and after seeking the views of the government of the Region.

International agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may continue to be implemented in the Hong Kong Special Administrative Region. The Central People's Government shall, as necessary, authorize or assist the government of the Region to make appropriate arrangements for the application to the Region of other relevant international agreements.

Article 154

The Central People's Government shall authorize the Government of the Hong Kong Special Administrative Region to issue, in accordance with law, passports of the Hong Kong Special Administrative Region of the People's Republic of China to all Chinese citizens who hold permanent identity cards of the Region, and travel documents of the Hong Kong Special Administrative Region of the People's Republic of China to all other persons lawfully residing in the Region. The above passports and documents shall be valid for all states and regions and shall record the holder's right to return to the Region.

The Government of the Hong Kong Special Administrative Region may apply immigration controls on entry into, stay in and departure from the Region by persons from foreign states and regions.

Article 155

The Central People's Government shall assist or authorize the Government of the Hong Kong Special Administrative Region to conclude visa abolition agreements with foreign states or regions.

Article 156

The Hong Kong Special Administrative Region may, as necessary, establish official or semi-official economic and trade missions in foreign countries and shall report the establishment of such missions to the Central People's Government for the record.

Article 157

The establishment of foreign consular and other official or semi-official missions in the Hong Kong Special Administrative Region shall require the approval of the Central People's Government.

Consular and other official missions established in Hong Kong by states which have formal diplomatic relations with the People's Republic of China may be maintained.

According to the circumstances of each case, consular and other official missions established in Hong Kong by states which have no formal diplomatic relations with the People's Republic of China may be permitted either to remain or be changed to semi-official missions.

States not recognized by the People's Republic of China may only establish non-governmental institutions in the Region.

Chapter VIII: Interpretation and Amendment of the Basic Law

Article 158

The power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress.

The Standing Committee of the National People's Congress shall authorize the courts of the Hong Kong Special Administrative Region to interpret on their own, in adjudicating cases, the provisions of this Law which are within the limits of the autonomy of the Region.

The courts of the Hong Kong Special Administrative Region may also interpret other provisions of this Law in adjudicating cases. However, if the courts of the Region, in adjudicating cases, need to interpret the provisions of this Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the Region, and if such interpretation will affect the judgments on the cases, the courts of the Region shall, before making their final judgments which are not appealable, seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress through the Court of Final Appeal of the Region. When the Standing Committee makes an interpretation of the provisions concerned, the courts of the Region, in applying those provisions, shall follow the interpretation of the Standing Committee. However, judgments previously rendered shall not be affected.

The Standing Committee of the National People's Congress shall consult its Committee for the Basic Law of the Hong Kong Special Administrative Region before giving an interpretation of this Law.

Article 159

The power of amendment of this Law shall be vested in the National People's Congress.

The power to propose bills for amendments to this Law shall be vested in the Standing Committee of the National People's Congress, the State Council and the Hong Kong Special Administrative Region. Amendment bills from the Hong Kong Special Administrative Region shall be submitted to the National People's Congress by the delegation of the Region to the National People's Congress after obtaining the consent of two-thirds of the deputies of the Region to the National People's Congress, two-thirds of all the members of the Legislative Council of the Region, and the Chief Executive of the Region.

Before a bill for amendment to this Law is put on the agenda of the National People's Congress, the Committee for the Basic Law of the Hong Kong Special Administrative Region shall study it and submit its views.

No amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong.

Chapter IX: Supplementary Provisions

Article 160

Upon the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong shall be adopted as laws of the Region except for those which the Standing Committee of the National People's Congress declares to be in contravention of this Law. If any laws are later discovered to be in contravention of this Law, they shall be amended or cease to have force in accordance with the procedure as prescribed by this Law.

Documents, certificates, contracts, and rights and obligations valid under the laws previously in force in Hong Kong shall continue to be valid and be recognized and protected by the Hong Kong Special Administrative Region, provided that they do not contravene this Law.

Annex I: Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region

1. The Chief Executive shall be elected by a broadly representative Election Committee in accordance with this Law and appointed by the Central People's Government.

2. The Election Committee shall be composed of 800 members from the following sectors:

Industrial, commercial and financial sectors	200
The professions	200
Labour, social services, religious and other sectors	200
Members of the Legislative Council, representatives of district-based organizations, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference	200

The term of office of the Election Committee shall be five years.

3. The delimitation of the various sectors, the organizations in each sector eligible to return Election Committee members and the number of such members returned by each of these organizations shall be prescribed by an electoral law enacted by the Hong Kong Special Administrative Region in accordance with the principles of democracy and openness.

Corporate bodies in various sectors shall, on their own, elect members to the Election Committee, in accordance with the number of seats allocated and the election method as prescribed by the electoral law.

Members of the Election Committee shall vote in their individual capacities.

4. Candidates for the office of Chief Executive may be nominated jointly by not less than 100 members of the Election Committee. Each member may nominate only one candidate.

5. The Election Committee shall, on the basis of the list of nominees, elect the Chief Executive designate by secret ballot on a one-person-one-vote basis. The specific election method shall be prescribed by the electoral law.

6. The first Chief Executive shall be selected in accordance with the "Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region".

7. If there is a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for approval.

Annex II : Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures

I. Method for the formation of the Legislative Council

1. The Legislative Council of the Hong Kong Special Administrative Region shall be composed of 60 members in each term. In the first term, the Legislative Council shall be formed in accordance with the "Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region". The composition of the Legislative Council in the second and third terms shall be as follows :

Second term

Members returned by functional constituencies	30
Members returned by the Election Committee	6
Members returned by geographical constituencies through direct elections	24

Third term

Members returned by functional constituencies	30
Members returned by geographical constituencies through direct elections	30

2. Except in the case of the first Legislative Council, the above-mentioned Election Committee refers to the one provided for in Annex I of this Law. The division of geographical constituencies and the voting method for direct elections therein; the delimitation of functional sectors and corporate bodies, their seat allocation and election methods; and the method for electing members of the Legislative Council by the Election Committee shall be specified by an electoral law introduced by the Government of the Hong Kong Special Administrative Region and passed by the Legislative Council.

