

United Nations Human Rights Council Universal Periodic Review:
Section of the Hong Kong Special Administrative Region

Comments of the Hong Kong Bar Association

1. The Hong Kong Bar Association (HKBA) was invited by the Constitutional and Mainland Affairs Bureau of the HKSAR Government to comment on an outline of the section on the HKSAR for inclusion in the report of the People's Republic of China (PRC) to the United Nations Human Rights Council for the purpose of the second Universal Periodic Review on the human rights situation of the PRC.

2. The HKBA's comments will focus on the framework for the promotion and protection of human rights in the HKSAR, the implementation of relevant human rights obligations in the HKSAR and various achievements, challenges and initiatives in the promotion and protection of human rights in the HKSAR.

Framework for promotion and protection of human rights in the HKSAR

3. The HKBA refers to the Immigration (Amendment) Ordinance 2012 (coming into effect in December 2012), which introduced a statutory screening mechanism for persons claiming protection from refoulement under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in relation to a claim of being subjected to torture upon return; and the judgment of the Hong Kong Court of Final Appeal in *Ubamaka* (dated 21 December 2012), which held that the Hong Kong Bill of Rights Ordinance (Cap 383), the domestic implementation of the provisions of the International Covenant on Civil and Political Rights (ICCPR) as applied in Hong Kong, required protection from refoulement also in relation to a claim of being subjected to ill-treatment qualifying as cruel, inhuman or degrading treatment or punishment under Article 3 of the Hong Kong Bill of Rights (corresponding to Article 7 of the ICCPR). The HKBA invites the HKSAR Government to include in the HKSAR section its considerations as to whether the above developments necessitates legislative amendment and other additional administrative mechanisms, including re-screening of failed torture

claimants who may be in a position to raise a claim of ill-treatment consistent with General Comment No 20 (1992) of the United Nations Human Rights Committee on Article 7 of the ICCPR.

4. The HKBA invites the HKSAR Government to include in the HKSAR section its considerations as to whether it has any plan to introduce a unified screening process for persons claiming protection from refoulement on the grounds of political persecution, torture and ill-treatment to ensure that no person is returned by the HKSAR Government to a country where there is demonstrated substantial grounds for believing that he would be persecuted, tortured or faced with cruel, inhuman or degrading treatment or punishment.

5. The HKBA invites the HKSAR Government to include in the HKSAR section an acknowledgement of the centrality of the Rule of Law with an independent Judiciary in the promotion and protection of human rights and the implementation of human rights obligations applicable to the HKSAR in Hong Kong. In this connection, the HKBA invites the HKSAR to include in the HKSAR section its considerations as to whether judicial independence and autonomy would be undermined if the Chief Executive of the HKSAR (the head of the HKSAR Government) seeks an interpretation of the Basic Law of the HKSAR from the Standing Committee of the National People's Congress for the purpose overturning the interpretation of the Basic Law of the Hong Kong Court of Final Appeal in the adjudication of a case before it after rejecting the argument put forward on behalf of the HKSAR Government; and as to whether judicial independence and autonomy would be undermined if the HKSAR Government seeks an interpretation of the Basic Law from the Standing Committee in the course of the adjudication of a case before the Court of Final Appeal for the purpose of achieving indirect nullification of an earlier interpretation by the Court of Final Appeal of a provision of the Basic Law that is within the limits of the autonomy of the HKSAR.

6. The HKBA invites the HKSAR Government to include in the HKSAR section its considerations on why the establishment of a Human Rights Commission with comprehensive terms of reference to promote and protect human rights in the HKSAR

consistent with the Paris Principles for National Human Rights Institutions (1991) has not been a feasible or appropriate policy initiative on the part of the HKSAR Government.

7. The HKBA invites the HKSAR Government to include in the HKSAR section its evaluation as to whether the present arrangements for the constitution, operation and funding of the Equal Opportunities Commission are consistent with the Paris Principles.

8. The HKBA invites the HKSAR Government to include in the HKSAR section its considerations on the review of the existing anti-discrimination legislations, particularly the Sex Discrimination Ordinance (Cap 480) and the Disability Discrimination Ordinance (Cap 486), including any mooted or proposed amendments and the timetable for introducing such amendments.

9. The HKBA invites the HKSAR Government to include in the HKSAR section its considerations as to whether the current reservations in respect of each and every of the international human rights treaties extended to the HKSAR should be withdrawn. These reservations include but are not limited to the reservation entered in relation to the ICCPR over immigration legislation and the reservation entered in relation to the implementation of Article 25 of the ICCPR concerning the constitution of an elected Legislative Council.

The implementation of human rights obligations in the HKSAR

10. The HKBA invites the HKSAR Government to include in the HKSAR section its explanation for its refusal to countenance enacting anti-discrimination legislation to outlaw discrimination based on sexual orientation.

11. The HKBA invites the HKSAR Government to include in the HKSAR section its considerations for imposing various enhanced policing measures on peaceful public processions in Hong Kong, including the introduction of more powerful pepper spray, using tall barriers to fence up and obscure designated public demonstration areas from the view of the visiting President of the PRC, the introduction of sonic boom devices, and the introduction of compact video-recording equipment in police vehicles and on police officers.

Achievements, challenges and initiatives in the promotion and protection of human rights

12. The HKBA invites the HKSAR Government to include in the HKSAR section the considerations of the Central People's Government and the HKSAR Government for the development of the political system in the HKSAR, including their understanding of universal and equal suffrage, their understanding of permissible restrictions or filtering mechanisms in the nomination of candidates in a Chief Executive election, their understanding of the compatibility of functional constituencies in the Legislative Council with universal and equal suffrage, and their timetable for introducing amendments to electoral laws to implement universal suffrage in Chief Executive election and in Legislative Council election.

Dated 11th March 2013.

HONG KONG BAR ASSOCIATION