

The Second Periodic Report on 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 (CCPR/C/HKG/2005/2)

SUBMISSION OF THE HONG KONG BAR ASSOCIATION
TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE
(For Hearing in 86th Session (13-31 March 2006), New York)

Part I: General observations

1. The Hong Kong Bar Association (“the Bar”) observes that most of the concerns raised by the United Nations Human Rights Committee (“the Committee”) in its Concluding Observations of 12 November 1999 (CCPR/C/79/Add.117) on the last occasion when it considered a periodic report on the Hong Kong Special Administrative Region (“the HKSAR”) remain outstanding. The Bar regrets to note that many of those observations of the Committee in 1999 concerned long-standing inconsistencies, deficiencies and matters identified in an even earlier set of Concluding Observations of the Committee (A/51/40, paras 66-72; A/52/40, paras 84-85).

Part II: Constitutional and legal framework for implementation of ICCPR and conformity of laws with it (ICCPR Art 2)

2. The Bar observes that serious concerns remain about the maintenance of the Rule of Law and the Independence of the Judiciary some 8 years after the establishment of the HKSAR as a Special Administrative Region of the People's Republic of China ('PRC') in 1997. These concerns arise in connection with powers reserved to the Central Authorities under the Basic Law.
3. The Standing Committee of the National People's Congress (NPCSC) exercised its power of interpretation of the Basic Law on 3 occasions between 1999 and 2005.
4. The first occasion, which the Committee considered in November 1999, involved the Chief Executive of the HKSAR seeking an interpretation of provisions of the Basic Law which the Hong Kong Court of Final Appeal had interpreted in a judgment adverse to the interests of the HKSAR Government in respect of claims of children born in Mainland China of HKSAR permanent resident parents so that the judgment's effect would be nullified.

5. The second occasion, which took place in April 2004, involved the NPCSC initiating and executing a process to interpret provisions of the Basic Law concerning the development of the political system of the HKSAR so that the NPCSC could make a decision precluding the Chief Executive of the HKSAR and the Legislative Council of the HKSAR from being elected by universal suffrage in 2007 and 2008 respectively and to specify limited extent in which the political system of the HKSAR may be developed in those years.

6. The third occasion, which took place in May 2005, involved the Acting Chief Executive of the HKSAR submitting a request to the Central People's Government of the People's Republic of China (CPG) for interpretation of a provision of the Basic Law concerning the term of office of the Chief Executive of the HKSAR, to impose an interpretation of the Basic Law that was the diametric opposite of the position adopted by the HKSAR Government months ago before the Legislative Council. This interpretation took place notwithstanding the fact that there were pending legal proceedings before the Court of First Instance that would have dealt with the same issue.

7. These 3 occasions demonstrate the reality that a NPCSC interpretation may be sought and given in the absence of a court case, in the middle of a court case, and subsequent to the final adjudication of a court case, and with or without a

request from the Chief Executive of the HKSAR.

8. The Bar observes that NPCSC interpretations have become a flexible instrument of rule used by the Central Authorities of the People's Republic of China to impose their will upon the legal order of the HKSAR, notwithstanding the language of the provisions of the Basic Law and the interpretation of its provisions by the courts of the HKSAR using established canons of construction. The statement of the HKSAR Government that the Chief Executive of the HKSAR would request a NPCSC interpretation only in highly exceptional circumstances is of little comfort since the NPCSC interpretation in April 2004 clearly demonstrated the readiness and willingness of the Central Authorities to act on matters relating to Hong Kong's autonomy without prompting from the Chief Executive. The circumstances in which the 3 NPCSC interpretations were made illustrate that the integrity of the established legal system of the HKSAR is subject to an uncertain and dominant source of law in respect of which the residents of the HKSAR have little say in shaping its content.
9. The Bar urges the Committee to express to both the CPG and the HKSAR Government its most serious concern about:

- (a) the state of the Rule of Law in Hong Kong;
- (b) the commitment of both Governments to honour the guarantee in the Basic Law of a separate legal system for the HKSAR;
- (c) the commitment of both Governments to maintain the independence of the judiciary and power of final adjudication; and
- (d) the commitment of both Governments towards effective protection of human rights through the courts of the HKSAR.