II. Procedures for voting on bills and motions in the Legislative Council

Unless otherwise provided for in this Law, the Legislative Council shall adopt the following procedures for voting on bills and motions :

The passage of bills introduced by the government shall require at least a simple majority vote of the members of the Legislative Council present.

The passage of motions, bills or amendments to government bills introduced by individual members of the Legislative Council shall require a simple majority vote of each of the two groups of members present: members returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee.

III. Method for the formation of the Legislative Council and its voting procedures subsequent to the year 2007

With regard to the method for forming the Legislative Council of the Hong Kong Special Administrative Region and its procedures for voting on bills and motions after 2007, if there is a need to amend the provisions of this Annex, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for the record.

Annex III : National Laws to be Applied in the Hong Kong Special Administrative Region

The following national laws shall be applied locally with effect from 1 July 1997 by way of promulgation or legislation by the Hong Kong Special Administrative Region:

1. Resolution on the Capital, Calendar, National Anthem and National Flag of the People's Republic of China.
2. Resolution on the National Day of the People's Republic of China.
3. Declaration of the Government of the People's Republic of China on the Territorial Sea.
4. Nationality Law of the People's Republic of China.
5. Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities.
6. Law of the People's Republic of China on the National Flag.
7. Regulations of the People's Republic of China concerning Consular Privileges and Immunities.
8. Law of the People's Republic of China on the National Emblem.
9. Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone.
10. Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region.
11. Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf.*
12. Law of the People's Republic of China on Judicial Immunity from Compulsory Measures concerning the Assets of Foreign Central Banks.**

* Added to Annex III on 4 November 1998 and applied in the HKSAR with effect from 24 December 1998.

** Added to Annex III on 27 October 2005.

**Decision of the National People's Congress on
the Basic Law of the Hong Kong Special Administration Region
of the People's Republic of China**

(Adopted at the Third Session of the
Seventh National People's Congress on 4 April 1990)

The Third Session of the Seventh National People's Congress adopts the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, which includes Annex I: Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region, Annex II: Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures, Annex III: National Laws to be Applied in the Hong Kong Special Administrative Region, and the designs of the regional flag and regional emblem of the Hong Kong Special Administrative Region. Article 31 of the Constitution of the People's Republic of China provides: "The State may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of the specific conditions." The Basic Law of the Hong Kong Special Administrative Region is constitutional as it is enacted in accordance with the Constitution of the People's Republic of China and in the light of the specific conditions of Hong Kong. The systems, policies and laws to be instituted after the establishment of the Hong Kong Special Administrative Region shall be based on the Basic Law of the Hong Kong Special Administrative Region.

The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China shall be put into effect as of 1 July 1997.

**Decision of the National People's Congress
on the Establishment of the
Hong Kong Special Administrative Region**

(Adopted at the Third Session of the
Seventh National People's Congress on 4 April 1990)

In accordance with the provisions of Article 31 and sub-paragraph 13 of Article 62 of the Constitution of the People's Republic of China, the Third Session of the Seventh National People's Congress decides:

1. The Hong Kong Special Administrative Region is to be established as of July 1, 1997.
2. The area of the Hong Kong Special Administrative Region covers the Hong Kong Island, the Kowloon Peninsula, and the islands and adjacent waters under its jurisdiction. The map of the administrative division of the Hong Kong Special Administrative Region will be published by the State Council separately.

**Decision of the National People's Congress
on the Method for the Formation of the First Government
and the First Legislative Council
of the Hong Kong Special Administrative Region**

(Adopted at the Third Session of the
Seventh National People's Congress on 4 April 1990)

1. The first Government and the first Legislative Council of the Hong Kong Special Administrative Region shall be formed in accordance with the principles of State sovereignty and smooth transition.

2. Within the year 1996, the National People's Congress shall establish a Preparatory Committee for the Hong Kong Special Administrative Region, which shall be responsible for preparing the establishment of the Region and shall prescribe the specific method for forming the first Government and the first Legislative Council in accordance with this Decision. The Preparatory Committee shall be composed of mainland members and of Hong Kong members who shall constitute not less than 50 per cent of its membership. Its chairman and members shall be appointed by the Standing Committee of the National People's Congress.

3. The Preparatory Committee for the Hong Kong Special Administrative Region shall be responsible for preparing the establishment of the Selection Committee for the First Government of the Hong Kong Special Administrative Region (hereinafter referred to as the "Selection Committee").

The Selection Committee shall be composed entirely of permanent residents of Hong Kong and must be broadly representative. It shall include Hong Kong deputies to the National People's Congress, representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference, persons with practical experience who have served in Hong Kong's executive, legislative and advisory organs prior to the establishment of the Hong Kong Special Administrative Region, and persons representative of various strata and sectors of society.

The Selection Committee shall be composed of 400 members in the following proportions :

Industrial, commercial and financial sectors	25 per cent
The professions	25 per cent

Labour, grass-roots, religious and other sectors	25 per cent
Former political figures, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference	25 per cent

4. The Selection Committee shall recommend the candidate for the first Chief Executive through local consultations or through nomination and election after consultations, and report the recommended candidate to the Central People's Government for appointment. The term of office of the first Chief Executive shall be the same as the regular term.

5. The Chief Executive of the Hong Kong Special Administrative Region shall be responsible for preparing the formation of the first Government of the Region in accordance with the Basic Law of the Hong Kong Special Administrative Region.

