

**Hong Kong Bar Association's Comments on the
Hong Kong Special Administrative Region Government's
Outline of the topics to be covered in the Second Report on HKSAR
under the International Covenant on Civil and Political Rights**

Introduction

1. The Bar regrets to note that since the initial report submitted by the Central People's Government on the Hong Kong Special Administrative Region ("HKSAR") in July 1999, which was heard by the United Nation's Human Rights Committee ("the Committee") in November 1999, not much progress has been made on human right issues in the HKSAR. In particular, the Bar regrets to note that most of the concerns raised by the Committee in its 'Concluding observations of the Human Rights Committee Hong Kong Special Administrative Region' (CCPR/C/79/Add.117, dated 15 November 1999) ("Concluding Observations") have not been implemented by the Special Administrative Region Government ("SAR Government").
2. The Bar notes that on one hand the senior officials in the SAR Government, especially the Chief Executive, have kept reminding the general public of their (and that of the Government's) respect to human rights and the rule of law in the past 5 years, at the same time the SAR Government has, on the other hand, paid scant notice to the recommendations made by the Committee in the "Concluding Observations".
3. The SAR Government should be reminded of its obligations under the various Articles under the ICCPR and that under Article 39 of the Basic Law.
4. In order to convince the general public in the SAR and the international community that it is serious in fulfilling the obligations under the ICCPR, the SAR Government is urged to implement the recommendations of the Committee, whether by enacting appropriate legislations or by way of administrative means, without further delay.

Specific Areas of Concern

5. Instead of commenting on the individual articles under the ICCPR at this stage, the Bar would like to concentrate on a few important areas of concern of events which took place since 1999. The Bar will submit its full view on how the SAR Government has observed under each of the articles of the ICCPR when the administration submits its report prior to 31st October 2003.

Article 23 of the Basic Law

6. Of all the issues affecting human rights in Hong Kong, the SAR Government's intention to enact laws under Article 23 of the Basic Law must have the most profound and long term effect.
7. The Bar has repeatedly raised its concern over both the timing and the scope of the SAR Government's intention to legislate under Article 23. In July 2002, the Bar first published its 'Views on the Legislation to be made under Article 23 of the Basic Law'. Then, in December 2002, the Bar published its 'Response to the Consultation Document on the Proposals to Implement Article 23 of the Basic Law'. On 11th April 2003, the Bar is going to publish its 'Views on the National Security (Legislative Provisions) Bill 2003'. Copies of all those papers together with their executive summary can be found at the Bar's website at <http://www.hkba.org>
8. A few matters for the record regarding the SAR Government's action. First, the Bar fails to see the need for the SAR Government to enact laws in such a great haste when in most areas the existing laws of the HKSAR are sufficient to prohibit the acts listed in Article 23. Further, since the resumption of sovereignty by the People's Republic of China on 1st July 1997, there is no evidence to indicate that such laws are required or necessary in order to protect national security. Whilst the Bar appreciates that the SAR Government is under constitutional obligation to enact laws for the acts mentioned under Article 23, it remains skeptical of its chosen timing and the lack of a genuine and meaningful consultation process.
9. The Bar regrets that the SAR Government has only allowed 3 months to consult the public for such a far reaching and important piece of legislation. Further, despite wide general public demands, the SAR Government has failed to respond to the modest and reasonable request of publishing a White Bill as part of the consultation process. Instead a Blue Bill was published only weeks after the end of the official consultation period. The Bar further regrets to note that instead of adopting a 'minimalist approach', parts of the matters stated in the Blue Bill have simply gone too far and are arguably unconstitutional. The Bar also regrets to note that the "Johannesburg principles" have not been followed in the preparation of the Blue Bill.
10. The Bar is extremely concerned that with the passing of the National Security (Legislative Provisions) Bill (which incidentally will most likely become law by the time of the SAR Government submitting its Second Report in October 2003), freedom of expression, freedom of association, freedom of thought, freedom of the press, freedom to hold opinions without interference will all be compromised under the thin disguise of protecting national security: **Articles 18, 19, 21, 22.**

Respect to the Final Decision of the CFA

11. Notwithstanding the comments made by the Committee in the Concluding Observations and despite repeated calls of the public for the SAR Government never again to seek any re-interpretation from the National People's Congress Standing Committee after the Court of Appeal has pronounced a final adjudication on a case involves with the interpretation of the Basic Law, the SAR Government to date has refused to give such an undertaking. As a result, not only that the judicial autonomy in the SAR continues to be threatened, it also shows the lack of respect for the independence for the Judiciary and the Rule of Law on the part of the Government.