The Committee should secure, through dialogue with the CPG, an assurance that there shall be no further NPCSC interpretation except by way of judicial reference under Art 158(3) of the Basic Law.

- 10. The Bar urges the Committee to reiterate to the HKSAR Government that the ICCPR prescribes only minimum standards, bearing in mind that while Art 39 of the Basic Law seeks to secure the continued application of the articles of the ICCPR as applied to Hong Kong, other articles of Chapter 3 of the Basic Law seeks to secure not only fundamental rights that overlap with the ICCPR rights but also a potentially broader extent of protection of those rights and other more specific rights.
- 11. Among the rights guaranteed in one of the articles in Chapter 3 of the Basic

Law is 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. The Court of Appeal indicated in 2005 that:

“lawyers are an integral part of the administration of justice. The rule of law depends to a very large extent on the presence of competent and independent-minded lawyers. The entitlement to legal representation if a person so wishes is a basic and fundamental part of the concept of a fair trial.”

12. Recent court cases give rise to concern that the HKSAR Government may not have respected the rights to confidential legal advice and legal representation on occasions. These concerns have arisen in the context of cases concerning law-enforcement bodies using investigative methods that arguably impinged on legal professional privilege.

13. In March 2002, a practising barrister was arrested by the police. They searched his chambers and seized documents in pursuance of an allegation that the barrister failed to make a disclosure to the police of a suspicion that property which was held by his client and said to represent the proceeds of a criminal offence was to be sold. The barrister obtained declarations that his arrest was unlawful and that the relevant statutory provision was subject to the common

law rule of legal professional privilege. The Court of First Instance found that the police had no grounds for reasonable suspicion against the barrister but made the arrest of the barrister “to see if, in questioning him and searching his chambers, they could find grounds for a reasonable suspicion”.

14. In June 2005, the prosecution admitted in a criminal prosecution that investigators of the Independent Commission Against Corruption had arranged for the covert recording by an undercover agent of the entirety of a meeting between a defendant and his lawyer, in reasonable anticipation that legal advice would be given during that meeting.
15. The Bar urges the Committee to express its concern that the law enforcement agencies in Hong Kong should fully respect the fundamental rights to confidential legal advice and to legal representation.
16. The Bar urges the Committee to continue to express its concern that the HKSAR Government had not to date even proposed to establish a statutory human rights commission with investigatory powers. The Bar also urges the Committee to continue to express its concern that the Equal Opportunities Commission, which implements anti-discrimination legislation on sex, disability and family status, must be allowed to operate and develop its

management arrangements autonomously without undue interference from the HKSAR Government.

17. The Bar urges the Committee to maintain its concern that there is no general legislation in the HKSAR providing effective protection against violations of the rights enshrined under the ICCPR as applied to the HKSAR by non-government actors.

18. The Bar urges the Committee to express its concern that the reasons put forward by the HKSAR Government for rejecting the proposal of the Legal Aid Services Council for establishing an independent legal aid authority, namely the costs of disestablishment of the Legal Aid Department and public finance policy were unconvincing, bearing in mind that part of the costs of legal aid services in Hong Kong were recovered from the parties held liable to pay costs to the aided persons and that the Legal Aid Ordinance (Cap 91) mandated the provision of publicly funded legal aid services to those meeting eligibility criteria regardless of the nature of the service providing authority.

19. The withdrawal of the National Security (Legislative Provisions) Bill in 2003 means that legislation to give effect to Art 23 of the Basic Law remains to be enacted later. In the meantime, the ancient offences of treason and sedition

enacted under a different constitutional order remain under the Crimes Ordinance (Cap 200).. The Bar urges the Committee to maintain its concern that some of the existing offences endanger fundamental rights enshrined under the ICCPR as applied to Hong Kong and that legislation to be enacted under Art 23 must comply with not only the ICCPR but also the rights guaranteed under Chapter 3 of the Basic Law.