6. The first Legislative Council of the Hong Kong Special Administrative Region shall be composed of 60 members, with 20 members returned by geographical constituencies through direct elections, 10 members returned by an election committee, and 30 members returned by functional constituencies. If the composition of the last Hong Kong Legislative Council before the establishment of the Hong Kong Special Administrative Region is in conformity with the relevant provisions of this Decision and the Basic Law of the Hong Kong Special Administrative Region, those of its members who uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and pledge allegiance to the Hong Kong Special Administrative Region of the People's Republic of China, and who meet the requirements set forth in the Basic Law of the Region may, upon confirmation by the Preparatory Committee, become members of the first Legislative Council of the Region.

The term of office of members of the first Legislative Council of the Hong Kong Special Administrative Region shall be two years.

**Decision of the National People's Congress
Approving the Proposal by the Drafting Committee for
the Basic Law of the Hong Kong Special Administrative Region on
the Establishment of the Committee for the Basic Law of
the Hong Kong Special Administrative Region
Under the Standing Committee of the National People's Congress**

(Adopted by the Third Session of the
Seventh National People's Congress on 4 April 1990)

The Third Session of the Seventh National People's Congress decides:

1. to approve the proposal by the Drafting Committee for the Basic Law of the Hong Kong Special Administrative Region on the Establishment of the Committee for the Basic Law of the Hong Kong Special Administrative Region Under the Standing Committee of the National People's Congress; and
2. to establish the Committee for the Basic Law of the Hong Kong Special Administrative Region Under the Standing Committee of the National People's Congress when the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China is put into effect.

Appendix

Proposal by the Drafting Committee for the Basic Law of the Hong Kong Special Administrative Region on the Establishment of the Committee for the Basic Law of the Hong Kong Special Administrative Region Under the Standing Committee of the National People's Congress

1. Name: The Committee for the Basic Law of the Hong Kong Special Administrative Region under the Standing Committee of the National People's Congress.

2. Affiliation: To be a working committee under the Standing Committee of the National People's Congress.

3. Function: To study questions arising from the implementation of Articles 17, 18, 158 and 159 of the Basic Law of the Hong Kong Special Administrative Region and submit its views thereon to the Standing Committee of the National People's Congress.

4. Composition: Twelve members, six from the mainland and six from Hong Kong, including persons from the legal profession, appointed by the Standing Committee of the National People's Congress for a term of office of five years. Hong Kong members shall be Chinese citizens who are permanent residents of the Hong Kong Special Administrative Region with no right of abode in any foreign country and shall be nominated jointly by the Chief Executive, President of the Legislative Council and Chief Justice of the Court of Final Appeal of the Region for appointment by the Standing Committee of the National People's Congress.

**Decision of the Standing Committee
of the National People's Congress on
the English Text of the Basic Law
of the Hong Kong Special Administrative Region
of the People's Republic of China***

(Adopted on 28 June 1990)

The 14th Meeting of the Standing Committee of the Seventh National People's Congress decides: the English translation of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, examined and approved under the aegis of the Law Committee of the National People's Congress, shall be the official English text and shall be equally authentic as the Chinese text. In case of any discrepancy in the meaning of wording between the English text and the Chinese text, the Chinese text shall prevail.

* This English translation text is reproduced from "The Laws of the People's Republic of China 1990-1992" compiled by the Legislative Affairs Commission of the Standing Committee of the National People's Congress of the People's Republic of China. It is for reference purposes and has no legislative effect.

**Decision of the Standing Committee of the
National People's Congress on the Addition to or Deletion from
the List of National Laws in Annex III to the Basic Law of the
Hong Kong Special Administrative Region of the People's Republic of China***

(Adopted at the Twenty Sixth Session of the Standing Committee of the
Eighth National People's Congress on 1 July 1997)

I. The following national laws are added to the list of laws in Annex III to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China -

- (1) Law of the People's Republic of China on the National Flag;
- (2) Regulations of the People's Republic of China concerning Consular Privileges and Immunities;
- (3) Law of the People's Republic of China on the National Emblem;
- (4) Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone;
- (5) Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region.

The above national laws shall be applied with effect from 1 July 1997 by way of promulgation or legislation by the Hong Kong Special Administrative Region.

II. The following national law is deleted from Annex III to the Basic Law of the Hong Kong Special Administrative Region:

Order on the National Emblem of the People's Republic of China
Proclaimed by the Central People's Government.

Attached: Design of the national emblem, notes of explanation and instructions for use.

* This English translation text is prepared by Department of Justice, Government of the Hong Kong Special Administrative Region. It is for reference purposes and has no legislative effect.

**Decision of the Standing Committee
of the National People's Congress
on the Addition to the List of National Laws
in Annex III to the Basic Law
of the Hong Kong Special Administrative Region
of the People's Republic of China ***

(Adopted on 4 November 1998)

The Fifth meeting of the Standing Committee of the Ninth National People's Congress decides: the national law being the "Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf" is added to the list of laws in Annex III to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

* This English translation text is prepared by Department of Justice, Government of the Hong Kong Special Administrative Region. It is for reference purposes and has no legislative effect.

**The Interpretation by the Standing Committee of the National
People's Congress of Articles 22(4) and 24(2)(3) of the Basic Law of the
Hong Kong Special Administrative Region of the People's Republic of China**

(Adopted by the Standing Committee of the
Ninth National People's Congress at its Tenth Session on 26 June 1999)