Selective Prosecution of Peaceful Demonstrators

12. The Bar is most concern with the SAR Government's apparent selective arrests and subsequent prosecutions of several well known social activists in May 2002. Leung Kwok-hung and two others had participated in a peaceful procession in February 2002. However, such public demonstration was unlawful under the Public Order Ordinance as the participants did not obtain the prior approval of the Commissioner of Police.
13. In a judgment delivered in November 2002, the Chief Magistrate queried whether it had been appropriate for issue of a political nature to be resolved in a legal forum.
14. The Bar is concerned that the SAR Government is going down a dangerous path in using draconian laws to silence its political dissenters.

The Human Rights Commission

15. The Bar notes with regret that, despite the clear concerns and recommendations of the Committee in its Concluding Observations, the SAR Government has to date failed to establish an independent body to investigate and monitor human rights violations in the SAR and the implementation of Covenant rights.
16. The SAR Government has so far not indicated whether it is going to establish such an independent body and, if so, when.
17. An independent Human Rights Commission will only conform to the image of a modern, open and civilised society like Hong Kong and enhance the status of the HKSAR as a 'world class' city.

Downgrading of the Equal Opportunity Commission("EOC")

18. While welcoming the establishment of the EOC after years of debate in the community, the Bar is very concerned with the SAR Government's recent stance over the renewal of the contract of its Chairperson. Not only the SAR Government has failed to confirm the renewal of the contract in a timely fashion, in a rather unusual move, it only offered a shorter term of 1 year to the Chairperson.
19. The Bar also notes with concern that the SAR Government has failed to dispel rumours that the status of the Chairperson of the EOC would be downgraded.

The Lack of Progress in Democratization

20. Despite the clear requirements of Articles 45 & 68 of the Basic Law, the SAR Government has so far failed to make any commitment as to when it will take steps to achieve such goals as (i) selecting the Chief Executive by universal suffrage; (ii) electing all the members of the Legislative Council by universal suffrage. Not only is there a complete silence on the part of the Government as to the timetable of achieving such goals, there seems to be no response to the calls from a sizable proportion of the population for making 'orderly and gradual progress' to achieve those goals: **Articles 1, 25 & 26**.

Racial Discrimination

21. There has been wide spread concern over the issue of racial discrimination in Hong Kong. Instead of addressing the issue, the SAR Government recently used administrative measures to effectively reduce the wages of foreign domestic helpers by HK\$400 per month. The Bar considers this arguably is a measure which may constitute to an infringement of racial discrimination.
22. If Hong Kong were to maintain its status as 'Asia's World City', like other leading cities in the world, legislation on racial discrimination should be implemented without further delay: **Article 26**.

Independent Police Complaints Council

23. Despite the Committee's concerns over the lack of independent power of investigation against the police in its Concluding Observations in 1999, the SAR Government has not taken effective steps to remedy that situation in the past 5 years.

Independent Legal Aid Authority

24. The current Legal Aid Services Council is but a supervisory body which lacks any independent statutory power, modest requests made by the Council to have more independent powers have so far not been met. The SAR Government has also failed to give any convincing reason of why an independent legal aid authority should not be established to monitor, supervise and implement all the legal aid and other related schemes in Hong Kong.

Conclusion

25. The above are but a few areas of major concern which the Bar has noted over the human rights situation in Hong Kong in the past 5 years. There are other areas where the SAR Government can and should do more. However, the issues identified above are not only areas which call for utmost concerns both locally and internationally, they represent a clear lack of commitment on the part of the SAR Government to improve the human rights situation in Hong Kong. Instead of making progress, the Bar has certainly detected deterioration in some important areas.
26. The Bar will provide a more detailed report to the Committee after the second report is prepared by the SAR Government on or before 31st October 2003 as is required by the Committee.

Dated this the 11th day of April 2003.

Hong Kong Bar Association