20. The Bar urges the Committee to maintain its concern that no legislation in detailed terms is in place to cover emergencies and that Art 18 of the Basic Law on that subject remains in apparent conflict with Art 4 of the ICCPR.

21. In June 2004, the police arrested three persons maintaining surveillance outside a block of flats in Hong Kong. Two of the three persons subsequently claimed to be public security personnel from the Mainland.. They were found in possession of handcuffs.. The HKSAR Government expressed concern and said that not even one single incident of cross-border law enforcement action would be tolerated. The arrested persons were, however, subsequently released. The Bar urges the Committee to express its concern to the CPG and the HKSAR Government that public security and national security personnel from Mainland should not operate clandestinely in Hong Kong and if any such personnel been found to have acted contrary to the laws of the HKSAR, he or

she should be subject to a properly conducted criminal investigation and prosecution.

Part III: Principles of gender equality and non-discrimination; freedom from torture and cruel, inhuman or degrading treatment, right to be free of arbitrary arrest and detention; security of the person and protection from arbitrary arrest; treatment of prisoners and other detainees (ICCPR Arts 3, 7, 9, 10 and 26)

22. Hong Kong residents detained in Mainland China are not accorded consular protection because they are nationals of the PRC. The CPG maintained that HKSAR officials based in Mainland may not visit Hong Kong residents under detention because the HKSAR representatives were said to be not of comparable status as representatives of foreign embassies/consulates. The Bar urges the Committee to express its concern over the humane treatment of Hong Kong residents under detention in Mainland China.
23. There is concern about the living conditions of asylum seekers in Hong Kong. The UN Convention relating to the Status of Refugees does not apply to Hong Kong and there is no legislation governing the reception of asylum seekers. The UNHCR will investigate refugee claims and the Immigration Department will investigate claims against *refoulement* from persons who claim protection under Article 3 UN Convention against Torture. Asylum seekers are not

permitted to work and the process of examination of claims takes many months, even years.

24. As a result, asylum seekers who do not qualify for UNHCR support are totally dependent on charities and the HKSAR Government refuses to provide any financial support to them. There are strong suggestions that these sources of assistance are inadequate to deal with long-term stays and that asylum seekers have been obliged to sleep in the streets, scavenge for food, gone hungry and have not been able to have access to free medical treatment. Some of these asylum seekers have been accompanied by young children and, although an effort has been made to accommodate families, no financial support is provided for them.
25. The Bar urges the Committee to express its concern that the policies of HKSAR Government may have the tendency to expose this small class of persons to the risk of degrading treatment within the meaning of Article 7.
26. Although the Police Force Ordinance (Cap 232) provides that suspects brought to a police station may only be detained for 48 hours pending investigation and must be either brought to court or released on bail, suspects are from time to time remanded by the court to police custody for a few days and in some cases for a few weeks.
27. The Bar notes that the conditions of detention in the police cells are not

conducive to long periods of detention. In particular, no police station in Hong Kong provides hot water showering facilities. The general hygienic condition of the police cells is also unsatisfactory. Rules regarding the maintenance of the police cells are outdated. Some have even infringed fundamental human rights. The Bar urges the Committee to question the HKSAR Government on this matter and to express its concern that such conditions to be improved so that detainees in police custody are treated humanely.

28. The mandatory sentence for the offence of murder committed by an adult in Hong Kong is life imprisonment. Unlike juveniles convicted of murder and sentenced to life imprisonment, adults convicted of other offences and sentenced to life imprisonment, adults convicted of murder are not entitled to a determination of a minimum term which they must serve in order to mark a period of punishment and retribution for their offences. The Bar urges the Committee to question the HKSAR Government for the rationale of this distinction in treatment of prisoners sentenced to life imprisonment and to express its concern as to lack of humanity of such treatment.

29. The Bar notes that the Prison Rules (Cap 234 sub leg) permit the prison management to remove a prisoner from association with other prisoners for the purpose of maintaining order and discipline in the prison or protecting the

interest of the prisoner. Such removal is for an initial period of 72 hours but can be extended to renewable periods of 1 month. The Bar urges the Committee to question the HKSAR Government on the use of such a severe power and the conditions of detention of persons subject to removal from association; and to express its concern that such a power must not be used as a punitive alternative to prison disciplinary sanctions or repeatedly to amount to inhumane conditions of detention.