The Standing Committee of the Ninth National People's Congress examined at its Tenth session the "Motion Regarding the Request for an Interpretation of Articles 22(4) and 24(2)(3) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China" submitted by the State Council. The motion of the State Council was submitted upon the report furnished by the Chief Executive of the Hong Kong Special Administrative Region under the relevant provisions of Articles 43 and 48(2) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. The issue raised in the Motion concerns the interpretation of the relevant provisions of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Court of Final Appeal of the Hong Kong Special Administrative Region in its judgment dated 29 January 1999. Those relevant provisions concern affairs which are the responsibility of the Central People's Government and concern the relationship between the Central Authorities and the Hong Kong Special Administrative Region. Before making its judgment, the Court of Final Appeal had not sought an interpretation of the Standing Committee of the National People's Congress in compliance with the requirement of Article 158(3) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. Moreover, the interpretation of the Court of Final Appeal is not consistent with the legislative intent. Therefore, having consulted the Committee for the Basic Law of the Hong Kong Special Administrative Region under the Standing Committee of the National People's Congress, the Standing Committee of the National People's Congress has decided to make, under the provisions of Article 67(4) of the Constitution of the People's Republic of China and Article 158(1) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, an interpretation of the provisions of Articles 22(4) and 24(2)(3) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China as follows :

1. The provisions of Article 22(4) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China regarding "For entry into the Hong Kong Special Administrative Region, people from other parts of China

must apply for approval” mean as follows : People from all provinces, autonomous regions, or municipalities directly under the Central Government, including those persons of Chinese nationality born outside Hong Kong of Hong Kong permanent residents, who wish to enter the Hong Kong Special Administrative Region for whatever reason, must apply to the relevant authorities of their residential districts for approval in accordance with the relevant national laws and administrative regulations, and must hold valid documents issued by the relevant authorities before they can enter the Hong Kong Special Administrative Region. It is unlawful for people from all provinces, autonomous regions, or municipalities directly under the Central Government, including persons of Chinese nationality born outside Hong Kong of Hong Kong permanent residents, to enter the Hong Kong Special Administrative Region without complying with the appropriate approval procedure prescribed by the relevant national laws and administrative regulations.

2. It is stipulated in the first three categories of Article 24(2) of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China that 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 Hong Kong of those residents listed in categories (1) and (2);”.

The provisions of category (3) regarding the “persons of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2)” mean both parents of such persons, whether born before or after the establishment of the Hong Kong Special Administrative Region, or either of such parents must have fulfilled the condition prescribed by category (1) or (2) of Article 24(2) of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China at the time of their birth. The legislative intent as stated by this Interpretation, together with the legislative intent of all other categories of Article 24(2) of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, have been reflected in the “Opinions on the Implementation of Article 24(2) of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China” adopted at the Fourth Plenary Meeting of the Preparatory

Committee for the Hong Kong Special Administrative Region of the National People's Congress on 10 August 1996.

As from the promulgation of this Interpretation, the courts of the Hong Kong Special Administrative Region, when referring to the relevant provisions of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, shall adhere to this Interpretation. This Interpretation does not affect the right of abode in the Hong Kong Special Administrative Region which has been acquired under the judgment of the Court of Final Appeal on the relevant cases dated 29 January 1999 by the parties concerned in the relevant legal proceedings. Other than that, the question whether any other person fulfils the conditions prescribed by Article 24(2)(3) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China shall be determined by reference to this Interpretation.

**The Interpretation by the Standing Committee of the National
People's Congress of Article 7 of Annex I and Article III of Annex II
to the Basic Law of the Hong Kong Special Administrative Region
of the People's Republic of China**

(Adopted by the Standing Committee of the Tenth National People's
Congress at its Eighth Session on 6 April 2004)

The Standing Committee of the Tenth National People's Congress examined at its Eighth Session the motion regarding the request for examination of "The Draft Interpretation of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China" submitted by the Council of Chairmen. Having consulted the Committee for the Basic Law of the Hong Kong Special Administrative Region under the Standing Committee of the National People's Congress, the Standing Committee of the National People's Congress has decided to make, under the provisions of Article 67(4) of the Constitution of the People's Republic of China and Article 158(1) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, an interpretation of the provisions of Article 7 of Annex I "Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region" to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China regarding "If there is a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for approval" and the provisions of Article III of Annex II "Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures" regarding "With regard to the method for forming the Legislative Council of the Hong Kong Special Administrative Region and its procedures for voting on bills and motions after 2007, if there is a need to amend the provisions of this Annex, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for the record" as follows:

1. The phrases “subsequent to the year 2007” and “after 2007” stipulated in the two above-mentioned Annexes include the year 2007.
2. The provisions in the two above-mentioned Annexes that “if there is a need” to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007 or the method for forming the Legislative Council and its procedures for voting on bills and motions after 2007 mean they may be amended or remain unamended.
3. The provisions in the two above-mentioned Annexes that any amendment must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive and shall be reported to the Standing Committee of the National People’s Congress for approval or for the record mean the requisite legislative process through which the method for selecting the Chief Executive and the method for forming the Legislative Council and its procedures for voting on bills and motions are amended. Such an amendment may take effect only if it has gone through the said process, including the approval or recording ultimately given or made by the Standing Committee of the National People’s Congress in accordance with law. The Chief Executive of the Hong Kong Special Administrative Region shall make a report to the Standing Committee of the National People’s Congress as regards whether there is a need to make an amendment; and the Standing Committee of the National People’s Congress shall, in accordance with the provisions of Articles 45 and 68 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, make a determination in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The bills on the amendments to the method for selecting the Chief Executive and the method for forming the Legislative Council and its procedures for voting on bills and motions and the proposed amendments to such bills shall be introduced by the Government of the Hong Kong Special Administrative Region into the Legislative Council.
4. If no amendment is made to the method for selecting the Chief Executive, the method for forming the Legislative Council and its procedures for voting on bills and motions as stipulated in the two above-mentioned Annexes, the provisions relating to the method for selecting the Chief Executive in Annex I will still be applicable to the method for selecting the Chief Executive, and the provisions relating to the method for

forming the third term of the Legislative Council in Annex II and the provisions relating to its procedures for voting on bills and motions in Annex II will still be applicable to the method for forming the Legislative Council and its procedures for voting on bills and motions.

This Interpretation is hereby proclaimed.

