

Outline of the Fourth Periodic Report of the Hong Kong Special Administrative
Region of the People’s Republic of China in the light of the
International Covenant on Civil and Political Rights

COMMENTS OF THE HONG KONG BAR ASSOCIATION

General Observations

1. The Hong Kong Bar Association (“the HKBA”) observes that the general profile of the Hong Kong Special Administrative Region (“HKSAR”) should also include a concise accurate summary on how the HKSAR has met long-standing deficiencies highlighted in the last Concluding Observations of the Human Rights Committee (CCPR/C/CHN-HKG/CO/3, 29 April 2013) (“the Concluding Observations”).
2. The HKBA asks the HKSAR Government to include in the Fourth Periodic Report its position on why the reservations currently applicable to the HKSAR in respect of the ICCPR should not all be withdrawn.

Articles 1: Progress and development of democracy and Article 25: Right to participate in public life

3. The HKBA notes the Concluding Observations, where, in para 6, the Committee observed that the HKSAR should take all necessary measures to implement universal and equal suffrage in conformity with the Covenant as a matter of priority for all future elections, outline clear and detailed plans on how universal and equal suffrage might be instituted and ensure enjoyment by all its citizens, under the new electoral system, of the right to

vote and to stand for election in compliance with article 25 of the ICCPR, taking due account of the Committee's General Comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service, as well as consider steps leading to withdrawing the reservation to article 25(b) of the ICCPR.

4. The HKBA notes the decision issued by the Standing Committee of the National People's Congress (NPCSC) on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016 on 31 August 2014 and that the legislative proposals for the method for selecting the Chief Executive by universal suffrage in 2017 was vetoed at the Legislative Council on 18 June 2015.
5. The HKBA considers that the Central People's Government ("the CPG") and the HKSAR Government should set out in the Fourth Periodic Report their position on the implementation of universal and equal suffrage for all future elections of the Chief Executive and the Legislative Council.

Article 2: Ensuring to all individuals the rights recognized in the ICCPR

6. The HKBA notes the Committee's regrets expressed in para 7 of the Concluding Observations over the lack of independent statutory body to investigate and monitor violations of human rights guaranteed by the ICCPR in a comprehensive manner, and in para 12, the lack of a fully independent mechanism mandated to conduct independent, proper and effective investigation into complaints against the police and empowered to formulate binding decisions.

7. The HKBA considers that the HKSAR Government should explain in the Fourth Periodic Report its reasons for maintaining the current system of investigating and determining complaints against police officers.

Article 6: Right to life and Article 7: Prohibition of torture, and cruel, inhuman and degrading treatment and punishment

8. The HKBA considers that the HKSAR Government should address in the Fourth Periodic Report the issue of use of force by the police and law enforcement officers, including its efforts ensure that all law enforcement actions will be taken with sensitivity, restraint and proportionality at all times, with due respect to the ICCPR (including Articles 7, 19 and 21) and in conformity with the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials.

9. The HKBA considers that the HKSAR Government should explain to the Committee in the Fourth Periodic Report its position regarding amending sections 2(1) and 3(4) of the Crimes (Torture) Ordinance for full compliance with the ICCPR.

10. The HKBA considers that the CPG and the HKSAR Government should explain to the Committee in the Fourth Periodic Report on its position declining to extend to the HKSAR the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol.

11. Following the implementation of the Unified Screening Mechanisms (USM) in March 2014 to assess non-refoulement protection claims on grounds including risk of torture, cruel, inhuman or degrading treatment or

punishment and violations of other “absolute and non-derogable rights”, the United Nations High Commissioner for Refugees (UNHCR) has ceased screening asylum claims in Hong Kong under its mandate.

12. The HKBA considers that the HKSAR Government should explain to the Committee in the Fourth Periodic Report its proposals for revising the current system of the USM, bearing in mind that:

- (1) The definition of “persecution risk” does not include the full definition of refugees under the 1951 Refugee Convention;
- (2) The applicable ground of “absolute and non-derogable rights under the Hong Kong Bill of Rights Ordinance” remains ill-defined despite calls for an exhaustive list, save that the Hong Kong Immigration Department will assess claims under this category relating to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and to the right to life;
- (3) The combination (rather than unification) of three sets of standards in screening which unnecessarily complicate the procedure, as different legal and/or administrative bases have to be applied for different sets of standards;
- (4) The screening of asylum claims for the purpose of establishing refugee status and that of persecution risk claims for the purpose of non-refoulement protection are different processes entailing different legal consequences;
- (5) The average length of processing time for a non-refoulement claim remains unsatisfactory;
- (6) The Hong Kong Immigration Department does not share with the legal profession the country of origin information it has gathered; and

(7) Appellate decisions by the Torture Claims Appeal Board or the Adjudicators have not been published.

Article 8: No slavery or servitude

13. The HKBA considers that the HKSAR Government should report in the Fourth Periodic Report any steps and measures taken, legislatively, policy-wise and administratively, in fulfilling its commitment to combat human trafficking, bearing in mind that the criminal law of Hong Kong only addresses human trafficking for the purpose of prostitution but does not cover instances of forced labour. The HKSAR Government should address whether it has adopted measures to ensure that all workers (including foreign domestic helpers) enjoy their basic rights independently of their migrant status, and to repeal the “two-weeks rule” and the live-in requirement.

Article 9: Liberty and security of the person

14. The HKBA is concerned with cases of persons being held in detention for a prolonged period of time, most notably in *Abid Saeed v Secretary for Justice* (DCCJ 562/2011, 30/1/2015) where detention lasted for 17 consecutive nights in the cells of different police station involving unlawful strip searches and use of handcuffs. The HKBA urges the HKSAR Government to report on the current conditions of detention, including but not limited to persons detained pending removal from Hong Kong.