30. The Bar notes the press reports that quoted community groups that there was 1 case of spouse or child abuse every 2 hours in Hong Kong and that police officers often recommended the women complaining of abuse not prosecute their husbands in the interests of their children and traditional family values. A domestic violence tragedy in April 2004 in which a woman and her two daughters were murdered by her husband ,even though she had reported the violent behaviour of her husband to the police, highlighted inadequacies not only in the police force, but also of publicly funded social welfare services. The Bar urges the Committee to express its concern that police officers should be properly trained to be sensitive to the difficult circumstances of spouse abuse; and that there should be proper allocation of resources to allow a zero tolerance on domestic violence policy to be effectively and efficiently implemented.

31. The Bar notes that the Independent Police Complaints Council remains a body that has no investigatory powers. Draft legislation to put the Council on a statutory basis has not yet been introduced. The Bar urges the Committee to maintain its concerns on this matter.

32. The Bar notes that investigation of complaints against the Independent Commission Against Corruption is undertaken by a unit within the Operations Department of the ICAC, even though most complaints are against the conduct of investigators of the Operation Department. The ICAC Complaints Committee is confined to reviewing reports of investigation into complaints. The Bar urges the Committee to express its concern along the lines adopted in respect of the police complaints investigation mechanism in Hong Kong.

33. The Bar notes that while there have been strong suggestions that the HKSAR Government is to introduce draft legislation in 2006 to outlaw racial discrimination, no such draft legislation has been published. The Bar urges the Committee maintain its concerns on this matter.

34. The Bar notes that while there has been recent successful challenges that certain criminal offences of buggery and gross indecency were invalid on the

ground of sex discrimination, there are still no legislative remedies for persons who suffer from discrimination on the ground of sexual orientation. The Bar urges the Committee maintain its concerns on this matter.

35. The Bar notes that a significant portion of enquiries directed to the Equal Opportunities Commission are related to alleged discrimination on the ground of age, such as problems encountered by middle age job seekers. This matter underlines the need to have a statutory human rights commission to address comprehensively human rights violations by non-government actors in Hong Kong. The Bar urges the Committee to question the HKSAR Government on this matter.

Part IV: Right to privacy, right to freedom of thought, conscience and religion; right to freedom of opinion and expression, peaceful assembly and association (ICCPR Arts 17, 18, 19, 21 and 22)

36. The recent ruling of the Court of First Instance that s 33 of the Telecommunications Ordinance (Cap 106) (which empower the Chief Executive to authorize interception of telecommunications on the ground of “public interest”) was inconsistent with the right to privacy guaranteed under the Hong Kong Bill of Rights and the Basic Law highlights the violation of the

ICCPR that the HKSAR Government had perpetrated throughout the years.

37. While the HKSAR Government intends to enact “corrective legislation” to cover Government parties in the coming 6 months, there is a serious concern that the legislative process (which will involve putting in place a comprehensive framework for authorizing interception of communications and covert surveillance and for oversight and complaint handling in respect of such activities) would not allow mature and in-depth discussion and reflection of the issues involved. At the time of writing, the HKSAR Government has not published any draft legislation. A reading of an outline of legislative proposals has already given rise to concerns. The proposal to use the undefined expression “public security” (not being one of the grounds for restriction spelt out in, for example, Art 19 of the ICCPR) as a criterion for authorizing interception of communications and covert surveillance is a matter of concern. The proposed dichotomized framework of “judicial authorization” of interception of communications and “more intrusive” forms of covert surveillance and of “departmental authorization” of “less intrusive” forms of covert surveillance is another matter of concern. The Bar urges the Committee to continue to express its concern on this matter and its views that the HKSAR Government should introduce draft legislation providing a regulatory framework that protects the right to privacy by way of narrowly defined criteria

and effective outside authorization, supervision and accountability mechanisms.