**Decision of the Standing Committee of the National People's Congress
on Issues relating to the Methods for Selecting the
Chief Executive of the Hong Kong Special Administrative Region
in the year 2007 and for Forming the Legislative Council
of the Hong Kong Special Administrative Region in the Year 2008**

(Adopted by the Standing Committee of the Tenth National People's
Congress at its Ninth Session on 26 April 2004)

The Standing Committee of the Tenth National People's Congress examined at its Ninth Session the "Report on whether there is a need to amend the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region in 2007 and for forming the Legislative Council of the Hong Kong Special Administrative Region in 2008" submitted by Tung Chee-hwa, the Chief Executive of the Hong Kong Special Administrative Region, on 15 April 2004 and, before the Session, had consulted the Hong Kong deputies to the National People's Congress, the Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference, different sectors of Hong Kong, the Hong Kong members of the Committee for the Basic Law of the Hong Kong Special Administrative Region under the Standing Committee of the National People's Congress, and the Constitutional Development Task Force of the Government of the Hong Kong Special Administrative Region, and had also sought the views of the Hong Kong and Macao Affairs Office of the State Council. The Standing Committee of the National People's Congress was, in the course of the examination, fully aware of the recent concerns of the Hong Kong society about the methods for selecting the Chief Executive and for forming the Legislative Council after the year 2007, including the views of some bodies and people that they wish to see the selection of the Chief Executive by universal suffrage in the year 2007 and the election of all the members of the Legislative Council by universal suffrage in the year 2008.

The Session is of the view that Articles 45 and 68 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter referred to as "Hong Kong Basic Law") already expressly provide that the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress, and that the ultimate aims are the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic

procedures and the election of all the members of the Legislative Council by universal suffrage. The methods for selecting the Chief Executive of the Hong Kong Special Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region shall conform to the above principles and provisions of the Hong Kong Basic Law. Any change relating to the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region and for forming the Legislative Council of the Hong Kong Special Administrative Region shall conform to principles such as being compatible with the social, economic, political development of Hong Kong, being conducive to the balanced participation of all sectors and groups of the society, being conducive to the effective operation of the executive-led system, being conducive to the maintenance of the long-term prosperity and stability of Hong Kong.

The Session is of the view that since the establishment of the Hong Kong Special Administrative Region, Hong Kong residents have enjoyed democratic rights that they have never had before. The first Chief Executive was elected by the Selection Committee, which was composed of 400 members. The second Chief Executive was elected by the Election Committee, which was composed of 800 members. Out of the 60 members of the Legislative Council, the number of members returned by geographical constituencies through direct elections increased from 20 in the Legislative Council in the first term to 24 in the Legislative Council in the second term and will reach 30 in the Legislative Council in the third term to be formed this September. Hong Kong does not have a long history of practising democratic elections. Until now, Hong Kong residents have exercised the democratic right to participate in the selection of the Chief Executive of the Special Administrative Region for less than 7 years. Since the reunification of Hong Kong with the motherland, the number of members of the Legislative Council returned by geographical constituencies through direct elections has already substantially increased. When the set-up is such that half of the members are returned by geographical constituencies through direct elections and half of the members are returned by functional constituencies, the impact on the operation of the Hong Kong society as a whole, especially the impact on the executive-led system, remains to be examined through practice. Further, at present, different sectors of the Hong Kong society still have considerable differences on how to determine the methods for selecting the Chief Executive and for forming the Legislative Council after the year 2007 and have not come to a broad consensus. In the circumstances, conditions do not exist for the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures as provided for in Article 45 of the Hong Kong Basic Law and the election of all the members of the Legislative Council by universal suffrage as provided for in Article 68 of the Hong Kong Basic Law.

In the light of the above and pursuant to the relevant provisions of the Hong Kong Basic Law and “The Interpretation by the Standing Committee of the National People’s Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China”, the Standing Committee of the National People’s Congress makes the following decision on the methods for selecting the Chief Executive of the Hong Kong Special Administrative Region in the year 2007 and for forming the Legislative Council of the Hong Kong Special Administrative Region in the year 2008:

- (1) The election of the third Chief Executive of the Hong Kong Special Administrative Region to be held in the year 2007 shall not be by means of universal suffrage. The election of the Legislative Council of the Hong Kong Special Administrative Region in the fourth term in the year 2008 shall not be by means of an election of all the members by universal suffrage. The ratio between members returned by functional constituencies and members returned by geographical constituencies through direct elections, who shall respectively occupy half of the seats, is to remain unchanged. The procedures for voting on bills and motions in the Legislative Council are to remain unchanged.
- (2) Subject to Article 1 of this Decision not being contravened, appropriate amendments that conform to the principle of gradual and orderly progress may be made to the specific method for selecting the third Chief Executive of the Hong Kong Special Administrative Region in the year 2007 and the specific method for forming the Legislative Council of the Hong Kong Special Administrative Region in the fourth term in the year 2008 according to the provisions of Articles 45 and 68 of the Hong Kong Basic Law and the provisions of Article 7 of Annex I and Article III of Annex II to the Hong Kong Basic Law.

The Session is of the view that developing democracy in the Hong Kong Special Administrative Region in the light of the actual situation and in a gradual and orderly manner according to the provisions of the Hong Kong Basic Law has all along been the resolute and firm stance of the Central Authorities. With the development and progress in all aspects of the Hong Kong society and through the joint endeavours of the Government of the Hong Kong Special Administrative Region and Hong Kong residents, the democratic system of the Hong Kong Special Administrative Region will certainly be able to progress forward incessantly, and ultimately attain the aims of selecting the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance

with democratic procedures and electing all the members of the Legislative Council by universal suffrage provided for in the Hong Kong Basic Law.

