

Plenary Session II

International Human Rights Law and Domestic Constitutional Law: Internationalisation of Constitutional Law in Hong Kong

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ABSTRACT

The case of Hong Kong, a former British colony which since 1997 has become a Special Administrative Region of the People's Republic of China, provides an interesting case study of the interaction of international human rights law and domestic constitutional law and the internationalisation of constitutional law. Hong Kong has, since 1991, introduced constitutional and legislative arrangements to enable the human rights norms in International Covenant on Civil and Political Rights to have constitutional force in Hong Kong, to be justiciable before the Hong Kong courts and to be used as yardsticks for constitutional judicial review of legislative and governmental actions. This system has continued to operate effectively after the handover in 1997 under the new constitutional regime established by the Basic Law of the Hong Kong Special Administrative Region enacted by the PRC.

Part II of this article provides an overview of the application of the norms of international human rights in the domestic law of the HKSAR. Part III consists of several case studies of major court cases in recent years that illustrate the internationalisation of constitutional law in Hong Kong. Part IV seeks to locate the case of Hong Kong in the international and global context, and to develop a

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conceptual framework for the study of the internationalisation of constitutional law. It seeks an understanding or explanation of the internationalisation of constitutional law in the HKSAR in terms of the lack of an indigenous constitutional tradition in Hong Kong and the peculiar mentality of the people of Hong Kong living under “one country, two systems,” particularly their anxiety regarding the “mainlandization” of Hong Kong and their aspirations for the preservation of civil liberties and the maintenance of their cherished way of life.

Keywords: *Hong Kong, Constitutional Law, International Law, Human Rights, Internationalization*

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I. INTRODUCTION

One of the major legal developments in the early twenty-first century world is a phenomenon that has been called the globalization and internationalisation of constitutional law. Whereas the globalization of constitutional law¹ may be understood as the global spread of certain constitutional values and rights which have gained increasing universal acceptance and the convergence of the content of constitutional laws around the world, the internationalisation of constitutional law² refers to the interaction and interpenetration of public international law and domestic constitutional laws, particularly the increasing degree of incorporation of international legal norms into the constitutional laws of sovereign nation-states.³ The domain of human rights law is one key area in which such internationalisation of constitutional law has taken place.

The case of Hong Kong, a former British colony which since 1997 has become a Special Administrative Region of the People's Republic of China (PRC), provides an interesting case study of the interaction of international human rights law and domestic constitutional law and the internationalisation of constitutional law. Hong Kong follows the British approach to the relationship between international law and domestic law:⁴ unless a treaty has been incorporated into domestic law by domestic legislative action, it does not form part of the domestic law of Hong Kong; customary international law, however, may be automatically incorporated into domestic law.⁵ In the domain of human rights, Hong Kong has, since 1991, introduced constitutional and legislative arrangements to enable the human rights norms in International Covenant on Civil and Political Rights (ICCPR) to have constitutional force in Hong Kong, to be justiciable before the Hong Kong courts and to be used as yardsticks for constitutional judicial review of legislative and governmental actions.⁶ This system has continued

1. See generally Mark Tushnet, *The Inevitable Globalization of Constitutional Law*, 49 VA. J. INT'L L. 985 (2009).

2. See, e.g., Herman Schwartz, *The Internationalization of Constitutional Law*, 10 HUM. RTS. BRIEF 10 (2003).

3. Internationalisation of constitutional law should be distinguished from the constitutionalisation of international law and the development of "international constitutionalism" and "international constitutional law." See generally TRANSNATIONAL CONSTITUTIONALISM: INTERNATIONAL AND EUROPEAN PERSPECTIVES, chs. 9-10 (Nicholas Tsagourias ed., 2007).

4. See generally David Feldman, *The Internationalization of Public Law and Its Impact on the United Kingdom*, in THE CHANGING CONSTITUTION 108 (Jeffrey Jowell & Dawn Oliver eds., 2007).

5. See, e.g., Oliver Jones, *Customary Non-refoulement of Refugees and Automatic Incorporation into the Common Law: A Hong Kong Perspective*, 58 INT'L & COMP. L.Q. 443 (2009).

6. See generally THE HONG KONG BILL OF RIGHTS: A COMPARATIVE APPROACH (Johannes Chan & Yash Ghai eds., 1993); Yash Ghai, *Sentinels of Liberty or Sheep in Wolf's Clothing? Judicial Politics and the Hong Kong Bill of Rights*, 60 MOD. L. REV. 459 (1997); Andrew Byrnes, *And Some Have Bills of Rights Thrust upon Them: The Experience of Hong Kong's Bill of Rights*, in PROMOTING

to operate effectively after the handover in 1997 under the new constitutional regime established by the Basic Law of the Hong Kong Special Administrative Region (HKSAR) enacted by the PRC.⁷

This article, apart from this introduction, is divided into the following parts. Part II provides an overview of the application of the norms of international human rights in the domestic law of the HKSAR. Part III consists of several case studies of major court cases in recent years that illustrate the internationalization of constitutional law in Hong Kong. Part IV seeks to locate the case of Hong Kong in the international and global context, and to explore the causes of the internationalization of Hong Kong's constitutional law. Finally, part V concludes the article.

II. THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS NORMS IN THE HKSAR

Hong Kong's pre-1997 constitution was contained in the Letters Patent issued by the British Crown.⁸ Before its 1991 amendment, the Letters Patent provided only a crude and rudimentary written constitution for the colony. In particular, it did not contain any guarantee of civil liberties and human rights. The effect in municipal law of treaties which Britain made applicable to Hong Kong and of other norms of international law was governed by English common law which was applicable to Hong Kong.

Such common law position is that "dualism" rather than "monism" is applicable in dealing with the relationship between public international law and municipal law, at least as far as treaties are concerned.⁹ The norms provided for in treaties which the state has entered into and the rights and obligations arising from such treaties do not take effect in municipal law and are not directly enforceable by the domestic courts, unless and until legislation has been introduced to give effect to such treaties.¹⁰ Where such legislation exists, the relevant treaties may be relied on by the courts when they interpret the legislation, and the courts generally presume, subject to contrary intention expressed in the legislation, that the legislature intended to comply with the state's international legal obligations.¹¹ As regards

HUMAN RIGHTS THROUGH BILLS OF RIGHTS: COMPARATIVE PERSPECTIVES 318 (Philip Alston ed., 1999).

7. See, e.g., Albert H.Y. Chen, *The Interpretation of the Basic Law—Common Law and Mainland Chinese Perspectives*, 30 H.K.L.J. 380 (2000); Albert H.Y. Chen, *Constitutional Adjudication in Post-1997 Hong Kong*, 15 PAC. RIM L. & POL'Y J. 627 (2006).

8. See generally NORMAN MINERS, *THE GOVERNMENT AND POLITICS OF HONG KONG*, ch. 5 (5th ed. 1995); PETER WESLEY-SMITH, *CONSTITUTIONAL AND ADMINISTRATIVE LAW IN HONG KONG*, ch. 2 (1994).

9. See generally Feldman, *supra* note 4; Jones, *supra* note 5.

10. See, e.g., *Malone v. Metro. Police Comm'r*, [1979] Ch. 344.

11. See, e.g., *Waddington v. Miah*, [1974] 1 W.L.R. 683; *Garland v. British Rail Eng'g Ltd.*,

customary international law, the common law rule is that the norms of customary international law automatically form part of municipal law without the need for legislative action,¹² although such norms may be overridden by legislation and their application are also subject to applicable case law.¹³ These common law rules have continued to be applicable to Hong Kong after 1997, as the Basic Law of the HKSAR has preserved the common law as a principal source of law in the HKSAR.¹⁴

The United Kingdom (UK) extended to its colony of Hong Kong various international human treaties to which the UK itself has become a party, and these treaties continue to apply to Hong Kong after the 1997 handover.¹⁵ One of the first major international human rights treaty applied to Hong Kong in this manner was the International Convention on the Elimination of All Forms of Racial Discrimination, which the UK ratified and made applicable to Hong Kong in 1969.¹⁶ In 1976, the UK ratified and extended to Hong Kong the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICECSR).¹⁷ Three other major human rights treaties were similarly made applicable to Hong Kong in the 1990s: the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment (extended to Hong Kong in 1992); the Convention on the Rights of the Child (in 1994); and the Convention on the Elimination of All Forms of Discrimination Against Women (in 1996).¹⁸

Given the “dualism” of English and Hong Kong law with regard to the relationship between international law and domestic law, the provisions of

[1983] 2 A.C. 751.

12. The leading authority on this point is *Trendtex Trading Corp. v. Cent. Bank of Nig.*, [1977] 1 Q.B. 529. *See also* *Rayner (Mincing Lane) Ltd. v. Dep't of Trade & Indus.*, [1990] 2 A.C. 418.

13. Feldman, *supra* note 4, at 114-16. *See also* *Cheung v. R.*, [1939] A.C. 160 (P.C.).

14. XIANGGANG JIBENFA [THE BASIC LAW OF HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA] [hereinafter BASIC LAW], art. 8.

15. For information on treaties currently applicable to the HKSAR, see <http://www.legislation.gov.hk/choice.htm> (last visited Nov. 13, 2009). On the application of treaties and international agreements to the HKSAR, see chapter VII of the Basic Law of the HKSAR; RODA MUSHKAT, *ONE COUNTRY, TWO INTERNATIONAL LEGAL PERSONALITIES: THE CASE OF HONG KONG* (1997). A total of 15 United Nations human rights treaties are currently applicable to Hong Kong, 7 of which entailing a reporting requirement: see <http://www.cmab.gov.hk/en/issues/human/htm> (website of the Constitutional and Mainland Affairs Bureau of the HKSAR Government, last visited Dec. 13, 2009).

16. *See* Nihal Jayawickrama, *Hong Kong and the International Protection of Human Rights*, in *HUMAN RIGHTS IN HONG KONG* 120, 123 (Raymond Wacks ed., 1993); Dinusha Panditaratne, *The Basic Law, the Bill of Rights and the ICCPR*, in *HONG KONG'S CONSTITUTIONAL LAW*, ch. 17 (Johannes Chan & C.L. Lim eds., forthcoming).

17. *See* Johannes Chan, *State Succession to Human Rights Treaties: Hong Kong and the International Covenant on Civil and Political Rights*, 45 INT'L & COMP. L.Q. 928 (1996). After the 1997 handover, the HKSAR Government has continued to submit reports to the Human Rights Committee and the treaty-monitoring bodies of other human rights treaties through the P.R.C. Government.

18. Byrnes, *supra* note 6, at 326; Panditaratne, *supra* note 16.

these human rights treaties were not directly enforceable by the courts of Hong Kong which can only enforce relevant legislation implementing the treaties if and when introduced by the legislature. From this perspective, international human rights law did not have a *direct* impact (as distinguished from the impact of implementing legislation) on Hong Kong's municipal legal system, particularly in the domain of constitutional law. This was the case until 1991. During that year, in an attempt to restore confidence in Hong Kong's future which had been deeply shaken by the Tiananmen incident of 4 June 1989, the Hong Kong Government introduced and the local legislature passed the Hong Kong Bill of Rights Ordinance ("the Bill of Rights"),¹⁹ which basically reproduced, and thus incorporated into the domestic law of Hong Kong, the provisions of the ICCPR that had been applied by the UK to Hong Kong in 1976. What was even more significant from the perspective of constitutional law was the introduction at the same time by the British Crown of a corresponding amendment to the Letters Patent to give the ICCPR supremacy over laws enacted by Hong Kong's legislature.²⁰ Thus as the Court of Appeal of Hong Kong pointed out in 1994:

"The Letters Patent entrench the Bill of Rights by prohibiting any legislative inroad into the International Covenant on Civil and Political Rights as applied to Hong Kong. The Bill is the embodiment of the covenant as applied here. Any legislative inroad into the Bill is therefore unconstitutional, and will be struck down by the courts as the guardians of the constitution."²¹

Since 1991, the courts of Hong Kong have on such constitutional basis exercised the power of judicial review of legislation—striking down any existing law which was considered to fail to meet the human rights norms embodied in the Bill of Rights and the ICCPR—and developed a solid body of case law on the protection of human rights.²² The era of constitutional adjudication thus began in Hong Kong. So did the era of internationalization of Hong Kong's constitutional law, as the standards used by the courts in adjudicating the constitutionality of legislation were precisely those

19. Hong Kong Bill of Rights Ordinance [hereinafter Bill of Rights], (1991) Cap. 383, § 8. (H.K.) (The text of this law and of all legislation currently in force in Hong Kong is available at <http://www.legislation.gov.hk/>). See generally the works cited in *supra* note 6.

20. See Byrnes, *supra* note 6, at 333-35.

21. R v. Chan, [1994] 3 H.K.C. 145, 153; cited by the Court of Appeal itself in Lee v. Attorney Gen., [1996] 1 H.K.C. 124, 127.

22. See, e.g., Ghai, *supra* note 6; Johannes M. M. Chan, *Hong Kong's Bill of Rights: Its Reception of and Contribution to International and Comparative Jurisprudence*, 47 INT'L & COMP. L.Q. 306 (1998); Byrnes, *supra* note 6.

articulated in the ICCPR, subject to those reservations made by the British Government when it extended the ICCPR to Hong Kong.²³

Upon the establishment of the HKSAR in July 1997, the colonial constitution embodied in the Letters Patent lost its force.²⁴ Article 8 of the Basic Law provides for the continued validity of the laws previously in force in Hong Kong except for any law that contravenes the Basic Law and subject to any amendment by the SAR legislature. Under Article 160 of the Basic Law, the Standing Committee of the National People's Congress (NPCSC) of the PRC may declare which of Hong Kong's pre-existing laws contravened the Basic Law and could not therefore survive the 1997 transition. Such a declaration was made by the NPCSC on 23 February 1997 in its Decision on the Treatment of the Laws Previously in Force in Hong Kong.²⁵ The Decision declared the non-adoption, *inter alia*, of three interpretive provisions in the Hong Kong Bill of Rights Ordinance,²⁶ apparently on the ground that they purported to give the Ordinance a superior status overriding other Hong Kong laws, which is inconsistent with the principle that only the Basic Law is superior to other Hong Kong laws.²⁷ Does this mean that the pre-existing regime of constitutional protection of rights in Hong Kong before 1997 would be dismantled or weakened? A negative answer has been revealed by various major judicial decisions in the post-1997 legal history of the HKSAR.

