

PROGRESS REPORT OF THE SUBGROUP ON FUNDAMENTAL RIGHTS
AND DUTIES OF HONG KONG INHABITANTS

22 August, 1987



Mr Chairman, Messrs Vice-Chairmen, and Members,

After the fourth plenary session of the Drafting Committee, the Subgroup on Fundamental Rights and Duties of Hong Kong Inhabitants held its eighth meeting on 17 April, 1987 in Beijing to discuss the proposals for major amendments to Chapter 3 raised at the fourth plenary session. The Subgroup resolved to hold another meeting for further discussion and revision regarding the draft of Chapter 3.

The ninth meeting of the Subgroup was held on 12-13 June 1987 in Guangzhou. The meeting looked closely into the opinions on Chapter 3 proposed at the fourth plenary session. The meeting also received further opinions from some of the CCBL members and other persons concerned in Hong Kong regarding the draft provisions of Chapter 3. Taking into consideration opinions from the various sources, members went over the provisions of Chapter 3 of the Basic Law one by one, and further amendments were made.

The following revised draft of Chapter 3 on the fundamental rights and duties of HKSAR inhabitants is submitted to the plenary session for examination and approval.

Subgroup on Fundamental Rights
and Duties of HKSAR Inhabitants

香港基本法草案

Article 1: HKSAR inhabitants include permanent inhabitants and non-permanent inhabitants.

(There are two proposals for amendment to paragraphs 2 and 3)

Proposal 1:

Hong Kong permanent inhabitants are:

- (1) Chinese nationals who were born in Hong Kong before or after the establishment of the HKSAR;
- (2) Chinese nationals who have ordinarily resided in Hong Kong for a continuous period of at least seven years before or after the establishment of the HKSAR;
- (3) Persons of Chinese nationality who were born outside Hong Kong of the inhabitants under sub-paragraphs (1) and (2);
- (4) Non-Chinese nationals who have ordinarily resided in Hong Kong before or after the establishment of the HKSAR for a continuous period of at least seven years and who have taken Hong Kong as their place of permanent residence before or after the establishment of the HKSAR;
- (5) Persons under 21 years of age who were born of the inhabitants under paragraph (4) before or after the establishment of the HKSAR; and

(6) Persons who had the right of abode only in Hong Kong before the establishment of the HKSAR.

The above-mentioned inhabitants shall have the right of abode in the HKSAR and be qualified to obtain permanent identity cards in accordance with the laws of the HKSAR.

Hong Kong non-permanent inhabitants are persons other than the above-mentioned six categories of persons; they may reside in the HKSAR but are not qualified to obtain permanent identity cards in accordance with the laws of the HKSAR.

Proposal 2:

Hong Kong permanent inhabitants are the following categories of persons who have the right of abode in the HKSAR and are qualified to obtain permanent identity cards in accordance with the laws of the HKSAR:

- (1) Chinese nationals who were born in Hong Kong before or after the establishment of the HKSAR;
- (2) Chinese nationals who have ordinarily resided in Hong Kong for a continuous period of at least seven years before or after the establishment of the HKSAR;
- (3) Persons of Chinese nationality who were born outside Hong Kong of the inhabitants under sub-paragraphs (1) and (2);

- (4) Non-Chinese nationals who have ordinarily resided in Hong Kong before or after the establishment of the HKSAR for a continuous period of at least seven years and who have taken Hong Kong as their place of permanent residence before or after the establishment of the HKSAR;
- (5) Persons under 21 years of age who were born of the inhabitants under paragraph (4) before or after the establishment of the HKSAR; and
- (6) Persons who had the right of abode only in Hong Kong before the establishment of the HKSAR.

Hong Kong non-permanent inhabitants are persons who are qualified to obtain Hong Kong identity cards but do not have the right of abode.

[Note]

1. The term "temporary inhabitants" is amended to "non-permanent inhabitants".
2. Members unanimously agreed that Hong Kong inhabitants were differentiated from other persons by the fact that the former were qualified to obtain Hong Kong identity cards while the latter were not. In accordance with the laws of the HKSAR, Hong Kong inhabitants under eleven years old are qualified to obtain permanent identity cards or Hong Kong identity cards, as the case may be, but they are not required to do so. As to "other persons", they are not qualified to obtain either of the above-mentioned identity cards under the laws of the HKSAR.
3. The two proposals regarding permanent inhabitants in this Article are identical in meaning; their difference is in expression. The former first lists the six categories of persons contained in Annex I (XIV) to the Joint Declaration before specifying that they have the right of abode and are qualified to obtain permanent identity cards. The latter proposal is expressed in the same way as the Joint Declaration and it is stylistically consistent with the paragraph on "non-permanent inhabitants".

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Article 2: Hong Kong inhabitants, irrespective of their nationality, race, ethnic, sex, occupation, religion, belief, education level, and financial condition, shall be equal before the law.

[Note] "Religious belief" of the original Article is amended to "religion, belief". "Belief" also includes "political belief".

Article 3: Hong Kong permanent inhabitants who have attained 21 years of age shall have the right to vote and the right to stand for election in accordance with law.

[Note]

1. After reconsideration, 21 years of age is still preferred as the age for entitlement to vote.
2. This Article lays down a general provision for the inhabitants' rights to vote and to stand for election. But there may be other specific provisions under the law e.g. the age and residence requirements for candidates for the Chief Executive as prescribed by law. Hence, the phrase "in accordance with law" should be retained.
3. According to the provisions under the Constitution of the PRC and the Nationality Law of the PRC, the concept of "nationals of the HKSAR of the PRC" should not be adopted.
4. A member expressed that Hong Kong permanent inhabitants who were not of Chinese nationality should not have the rights to vote and to stand for election. After further study, the present Article is found to be consistent with the following provision under the Joint Declaration: "The government and legislature of the Hong Kong Special Administrative Region shall be composed of local inhabitants."

