

# **Part I**

## **General Profile of the Hong Kong Special Administrative Region**

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### **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<sup>#</sup></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

<sup>#</sup> Provisional figures

**(b) Population by age group and sex<sup>1</sup>**

		<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<sup>#</sup></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

<sup>1</sup> 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)**<sup>2 & 6</sup>

<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**<sup>3 & 6</sup> 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> <sup>4</sup>
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

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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> <sup>#</sup>
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> <sup>#</sup>
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 <sup>#</sup>

**(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 <sup>#</sup>

<sup>#</sup>Provisional figure

**(j) Fertility rate**

	<u>1987</u>	<u>1992</u>	<u>1999</u>	<u>2002</u>	<u>2003</u> <sup>5</sup>
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 (%)<sup>6</sup>**

<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

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<sup>5</sup> 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.

<sup>6</sup> 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)<sup>7</sup>**

<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

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<sup>7</sup> 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) <sup>8</sup>
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

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<sup>8</sup> 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 –

<b><u>Membership</u></b>	<b><u>First term</u></b> 1998-2000 (two years)	<b><u>Second term</u></b> 2000-2004 (four years)	<b><u>Third term</u></b> 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	-
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

legislation<sup>9</sup>. 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

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<sup>9</sup> 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 Ordinance<sup>10</sup>) 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.

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<sup>10</sup> 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) <sup>11</sup>. The Ombudsman investigates and reports on grievances arising from maladministration. "Maladministration" includes such things as inefficient, bad or improper

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<sup>11</sup> 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 Covenant<sup>12</sup>. The Government of

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<sup>12</sup> 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.