The Court of Final Appeal's (CFA) decision in *HKSAR v. Ng Kung Siu*²⁸ in 1999 was probably the most theoretically significant case on civil liberties and human rights in the early legal history of the HKSAR. In this case, the defendants had participated in a demonstration in Hong Kong for democracy in China during which they displayed a defaced national flag (of the PRC) and a defaced regional flag (of the HKSAR). They were subsequently charged with violations of Section 7 of the National Flag and National Emblem Ordinance²⁹ and Section 7 of the Regional Flag and Regional

23. Such reservations were also reiterated by and incorporated into the Hong Kong Bill of Rights Ordinance. For more information, see part III ("exceptions and savings") of the Ordinance, particularly secs. 9-13.

24. See generally YASH GHAI, *HONG KONG'S NEW CONSTITUTIONAL ORDER: THE RESUMPTION OF CHINESE SOVEREIGNTY AND THE BASIC LAW* (2d ed. 1999).

25. For an English translation of this Decision, see Albert H.Y. Chen, *Legal Preparation for the Establishment of the HKSAR: Chronology and Selected Documents*, 27 H.K.L.J. 405, 419 (1997).

26. The interpretive provisions concerned were secs. 2(3), 3 and 4 of the Ordinance. For views at that time on the effect of the non-adoption of these provisions, see Peter Wesley-Smith, *Maintenance of the Bill of Rights*, 27 H.K.L.J. 15 (1997); Johannes Chan, *The Status of the Bill of Rights in the Hong Kong Special Administrative Region*, 28 H.K.L.J. 152 (1998).

27. For the P.R.C.'s views on the Hong Kong Bill of Rights Ordinance, see Byrnes, *supra* note 6, at 335-37.

28. *HKSAR v. Ng Kung Sui*, (1999) 2 H.K.C.F.A.R. 442.

29. This section was basically reproduced from art. 19 of the P.R.C. Law on the National Flag and art. 13 of the PRC Law on the National Emblem. These two P.R.C. laws had since 1 July 1997 been

Emblem Ordinance. The sections provide for the offences of desecration of the national and regional flags and emblems.

The defendants were convicted by the magistrate; they were neither fined or imprisoned, but bound over³⁰ to keep the peace on a recognizance of HK\$2000 for each of the two charges for 12 months. They successfully appealed against their conviction before the Court of Appeal.³¹ The Government appealed the case to the CFA, which rendered its judgment in December 1999. The appeal was allowed by the CFA unanimously, and the two ordinances were upheld as constitutional and valid by applying and interpreting the human rights norm in the ICCPR governing freedom of expression. The CFA pointed out that the national and regional flags are important and unique symbols of the nation and of the HKSAR respectively. There exist therefore societal and community interests in the protection of the flags. Such protection constitutes the objective behind the flag desecration laws. Such protection was held to fall within the concept of “public order (*ordre public*)” as used in article 19 of the ICCPR. It was held that the court below adopted too narrow a conception of “public order (*ordre public*).”³²

The next questions for the CFA were whether the flag desecration laws impose restrictions on the freedom of expression, and, if so, whether such restrictions can be justified on the ground that they are necessary for the protection of “public order (*ordre public*)” and proportionate to the objective sought to be achieved (and thus not excessive). This was the application of the principles of rationality and proportionality well-established in human rights jurisprudence elsewhere and already introduced into Hong Kong since 1991.³³ The CFA held that flag desecration is indeed “a form of non-verbal speech or expression,”³⁴ and the impugned laws do constitute a restriction thereon. However, the court pointed out that the restriction is a limited one, because while one mode of expression is prohibited, the same message which the actor wants to express can still be freely expressed by other

listed in Annex III to the Basic Law as among those mainland laws that are applicable to Hong Kong under art. 18 of the Basic Law.

30. For the practice of “binding over,” see Peter Wesley-Smith, *Protecting Human Rights in Hong Kong*, in HUMAN RIGHTS IN HONG KONG, *supra* note 16, at 26-27.

31. HKSAR v. Ng, [1999] 1 H.K.L.R.D. 783.

32. Both the English and French expressions appear in the text of art. 19 of the ICCPR. The court below (the Court of Appeal) in its judgment referred to the two decisions of the American Supreme Court to the effect that the criminalization of flag desecration violates the “free speech” clause in the US Constitution and is unconstitutional: *Texas v. Johnson*, 491 U.S. 397 (1989); *U.S. v. Eichman*, 496 U.S. 310 (1990). Each of these cases was decided by a majority of 5 to 4 in the Supreme Court and was extremely controversial in the USA.

33. See the leading case of *R. v. Sin Yau-ming*, [1991] 1 H.K.P.L.R. 88; *R v. Sin Yau-ming*, [1992] 1 H.K.C.L.R. 127.

34. HKSAR v. Ng, [1999] 2 H.K.C.F.A.R. 442, 455.

modes.³⁵ It was therefore concluded that the “necessity” and “proportionality” tests had been satisfied.³⁶

Although the CFA’s actual decision in *Ng Kung Siu* was to uphold the flag desecration law, the approach and mode of reasoning adopted by the CFA in this case have far-reaching positive implications for the regime of rights protection in post-1997 Hong Kong. The case demonstrates that the operative force of the Bill of Rights and the ICCPR, and the Hong Kong courts’ power to review the constitutionality of Hong Kong legislation on the basis of the human rights standards enshrined in these documents, and, if necessary, to strike down such legislation, have survived the non-adoption (by the NPCSC) of the relevant provisions in the Hong Kong Bill of Rights Ordinance as mentioned above. More particularly, the HKSAR courts may review whether any legislative or executive action in Hong Kong violates the human rights guaranteed by the provisions of the Basic Law or by the ICCPR (the applicable provisions of which have, as mentioned above, been reproduced in the Bill of Rights) which is given effect to by Article 39 of the Basic Law.³⁷ Article 39 has been interpreted to mean that the relevant provisions of the ICCPR and the corresponding provisions of the Bill of Rights have the same constitutional force as the Basic Law itself, thus overriding laws that are inconsistent with these provisions.³⁸

Since the CFA’s decision in *Ng Kung Siu*, the courts of the HKSAR have decided a significant number of cases in which international human rights norms were applied,³⁹ resulting in law reform in a number of areas. The

35. *Id.* at 456.

36. *Id.* at 460-61.

37. Art. 39 of the Basic Law provides as follows: “The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region. 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.”

38. As pointed out by Carole Petersen, Hong Kong judges “consistently treat the ICCPR as a link between the Basic Law and international standards and often embrace recent developments. Thus, the incorporation of the ICCPR in art. 39 (which can be traced back to the language of the Joint Declaration) has arguably become the single most powerful element in the Basic Law’s framework for the protection of human rights, firmly connecting Hong Kong to some of the most advanced jurisdictions in the field, even though the Basic Law contains many other provisions protecting human rights, which are far more detailed than art. 39.” Carole J. Petersen, *Embracing Universal Standards? The Role of International Human Rights Treaties in Hong Kong’s Constitutional Jurisprudence*, in INTERPRETING HONG KONG’S BASIC LAW: THE STRUGGLE FOR COHERENCE 33, 34 (Hualing Fu et al. eds., 2007).

39. See generally the cases discussed in Chen, *supra* note 7; Johannes Chan, *Basic Law and Constitutional Review: The First Decade*, 37 H.K.L.J. 407 (2007); Po Jen Yap, *Constitutional Review Under the Basic Law: The Rise, Retreat and Resurgence of Judicial Power in Hong Kong*, 37 H.K.L.J. 449 (2007); Albert H.Y. Chen, *A Tale of Two Islands: Comparative Reflections on Constitutionalism in Hong Kong and Taiwan*, 37 H.K.L.J. 647 (2007); Albert H.Y. Chen, “One Country, Two Systems” from a Legal Perspective, in THE FIRST DECADE: THE HONG KONG SAR IN RETROSPECTIVE AND INTROSPECTIVE PERSPECTIVES 161 (Yue-man Yeung ed., 2007).

tables in the Appendix to this article document the extent to which Hong Kong courts (both before and after 1997) have in their decision-making drawn upon international human rights norms set out in some of the major human rights treaties. The following table provides an overview of the relevant figures.

Number of relevant cases (1991- mid 2009)

Cases citing the ICCPR	255
Cases citing documents of the UN Human Rights Committee under the ICCPR	46
Cases citing the Universal Declaration of Human Rights	13
Cases citing the International Covenant on Economic, Social and Cultural Rights	41
Cases citing the European Convention on Human Rights	150
Cases citing the Canadian Charter of Rights and Freedoms	61

The case law on the European Convention on Human Rights (ECHR) has proved to be the single most important source of reference for the Hong Kong courts in construing and applying the ICCPR and Bill of Rights.⁴⁰ This may be explicable in terms of the similarity in wording between many of the provisions of the ECHR and ICCPR,⁴¹ the accessibility of the English-language case law of the European Court of Human Rights (and previously also the European Commission of Human Rights), the applicability of the ECHR to Britain to whose legal system Hong Kong law has been closely linked since colonial times,⁴² and the fact that the jurisprudence of the ECHR is more voluminous and more highly developed than that of the ICCPR itself.

Apart from the jurisprudence of the ECHR, Hong Kong courts have from time to time also referred to and relied on a wide range of other international and comparative legal materials in deciding human rights cases,⁴³ including (a) the general comments, concluding observations and other communications of treaty-monitoring bodies established under the human rights treaties (particularly the Human Rights Committee under the

40. Even before the handover, the case law of ECHR was already “the most frequently cited international source” (Byrnes, *supra* note 6, at 364) in the Hong Kong courts. The trend has continued after the handover.

41. As Byrnes (*supra* note 6, at 366) has pointed out, “many provisions of the European Convention correspond closely to provisions of the ICCPR, and the development of the Covenant and the Convention (and its Protocols) overlapped in time.”

42. After the enactment of the Human Rights Act 1998 in the UK (which has directly incorporated the ECHR into the domestic law), the case law developed by the English courts on the Human Rights Act and the ECHR is also conveniently available to Hong Kong courts which since colonial times have relied heavily on English case law.

43. See generally Chan, *supra* note 22, at 410-13; Petersen, *supra* note 38.

ICCPR), (b) the periodic reports submitted by the Hong Kong Government to the treaty-monitoring bodies, (c) the case law of (i) leading common law jurisdictions such as Britain, Canada, the USA, Australia, New Zealand, (ii) leading constitutional courts such as the Constitutional Court of South Africa, and (iii) international tribunals such as the International Court of Justice and the Inter-American Court of Human Rights, and (d) “soft law” such as the Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR.⁴⁴ Indeed, compared to the record of the Hong Kong courts before 1997, Hong Kong courts in the post-1997 era have been even more open, active and receptive than before in the use of international and comparative materials in the domain of human rights law.⁴⁵

As the ICCPR has been incorporated into Hong Kong’s domestic law and accorded constitutional force as mentioned above, it is the single most important treaty that has promoted the internationalisation of constitutional law in Hong Kong. Although the ICESCR and international labour conventions are mentioned in Article 39 “in the same breath”⁴⁶ as the reference to the ICCPR, they have not been *directly* given the force of domestic law, not to mention constitutional force.⁴⁷ Hong Kong courts have expressed the view that the ICESCR is promotional and aspirational in nature and does not give rise to justiciable rights before the courts of Hong Kong.⁴⁸ This does not mean, however, that the ICESCR is irrelevant to Hong Kong’s domestic law. Given Hong Kong’s “dualist” approach to the relationship between international law and domestic law as mentioned above, the “standard” mode or “normal” mode of implementation of treaties⁴⁹—including human rights treaties—is by way of domestic

44. For the text of the Principles, see *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 7 HUMAN RIGHTS Q. 3 (1985).

45. For the relevant practice before 1997, see Chan, *supra* note 22; Byrnes, *supra* note 6, at 356-70.

46. Referring to art. 39 of the Basic Law, Justice Bokhary pointed out in his dissenting judgment in *Ho v. H.K. Hous. Auth.*, [2005] 8 H.K.C.F.A.R. 628 that “Our constitution the Basic Law speaks of the ICESCR in the same breath as it does of the International Covenant on Civil and Political Rights” (para. 67 of the judgment).

47. “Directly” here refers to the introduction (as in the case of the ICCPR) of domestic legislation reproducing verbatim the text of the treaty. See the relevant discussion in Petersen, *supra* note 38, at 45-48; Chan, *supra* note 39, at 411-13.

48. See, e.g., *Chan v. Dir. of Immigration*, [2000] 1 H.K.L.R.D. 28; *Chan v. Dir. of Immigration* [2001] 3 H.K.L.R.D. 109. Interestingly, the UK Government has also adopted the position that the provisions on economic and social rights in the ICESCR and the Convention on the Rights of the Child are “aspirational” and “do not require the state to guarantee an ascertainable level of protection at any one time: see Feldman, *supra* note 4, at 117-18. On the other hand, the UN Committee on Economic, Social and Cultural Rights has in commenting on the HKSAR’s report expressed regret that the HKSAR Government took the view that the ICESCR is only promotional or aspirational in nature, and urged the Government “not to argue in court proceedings that the Covenant is only ‘promotional’ or ‘aspirational’ in nature.” UN Doc E/C.12/1/Add 58, paras. 16, 27 (May 11, 2001), discussed in Chan, *supra* note 39, at 412. See also GHAI, *supra* note 24, at 411-12.