38. Seven newspapers had their premises searched by the Independent Commission Against Corruption on 24 July 2004 pursuant to warrants made by a judge of the Court of First Instance authorizing search and seizure of journalistic materials after an ex parte hearing. The ICAC conducted the searches in pursuance of an investigation of a conspiracy to pervert the course of justice and breaches of the Witness Protection Ordinance (Cap 564). One of the seven newspapers subsequently succeeded in setting aside the warrants directed to it and one of its reporters on the basis that the ICAC had resorted to the oppressive and unnecessary means of a search warrant and a high profile search operation without first seeking the inspection or production of the journalistic materials it thought to be of assistance to the investigation by mutual co-operation or an inter partes court order.

39. The ICAC's appeal was unsuccessful on jurisdictional grounds but the Court of Appeal observed that the issue of the search warrants was in the circumstances justified. The troubling aspect of the statutory framework was that by enlisting judges of the Court of First Instance to perform the function of authorizing searches on an ex parte application from the relevant law enforcement agency,

the safeguard of the supervisory jurisdiction of the Court of First Instance to judicially review the legality of the authorization on an inter partes basis was removed because the Court of First Instance does not review itself.

40. . The Bar urges the Committee to express a similar view and impress upon the HKSAR Government the importance of reserving senior judges to review the acts of more junior judges in whom the responsibility for issuing such warrants can be properly entrusted. .
41. The Bar observes that the Public Order Ordinance (Cap 245) remains capable to be applied to restrict unduly the enjoyment of the rights guaranteed in Art 21 of the ICCPR. The Bar urges the Committee to express the view that “national security” should be deleted from the provisions of the Ordinance setting out the grounds for refusing permission to hold public meetings and public processions.
42. The Bar observes that the HKSAR Government has not conducted a review of the Societies Ordinance (Cap 151) to implement the Committee’s Concluding Observations in 1999. Rather, the HKSAR Government sought to enact in 2003 (albeit unsuccessfully) additional provisions for the proscription of local organizations in the interest of national security, particularly where the same

organization or an affiliate of it had been banned in Mainland China. The Bar urges the Committee to continue to express its concern that the Ordinance remains a threat to the full enjoyment of rights under Art 22 of the ICCPR and that “national security” should be deleted from the provisions of the Ordinance regarding the criteria for refusal of registration, cancellation of registration or prohibition of operation of societies.

43. The Bar observes that the HKSAR Government has not conducted a review of the Official Secrets Ordinance (Cap 521) to bring it fully in line with Art 19 of the ICCPR. The Bar urges the Committee to express a similar view.

Part V: Expulsion of aliens; right to enter one’s own country; protection of the family and children (ICCPR Arts 12, 13, 23, 24)

44. It was formally disclosed in the course of litigation in November 2005 that the immigration authorities of the HKSAR maintain a system of information gathering, preparation and display known as the Watchlist for the purpose of keeping away from Hong Kong individuals whose presence in Hong Kong poses, or may pose, a risk to the security, public order or public safety or the peace and stability, of the HKSAR. Information and intelligence relevant to the Watchlist may come from the Immigration Department itself, other HKSAR

government department and “other sources”.

45. A judge of the Court of First Instance ordered disclosure of documents on the reasons of placing the applicants in the litigation (who were professed practitioners of Falun Gong, a spiritual or religious movement banned in Mainland China) on the Watchlist so that the allegation that they were denied entry into Hong Kong on the ground of their belonging to the movement could be fairly adjudicated but the HKSAR Government invoked the doctrine of public interest immunity to prevent their disclosure. The Bar is concerned that the information and intelligence gathering for the Watchlist involves exchange of information and intelligence with public security and national security counterparts in Mainland China which undermines not only the freedom of movement of HKSAR residents but also puts in jeopardy the freedom of others to participate in legitimate meetings in exercise of the freedoms of association, assembly and expression, a purpose that the applicants in the litigation claimed to be theirs for coming to Hong Kong. The Bar urges the Committee to highlight this concern.
46. The Bar urges the Committee to closely question the CPG and the HKSAR Government on the extent to which the right to family reunion of Mainland born claimants for right of abode with their parents in Hong Kong have been met in the 6-year period between 1999 and 2005, bearing in mind of reports

that some claimants who had successfully secured their presence in Hong Kong had not yet been issued with identity cards evidencing their status as permanent residents.