**Interpretation of Paragraph 2, Article 53 of the Basic Law of
the Hong Kong Special Administrative Region of
the People's Republic of China by the Standing
Committee of the National People's Congress**

(Adopted at the 15th Session of the Standing Committee of the
Tenth National People's Congress on 27 April 2005)

The Standing Committee of the Tenth National People's Congress at its 15th session deliberated the State Council's Proposal on Requesting Interpretation of Paragraph 2, Article 53 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. In accordance with Item 4, Article 67 of the Constitution of the People's Republic of China and Paragraph 1, Article 158 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, and after consulting the Committee for the Basic Law of the HKSAR under the NPC Standing Committee, the Standing Committee of the National People's Congress hereby makes the following interpretation on Paragraph 2, Article 53 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

Paragraph 2, Article 53 of the Basic Law stipulates, "In the event that the office of Chief Executive becomes vacant, a new Chief Executive shall be selected within six months in accordance with the provisions of Article 45 of this Law." The phrase "a new Chief Executive shall be selected ... in accordance with the provisions of Article 45 of this Law" implies that both the method of selecting and the term of office of the new Chief Executive shall be as prescribed and determined by the said Article.

Paragraph 3, Article 45 of the Basic Law stipulates, "The specific method for selecting the Chief Executive is prescribed in Annex I 'Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region'." Clause 1 of Annex I stipulates, "The Chief Executive shall be elected by a broadly representative Election Committee in accordance with this Law and appointed by the Central People's Government." Clause 2 of Annex I stipulates, "The term of office of the Election Committee shall be five years." Clause 7 of Annex I stipulates, "If there is a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for approval." These provisions

make it clear that prior to the year 2007, when the Chief Executive is selected by the Election Committee with a five-year term of office, in the event that the office of Chief Executive becomes vacant as he (she) fails to serve the full term of office of five years as prescribed by Article 46 of the Basic Law, the term of office of the new Chief Executive shall be the remainder of the previous Chief Executive; and that after 2007, the above-mentioned method for selecting the Chief Executives could be amended, and should the office of the Chief Executive then become vacant, the term of office of the new Chief Executive shall be determined in accordance with the amended method for the selection of the Chief Executive.

This Interpretation is hereby announced.

**Decision of the Standing Committee
of the National People's Congress
on the Addition to the List of National Laws
in Annex III to the Basic Law
of the Hong Kong Special Administrative Region
of the People's Republic of China ***

(Adopted on 27 October 2005)

The Eighteenth meeting of the Standing Committee of the Tenth National People's Congress decides: the national law being the "Law of the People's Republic of China on Judicial Immunity from Compulsory Measures concerning the Assets of Foreign Central Banks" is added to the list of laws in Annex III to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

* This English translation text is prepared by Department of Justice, Government of the Hong Kong Special Administrative Region. It is for reference purposes and has no legislative effect.

**HONG KONG BILL OF RIGHTS
ORDINANCE, CAP. 383**

HONG KONG BILL OF RIGHTS ORDINANCE
ARRANGEMENT OF SECTIONS

Section	Page
PART I	
PRELIMINARY	
1. Short title	4
2. Interpretation	4
3. Effect on pre-existing legislation	5
4. <i>(Not adopted as the Laws of the HKSAR)</i>	5
5. Public emergencies	5
6. Remedies for contravention of Bill of Rights	6
7. Binding effect of Ordinance	6

PART II

THE HONG KONG BILL OF RIGHTS

8. Hong Kong Bill of Rights	6
-----------------------------------	---

Article 1

Entitlement to rights without distinction

Article 2

Right to life

Article 3

No torture or inhuman treatment and no experimentation without consent

Article 4

No slavery or servitude

Article 5

Liberty and security of person

Article 6

Rights of persons deprived of their liberty

Article 7

No imprisonment for breach of contract

Article 8

Liberty of movement

Article 9

Restrictions on expulsion from Hong Kong

Article 10

Equality before courts and right to fair and public hearing

Article 11

Rights of persons charged with or convicted of criminal offence

Article 12

No retrospective criminal offences or penalties

Article 13

Right to recognition as person before law

Article 14

Protection of privacy, family, home, correspondence, honour and reputation

Article 15

Freedom of thought, conscience and religion

Article 16

Freedom of opinion and expression

Article 17

Right of peaceful assembly

Article 18

Freedom of association

Article 19

Rights in respect of marriage and family

Article 20

Rights of children

Article 21

Right to participate in public life

Article 22

Equality before and equal protection of law

Article 23

Rights of minorities

Section	Page
---------	------

PART III

EXCEPTIONS AND SAVINGS

9. Armed forces and persons detained in penal establishments	15
10. Juveniles under detention.....	15
11. Immigration legislation.....	16
12. Persons not having the right of abode.....	16
13. Executive and Legislative Councils.....	16
14. Temporary savings.....	16
Schedule. Provisions to which section 14(1) and (2) applies.....	17

CHAPTER 383

HONG KONG BILL OF RIGHTS

An Ordinance to provide for the incorporation into the law of Hong Kong of provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong; and for ancillary and connected matters.

[8 June 1991]

PART I

PRELIMINARY

1. Short title

This Ordinance may be cited as the Hong Kong Bill of Rights Ordinance.

2. Interpretation

- (1) In this Ordinance, unless the context otherwise requires-
- "article" means an article of the Bill of Rights;
- "Bill of Rights" (人權法案) means the Hong Kong Bill of Rights set out in Part II;
- "commencement date" (生效日期) means the date on which this Ordinance comes into operation;
- "legislation" (法例) means legislation that can be amended by an Ordinance;
- "pre-existing legislation" (先前法例) means legislation enacted before the commencement date.
- (2) The Bill of Rights is subject to Part III.
- (3) (** Not adopted as the Laws of the HKSAR*)
- (4) Nothing in this Ordinance shall be interpreted as implying for the Government or any authority, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized in the Bill of Rights

* See Decision of the Standing Committee of the National People's Congress on Treatment of the Laws Previously in Force in Hong Kong in accordance with Article 160 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, which is published in Volume 1, P. 13/1.

or at their limitation to a greater extent than is provided for in the Bill. [cf. ICCPR Art. 5.1]

(5) There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in Hong Kong pursuant to law, conventions, regulations or custom on the pretext that the Bill of Rights does not recognize such rights or that it recognizes them to a lesser extent. [cf. ICCPR Art. 5.2]

(6) A heading to any article does not have any legislative effect and does not in any way vary, limit or extend the meaning of the article.