49. As the HKSAR Government stated in its second report under the ICESCR (see note 50

legislation. In the case of the ICESCR, the HKSAR Government has pointed out in its second report under this covenant⁵⁰ that provisions of the covenant have been incorporated into Hong Kong's domestic law through several articles of the Basic Law and through provisions in over 50 ordinances listed in an annex to the report. The Government argues that "specific measures of this kind more effectively protect Covenant rights than would the mere reiteration in domestic law of the Covenant provisions themselves."⁵¹

Like the ICESCR, other human rights treaties (other than the ICCPR) applicable to Hong Kong are, to varying extents, implemented in Hong Kong by various pieces of domestic legislation, sometimes resulting in the creation of new criminal offences or new remedies in civil law. For example, the Crimes (Torture) Ordinance⁵² partially implemented the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by creating the criminal offence of torture.⁵³ The Sex Discrimination Ordinance⁵⁴ and the Race Discrimination Ordinance⁵⁵ introduced elaborate statutory schemes—including civil remedies—partially implementing the Convention on the Elimination of All Forms of Discrimination Against Women and the International Convention on the Elimination of All Forms of Racial Discrimination respectively.

Compared to other human rights treaties applicable to Hong Kong, the ICCPR stands in a privileged or specially elevated position by virtue of its being reproduced verbatim in domestic legislation⁵⁶ and given constitutional force through the courts' interpretation of Article 39 of the Basic Law. Although the objective behind the enactment of the Hong Kong Bill of Rights Ordinance in 1991 was probably mainly political (in terms of alleviating the crisis of confidence in Hong Kong precipitated by China's

below), "[t]he 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" (para. 33 of the report).

50. This report was submitted to the UN in 2003 as part of the PRC's initial report under the ICESCR. See the Constitutional and Mainland Affairs Bureau webpage referred to in note 15 above, which also provides the full text of all reports submitted by the HKSAR Government under various human rights treaties.

51. Para. 2.3 of the report.

52. (1993) Cap. 427 (H.K.)

53. Art. 4 of the Convention Against Torture (CAT) requires state parties to ensure that all acts of torture are offences under their criminal law. The article has been implemented by the enactment of the Crimes (Torture) Ordinance. However, art. 3 of CAT, which provides that no state party shall expel, return or extradite a person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture, has only been implemented in Hong Kong by administrative policy but not by legislation: see the case of *Secretary for Security v. Prabakar* discussed in section H of part III of this article.

54. (1995) Cap. 480 (H.K.).

55. (2008) Cap. 602 (H.K.).

56. I.e. the Hong Kong Bill of Rights Ordinance. See the discussion of the significance of this ordinance in Hong Kong's post-1997 constitutional regime of human rights protection in Panditaratne, *supra* note 16.

suppression of the Beijing student movement in June 1989), the special status of the ICCPR in Hong Kong's domestic legal order may be justified by pointing out that its provisions are, compared to most other human rights treaties, more clearly justiciable or amenable to judicial interpretation and enforcement, and that from a pragmatic perspective they can conveniently be a surrogate for an indigenously drafted bill of rights and can enable Hong Kong's constitutional jurisprudence of human rights to draw on the big reservoir of international and comparative jurisprudence. By contrast, the provisions in other human rights treaties applicable to Hong Kong are not themselves part of Hong Kong's domestic law; they have neither direct legal nor constitutional force in Hong Kong's domestic law. However, they may be referred to as an aid to statutory interpretation.⁵⁷

Finally, it may be noted that whereas most human rights treaties applicable to Hong Kong were extended to Hong Kong while it was a British colony and such treaties continue to apply to Hong Kong after 1997, the HKSAR's reports to the relevant treaty-monitoring bodies have in most cases been submitted as part of the PRC's reports to these bodies.⁵⁸ This happens in the cases of human rights treaties that are applicable to both mainland China⁵⁹ and the HKSAR. In the case of the ICCPR which is only applicable to the HKSAR but not to the PRC,⁶⁰ an arrangement has been introduced under which the PRC Government transmits the HKSAR's report under the ICCPR to the UN Human Rights Committee.⁶¹

57. *Supra* note 11. As stated in the HKSAR's second report under the ICESCR (*supra* note 50), "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." (para. 33 of the report) For a case illustrating how a human rights treaty may be taken into account in statutory interpretation, see *Equal Opportunities Comm'n v. Dir. of Educ.*, [2001] 2 H.K.L.R.D. 690 (C.F.I.) (discussed below in section A of part III of this article). See also Justice Bokhary's dissenting judgment in *Ho v. H.K. Hous. Auth.*, *supra* note 46, where he pointed out that "it might well be possible to pray the ICESCR powerfully in aid of construing the Housing Ordinance to impose" on the Housing Authority a duty to provide affordable housing to lower income groups in Hong Kong (para. 68 of the judgment).

58. See the information provided by the Constitutional and Mainland Affairs Bureau webpage referred to in note 15 above.

59. For human rights treaties applicable to the PRC, see Liu Huawen, *Protection of Human Rights and the Establishment of "Rule of Law" in China*, in *THE CHINA LEGAL DEVELOPMENT YEARBOOK*, vol. 2, 279 (Li Lin ed., 2009).

60. The PRC signed the ICCPR in 1998 but has not ratified it yet.

61. As pointed out in the Constitutional and Mainland Affairs Bureau webpage referred to in note 15 above, "HKSAR teams attend the hearings of [the HKSAR's reports under various human rights treaties] as part of the relevant Chinese delegation, except in the case of the ICCPR which they attend in their own right by special arrangement between the Central People's Government and the UN." The HKSAR's first report under the ICCPR was submitted in 1999 and was heard by the Human Rights Committee in the same year. The second report was submitted in 2005, and the related hearing was held in 2006 (see the same webpage).

III. CASE STUDIES

In this part, we will examine several cases decided in the HKSAR in recent years that exemplify the internationalisation of constitutional law in Hong Kong. Most of the cases covered in this study were decided by the Hong Kong courts in or after 2007, and they have been selected both because they provide good examples of the reception of international legal norms by Hong Kong's constitutional law and because, being relatively recent, the cases have been little discussed in the existing literature. A few cases decided before 2007 have also been selected as they illustrate noteworthy aspects of the application of international human rights law in Hong Kong.

A. *A Case on Discrimination Against Girls in Schools*

In *Equal Opportunities Commission v. Director of Education*,⁶² the Equal Opportunities Commission challenged the Education Department's policy regarding the system of allocation of secondary school places to students completing primary school education. The effect of the operation of this system was that with regard to a boy and a girl who had equal academic merits (as measured by scores), the boy stood a better chance of being admitted to his preferred secondary school than the girl. The policy was based on findings that girls' academic achievements (as measured by scores) at the time of completion of primary education were on the average higher than boys presumably because of a faster pace of intellectual development at that age, though boys would be able to catch up later. The policy was designed to ensure a more balanced ratio between male and female students in the elite schools (i.e. schools to which admission is most competitive).

The Court of First Instance of the High Court⁶³ held that the Education Department's policy was discriminatory against female students and the discrimination failed to be justified by any of the reasons advanced by the Department. Referring to Article 25 of the Basic Law, Article 22 of the Hong Kong Bill of Rights (Article 26 of the ICCPR), the Sex Discrimination Ordinance⁶⁴ and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which was extended to Hong Kong in 1996, the court stressed that the right to equal treatment free of sex discrimination in this case was the individual's fundamental right, and could not be easily subordinated to considerations of "group fairness"⁶⁵ or the

62. *Equal Opportunities Comm'n*, [2001] 2 H.K.L.R.D. 690 (C.F.I.).

63. The case was not appealed to any higher court.

64. *Supra* note 55.

65. *Equal Opportunities Comm'n*, [2001] 2 H.K.L.R.D. 690, para. 80 (C.F.I.).

interest in achieving a better balance in schools between boys and girls as two groups. Any restriction of the girls' right in this case must pass the stringent standards of scrutiny of the "proportionality test"⁶⁶ in order to be justified. After examining the Government's arguments and the evidence submitted by it, the court held that the impugned scheme of allocation of school places in failed to pass this test. As a result of this decision, the Education Department changed its original policy.

From the perspective of the interaction between international law and domestic constitutional law, the most noteworthy feature of this case is that whereas most constitutional rights cases in Hong Kong involve the ICCPR and the Bill of Rights, in this case CEDAW formed part of the basis for the court's decision. The court held that the relevant provisions of the Sex Discrimination Ordinance "are to be construed, if they are reasonably capable of bearing such a meaning, as intended to carry out the obligations contained in CEDAW rather than being inconsistent with them."⁶⁷ Reference to CEDAW was crucial at two points of the reasoning leading to the court's conclusion in this case.⁶⁸

B. *Two Cases on Homosexuals' Rights*

In *Leung v. Secretary for Justice*,⁶⁹ Leung, the applicant for judicial review, was a homosexual aged 20 at the time he brought this action before the court. He challenged the constitutionality of certain provisions in the existing criminal law on the grounds that they were discriminatory on the basis of sexual orientation and violated the constitutional rights to equality and non-discrimination (under Article 25 of the Basic Law and Articles 1 and 22 of the Bill of Rights (Articles 2, 3 and 26 of the ICCPR)) and privacy (under Article 14 of the Bill of Rights (Article 17 of the ICCPR)). The main provision that was controversial in this case was Section 118C of the Crimes Ordinance, which provided that if two men committed buggery with each other and one or both of them were under the age of 21, then each of them would be guilty of a criminal offence the maximum punishment for which would be life imprisonment. Both the Court of First Instance and the Court of Appeal held that this provision was unconstitutional and invalid, because it discriminated against male homosexuals and the Government was not able to give good reasons to persuade the court that the discrimination or differential treatment was justified. The impugned provision was

66. *Id.* para. 121.

67. *Id.* para. 90.

68. *See id.* paras. 88-91 & 109-11.

69. *Leung v. Sec'y for Justice*, [2005] 3 H.K.L.R.D. 657 (C.F.I.); *Leung v. Sec'y for Justice*, [2006] 4 H.K.L.R.D. 211 (C.A.).

discriminatory against male homosexuals because under Hong Kong's existing law, in the case of consensual vaginal intercourse between heterosexuals, no criminal liability exists so long as both parties are above the age of 16. Thus homosexual males between the age of 16 and 21 were discriminated against.

In reaching this decision, the Hong Kong courts placed considerable reliance on international human rights norms and the jurisprudence of the European Convention on Human Rights and Canadian Charter of Rights and Freedoms. It was pointed out that the UN Human Rights Committee under the ICCPR has in the case of *Toonen v. Australia*⁷⁰ (in the year 1992) determined that the reference to "sex" in the equality and non-discrimination provisions of the ICCPR (Articles 2(1) and 26) includes "sexual orientation." In 1995, the Ontario Court of Appeal in the case of *R. v. C.M.*⁷¹ struck down a statutory provision which criminalized anal intercourse between persons under 18 (unless they were married) as discriminatory, since vaginal intercourse between persons over 14 was lawful. In 1997, the European Commission of Human Rights in the case of *Sutherland v. United Kingdom*⁷² determined that the different minimum ages of consent in the UK for the purpose of heterosexual and homosexual intercourse (16 and 18 respectively) was an unjustifiable discrimination on the basis of sexual orientation. Other cases referred to by the courts include the decision of the European Court of Human Rights in *L v. Austria*,⁷³ the U.S. Supreme Court's decision in *Lawrence v. Texas*,⁷⁴ and the decision of the Constitutional Court of South Africa in *National Coalition for Gays & Lesbian Equality v. Minister of Justice*.⁷⁵

Another case on gay rights decided by the Hong Kong courts at almost the same time is *Secretary for Justice v. Yau Yuk Lung*.⁷⁶ In this case, the two male defendants, found inside a private car parked beside a public road, was charged with committing buggery with each other otherwise in private—an offence under the Section 118F(1) of the Crimes Ordinance which carried a maximum punishment of 5 years' imprisonment. There was in Hong Kong

70. UN Human Rights Committee, Communication No. 488 of 1992, 112 I.L.R. 328.

71. *R. v. C.M.*, [1995] 82 O.A.C. 68 (Can.).

72. *Sutherland v. United Kingdom*, 24 Eur. H.R. Rep. CD 22 (1997).

73. *L & V v. Austria*, 36 Eur. H.R. Rep. 55 (2003), referred to in para. 47(4) of the judgment of the Court of Appeal. The case concerns a provision of the Austrian Criminal Code which criminalized homosexual acts of adult men with consenting boys aged between 14 and 18. Heterosexual or lesbian acts between adults and persons over the age of 14 were not however punishable under Austrian law. The court held that arts. 8 & 14 of the ECHR had been violated.

74. *Lawrence v. Texas*, 539 U.S. 558, 584 (2003) (referred to in para. 140 of the judgment of the Court of First Instance).

75. *Nat'l Coal. for Gays & Lesbian Equal. v. Minister of Justice* 1998 (6) B.H.R.C. 127 (S. Afr.), referred to in paras. 29(3) and 47(5) of the judgment of the Court of Appeal.

76. *Sec'y for Justice v. Yau Yuk Lung*, [2006] 4 H.K.L.R.D. 196 (C.A.); [2007] 3 H.K.L.R.D. 903 (C.F.A.).

law no equivalent statutory offence for vaginal intercourse between heterosexuals, buggery between heterosexuals and sexual conduct between lesbians otherwise than in private.⁷⁷ Both the Court of Appeal and the Court of Final Appeal held that Section 118F(1) amounted to an unconstitutional infringement of the right to equality. The provision was discriminatory against male homosexuals, and the Government had failed to provide sufficient justification for it. In particular, the Government failed to establish any legitimate aim of the differential treatment—the first step of the reasoning involved in applying the proportionality test. The Chief Justice stated categorically in his judgment that discrimination on the ground of sexual orientation is unconstitutional in the HKSAR, because in Article 22 of the Bill of Rights (Article 26 of the ICCPR) which prohibits “discrimination on any ground such as race, colour, sex, . . . birth or other status,” “other status” includes sexual orientation.⁷⁸ Justice Bokhary in his judgment made extensive references to international legal materials, and pointed out that “[i]n the field of human rights, municipal law has often walked in the footsteps of international law—and may in some jurisdictions have caught up with or even overtaken it.”⁷⁹

The two cases mentioned above have been controversial as they involved the judiciary stepping into the domain of social and sexual morality and overturning a law (made by the legislature) reflecting what was supposed to be the moral standards of the community. It may be questioned whether judges in Hong Kong may legitimately set the behavioral norms for the community in this regard, and whether it is appropriate for the judiciary in Hong Kong to rely so much on international and Western jurisprudence on homosexuals’ rights. However, the judicial decisions may be defended on the ground that one of the legitimate functions of constitutional review of laws by the courts is to protect the fundamental rights of minorities against oppressive or unjust laws enacted by a legislature that represents only the views or interests of the majority in society.