Article 10: Rights of persons deprived of their liberty

15. The HKBA notes that prison inmates’ main venue of complaint of available allegations against prison officers is the Complaints Investigation Unit, an internal unit of the Correctional Services Department. There are also

reported issues of lack of confidentiality of complaints lodged, difficulties in collecting evidence owing to the lack of systematic and long-term record-keeping or accessibility by inmates, such as to CCTV records. The HKSAR Government should address in the Fourth Periodic Report the prison discipline system and the measures for effective investigation and redress of abuse of prisoners.

Article 12: Liberty of movement

16. The HKBA considers that the HKSAR Government should clarify in the Fourth Periodic Report its commitment to the respecting and protecting the freedom of movement, while exercising its authority of immigration control, in conformity with the ICCPR and under “one country, two systems”.

Article 14: Equality before the courts and right to fair and public hearing

17. The HKBA believes that the Committee has continuously regarded as a principal matter of concern the rule of law and the independence of the judiciary. In this regard the CPG and the HKSAR Government should explain in the Fourth Periodic Report how (1) the White Paper on the Practice of the "One Country, Two Systems" Policy in the HKSAR issued by the Information Office of the State Council of the People's Republic of China on 10 June 2014; (2) the interpretation by the Standing Committee of the National People's Congress of Article 104 of the Basic Law on 7 November 2016; and (3) the decision by the Standing Committee of the National People's Congress on the Co-operation Arrangement for Co-location of immigration, customs and quarantine checkpoints at West Kowloon Station Port, do not affect the independence of the Judiciary, power of final adjudication of the Hong Kong courts and public confidence

in the rule of law.

Article 15: No retrospective criminal offences or penalties

18.The HKBA considers that the HKSAR Government state in the Fourth Periodic Report whether its implementation of the National Anthem Law of the People's Republic of China in the HKSAR would involve any attempt in retrospective criminalization.

Article 16: Right to recognition as person before law

19.The HKBA considers that the HKSAR Government should update the Committee in the Fourth Periodic Report on the progress of the Inter-Departmental Working Group on Gender Recognition and any proposed legislative or other changes.

Article 17: Protection of privacy, family, home, correspondence, honour and reputation

20.The HKBA considers that the HKSAR Government should set out in the Fourth Periodic Report its proposals and actions over the use of camera and video-recording by police during demonstrations, including whether clear and publicly accessible guidelines have been produced for observation by the police and other law enforcement authorities.

Articles 18: Freedom of thought, conscience and religion

Articles 19, 21 and 22: Freedoms of opinion and expression, of assembly and of association

21.The HKBA considers that the HKSAR Government should provide an account in the Fourth Periodic Report on how the freedom of expression (including but not limited to freedom of the press, academic freedom and political speech), assembly are respected and protected in Hong Kong. Particular matters include whether there will be a reform of the statutory offence of sedition, whether journalists and academics have been adequately protected from violence, whether university administrators have observed and valued freedom of expression and academic freedom in the free discussion of issues among students and academics, and whether all arrests and prosecutions of participants in public meetings, assemblies, processions and demonstrations (with reference to statistics) are justified.

Article 23: The family – a vital component of society

22.The HKBA considers that the HKSAR Government should continue to address in the Fourth Periodic Report the questions of subsistence of families of refoulement claimants, asylum seekers and education of their children in Hong Kong; and the situation of post-operative transgender persons in forming families through marriage.

Article 26: Right to Equal Protection before the law

23.The HKBA considers that the HKSAR Government should explain in the Fourth Periodic Report its reasons for maintaining the textual exemptions in section 8 of the Race Discrimination Ordinance (Cap 602) that exclude from the scope of the Ordinance discrimination on the basis of nationality, immigrant status or length of residence in Hong Kong or elsewhere, as well as its limited applicability to the Government, as shown in the case of *Singh Arjun v Secretary for Justice* (DCEO 9/2011, 30.5.2016).

24. The HKBA considers that the HKSAR Government should explain in the Fourth Periodic Report its progress in enacting legislation that prohibits discrimination on ground of sexual orientation and gender identity, in taking steps to put an end to prejudice and social stigmatization of homosexuality and send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation or gender identity, and in ensuring that benefits granted to unmarried cohabiting opposite-sex couples are equally granted to unmarried cohabiting same-sex couples, in line with the ICCPR.

Article 27: Right of ethnic minorities

25. The HKBA considers that the HKSAR Government should follow up in the Fourth Periodic Report the concerns of the Committee and the Committee on the Elimination of Racial Discrimination that ethnic minorities are underrepresented in higher education, that non-Chinese speaking migrants face discrimination and prejudice in employment due to the requirement of written Chinese language skills, even for manual jobs, and the lack of official education policy for teaching Chinese as a second language for non-Chinese speaking students with an immigrant background in Hong Kong.

26. The HKBA notes the implementation of the “Chinese Language Curriculum Second Language Learning Framework” from the 2014/2015 academic year for non-Chinese speaking students, which however falls short of an official education policy, and has not led to the development of any comprehensive curriculum for Chinese as a second language. The HKBA also notes that the Race Discrimination Ordinance provides exceptions for, inter alia, the arrangement of medium of instruction in vocational training (section 20(2))

and education (section 26(2)). The HKBA considers that the HKSAR Government should explain in the Fourth Periodic Report its position on the development of an education policy for non-Chinese speaking students to learn Chinese, and on revising the said provisions of the Race Discrimination Ordinance.

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Hong Kong Bar Association