3. Effect on pre-existing legislation

(1)-(2) (* Not adopted as the Laws of the HKSAR)

@ (3)-(4) (Repealed 2 of 1998 s. 2)

4. (* Not adopted as the Laws of the HKSAR)

5. Public emergencies

(1) In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, measures may be taken derogating from the Bill of Rights to the extent strictly required by the exigencies of the situation, but these measures shall be taken in accordance with law.

(2) No measure shall be taken under subsection (1) that-

- (a) is inconsistent with any obligation under international law that applies to Hong Kong (other than an obligation under the International Covenant on Civil and Political Rights);
- (b) involves discrimination solely on the ground of race, colour, sex, language, religion or social origin; or
- (c) derogates from articles 2, 3, 4(1) and (2), 7, 12, 13 and 15.

[cf. ICCPR Art. 4]

* See Decision of the Standing Committee of the National People's Congress on Treatment of the Laws Previously in Force in Hong Kong in accordance with Article 160 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, which is published in Volume 1, P. 13/1.

@ S. 3(3) and (4) was added by 107 of 1997. As to suspension of operation of 107 of 1997, please see S. 2(1) and (2) of Cap 538.

6. Remedies for contravention of Bill of Rights

(1) A court or tribunal-

(a) in proceedings within its jurisdiction in an action for breach of this Ordinance; and

(b) in other proceedings within its jurisdiction in which a violation or threatened violation of the Bill of Rights is relevant,

may grant such remedy or relief, or make such order, in respect of such a breach, violation or threatened violation as it has power to grant or make in those proceedings and as it considers appropriate and just in the circumstances.

(2) No proceedings shall be held to be outside the jurisdiction of any court or tribunal on the ground that they relate to the Bill of Rights.

7. Binding effect of Ordinance

(1) This Ordinance binds only-

(a) the Government and all public authorities; and

(b) any person acting on behalf of the Government or a public authority.

(2) In this section-

"person" (人) includes any body of persons, corporate or unincorporate.

PART II

THE HONG KONG BILL OF RIGHTS

8. Hong Kong Bill of Rights

The Hong Kong Bill of Rights is as follows.

Article 1

Entitlement to rights without distinction

(1) The rights recognized in this Bill of Rights shall be enjoyed without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(2) Men and women shall have an equal right to the enjoyment of all civil and

political rights set forth in this Bill of Rights.

[*cf. ICCPR Arts. 2 & 3*]

Article 2

Right to life

(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

(2) Sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of this Bill of Rights and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

(3) When deprivation of life constitutes the crime of genocide, nothing in this article shall authorize the derogation in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

(4) Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

(5) Sentence of death shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women.

(6) Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment in Hong Kong.

[*cf. ICCPR Art. 6*]

Article 3

No torture or inhuman treatment and no experimentation without consent

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

[*cf. ICCPR Art. 7*]

Article 4

No slavery or servitude

- (1) No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
- (2) No one shall be held in servitude.
- (3) (a) No one shall be required to perform forced or compulsory labour.
(b) For the purpose of this paragraph the term "forced or compulsory labour" shall not include-
 - (i) any work or service normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
 - (ii) any service of a military character and, where conscientious objection is recognized, any national service required by law of conscientious objectors;
 - (iii) any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
 - (iv) any work or service which forms part of normal civil obligations.

[*cf. ICCPR Art. 8*]

Article 5

Liberty and security of person

- (1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
- (2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
- (3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
- (4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
- (5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

[*cf. ICCPR Art. 9*]

Article 6

Rights of persons deprived of their liberty

(1) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

(2) (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

(3) The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

[cf. ICCPR Art. 10]

Article 7

No imprisonment for breach of contract

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

[cf. ICCPR Art. 11]

Article 8

Liberty of movement

(1) Everyone lawfully within Hong Kong shall, within Hong Kong, have the right to liberty of movement and freedom to choose his residence.

(2) Everyone shall be free to leave Hong Kong.

(3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in this Bill of Rights.

(4) No one who has the right of abode in Hong Kong shall be arbitrarily deprived of the right to enter Hong Kong.

[cf. ICCPR Art. 12]

Article 9

Restrictions on expulsion from Hong Kong

A person who does not have the right of abode in Hong Kong but who is lawfully in Hong Kong may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

[cf. ICCPR Art. 13]

Article 10

Equality before courts and right to fair and public hearing

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

[cf. ICCPR Art. 14.1]

Article 11

Rights of persons charged with or convicted of criminal offence

- (1) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
- (2) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality-
 - (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) to have adequate time and facilities for the preparation of his defence and to

- communicate with counsel of his own choosing;
- (c) to be tried without undue delay;
 - (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) not to be compelled to testify against himself or to confess guilt.
- (3) In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
- (4) Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
- (5) When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
- (6) No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of Hong Kong.

[*cf. ICCPR Art. 14.2 to 7*]

Article 12

No retrospective criminal offences or penalties

(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under Hong Kong or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

(2) Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

[*cf. ICCPR Art. 15*]

Article 13

Right to recognition as person before law

Everyone shall have the right to recognition everywhere as a person before the law.

[*cf. ICCPR Art. 16*]

Article 14

Protection of privacy, family, home, correspondence, honour and reputation

(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

(2) Everyone has the right to the protection of the law against such interference or attacks.

[*cf. ICCPR Art. 17*]

Article 15

Freedom of thought, conscience and religion

(1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

(2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

(3) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

(4) The liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions shall be respected.