Article 4: Hong Kong inhabitants shall, in accordance with law, have

- (1) freedoms of speech, of the press and of publication;
- (2) freedom of association, freedom to form and join trade union and freedom to strike; and
- (3) freedoms of assembly and of demonstration.

[Note] In the discussions of the Subgroup, two proposals for amendment to this Article were raised:

Proposal 1:

Amend "Hong Kong inhabitants shall, in accordance with law, have..." to "Hong Kong inhabitants shall have...."

Proposal 2:

Amend "Hong Kong inhabitants shall, in accordance with law, have...." to "The HKSAR shall, in accordance with law, ensure that Hong Kong inhabitants have...."

Article 5: The personal liberty of Hong Kong inhabitants shall not be violated.

Hong Kong inhabitants shall not be unlawfully arrested, detained or imprisoned. Unlawful deprivation or limitation of the personal liberty of any inhabitant in any way shall be prohibited. Unlawful search of the person of any inhabitant shall be prohibited.

Article 6: The home and other premises of any Hong Kong inhabitant shall not be violated. Any unlawful search or unlawful entry into the home or other premises of any inhabitant shall be prohibited.

Article 7: Freedom of communication and secrecy of communication of Hong Kong inhabitants shall be protected by law. Any department or individual shall not for any reason infringe upon the freedom of communication and secrecy of communication of any inhabitant save that the relevant organisation may inspect communication according to the procedure as prescribed by law which is necessary for the purposes of maintaining public security and investigation of crime.

[Note] "Correspondence" is amended to "communication" to cover a broader scope.

Article 8: Hong Kong inhabitants shall have the freedom of movement within the HKSAR and the freedom of emigration to other countries or territories, and Hong Kong inhabitants who hold valid travel documents shall have the freedoms of travel and of departure and entry.

Article 9: Hong Kong inhabitants shall have the freedom of belief.

Hong Kong inhabitants shall have the freedom of religious belief and the freedoms to spread religions and to hold and participate in religious activities in public.

[Note]

1. "Hong Kong inhabitants have the freedom of other beliefs" is amended to "Hong Kong inhabitants shall have the freedom of belief" and is stated as paragraph 1.

2. "Hong Kong inhabitants shall have the freedom of religious belief and the freedoms to spread religions and to hold and participate in religious activities in public" is stated as paragraph 2. "To believe in religions" is amended to "of religious belief".

Article 10: Hong Kong inhabitants shall have the freedom of choice of occupation.

Article 11: Hong Kong inhabitants shall have the freedoms of academic research, of literary or artistic creation and of other cultural activities.

Article 12: Hong Kong inhabitants shall have the right to confidential legal advice, access to the courts, prompt protection of his lawful rights and interests by lawyers of his own choice, representation in the courts by lawyers of his own choice and to obtain judicial remedies.

Hong Kong inhabitants shall have the right to challenge the actions of the executive or members of the executive personnel in courts.

[Note] Whether Hong Kong inhabitants shall have the right to challenge the actions of Central State organs or their personnel in courts has yet to be decided after further study with the Subgroup concerned.

Article 13: Hong Kong inhabitants shall have the right to enjoy social welfare. The welfare of labour shall be protected by law.

Article 14: Hong Kong inhabitants' freedom of marriage and right to raise a family freely shall be protected by law.

Article 15: Hong Kong inhabitants shall have all other rights and freedoms which are ensured by the laws of the HKSAR.

The rights and freedoms of Hong Kong inhabitants shall not be restricted save as prescribed by law and necessary to protect national security, public order, public safety, public health, public morals or the rights and freedoms of others.

[Note]

1. The following is added to paragraph 2 as a result of an expressed opinion: "and necessary to protect of others".
2. In the discussions of the Subgroup, a member proposed to delete the expression "in accordance with law" in Article 4 and to amend paragraph 2 of this Article as follows: "Hong Kong inhabitants, in exercising their rights and freedoms, shall not infringe upon national security, public order, public health or the rights and freedoms of others."

Article 16: The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall be enforced in accordance with the laws of the HKSAR.

Article 17: The lawful and traditional rights and interests of the indigenous "New Territories" inhabitants shall be protected by the HKSAR.

[Note]

1. According to the expression in the Joint Declaration (Chinese text), the term "New Territories" is in quotation marks.
2. The expression "lawful rights and interests" is amended to "lawful and traditional rights and interests".

Article 18: Persons in the HKSAR other than Hong Kong inhabitants shall, in accordance with law, have the rights and freedoms of Hong Kong Inhabitants as stipulated by this Chapter.

[Note] A members proposed that this Article be amended as follows: "Persons other than Hong Kong inhabitants shall, in accordance with law, have the rights and freedoms of Hong Kong inhabitants as stipulated by this Chapter (save for the right to vote and the right to stand for election)". After study by the Subgroup, it was found that, apart from the rights to vote and to stand for election, "other persons" would not have other rights such as the right to freedom of entry into Hong Kong. Consequently no amendment has been made to the original Article.

Article 19: Hong Kong inhabitants and all other persons in the HKSAR shall have the duty to abide by the laws of the HKSAR.