47. From July 2003, the immigration authorities changed its policy regarding immigrants coming to Hong Kong as dependents. Such immigrants would, under the new policy, require permission if they wish to work or establish a business and in obtaining that permission, they have to show that they have skills or expertise that are scarce in Hong Kong. The Bar observes that this policy change is not conducive to the full enjoyment of the right of family union in Hong Kong and potentially discriminatory against immigrants of modest means. The Bar urges the Committee to express a similar view.

48. Following the February 2003 judgment of the Hong Kong Court of Final Appeal that removed the unconstitutional statutory requirement that a non-Chinese national applying for permanent resident status in the HKSAR must first be granted unconditional stay in the territory, the immigration authorities subjected such applicants to questioning of their private lives (such as whether they had a Chinese girlfriend/boyfriend) and future plans for the ostensible purpose of determining whether they had taken “concrete steps” to make Hong Kong alone their place of permanent residence. The Bar urges the

Committee to question the HKSAR Government on how it would maintain proper respect of personal privacy guaranteed under the ICCPR in the processing of such applications.

Part VI: Right to take part in the conduct of public affairs; right to vote (ICCPR Art 25)

49. The HKSAR Government established a Constitutional Development Task Force in 2004 to examine the principles and legislative process in the Basic Law relating to constitutional development, to consult the relevant departments of the Central Authorities, and to listen to the views of the public on the issues. One of the reports of the task force was formulated for the NPCSC to make its decision in April 2004 precluding universal suffrage for the election of the Chief Executive of the HKSAR in 2007 and the election of the Legislative Council of the HKSAR in 2008. The fifth report of the task force proposed modest changes in the political system of the HKSAR following the strictures imposed under the NPCSC interpretation in April 2004 and the NPCSC decision in April 2004, including doubling the size of the election committee for the Chief Executive to 1,600 persons, adding 5 functional constituency seats and 5 geographical constituency seats to the Legislative Council, and having the 5 new functional constituency seats returned by election of

members of District Councils among themselves. The Legislative Council did not endorse the proposals of the fifth report in December 2005. The HKSAR Government then decided that the task force's work was complete and that further consideration on the topic of universal suffrage for Hong Kong would be conducted in a committee under a Strategic Development Commission.

50. Neither the CPG nor the HKSAR Government has formally indicated any route map and timetable for progress of political development towards universal suffrage in the election of the Chief Executive of the HKSAR and the election of all members of the Legislative Council. The earliest time for any further change in the political system of the HKSAR appears to be 2012.

51. The Bar urges the Committee to question closely the CPG and the HKSAR Government on their understanding of Arts 45 and 68 of the Basic Law, the NPCSC interpretation in April 2004 of Art 7 of Annex I and Art III of Annex II of the Basic Law, and the NPCSC decision in April 2004 on the methods for selecting the Chief Executive of the HKSAR in 2007 and electing the Legislative Council of the HKSAR in 2008. The Bar urges the Committee to express a view as to whether –
 - those provisions of the Basic Law (which prescribe for the political

system of the HKSAR to be in the light of the actual situation of the HKSAR and for its development in accordance with the principle of gradual and orderly progress, with the ultimate aim of universal suffrage),

- the NPCSC interpretation (which introduced the additional control mechanism of the NPCSC determining whether there is a need of change in the political system of the HKSAR), and

- the NPCSC decision (which precluded the adoption of universal suffrage for the election of the Chief Executive in 2007 and the Legislative Council in 2008, and maintained for the 2008 Legislative Council election the 50%/50% proportion between seats returned by way of geographical constituencies and seats returned by way of functional constituencies, while introducing additional principles governing political development in the HKSAR, 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 long-term prosperity and stability of Hong Kong),

are, individually and/or taken together, inconsistent with Art 25 of the ICCPR.