C. *A Case on Prisoners’ Right to Vote*

While the above cases concern homosexuals’ rights, the next case to be considered here concerns the rights of another “minority” in society—prisoners’ rights. In *Chan Kin Sum v. Secretary for Justice*,⁸⁰ the

77. However, these acts may constitute the common law offence of outraging public decency.

78. Para. 11 of his judgment in the Court of Final Appeal. He also pointed out that discrimination on the ground of sexual orientation is also unconstitutional under art. 25 of the Basic Law.

79. Para. 34 of the Court of Final Appeal’s judgment.

80. *Chan v. Sec’y for Justice & Electoral Affairs Comm’n*, [2008] 2 H.K.L.R.D. 166 (C.F.I.). This case (and other Hong Kong cases mentioned below by reference to the case numbers given to them by the Hong Kong judiciary) is available at <http://legalref.judiciary.gov.hk>.

applicants applied for judicial review to challenge the constitutionality of provisions in the Legislative Council Ordinance which disenfranchised persons otherwise eligible to vote in the Legislative Council election who were in prison serving a sentence, or who had been sentenced to imprisonment but had not yet served their sentence. The applicants based their arguments on provisions on the right to vote in the Basic Law and the Bill of Rights,⁸¹ as well as case law in favour of prisoners' right to vote from the Canadian Supreme Court, European Court of Human Rights, Australian High Court and Constitutional Court of South Africa. The Court of First Instance of the High Court of Hong Kong held that while the right to vote is not an absolute right and may be subject to reasonable restrictions, such restrictions should be subjected to rigorous judicial scrutiny as the right to vote belongs to the category of rights "of high constitutional importance"⁸² and "is without doubt the most important political right."⁸³ It was held that the restrictions in this case failed to pass the "proportionality test"; the Government was not able to provide convincing arguments and evidence to justify the "general, automatic and indiscriminate restrictions"⁸⁴ on prisoners' right to vote imposed by the impugned legislation. The relevant statutory provisions were therefore declared unconstitutional. Following the precedent established by the case of *Koo Sze Yiu v. Chief Executive of the HKSAR*,⁸⁵ the court granted a "temporary suspension order" regarding the declaration of unconstitutionality so as to give the government and the legislature time (until the end of October 2009) to amend the existing law.⁸⁶

On 24 June 2009, the Legislative Council of the HKSAR enacted the Voting by Imprisoned Persons Ordinance, which basically removes all restrictions or disqualifications relating to prisoners' right to register as voters and to vote in all elections in Hong Kong—not only elections for the Legislative Council, but also elections for the District Councils and for Village Representatives. The new ordinance also goes beyond what was required by the court in the *Chan Kin Sum* case by removing the provisions in the existing law on the disenfranchisement of those convicted of election-related offences for three years after conviction. The *Chan Kin Sum* case is thus another illustration of the potency of constitutional judicial review in the HKSAR and the role of the judiciary in safeguarding minorities' rights. It also furnishes yet another example of how judges in Hong Kong have been receptive to international and comparative

81. Basic Law, art. 26; Bill of Rights, art. 21; ICCPR, art. 25.

82. Para. 154 of the judgment.

83. Para. 164 of the judgment.

84. Para. 164 of the judgment.

85. *Koo v. Chief Executive of the HKSAR*, [2006] 3 H.K.L.R.D. 455 (C.F.A.).

86. For the judgment relating to the temporary suspension order, see *Chan v. Sec'y for Justice* [2008] 2 H.K.L.R.D. 166 (C.F.I.).

jurisprudence on civil and political rights, and have been ready and willing to bring Hong Kong's law in line with the more "progressive" jurisdictions overseas—as noted in a government document quoted in the judgment in the Chan case, a total ban on voting by prisoners is still practiced in many states of the USA, Japan, Singapore and Malaysia.⁸⁷

D. *A Case on Insider Trading*

In *Koon Wing Yee v. Insider Dealing Tribunal*,⁸⁸ the respondents (Koon and another) were found to be insider dealers by the Insider Dealing Tribunal. Several orders were made against them by the Tribunal, including an order for disqualification as director of any listed company, an order for disgorgement of their gain from insider dealing, and an order for the payment of a monetary penalty. The respondents argued that the procedural and evidential rules governing the proceedings of the Tribunal provided for in the relevant legislation infringed their privilege against self-incrimination or the right to silence, and applied to them the wrong standard of proof—the standard of proof in civil proceedings had been applied but the correct one should have been the higher standard of proof in criminal proceedings, thus violating Articles 10 and 11 of the Bill of Rights (Article 14 of the ICCPR).

The first question for the court was whether these articles were applicable to the proceedings before the Insider Dealing Tribunal. If the answer was affirmative, the next question would be whether there was a violation of the articles in the present case. In answering both questions, the Court of Final Appeal placed much reliance on the case law of the European Court of Human Rights ("the Strasbourg Court") and the General Comments of the UN Human Rights Committee under the ICCPR. Justice Mason (a visiting judge⁸⁹ of the Hong Kong Court of Final Appeal and former Chief Justice of Australia) pointed out in the judgment in this case that "The

87. Para. 45 of the judgment.

88. *Koon v. Insider Dealing Tribunal*, [2008] 3 H.K.L.R.D. 372 (C.F.A.).

89. The Basic Law (art. 82) provides that the CFA may invite judges from other common law jurisdictions to sit on the CFA. The operation of this system of visiting judges from overseas is provided for in the Hong Kong Court of Final Appeal Ordinance (Cap. 484). The visiting judges are "non-permanent judges" of the CFA, as distinguished from the "permanent judges." Cases heard by the CFA are heard by a 5-member panel, usually comprising 4 local judges and one visiting non-permanent judges from overseas. The visiting judges who have been appointed are all serving or retired judges of the highest courts in the UK, Australia and New Zealand. For the operation of the CFA, see generally Simon N.M. Young, *The Hong Kong Multinational Judge in Criminal Appeals*, 26 LAW IN CONTEXT (CRIMINAL APPEALS 1907-2007: ISSUES AND PERSPECTIVES) 130 (2008); SIMON N.M. YOUNG, *Ten Years of Constitutional Rights in Hong Kong's Court of Final Appeal* (forthcoming; on file with author); Simon N.M. Young & Antonio Da Roza, *From the Privy Council to the Court of Final Appeal: Changing Conditions for Final Justice in Hong Kong* (forthcoming; on file with author). The author is grateful to Professor Young, his colleague, for making available to him these manuscripts.

decisions of the Strasbourg Court on provisions of the [European] Convention which are in the same, or substantially the same terms, as the relevant provisions of the BOR [Bill of Rights], though not binding on the courts of Hong Kong, are of high persuasive authority.”⁹⁰ He then noted that Article 10 of the BOR is textually similar to Article 6(1) of the Convention, and applied to the present case the criteria established by the Strasbourg Court for determining whether there is a “criminal charge” within the meaning of Article 6 of the Convention. A paragraph in General Comment No. 32 of the Human Rights Committee relating to Article 14 of the ICCPR was also referred to. It was concluded that, having regard to the monetary penalty imposed on the respondents in the present case, the case did involve a “criminal charge” against the respondents for the purpose of Articles 10 and 11 of the BOR, and the protection provided by these articles was therefore applicable to them. (The court also considered whether the Tribunal’s power to disqualify insider dealers from being directors of listed companies rendered the case one concerning a “criminal charge” for the purpose of the BOR. Again relying on the case law of the Strasbourg Court, it was held that such power concerns a matter that is regulatory in nature and protective of investors rather than criminal or punitive, and thus does not involve a “criminal charge.”)

As regards whether there was a violation of Articles 10 and 11 of the BOR in the present case, the court held that the privilege against self-incrimination recognised in these articles had been violated. As regards the respondents’ argument that the Tribunal had applied the wrong standard of proof, the court pointed out that neither the ICCPR nor European Convention explicitly mandates a specific standard of proof,⁹¹ and the relevant case law of the Strasbourg Court is not conclusive. Here the court placed critical reliance on the Human Rights Committee’s General Comment No. 13 and its subsequent replacement—General Comment No. 32, both of which suggest that proof beyond reasonable doubt is required under Article 14 of the ICCPR.⁹² Justice Mason pointed out that “The General Comments [of the Human Rights Committee] are a valuable jurisprudential resource which is availed of by the Committee in its adjudicative role. While the General Comments are not binding on this Court, they provide influential guidance as to how the ICCPR is applied and will be applied by the Committee when sitting as a judicial body in making determinations.”⁹³

90. Para. 27 of the judgment of the Court of Final Appeal.

91. Para. 91 of the judgment.

92. See paras. 97-98 of the judgment.

93. Para. 101 of the judgment. Under the first Optional Protocol to the ICCPR, the Human Rights Committee may deal with complaints by individuals from states which are parties to the Optional Protocol. This Optional Protocol is not applicable to the HKSAR. The UK itself has not acceded to the Optional Protocol. See Jayawickrama, *supra* note 16, at 122-23. Although the UK extended the

“[T]his Court should regard General Comment No. 13, in so far as it prescribed the standard of proof beyond reasonable doubt, as the appropriate standard to be applied for the purposes of Article 11 of the BOR.”⁹⁴ The court finally held that the Tribunal’s findings in the present case were impaired by the failure to apply the correct standard of proof.⁹⁵

E. *A Case on Prisoners’ Disciplinary Offences*

*Wong Tak Wai v. Commissioner of Correctional Services*⁹⁶ involves a constitutional and legal challenge before the court of the existing practice by which offences against prison discipline in Hong Kong were dealt with by the prison authorities under the Prison Rules. Under the existing law, prisoners are entitled to remission of sentence (of up to one third of the length of the original sentence) on the ground of industry and good conduct, but if they are found guilty of breach of discipline in the prison, they may be punished by forfeiture of remission of a specified period. In this case, the applicant for judicial review had been punished by such forfeiture, and he challenged the fairness of the procedure involved. In particular, it was argued that the charge regarding the disciplinary offence should not have been heard by the head of the prison, who could not be regarded as sufficiently independent and impartial because the complaint that the offence had been committed was made by his subordinate prison officer. It was also argued that the wrong standard of proof had been applied.

The Court of First Instance considered whether there was a breach of Articles 10 and 11 of the Bill of Rights (Article 14 of the ICCPR) and of the common law rule against bias in the present case. It was held that given the possibility of the sanction of forfeiture of remission being imposed, the charge for the disciplinary offence should be regarded as a “criminal charge” for the purpose of the relevant provisions of the BOR. The court relied extensively on the case law of the European Court of Human Rights on Article 6 of the European Convention⁹⁷ (which the court pointed out is the

European Convention on Human Rights to some of its dependent territories and permitted complaints by individuals from these territories to be brought under the Convention, the Convention had never been extended to the British colony of Hong Kong. *See* Byrnes, *supra* note 6, at 327.

94. Para. 103 of the judgment.

95. Para. 106 of the judgment. Unlike the remedy granted by the Court of Appeal in this case, the remedy granted by the Court of Final Appeal (C.F.A.) was unconventional and innovative. The C.F.A. held that it had the power under section 6 of the Hong Kong Bill of Rights Ordinance to strike down a provision of the impugned ordinance which did not itself infringe the Bill of Rights (but which may be said to have caused the violation of the Bill of Rights in the present case) so as to render the impugned ordinance constitutional as far as possible and to give it “as effective an operation as it can be given consistently with the BOR” (para. 113 of the judgment).

96. *Wong v. Comm’r of Corr. Serv.*, [2009] H.K.E.C. 1462 (C.F.I.).

97. *See* paras. 23-25 of the judgment.

equivalent of Article 10 of the BOR) in deciding that the present case involved a “criminal charge” and that the requirement of independence and impartiality of the adjudicator had not been met in the present case. Indeed, it was pointed out that following the decisions of the Strasbourg Court, the English prison service introduced a two-tier system involving independent adjudicators for the adjudication of prison disciplinary offences.⁹⁸ On the question of the standard of proof, the court referred to the Human Rights Committee’s General Comment No. 13 (also relied on in the *Koon* case above) and held that Article 11 of the BOR requires the standard of proof regarding criminal charges to be proof beyond reasonable doubt. It was determined that the wrong standard of proof had been applied by the prison authorities in the present case.

Thus both the present case and the *Koon* case mentioned above furnish good recent examples of the Hong Kong courts’ reliance on the jurisprudence of the European Court of Human Rights and the General Comments of the Human Rights Committee under the ICCPR. In the next case to be considered, there was a divergence between the views of the European Court and the Human Rights Committee on what was essentially the same legal issue of interpretation, and we shall see how the Hong Kong court resolved the conflict.

F. *A Case on Police Disciplinary Hearings*

While the *Wong* case above concerns disciplinary offences committed by prisoners, *Lam Siu Po v. Commissioner of Police*⁹⁹ concerns disciplinary offences committed by police officers. The appellant, a police constable, was charged with the disciplinary offence of being in “serious pecuniary embarrassment stemming from financial imprudence which leads to the impairment of an officer’s operational efficiency.”¹⁰⁰ After disciplinary hearings, he was given the penalty of compulsory retirement. He challenged the fairness of the disciplinary proceedings, particularly the rule in the Police (Discipline) Regulations which prohibited him from being represented by a lawyer at the hearing.¹⁰¹ The case was litigated all the way up to the Court of Final Appeal (CFA).

The impugned rule was contained in subsidiary legislation; the main question in this case was whether this rule was unconstitutional as a violation of Article 10 of the Bill of Rights (Article 14 of the ICCPR), which

98. Paras. 26-28 of the judgment.

99. *Lam v. Comm’r of Police*, [2009] 4 H.K.L.R.D. 575 (C.F.A.).