[*cf. ICCPR Art. 18*]

Article 16

Freedom of opinion and expression

(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include

freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

(3) The exercise of the rights provided for in paragraph (2) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary-

- (a) for respect of the rights or reputations of others; or
- (b) for the protection of national security or of public order (ordre public), or of public health or morals.

[*cf. ICCPR Art. 19*]

Article 17

Right of peaceful assembly

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

[*cf. ICCPR Art. 21*]

Article 18

Freedom of association

(1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

(2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms or others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

(3) Nothing in this article authorizes legislative measures to be taken which would prejudice, or the law to be applied in such a manner as to prejudice, the guarantees provided for in the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to organize as it applies to Hong Kong.

[*cf. ICCPR Art. 22*]

Article 19

Rights in respect of marriage and family

(1) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

(2) The right of men and women of marriageable age to marry and to found a family shall be recognized.

(3) No marriage shall be entered into without the free and full consent of the intending spouses.

(4) Spouses shall have equal rights and responsibilities as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

[*cf. ICCPR Art. 23*]

Article 20

Rights of children

(1) Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

(2) Every child shall be registered immediately after birth and shall have a name.

[*cf. ICCPR Art. 24*]

Article 21

Right to participate in public life

Every permanent resident shall have the right and the opportunity, without any of the distinctions mentioned in article 1(1) and without unreasonable restrictions-

- (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) to have access, on general terms of equality, to public service in Hong Kong.

[*cf. ICCPR Art. 25*]

Article 22

Equality before and equal protection of law

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

[*cf. ICCPR Art. 26*]

Article 23

Rights of minorities

Persons belonging to ethnic, religious or linguistic minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

[*cf. ICCPR Art. 27*]

PART III

EXCEPTIONS AND SAVINGS

9. Armed forces and persons detained in penal establishments

Members of and persons serving with the armed forces of the government responsible for the foreign affairs of Hong Kong and persons lawfully detained in penal establishments of whatever character are subject to such restrictions as may from time to time be authorized by law for the preservation of service and custodial discipline.

10. Juveniles under detention

Where at any time there is a lack of suitable prison facilities or where the mixing of adults and juveniles is mutually beneficial, article 6(2)(b) and (3) does not require juveniles who are detained to be accommodated separately from adults.

11. Immigration legislation

As regards persons not having the right to enter and remain in Hong Kong, this Ordinance does not affect any immigration legislation governing entry into, stay in and departure from Hong Kong, or the application of any such legislation.

12. Persons not having the right of abode

Article 9 does not confer a right of review in respect of a decision to deport a person not having the right of abode in Hong Kong or a right to be represented for this purpose before the competent authority.

13. Executive and Legislative Councils

Article 21 does not require the establishment of an elected Executive or Legislative Council in Hong Kong.

14. Temporary savings

(1) For a period of 1 year beginning on the commencement date, this Ordinance is subject to the Ordinances listed in the Schedule.

(2) This Ordinance does not affect-

(a) any act done (including any act done in the exercise of a discretion); or

(b) any omission authorized or required, or occurring in the exercise of a discretion,

before the first anniversary of the commencement date, under or by any Ordinance listed in the Schedule.

(3) The Legislative Council may before the first anniversary of the commencement date by resolution amend this section for all or any of the following purposes-

(a) to provide that, for a period of 1 year beginning on the first anniversary of the commencement date, this Ordinance is subject to such of the Ordinances listed in the Schedule as are specified in the amendment;

(b) to provide that this Ordinance does not affect-

(i) any act done (including any act done in the exercise of a discretion); or

(ii) any omission authorized or required, or occurring in the exercise of a discretion,

before the second anniversary of the commencement date, under or by any Ordinance listed in the Schedule that is specified in the amendment; and

(c) to repeal this subsection.

(4) In this section, a reference to an Ordinance includes a reference to any subsidiary legislation made under that Ordinance.

(5) This section operates notwithstanding section 3.

[section 14]

SCHEDULE

PROVISIONS TO WHICH SECTION 14(1) AND (2) APPLIES

Immigration Ordinance (Cap 115)

Societies Ordinance (Cap 151)

Crimes Ordinance (Cap 200)

Prevention of Bribery Ordinance (Cap 201)

Independent Commission Against Corruption Ordinance (Cap 204)

Police Force Ordinance (Cap 232)

CAP 200 CRIMES ORDINANCE

**Schedule 2 - SEXUAL OFFENCE PROVISIONS THAT HAVE
EXTRA-TERRITORIAL EFFECT - 19/12/2003**

[sections 153P, 153Q & 153R]

Section Description of offence

118	Rape
118A	Non-consensual buggery
118B	Assault with intent to commit buggery
118C	Homosexual buggery with or by man under 21
118D	Buggery with girl under 21
118F	Homosexual buggery committed otherwise than in private
118G	Procuring others to commit homosexual buggery
118H	Gross indecency with or by man under 21
118J	Gross indecency by man with man otherwise than in private
118K	Procuring gross indecency by man with man
119	Procurement by threats
120	Procurement by false pretences
121	Administering drugs to obtain or facilitate unlawful sexual act
122	Indecent assault
123	Intercourse with girl under 13
124	Intercourse with girl under 16
126	Abduction of unmarried girl under 16
130	Control over persons for purpose of unlawful sexual intercourse or prostitution
132	Procurement of girl under 21
134	Detention for intercourse or in vice establishment
135	Causing or encouraging prostitution of, intercourse with, or indecent assault on, girl or boy under 16
140	Permitting girl or boy under 13 to resort to or be on premises or vessel for intercourse
141	Permitting young person to resort to or be on premises or vessel for intercourse, prostitution, buggery or homosexual act
146	Indecent conduct towards child under 16

(Schedule 2 added 31 of 2003 s. 18)