52. The Bar urges the Committee to question closely the CPG and the HKSAR

Government on their reasons for the NPCSC decision precluding in 2004 the implementation of universal suffrage for the election of the Chief Executive in 2007 and the Legislative Council in 2008 and to express a view as to whether that decision is inconsistent with Art 25 of the ICCPR.

53. The Bar urges the Committee to express a clear and firm view that the form of suffrage in the HKSAR is not a system of universal suffrage since the voting public do not have equality of voting rights; and that while the ICCPR does not impose any particular electoral system, compatibility of a country's electoral system with Art 25 of the ICCPR with the principle of one person, one vote only permits variations that do not distort the distribution of voters, favour any group or discriminate against any group. The Bar considers this matter to be of significance in the light of a discussion paper of the Strategic Development Commission on universal suffrage that suggests, by reference to the Committee's General Comment and an United Nations publication, that "equal suffrage" does not require that each vote should have the same effect on the outcome of the election'; and that "the international community recognizes that there is no single electoral system that suits all places, and would not seek to impose any single political model or electoral system on any place. Different jurisdictions have adopted, respectively, direct or indirect elections and different models of unicameral or bicameral legislature. As far as an individual

jurisdiction is concerned, while conforming to the general understanding of universal suffrage held internationally, it may also develop its electoral system having regard to the particular needs and aspirations of its people, and its historical realities”.

54. The Bar urges the Committee to reiterate its Concluding Observation in 1995 that the reservation entered by the United Kingdom Government in respect of Art 25 of the ICCPR can no longer be relied on in resistance to full compliance with Art 25 once the Legislative Council of Hong Kong is fully constituted by members returned by way of elections. Thereafter, the electoral system of the Legislative Council must conform to Art 25.
55. The Bar urges the Committee to consider the electoral system for the Chief Executive of the HKSAR (which involves an election committee of 800 members electing a Chief Executive for appointment by the CPG) and express a view as to the consistency of such a system with Art 25 of the ICCPR.
56. The Bar urges the Committee to at least maintain its strong views in 1999 that the electoral system of the Legislative Council of the HKSAR (which continues to return members elected under functional constituencies at least till 2008 and permits voter registration in some functional constituencies by corporations and thus indirect control by entrepreneurs of more than 1 vote in

the same constituency) does not comply with the ICCPR and that the HKSAR Government should take all necessary measures to strengthen democratic representation of HKSAR residents in public affairs.

57. The Bar urges the Committee to express its serious concern of the retrograde step of the HKSAR Government, inconsistent with Art 25 of the ICCPR, of re-introducing seats appointed by the Chief Executive of the HKSAR in District Councils.
58. The Bar observes that between December 2003 and September 2004, the Central Authorities of People's Republic of China appeared to exert pressure on the voting public in the HKSAR to ensure in vague terms that "Hong Kong would not get out of control". This was done in the beginning of 2004 by way of strong words from opinion formers associated with the Central Authorities that those who served in the HKSAR Government and the Legislative Council of the HKSAR should be "patriotic"; that some of those currently serving in the Legislative Council were not; and that people in Hong Kong should be warned against individuals aspiring for Hong Kong to become a "political entity" or independent.
59. As the Legislative Council elections in September 2004 drew near, reports

emerged of action taken by Mainland officials “encouraging” Hong Kong residents investing or working in their localities to register to vote; and to vote for particular political parties having a good relationship with the Central Authorities. Some Mainland officials were said to have demanded the Hong Kong residents concerned to take photographs of their ballot papers with their mobile telephones so that the photographs would then be transmitted back to the officials as proof of compliance. The electoral authorities in Hong Kong had to react by publicizing the importance of secrecy of the ballot and the existing ban of photographic equipment in polling stations and by taking administrative measures in the set-up of polling stations. The reports of voter intimidation were publicized by, among others, a number of current affairs commentators hosting radio phone-in or commentary programmes. These current affairs commentators then quitted their programmes in circumstances suggesting that threats had been made of the safety of themselves and their families. The Bar urges the Committee to question the CPG and the HKSAR Government on these matters and to express its serious concern on such interference with the free will of the voting public to participate in Hong Kong’s public affairs.

Dated 25th February 2006.

Hong Kong Bar Association.