100. This is provided for in Police General Order 6-01(8). *See* para. 4 of the judgment.

101. The rule only permitted representation by a fellow police officer or a police officer who was qualified as a lawyer. *See* para. 3 of the judgment.

requires a fair hearing by an independent and impartial tribunal in the determination of any “criminal charge” or a person’s “rights and obligations in a suit at law.” The CFA first needed to decide whether Article 10 was applicable to the disciplinary proceedings in the present case. In making its decision on this point, it examined in detail both the case law of the European Court of Human Rights on Article 6(1) of the European Convention on Human Rights (which the CFA considered to be very similar to Article 10 of the BOR) and the views of the Human Rights Committee on Article 14(1) of the ICCPR expressed in its General Comment No. 32.

In his judgment, Justice Ribeiro pointed out that although Article 6(1) of the European Convention was not originally intended to apply to the proceedings of administrative or disciplinary tribunals and the legal relations between civil servants and the state as their employer, the trend of the European case law (as seen, for example, in the latest decision of the Strasbourg Court in *Eskelinen v. Finland*),¹⁰² was to extend the protection of the article to civil servants except where grounds relating to the effective functioning of the state or some other public necessity justify its exclusion. On the other hand, the Human Rights Committee in General Comment No. 32¹⁰³ had expressed the view that cases involving the termination of employment of civil servants for disciplinary reasons would not be covered by Article 14(1) of the ICCPR. Faced with such divergence between the views of the European Court and the Human Rights Committee (HRC), the CFA expressed its preference for the former. Justice Ribeiro noted in his judgment that “the HRC has evidently fallen behind the European court in developments in this area,”¹⁰⁴ and criticized the HRC’s interpretation of the phrase “rights and obligations in a suit at law” as “a piecemeal and necessarily disjointed approach.”¹⁰⁵ “I would respectfully adopt in preference the Eskelinen approach as the more principled.”¹⁰⁶

Applying the European Court’s jurisprudence on Article 6(1) of the European Convention to the interpretation of Article 10 of the Bill of Rights, the CFA concluded that the disciplinary proceedings in the present case did amount to a determination of the appellant’s “rights and obligations in a suit at law,” and hence he was entitled to the constitutional protection of Article 10 regarding a fair hearing. It further held that for the purpose of determining what was a fair hearing under Article 10, the court could resort to common law principles of procedural fairness. Applying such principles, the court held that the blanket exclusion of legal representation by the

102. *Eskelinen v. Finland*, (2007) 45 Eur. H.R. Rep. 43.

103. 15(1) I.H.R.R. 1 (2008).

104. Para. 90 of the judgment.

105. *Id.*

106. *Id.*

relevant subsidiary legislation in the present case was unfair and thus unconstitutional. Fairness requires that the disciplinary tribunal be given a discretion in deciding whether legal representation is to be allowed, which discretion should be exercised in accordance with the circumstances of the particular case.

The *Lam* case provides yet another example of the significant influence in Hong Kong of the jurisprudence of the European Convention on Human Rights, and of how such jurisprudence may be preferred to the views of the Human Rights Committee. The case also illustrates the interaction of rights protected at the constitutional level and the rights recognised by the common law. It demonstrates that one effect of Article 10 of the Bill of Rights is to elevate the common law norms of procedural fairness to the constitutional level in situations to which Article 10 is applicable. Whereas such norms are, in the absence of constitutional protection, subject to legislation (including subsidiary legislation)¹⁰⁷ that may override the common law norms, the norms—now incorporated by judicial interpretation into Article 10 of the Bill of Rights and thus given constitutional force—can now override legislation.

G. *A Case on Double Jeopardy as Torture*

In *Ubamaka Edward Wilson v. Secretary for Security*,¹⁰⁸ the applicant for judicial review was a Nigerian national in Hong Kong subject to a deportation order issued by the Hong Kong Government. He first arrived in Hong Kong in 1991 and was arrested at the airport for possessing dangerous drugs. He was subsequently prosecuted and convicted of trafficking in dangerous drugs. When he finished serving his prison sentence in 2007, he faced the prospects of being repatriated to Nigeria in accordance with the deportation order. Under Nigerian law, he could be tried and punished again upon return to Nigeria for the offence of exportation of narcotic drugs. He therefore challenged the deportation order and argued that it would subject him to double jeopardy.

Article 14(7) of the ICCPR and Article 11(6) of the Bill of Rights afford protection against double jeopardy. In construing the meaning of these provisions, the Court of First Instance considered the *travaux préparatoires* for the ICCPR but found them inconclusive on the relevant issue. On the

107. In this case, apart from the issue of the constitutionality of the rule prohibiting legal representation, the issue also arose of whether the rule (being contained in subsidiary legislation) was *ultra vires* the principal legislation (i.e. the Police Force Ordinance) in pursuance of which the relevant subsidiary legislation in this case was made. The CFA found it unnecessary to decide this issue. The court below—the Court of Appeal—had earlier decided, by applying the relevant law at the time of the making of the subsidiary legislation, that the rule was not *ultra vires*.

108. *Wilson v. Sec'y for Sec.*, [2009] H.K.E.C. 908 (C.F.I.).

other hand, the judge found to be useful *Van Esbroeck*,¹⁰⁹ a decision of the European Court of Justice on the construction of the prohibition against double jeopardy in Article 54 of the Convention Implementing the Schengen Agreement. It was held that there was “a practical risk of double jeopardy”¹¹⁰ in the present case. However, the court concluded that the relevant provisions in the BOR and the ICCPR could not cover the present case, as both are expressly subject to reservations (made by the UK when it first extended the ICCPR to Hong Kong) in respect of immigration legislation affecting persons without the right to enter and remain in Hong Kong. Furthermore, the Human Rights Committee has expressed the view that Article 14(7) of the ICCPR prohibits double jeopardy only with regard to prosecutions in the same state.¹¹¹

Although the applicant’s argument on the basis of Article 14(7) of the ICCPR failed, his argument on the basis of Article 7 of the ICCPR (Article 3 of the BOR) and the Convention Against Torture¹¹² turned out to be successful. Article 7 of the ICCPR provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The court pointed out that the risk of double jeopardy in the present case would not be covered by “torture” as defined in Article 1 of the Convention Against Torture. However, taking into account the interpretation of “inhuman or degrading treatment or punishment” by the European Court of Human Rights in *Soering v. UK*,¹¹³ the court held that deportation of the applicant to Nigeria in the circumstances of the present case with the risk of double jeopardy would constitute inhuman treatment. Relying on the General Comments of the Human Rights Committee,¹¹⁴ the court held that the reservation regarding immigration legislation and persons with no right to enter and remain in Hong Kong made by the UK when it applied the ICCPR to Hong Kong, and the corresponding exception in the BOR, are not applicable to Article 7 of the ICCPR (or Article 3 of the BOR), because the rule stated in Article 7 is a peremptory norm of customary international law from which no derogation is legally permissible. The Court of First Instance therefore quashed the deportation order in the present case, which is currently on appeal to the Court of Appeal.

This case furnishes yet another example of the extensive penetration of international human rights law into Hong Kong’s constitutional law. As in

109. Case C-436/04, *Van Esbroeck*, (2006) 3 C.M.L.R. 6.

110. Para. 70 of the judgment.

111. Communication No. 204/1986 and General Comment No. 32, para. 57. See paras. 83-85 of the judgment in the *Ubamaka* case.

112. This Convention is applicable to the HKSAR.

113. *Soering v. United Kingdom*, (1989)11 Eur. Ct. H.R. (ser. A).

114. General Comment No. 20 (1992), para. 3; General Comment No. 24 (1994), paras. 8, 18; see paras. 95-97 of the judgment in the *Ubamaka* case.

some of the cases mentioned above, the jurisprudence of the European Court of Human Rights and the Human Rights Committee has played a crucial role in shaping the outcome of the judicial reasoning in the present case. In addition, reliance has also been placed on the jurisprudence of the European Court of Justice. Furthermore, the important concept of peremptory norms of customary international law has been used for the purpose of interpreting the scope of the constitutional protection of rights in Hong Kong.

H. *Some Cases on Refugees and Persons Claiming That They Might Be Tortured upon Repatriation*

Our final case study here concerns foreigners who, after arriving in the HKSAR, claim that they are refugees escaping from persecution in their home country or that they would be in danger of being tortured if repatriated to their home country. The Hong Kong courts have decided several cases on such persons which raise issues relating to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention Relating to the Status of Refugees and its Protocol (“the Refugee Convention”) and the customary international law on the treatment (particularly non-refoulement) of refugees.

In *Secretary for Security v. Prabakar*,¹¹⁵ the applicant for judicial review came to Hong Kong from Sri Lanka, and successfully challenged the deportation order made by the Hong Kong Government against him on the ground of procedural unfairness. The case was litigated all the way up to the Court of Final Appeal (CFA). The court noted that the CAT is a treaty which has been extended to Hong Kong. However, Article 3 of CAT, which provides that no state party shall expel or return a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture, has not been introduced into Hong Kong’s domestic law by legislation.¹¹⁶ On the other hand, the court noted that the Hong Kong Government (through the PRC Government) has submitted in 1999 a report under the CAT to the Committee Against Torture stating that it was the Hong Kong Government’s policy not to deport a person to a particular country if there is a well-founded claim that (s)he would be subjected to torture in that country.¹¹⁷ The court held (in accordance with common law principles of administrative law) that in implementing this

115. *Sec’y for Sec. v. Prabakar*, [2005] 1 H.K.L.R.D. 289 (C.F.A.).

116. The Crimes (Torture) Ordinance (Cap. 427) has been enacted in Hong Kong for the purpose of the implementation of CAT. However, this Ordinance does not contain any provision equivalent to art. 3 of CAT.

117. *See* para. 27 of the report, at the website of the Constitutional and Mainland Affairs Bureau, *supra* note 15.

policy, the Government must follow a high standard of fairness. The procedure according to which the applicant was dealt with was held to have failed to meet this standard, because the Government did not have any mechanism for properly assessing the applicant's claim regarding the risk of torture upon repatriation, and simply relied on the determination of the Hong Kong office of the United Nations High Commissioner for Refugees (UNHCR) on whether the applicant should be considered a refugee. In enunciating what would be the elements of a fair procedure, the CFA referred to General Comment No. 1 issued by the Committee Against Torture under CAT on the implementation of Article 3 of CAT.¹¹⁸

After the CFA's decision in the *Prabakar* case, the Hong Kong Government established a screening process for claimants of likely torture upon repatriation. However, many elements of this new system were found to be flawed and to fail the high standard of fairness required by Prabakar in *FB v. Director of Immigration*,¹¹⁹ a "test case"¹²⁰ in which the applicants for judicial review challenged the procedures which were being used to deal with "over 2,600 Convention [CAT] claimants (out of about 3,000 in 3 ½ years) awaiting assessment by" the Director of Immigration.¹²¹ Elements of the system found to be defective included the prohibition of the presence of lawyers to assist the claimants at certain points of the process, the general lack of provision for legal representation for claimants who could not afford to employ their own lawyers, the lack of adequate training on the part of certain officials involved in the process of assessing torture claims, the lack of an oral hearing during the appeal stage, the non-disclosure to the claimants of the legal advice received by officials handling their cases, and the failure to give reasons for rejections of appeals.

Apart from the mechanism for assessing claims of likely torture upon repatriation ("torture claims"), the practice of subjecting foreigners to detention while their torture claims were being assessed was also successfully challenged before the Hong Kong courts. In *A (Torture Claimant) v. Director of Immigration*,¹²² the Court of Appeal held that the manner in which the Government exercised the power under Section 32 of the Immigration Ordinance to detain torture claimants pending removal or deportation contravened Article 5 of the Bill of Rights (Article 9 of the

118. Para. 52 of the judgment. The C.F.A. noted at the same time that this Comment relates to claims made by individuals to the Committee Against Torture in cases where the state party has declared under art. 22 of the Convention that it recognizes the Committee's competence to deal with claims from individuals, while Hong Kong has not made such a declaration. Nevertheless, the C.F.A. was of the view that "the Comment may provide a useful reference for the Secretary [for Security] in assessing claims in accordance with the policy" (para. 52 of the judgment).

119. *FB v. Dir. of Immigration*, [2009] 2 H.K.L.R.D. 346 (C.F.I.).

120. Para. 61 of the judgment.

121. Para. 59 of the judgment.

122. *A (Torture Claimant) v. Dir. of Immigration*, [2008] 4 H.K.L.R.D. 752 (C.A.).

ICCPR) which protects the liberty of the person. It was held that in the absence of published policies indicating the circumstances under which such power would be exercised, the requirement of Article 5 (as interpreted by the court) that the grounds and procedure for detention of persons must be certain and accessible had not been complied with.

Finally we come to a case involving refugees rather than torture claimants. Whereas the CAT has been extended to Hong Kong, the Refugee Convention has never been made applicable to Hong Kong. Does that mean that Hong Kong is under no obligation in international law not to repatriate refugees to countries where they fear persecution? And does the domestic law of Hong Kong require the Hong Kong Government not to repatriate refugees (i.e. non-refoulement of refugees)? These questions arose for judicial determination in *C v. Director of Immigration*.¹²³

In this case—also a “test case” brought to test the legality of government practice, the applicants for judicial review were from Zaire, Guinea, Sri Lanka and Togo. Their claims to be recognised as refugees had been investigated by the Hong Kong office of the United Nations High Commissioner for Refugees (UNHCR) and rejected. The Hong Kong Government planned to repatriate them. They brought an action before the court, arguing that the Hong Kong Government has the legal obligation not to repatriate them to countries where they fear prosecution, as well as the obligation to make an independent and fair determination of their claims for refugee status instead of relying completely on the UNHCR’s determination which was the existing practice.

Although the Refugee Convention has not been extended to Hong Kong (though both the UK and the PRC are parties to the Convention), the applicants argued that the rule of non-refoulement of refugees is a rule of customary international law and a peremptory norm from which no derogation is allowed by international law. The court noted that under Hong Kong’s common law-based legal system, customary international law automatically forms part of domestic law without the need for legislative action. However, such automatic incorporation of customary international law is subject to contrary domestic legislation and repudiation by conduct. The court held that the rule of non-refoulement of refugees forms part of customary international law, but it has not acquired the status of a peremptory norm. It was further held that this rule has not been incorporated into Hong Kong’s domestic law because of the Hong Kong Government’s “consistent and long-standing objection”¹²⁴ to it by conduct. The court accepted the Government’s position that although its practice has been not to

123. *C. v. Dir. of Immigration*, [2008] 2 H.K.C. 167 (C.F.I.). The case is currently on appeal to the Court of Appeal. For a detailed comment on the case, see Jones, *supra* note 5.

124. Para. 194 of the judgment.

repatriate persons whom the Hong Kong office of the UNHCR has determined to be refugees, this is a matter of the exercise of its discretion under the relevant immigration on humanitarian and compassionate grounds, rather than an indication that it has accepted the rule of non-refoulement of refugees as an applicable rule of customary international law. On the issue of the Government not having its own machinery for the determination of claims of refugee status and its reliance on determinations made by the UNHCR, the court found nothing unlawful in this practice. This decision by the Court of First Instance is currently on appeal to the Court of Appeal.

The cases discussed in this section demonstrate that although the rule of non-refoulement of torture claimants in CAT (a treaty applicable to Hong Kong) has not been incorporated by legislative action into Hong Kong law, and although the Refugee Convention is not applicable to Hong Kong, in practice torture claimants and claimants of refugee status are given considerable protection in Hong Kong, and as far as torture claimants are concerned the Hong Kong courts have intervened to protect their right to a high standard of fairness in the assessment of their claims and their right to liberty of the person and freedom from arbitrary detention.

IV. THE INTERNATIONALISATION OF CONSTITUTIONAL LAW IN THE HKSAR

The internationalisation of constitutional law in Hong Kong as described in this article may be better understood within a conceptual framework that takes into account (a) the relationship between international law and constitutional law, (b) the enforcement of international human rights law, and (c) contemporary worldwide trends in the convergence between international human rights law and domestic constitutional law or the internationalisation of constitutional law. In this part of this article, such a conceptual framework will first be outlined. Then we shall attempt to place the case of Hong Kong within the framework, and to seek possible explanations of its salient characteristics.

Although the domestic constitutional laws of states and public international law have very different historical origins, are based on different underlying principles and have different modes of interpretation and implementation, these two systems of law actually share much in common, and hence their increasing interaction and interpenetration in the course of time may be considered something natural or even the outcome of an inherent logic of legal development. Jean Bodin, the great 16th century theorist of sovereignty, already contemplated that constitutional law and international law constituted possible limits on the absolute sovereignty of

the emerging modern state.¹²⁵ “Many prominent Western political theorists conceived of what we would today call constitutional and international law as conjoined efforts to regulate the sovereign state from an ‘internal’ and ‘external’ perspective.”¹²⁶ As pointed out by Jack Goldsmith and Daryl Levinson, both constitutional law and international law may be regarded as “public law” in a broad sense, as distinguished from “ordinary domestic law.”¹²⁷ This is because both constitutional law and international law are intended to constitute and at the same time to govern and constrain the behaviour of states, state actors and state institutions.¹²⁸ While Goldsmith and Levinson put forward this thesis as a general proposition relevant to the whole of international law, the development of international human rights law in recent decades can be said to provide an excellent illustration of the thesis at work. International human rights law shares one of the principal objectives of traditional domestic constitutional law—that of protecting the rights of individuals against the state and regulating the relationship between the government of a state and its citizens.

The question of the enforcement of international human rights law turns on the relationship and interaction between international law and domestic constitutional law to a considerable extent. Harold Koh writes that “if the question is ‘how is international human rights enforced?’, my short answer is through a transnational legal process of institutional *interaction*, *interpretation* of legal norms, and attempts to internalize those norms into domestic legal systems.”¹²⁹ He distinguishes between the “horizontal story” and “vertical story” of the enforcement of international human rights. Whereas the former focuses on the state-to-state level, the latter—which Koh prefers—is about a transnational legal process in which non-government organizations and individuals (whom Koh terms “transnational norm entrepreneurs” and “governmental norm sponsors”) are actively involved. Their efforts play an important role in the adoption of interpretations of international human rights norms at both governmental and non-governmental fora (including treaty regimes and domestic, regional and international courts) “that create an ‘interpretive community’ that is capable of defining, elaborating and testing the definition of particular norms and their violations.”¹³⁰ The norms and interpretations of this “global interpretive community” are then “internalised” by national governments

125. See Jack Goldsmith & Daryl Levinson, *Law for States: International Law, Constitutional Law, Public Law*, 122 HARV. L. REV. 1791 at 1796-97 & n.11 (2009).

126. *Id.*

127. *Id.* at 1794-95.

128. *Id.*

129. Harold Hongju Koh, *How Is International Human Rights Law Enforced?*, 74 IND. L.J. 1397, 1399 (1999) (emphasis in original).

130. *Id.* at 1410.

into their domestic legal systems. “Thus, over time, domestic decisionmaking structures become ‘enmeshed’ with international legal norms”,¹³¹ international human rights law is thus brought home.¹³²

What Koh calls “internalisation” of international human rights law into domestic legal systems is basically what is in this article termed the internationalisation of constitutional law. Koh distinguishes between social, political and legal internalisation. “Legal internalization occurs when an international norm is incorporated into the domestic legal system through executive action, legislative action, judicial interpretation, or some combination of the three.”¹³³

In the early twenty-first century world, such internalisation of international human rights norms into domestic legal systems is occurring more actively than ever before. For example, some of the new democracies in Eastern and Central Europe have provided in their constitutions for the direct application in domestic law of international law and even the priority of international law over domestic law.¹³⁴ Emerging democracies in Africa embrace human rights in their new constitutions.¹³⁵ The 1996 Constitution of South Africa provides that courts must consider international law when interpreting the constitutional bill of rights.¹³⁶ Britain, the home of the common law and one of the few countries in the world without a written constitution, enacted the Human Rights Act 1998 to “internalise” the European Convention on Human Rights. In East and Southeast Asia, judicial review by constitutional courts on the basis of internationally recognized human rights has made rapid progress in recent decades.¹³⁷ These trends of internationalisation of constitutional law have been analysed by Chang Wen-chen who has developed the following classification of modes of convergence between international human rights law and domestic constitutional law.¹³⁸

According to Chang, there are two principal modes of such

131. *Id.* at 1410-11.

132. *Id.* at 1409, 1413.

133. *Id.* at 1413 (emphasis in original).

134. *See, e.g.*, CONSTITUTIONAL REFORM AND INTERNATIONAL LAW IN CENTRAL AND EASTERN EUROPE (Rein Müllerson et al. eds., 1998).

135. *See, e.g.*, LAW AND RIGHTS: GLOBAL PERSPECTIVES ON CONSTITUTIONALISM AND GOVERNANCE (Penelope E. Andrews & Susan Bazilli eds., 2008).

136. § 39(1) of this Constitution provides that a court when interpreting the constitutional bill of rights “must consider international law” and “may consider foreign law.” S. AFR. CONST. 1996, art. 39(1).

137. *See, e.g.*, TOM GINSBURG, JUDICIAL REVIEW IN NEW DEMOCRACIES: CONSTITUTIONAL COURTS IN ASIAN CASES (2003).

138. Wen-Chen Chang, *Hsien Fa Yu Kuo Chi Jen Chuan Fa Te Hui Liu [The Convergence of Constitutional Law and International Human Rights Law]*, in 6 XIANFA JIESHI ZHI LILUN YU SHIJIAN [THE THEORY AND PRACTICE OF CONSTITUTIONAL INTERPRETATION] 223 (Fort Fu-Te Liao ed., 2009).

convergence—the “legislative” mode and the “interpretive” mode.¹³⁹ The latter refers to the use of international legal materials on human rights by the courts.¹⁴⁰ The former refers to the use of constitutional or statutory provisions to incorporate international human rights norms into domestic law. It may be further divided into three modes.¹⁴¹ The first is where a set of human rights set out in an international instrument is given constitutional force in a domestic legal order. Chang points out that an example of this situation is provided by the new constitution of the Republic of Bosnia and Herzegovina. The second situation is what Chang terms the “wrapping mode of constitutionalization” of international human rights law. This includes situations where (a) the constitution provides generally for the applicability of international law and its priority over domestic law (e.g. Hungary’s Constitution provides that it “accepts the generally recognized principles of international law, and shall harmonize the country’s domestic law with the obligations assumed under international law”); (b) as in South Africa, the constitution requires international human rights law to be taken into consideration in judicial decision-making; (c) as in some new democracies in Eastern Europe, the constitution provides that international human rights treaties to which the state is a party have the force of domestic law and have a status higher than ordinary domestic law; and (d) as in the case of the Russian Federation, the constitution authorizes citizens to take their cases to international human rights tribunals, thus implicitly recognizing the superior force of international human rights law. The third mode is the enactment of legislation giving “quasi-constitutional” status to international human rights law. An example here is the UK’s Human Rights Act 1998.

The internationalisation of constitutional law in the case of Hong Kong may be regarded as a result of the combined operation of the “legislative” mode (particularly its first sub-mode as mentioned above) and the “interpretive” mode in Chang’s typology. In particular, there has been in the case of the HKSAR a convergence of four events or movements: (a) the making in the PRC of the Basic Law of the HKSAR in 1990 which expressly refers to the human rights guarantees in the ICCPR; (b) the enactment in colonial Hong Kong and constitutional entrenchment by the British Crown in 1991 of the Hong Kong Bill of Rights Ordinance that reproduces the text of the ICCPR as applied to Hong Kong; (c) the interpretive acts of the HKSAR courts after the Basic Law came into effect in 1997 that gave constitutional force to the ICCPR and the Hong Kong Bill of Rights; and (d) the vigilance and activism of the HKSAR courts in ensuring that domestic laws and policies comply with international human rights norms as

139. *Id.* at 230.

140. *Id.* at 238-42.

141. *Id.* at 231-38.

interpreted by the courts, and their readiness and willingness to draw on international and comparative jurisprudence in their interpretive endeavours.

It may be suggested that each of these four conditions has been a necessary condition for the internationalisation of Hong Kong's constitutional law, the convergence of international human rights law and domestic constitutional law (in Chang's language) or the internalisation of international human rights law (in Koh's language) into the domestic legal system of Hong Kong. If the British colonial government in Hong Kong had not introduced the Hong Kong Bill of Rights Ordinance that reproduces the text of the ICCPR and had not entrenched it in Hong Kong's colonial constitution, the Hong Kong courts would not have had the opportunity before the 1997 handover to practise judicial review of the constitutionality of governmental and legislative actions on the basis of international human rights norms, to accumulate experience in this regard and to build up a body of relevant case law. If Article 39 of the Basic Law of the HKSAR had not been drafted in the language in which it now appears (which is partly but not wholly derived from the Sino-British Joint Declaration of 1984 on the return of Hong Kong to the PRC in 1997) and had not referred to the ICCPR in the way it now does, the courts of the HKSAR would most probably have had no room to manoeuvre in terms of asserting the overriding status of international human rights norms and giving them constitutional force, particularly in view of the NPC Standing Committee's non-adoption at the time of the 1997 handover of certain crucial provisions of the Hong Kong Bill of Rights Ordinance. If the courts of the HKSAR had not adopted a liberal approach to the interpretation of the Basic Law in general and Article 39 in particular, or had not been so open to and receptive of international and comparative jurisprudence, the degree of internationalisation of Hong Kong's constitutional law would have been considerably less than where it now stands.

Credit should also be given to the general infrastructure of Hong Kong's legal system, the legal community in Hong Kong and its civil society. As provided for in the Basic Law, the legal system of the HKSAR is basically the common law system that existed before the handover.¹⁴² Courts are expressly authorised to refer to the case law of common law jurisdictions overseas.¹⁴³ Expatriate judges who served in Hong Kong before 1997 have been allowed to remain in office.¹⁴⁴ English has continued to be the main

142. Basic Law, art. 8.

143. *Id.* art. 84.

144. *Id.* art. 93. Only the Chief Justice of the Court of Final Appeal and the Chief Judge of the High Court are required to be "Chinese citizens who are permanent residents of the Region [HKSAR] with no right of abode in any foreign country." Basic Law, art. 90.

language of the law, particularly in proceedings before the higher courts.¹⁴⁵ The Basic Law expressly allows the Court of Final Appeal, established to replace the Privy Council in London as the final appellate court of the Hong Kong legal system, to have (in addition to permanent judges who are permanent residents of the HKSAR) non-permanent judges visiting from other common law jurisdictions.¹⁴⁶

The members of the legal community in Hong Kong, including lawyers working in the Department of Justice of the Hong Kong Government, share a faith in the same common law values and in international human rights norms. Government lawyers drafting bills for the legislature check and certify that each bill is compatible with the Bill of Rights.¹⁴⁷ Government lawyers appearing before the HKSAR courts have never argued against giving constitutional force to the Hong Kong Bill of Rights and the ICCPR or active use of international human rights jurisprudence and materials. Hong Kong also has a sound and well-established system of legal aid, in which cases involving Bill of Rights are given special attention.¹⁴⁸ There exist NGOs in Hong Kong that have been active in designing, supporting or participating in public interest litigation that promotes the cause of human rights.

It has been said that “[t]he relationship between international law and domestic law is often resolved on the basis of how open or how closed a society is.”¹⁴⁹ The internationalisation of constitutional law in Hong Kong testifies to the openness of the HKSAR as an international city within the PRC. In order to protect their own national interests, most states set limits to and operate “filters” regarding the direct application of international law in their domestic legal order.¹⁵⁰ Such limits may also be necessary to ensure democratic accountability of state institutions to citizens, as the making of international legal norms may take place in processes and institutions that lack the legitimacy of a popularly elected government. The USA probably provides an extreme example of strong resistance to the use of international and comparative jurisprudence in constitutional interpretation, partly on the

145. According to art. 9 of the Basic Law, Chinese and English are both official languages. See also the Official Languages Ordinance, (1997) Cap. 5 (H.K.); Anne Cheung, *Official Languages*, in HONG KONG'S CONSTITUTIONAL LAW, *supra* note 16, ch. 6. Most of the judgments of the higher courts of the HKSAR are written in English and not translated in full into Chinese. Legislation is however bilingual with both the English and Chinese texts being equally authentic (see the Interpretation and General Clauses Ordinance, Cap. 1 (H.K.)).

146. See *supra* note 90.

147. As Byrnes (*supra* note 6, at 348) has pointed out, the scrutiny of bills to check their compatibility with the Bill of Rights has become an established part of the work of members and bills committees of the Legislative Council in Hong Kong.

148. See the Legal Aid Ordinance, (1997) Cap. 91 (H.K.).

149. Rein Müllerson, *Introduction*, in CONSTITUTIONAL REFORM AND INTERNATIONAL LAW IN CENTRAL AND EASTERN EUROPE, *supra* note 134, at XIII.

150. See generally Feldman, *supra* note 4.

basis of particular perspectives on constitutional interpretation such as “originalism,” and partly as a result of concerns regarding state sovereignty and citizens’ democratic self-governance.¹⁵¹ The case of Hong Kong probably stands near the other end of the spectrum.

One possible explanation of Hong Kong’s openness to international human rights jurisprudence is that unlike the USA which has on its own a long and robust tradition of constitutional law and discourse, Hong Kong almost has none, as the HKSAR was only established in 1997, and even if we trace the origins of constitutional judicial review in Hong Kong to the colonial era, we can only go back as far as 1991. Without an indigenous tradition of constitutional protection of human rights, it would have been natural for Hong Kong to draw on external resources for support and guidance. As Britain—Hong Kong’s colonial master—itself does not have a written constitution and the UK Human Rights Act 1998 came even later than Hong Kong’s Bill of Rights, it is not surprising that international human rights law became the main resource that the Hong Kong judiciary drew on in developing Hong Kong’s constitutional law and Hong Kong’s system of constitutional judicial review.

There is in this author’s opinion another even deeper force that has propelled the internationalisation of constitutional law in Hong Kong, and this is associated with the peculiar and unique nature of the space occupied by Hong Kong as the major Special Administrative Region¹⁵² of the PRC under the framework of “one country, two systems.”¹⁵³ Ever since the Sino-British Joint Declaration was concluded in 1984 and Hong Kong’s fate of eventual re-union with its motherland in 1997 was sealed, there has been in all levels of Hong Kong society a deep and persistent anxiety that the civil liberties which Hong Kong people had enjoyed under British rule might one day come to an end, and Hong Kong will be assimilated into the communist system in mainland China. The enactment of the Hong Kong Bill of Rights Ordinance, the strengthening of legal institutions in Hong Kong during the transition to 1997 and the democratisation of the colonial political system could all be interpreted as attempts to fortify Hong Kong against those forces

151. See, e.g., *Atkins v. Virginia*, 536 U.S. 304 (2002); *Lawrence v. Texas*, 539 U.S. 558 (2003); Mark Tushnet, *Transnational/Domestic Constitutional Law*, 37 *LOY. L.A. L. REV.* 239 (2003); Sanford E. Levinson, *Looking Abroad When Interpreting the U.S. Constitution: Some Reflections*, 39 *TEX. INT’L. L.J.* 353 (2004); *The Relevance of Foreign Legal Materials in U.S. Constitutional Cases: A Conversation Between Justice Antonin Scalia and Justice Stephen Breyer*, 3 *INT’L J. CONST. L.* 519 (2005).

152. The only other Special Administrative Region (SAR) of the P.R.C. that enjoys a high degree of autonomy comparable to that of Hong Kong is the Macau SAR, established in 1999 upon the end of Portuguese rule.

153. See generally GHAI, *supra* note 24; Albert H.Y. Chen, *The Concept of “One Country, Two Systems” and Its Application to Hong Kong*, in *UNDERSTANDING CHINA’S LEGAL SYSTEM: ESSAYS IN HONOUR OF JEROME A. COHEN*, ch. 9 (C. Stephen Hsu ed., 2003).

coming from the mainland that may erode the freedoms and way of life that the people of Hong Kong cherish.¹⁵⁴ From this perspective, there is everything to be gained, and nothing to lose, by attaching Hong Kong as firmly and closely as possible to the international system for the protection of human rights and fundamental freedoms. This, then, is probably the inner logic behind the internationalisation of constitutional law in Hong Kong.

Hong Kong not being an independent state, there are no sovereignty-based and national interest-based concerns regarding the internationalisation of constitutional law in Hong Kong.¹⁵⁵ And as Hong Kong is not yet a full democracy¹⁵⁶ and the existing political system suffers from “democracy deficit”¹⁵⁷ and the lack of sufficient legitimacy, reservations in other countries about the domestic application of international law on the ground that it suffers from “democracy deficit” and lacks legitimacy are absent in Hong Kong.¹⁵⁸ On the contrary, standards that are “international” are almost invariably perceived as good by the people of Hong Kong who take pride in Hong Kong being an international and cosmopolitan city. “Internationalisation” is at once a good in itself and a good means to enable Hong Kong to resist “mainlandization.”¹⁵⁹ Hence the internationalisation of constitutional law in Hong Kong may be interpreted as a vehicle of Hong Kong’s search for its own identity in the context of “one country, two systems.” As the Chief Justice of Hong Kong has said in *Ng Ka Ling v. Director of Immigration*¹⁶⁰—probably the most famous constitutional law case in the history of the HKSAR so far,¹⁶¹ the freedoms guaranteed by the Basic Law “lie at the heart of Hong Kong’s *separate system*.”¹⁶² Thus if Hong Kong is still the Pearl of the Orient, it is such

154. See generally Chen, *supra* note 39.

155. Indeed, the attempt by the HKSAR Government in 2003 to legislate on national security as required by art. 23 of the Basic Law (which requires the HKSAR to legislate to prohibit treason, secession, sedition, subversion against the Central Government, etc.) failed because of a demonstration of half a million Hong Kong people against the proposed bill. See generally NATIONAL SECURITY AND FUNDAMENTAL FREEDOMS: HONG KONG’S ARTICLE 23 UNDER SCRUTINY (Fu Hualing et al. eds., 2005).

156. See, e.g., Albert H.Y. Chen, *The Basic Law and the Development of the Political System in Hong Kong*, 15 ASIA PAC. L. REV. 19 (2007).

157. Indeed, it has been suggested that “the resort to judicial challenges as a means for pushing legal or political reform [in the HKSAR] is itself a result of a democracy deficit.” Johannes Chan, *Administrative Law, Politics and Governance: The Hong Kong Experience*, in ADMINISTRATIVE LAW AND GOVERNANCE IN ASIA 143, 166 (Tom Ginsburg & Albert H.Y. Chen eds., 2009).

158. For the same reason, the “counter-majoritarian” difficulty with constitutional judicial review has not arisen in Hong Kong. See Chen, *supra* note 7, at 383-87, 419-20.

159. For the concept of “mainlandization” of Hong Kong, see SONNY SHIU-HING LO, THE DYNAMICS OF BEIJING-HONG KONG RELATIONS (2008) (esp. ch. 2: The Mainlandization of Hong Kong).

160. *Ng v. Dir. of Immigration*, [1999] 1 H.K.L.R.D. 315 (C.F.A.).

161. See generally HONG KONG’S CONSTITUTIONAL DEBATE: CONFLICT OVER INTERPRETATION (Johannes M.M. Chan et al. eds., 2000).

162. *Supra* note 160, at 326 (emphasis supplied).

freedoms that continue to make it bright and beautiful, freedoms that have been and will be protected by an internationalised constitutional law of human rights.

V. CONCLUSION

In this article, the case of Hong Kong has been used as a case study on the interaction of international human rights law and domestic constitutional law and the internationalisation of constitutional law, defined to mean the increasing degree of incorporation of international legal norms into the constitutional laws of states.

Part II of this article shows that Hong Kong, both before and after the 1997 handover, has adhered to the approach of “dualism” adopted by English law with regard to the relationship between international law and municipal law. However, a major step forward in the constitutional evolution of Hong Kong and the internationalisation of its constitutional law was taken in 1991 when the British colonial government enacted the Hong Kong Bill of Rights Ordinance which reproduced the text of the ICCPR and incorporated it directly into domestic law. At the same time, the colonial constitution of Hong Kong was amended so as to give the ICCPR supremacy over the laws of Hong Kong. This inaugurated the era of constitutional judicial review of legislative and administrative actions in Hong Kong on the basis of the international human rights norms enshrined in the ICCPR and the Hong Kong Bill of Rights. Despite some changes to the text of the Hong Kong Bill of Rights Ordinance made by the National People’s Congress Standing Committee of the PRC at the time of the 1997 handover, the courts of the HKSAR have continued to exercise the power of constitutional review on the basis of the ICCPR and the Hong Kong Bill of Rights by relying on the reference to the ICCPR in Article 39 of the Basic Law of the HKSAR. They have extensively used international human rights jurisprudence for this purpose, particularly the case law on the European Convention on Human Rights.

Part III of this article considers a number of cases decided by the HKSAR courts, particularly recently decided cases, that illustrate how Hong Kong judges have made use of international human rights jurisprudence. In these cases, they have required the reform of the scoring system for entrance into secondary schools in order to promote gender equality; they have liberalised the criminal law on buggery committed by male homosexuals; they have defended the right to vote on the part of prisoners; they have ensured a greater degree of procedural due process in the work of the Insider Dealing Tribunal and the hearing of prisoners’ disciplinary offences and police disciplinary offences; they have used the international human rights

norm regarding torture and cruel, inhuman or degrading treatment or punishment to extend the protection against double jeopardy; and they have given considerable protection to foreigners arriving in Hong Kong who claim that they would be subjected to torture if repatriated.

Finally, part IV of this article provides a conceptual framework for the study of the internationalisation of constitutional law, and suggests that the case of Hong Kong involves the combined operation of the “legislative” and “interpretive” modes of the convergence between international human rights law and domestic constitutional law. It points out that the internationalisation of constitutional law in Hong Kong would not have been possible without the convergence of several events or movements involving the Basic Law of the HKSAR, the Hong Kong Bill of Rights Ordinance and the interpretive stance of the HKSAR courts. Finally, it seeks an understanding or explanation of the internationalisation of constitutional law in the HKSAR in terms of the lack of an indigenous constitutional tradition in Hong Kong and the peculiar mentality of the people of Hong Kong living under “one country, two systems,” particularly their anxiety regarding the “mainlandization” of Hong Kong and their aspirations for the preservation of civil liberties and the maintenance of their cherished way of life.

APPENDIX*

Table 1 Cases citing the International Covenant on Civil and Political Rights

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Article(s) in ICCPR cited
<i>Her Majesty's Attorney General in and for the United Kingdom v South China Morning Post Ltd and others</i>	8/9/1987	[1988] 1 HKLR 143	CA	19
<i>Bank of India v Murjani Industries (HK) Ltd and another</i>	22/6/1989	[1989] 2 HKLR 358	CA	12
<i>Madam Lee Bun and another v Director of Immigration</i>	29/6/1990	[1990] 2 HKLR 466	CA	13
<i>Re Pham Van Ngo</i>	12/11/1990	[1991] 1 HKLR 499	HC	9(1)
<i>The Queen v Li Wing Tat and others</i>	18/1/1991	[1991] 1 HKLR 731	SC	General ref.
<i>Tam Hing Yee v Wu Tai Wai</i>	8/7/1991	DCCJ6250/1989	DC	5.1
<i>In Re the Hong Kong and Shanghai Banking Corporation Ltd and others</i>	8/8/1991	[1992] HKDCLR 37	DC	17 [BOR 14]
<i>The Queen v Ng Po Lam</i>	21/8/1991	DCCC101/1991	DC	14(2)
<i>R v Sin Yau Ming</i>	30/9/1991	[1992] 1 HKCLR 127	CA	14.2
<i>Attorney General v Lorraine Esme Osman Dato Mohommed Shamsuddin and others</i>	28/10/1991	[1992] 1 HKCLR 35	HC	General ref.

* The author is grateful to his research assistant, Mr. Lee To Ching Ken, for his compilation of the information in these tables on the basis of the databases in Hong Kong judiciary's website, Westlaw and Lexis.

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Article(s) in ICCPR cited
<i>Tam Hing Yee v Wu Tai Wai</i>	28/11/1991	[1992] 1 HKLR 185	CA	5
<i>R v Lam Wan-kow</i>	25/3/1992	[1992] 1 HKCLR 272	CA	14, 14(2), 14(5), 15(4)
<i>The Queen v William Hung</i>	14/4/1992	[1992] 2 HKCLR 90	HC	9(3), 14, 14(3)
<i>The Queen v Charles Cheung Wai Bun</i>	16/6/1992	[1993] 1 HKCLR 189	HC	14 [BOR 10, 11(2)(c)]
<i>The Queen v Fu Yan</i>	23/6/1992	[1992] 2 HKCLR 59	CA	14(3)(d)
<i>The Queen v Man Wai Keung (No.2)</i>	7/7/1992	CACC403/1990	CA	1, 10, 11(1), 11(4), 22
<i>The Queen v Lum Wai Ming</i>	27/7/1992	[1992] 2 HKCLR 221	HC	14.2
<i>The Queen v Chandra Thanwardas Mirchandani</i>	28/7/1992	[1992] 2 HKCLR 174	CA	14 [BOR 11]
<i>The Queen v Chan Wai Ming</i>	6/8/1992	[1993] 1 HKCLR 51	CA	14.2
<i>Re Chan Heung Mui and another</i>	28/9/1992	[1993] 1 HKLR 126	HC	23
<i>Re Ho Ming Sai and others</i>	1/10/1992	[1993] 2 HKLR 29	HC	2, 3, 29, 22, 26
<i>Re Suthipong Smittachartch and another</i>	12/10/1992	[1993] 1 HKLR 93	HC	14, 26 [BOR 10, 11, 11(2), 22]
<i>Re Tse Chu Fai Ronald</i>	20/11/1992	[1993] 2 HKLR 453	HC	9(1), 14(3)(g), 17, 18, 19 [BOR 5(1), 11(3)(g), 14, 15, 16]
<i>The Queen v Wong Hiu Chor and others</i>	4/12/1992	[1993] 1 HKCLR 107	CA	14
<i>Lee Kwok Hung, ex parte</i>	19/2/1993	[1993] 2 HKLR 51	CA	14

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Article(s) in ICCPR cited
<i>The Commissioner of Inland Revenue, Hong Kong v Lee Lai Ping</i>	25/3/1993	DCCJ1541/1992	DC	14
<i>The Queen v Chiu Te-ken, Deacon and another</i>	20/4/1993	[1993] 2 HKCLR 21	HC	14 [BOR 10, 11]
<i>Attorney General of Hong Kong v Lee Kwong-kut and others</i>	19/5/1993	[1993] AC 951	PC	14 [BOR 11(1)]
<i>Chan Chuen-kam and others v R</i>	16/6/1993	[1993] 2 HKCLR 144	CA	15 [BOR 12]
<i>Wong King Lung and Others v Director of Immigration</i>	22/6/1993	[1994] 1 HKLR 312	HC	General ref.
<i>The Queen v Wan Siu-kei</i>	1/9/1993	[1994] 2 HKCLR 127	CA	General ref.
<i>R v Yu Yem Kin</i>	9/2/1994	HCCC111/1993	HC	General ref.
<i>Chan Chak Fan and another v R</i>	17/3/1994	[1994] 2 HKCLR 17	CA	14(2)
<i>Hai Ho Tak v Attorney General</i>	8/4/1994	[1994] 2 HKLR 202	CA	17, 23
<i>Auburntown Ltd v Town Planning Board</i>	18/4/1994	[1994] 1 HKLR 272	HC	14
<i>In Re Lau San-ching and others</i>	2/9/1994	[1995] 2 HKLR 14	HC	14(1), 25, 26 [BOR 21, 22]
<i>R v To Kwan Hang and another</i>	9/9/1994	HCMA945/1993; [1995] 1 HKCLR 25	CA	21 [BOR 17]
<i>Lau San Ching v Apollonia Liu, the Returning Officer of Kwai Tsing District</i>	19/1/1995	(1995) 5 HKPLR 23; HCMP3215/1994	HC	25
<i>R v Chan Suen Hay</i>	22/3/1995	[1995] 1 HKC 847; DCMP83/1994	DC	14, 15 [BOR 11(1), 11(6), 12(1)]

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Article(s) in ICCPR cited
<i>The Queen v Chan Suen-hay</i>	22/3/1995	DCCC83/1994	DC	15 [BOR 12]
<i>R v Lift contractors' Disciplinary Board, Ex p Otis Elevator Co (HK) Ltd</i>	11/4/1995	(1995) 5 HKPLR 78; CACV184/1994; [1995] HKLY 558	CA	6
<i>Lee Miu Ling and another v Attorney General (No.2)</i>	21/4/1995	(1995) 5 HKPLR 181; HCMP1696/1994	HC	2(2), 25, 25(b), 26
<i>The Queen v Chan Chi-hung</i>	26/7/1995	[1996] AC 442; [1995] 2 HKCLR 50	PC	15.1
<i>Kwan Kong Co Ltd v Town Planning Board</i>	31/7/1995	[1995] 3 HKC 254; HCMP1675/1994	HC	14.1
<i>Eastweek Publisher Ltd and another v Cheung Ng Sheong, Steven</i>	20/10/1995	[1995] 3 HKC 601; CACV198/1994; [1995] HKLY 1453	CA	16, 19
<i>The Association of Expatriate Civil Servants of Hong Kong and others v The Secretary of the Civil Service and another</i>	31/10/1995	HCMP3037/1994	HC	12(4), 13, 25
<i>R v Secretary for the Civil Service and the Attorney General, Ex p The Association of Expatriate Civil Servants of Hong Kong & Ors</i>	31/10/1995	(1995) 5 HKPLR 490	CFI	2, 25
<i>Lee Miu Ling and another v The Attorney General</i>	24/11/1995	[1996] 1 HKC 124; CACV145/1995	CA	26
<i>The Queen v Kwong Kui-wing and others</i>	8/2/1996	[1996] 1 HKDCLR 15	DC	14(2)

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Article(s) in ICCPR cited
<i>Ming Pao Newspapers Limited and others v Attorney General of Hong Kong</i>	20/5/1996	[1996] 2 HKLR 39	PC	19
<i>R v Ng Wing Keung Paul</i>	21/5/1996	(1996) 6 HKPLR 299	DC	14 [BOR 11(1)]
<i>Hong Kong Polytechnic University and others v Next Magazine Publishing Ltd and another</i>	7/6/1996	[1996] 2 HKLR 260	HC	General ref.
<i>R v The Town Planning board and another, Ex parte The Real Estate Developers Association of Hong Kong</i>	8/6/1996	[1996] 2 HKLR 267	HC	General ref.
<i>Kwan Kong Co Ltd v Town Planning Board</i>	11/7/1996	[1996] 2 HKLR 363	CA	General ref.
<i>The Attorney General v Mak Chuen Hing & 71 others</i>	15/8/1996	HCMA398/1996	CA	9 [BOR5 (1)]
<i>Fok Lai Ying v Governor in Council and others</i>	26/9/1996	HCMP940/1996	HC	17
<i>Lau Wong Fat v Attorney General</i>	18/11/1996	HCA6016/1994	HC	18, 23, 27 [BOR 15, 19, 23]
<i>The Association of Expatriate Civil Servants of Hong Kong v The Secretary for the Civil Service and another</i>	22/11/1996	CACV260/1995	CA	25

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Article(s) in ICCPR cited
<i>Fok Lai Ying v Governor in Council and others</i>	4/12/1996	[1997] HKLRD 111	CA	17 [BOR 14]
<i>R v Lam Chi Keung</i>	29/4/1997	[1997] HKLRD 421	CA	2.1, 14.1 and 26
<i>Lau Kong Fat v Attorney General</i>	6/5/1997	[1997] HKLRD 533	CA	18, 21, 27 [BOR 15, 19, 23]
<i>Fok Lai Ying v Governor in Council & others</i>	27/6/1997	[1997] HKLRD 810	PC	17
<i>Cheung Lai Wah and others v The Director of Immigration</i>	9/10/1997	[1997] HKLRD 1081	CFI	12(4), 15(1)
<i>Re Yung Kwan Lee and others</i>	30/12/1997	[1998] 1 HKLRD 125	CFI	9
<i>Re Yung Kwan Lee and others</i>	30/12/1997	[1998] 1 HKLRD 125	CFI	9, 9(1)
<i>Chan Kam Nga and others v The director of Immigration</i>	26/1/1998	[1998] 1 HKLRD 142	CFI	General ref.
<i>Ma Wan Farming Ltd v Chief Executive in Council and another</i>	26/3/1998	[1998] 1 HKLRD 514	CA	14(1) [BOR 10]
<i>Cheung Lai Wah v The Director of Immigration</i>	2/4/1998	[1998] 1 HKC 617; CACV203, 216, 217, 218/1997	CA	12, 15
<i>The Association of Expatriate Civil Servants of Hong Kong v The Chief Executive of HKSAR</i>	3/4/1998	[1998] 1 HKLRD 615	CFI	12(3), 25 [BOR 8(2), 8(3), 21(c)]
<i>Chan Kam Nga and others v The Director of Immigration</i>	20/5/1998	[1998] 1 HKLRD 752	CA	23, 23(1)

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Article(s) in ICCPR cited
<i>The Secretary for Justice v The Oriental Press Group Ltd and Others</i>	23/6/1998	[1998] 2 HKLRD 123	CFI	19(3)
<i>Chen Chong Gui v Hon Chief Executive of HKSAR</i>	29/9/1998	[1999] 1 HKLRD 693	CFI	14
<i>Yip Ku v Kwan Kuk Lin</i>	22/12/1998	HCMC5/1997	CFI	14.1 [BOR 10]
<i>HKSAR v Chim Pui Chung</i>	24/12/1998	[1992] 2 HKCLR 207	CA	14.1, 14.3
<i>Chan Wah v Hang Hau Rural Committee and another</i>	25/1/1999	HCAL112/1998	CFI	General ref.
<i>Chan Kam Nga v Director of Immigration</i>	29/1/1999	[1999] 1 HKLRD 304; (1999) 2 HKCFAR 82	CFA	23(1)
<i>Ng Ka Ling and another v The Director of Immigration</i>	29/1/1999	[1999] 1 HKLRD 315; (1999) 2 HKCFAR 4	CFA	3, 15(1), 23(1), 26
<i>Chim Pui Chung v HKSAR</i>	1/2/1999	[1999] 1 HKLRD 836; (1999) 2 HKCFAR 166	CFA	14.1, 14.3
<i>Wong Yeung Ng v The Secretary for Justice</i>	9/2/1999	[1999] 2 HKLRD 293	CA	19
<i>Mark Anthony Seabrook v HKSAR</i>	11/3/1999	[1999] 1 HKLRD 853; (1999) 2 HKCFAR 184	CFA	15(1)
<i>Chan Wah v Hang Hau Rural Committee and another and Cheung Kam Chuen (Intervener)</i>	12/3/1999	[1999] 2 HKLRD 286	CFI	25
<i>HKSAR v Ng Kung Siu and another</i>	23/3/1999	[1999] 1 HKLRD 783	CA	19

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Article(s) in ICCPR cited
<i>Wong Yeung Ng v The Secretary for Justice</i>	23/6/1999	[1999] 3 HKC 143; FAMC8/1999	CFA	19 [BOR 16(2)]
<i>The Commissioner for Registration v The Registration of Persons Tribunal and another</i>	24/6/1999	[1999] 3 HKLRD 199	CFI	26
<i>Tam Nga Yin and others v The Director of Immigration</i>	25/6/1999	[1999] 2 HKLRD 505	CFI	General ref.
<i>Xie Xiaoyi v The Director of Immigration</i>	25/6/1999	[1999] 2 HKLRD 505	CFI	General ref.
<i>Tse Kwan Sang v Pat Heung Rural Committee</i>	29/6/1999	[1999] 3 HKLRD 267	CFI	25, 25(a), 25(b)
<i>Chan Mei Yee v Director of Immigration</i>	28/7/1999	HCAL77/1999	CFI	23
<i>The Commissioner of Customs and Excise v King Regent Technology Ltd and another</i>	30/7/1999	DCMP782/1999	DC	14
<i>Thapa Indra Bahadur v The Secretary for Security</i>	21/10/1999	HCAL18/1999	CFI	General ref.
<i>Lau Kong Yung and others v The Director of Immigration</i>	3/12/1999	[1999] 3 HKLRD 778; (1999) 2 HKCFAR 300	CFA	15(1)
<i>HKSAR v Ng Kung Siu and another</i>	15/12/1999	[1999] 3 HKLRD 907; (1999) 2 HKCFAR 442	CFA	19
<i>Re Wong Chung Ki and another</i>	23/12/1999	(1998-1999) 8 HKPLR 255; HCAL151/1999	CFI	25

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Article(s) in ICCPR cited
<i>Santosh Thewe v The Director of Immigration</i>	18/1/2000	[2000] 1 HKLRD 717	CFI	General ref.
<i>Chan Wah v Hang Hau Rural Committee and others</i>	26/1/2000	[2000] 1 HKLRD 411	CA	2(2), 25, 25(a), 25(b), 26
<i>Master Zhang Chaojie and another v Director of Immigration</i>	28/1/2000	HCAL5/2000	CFI	General ref.
<i>Lui Tat Hang Louis v The Post-Release Supervision Board and another</i>	14/2/2000	HCAL154/1999	CFI	15
<i>HKSAR v Yik Po Man</i>	23/2/2000	HCCC251/1999	CFI	9(1), 14(1), 14(2)
<i>Krishna Rai and another v Director of Immigration</i>	25/2/2000	HCAL145/1999; [2000] HKLRD (Yrbk) 450	CFI	General ref.
<i>Xie Xiaoyi v The Director of Immigration</i>	16/3/2000	[2000] 2 HKLRD 161	CA	17, 23, 23(1), 24, 26
<i>HKSAR v Maria Remedios Coady</i>	11/4/2000	[2000] 2 HKLRD 195	CA	9, 14(1)
<i>Thapa Indra Bahadur v The Secretary for Security</i>	18/4/2000	[2000] 2 HKLRD 113	CA	9
<i>HKSAR v Tsui Ping Wing</i>	19/4/2000	[2000] 3 HKC 247	CFI	19, 26
<i>Commissioner of Registration v Registration of Persons Tribunal and another</i>	19/4/2000	[2000] 2 HKLRD 523	CA	General ref.
<i>Gurung Kesh Bahadur v Director of Immigration</i>	30/5/2000	HCAL11/2000	CFI	12.4

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Article(s) in ICCPR cited
<i>Wong Chung Ki and another v The Chief Executive and another</i>	20/6/2000	[2003] 1 HKC 404; CACV1/2000	CA	25
<i>Lau Fong v The Director of Immigration</i>	29/6/2000	HCAL128/1999	CFI	12.4
<i>Ng Siu Tung and others v The Director of Immigration</i>	30/6/2000	HCAL81/1999	CFI	15.1
<i>Sin Hoi Chu and others v The Director of Immigration</i>	30/6/2000	HCAL70/2000	CFI	15(1)
<i>Li Shuk Fan v The Director of Immigration</i>	30/6/2000	HCAL2/2000	CFI	15(1)
<i>Chan Mei Yee v Director of Immigration</i>	13/7/2000	[1999] 3 HKC 441; HCAL77/1999	CFI	23(1)
<i>Lui Tat Hang Louis v The Post-Release Supervision Board and another</i>	21/7/2000	HCAL154/1999	CFI	15
<i>Re Au Kwok Hung</i>	25/7/2000	HCAL147/1999	CFI	14(1)
<i>Yu Pik Ying and another v Director of Immigration Department</i>	21/9/2000	HCAL1804/2000; [2000] HKLRD (Yrbk) 22	CFI	General ref.
<i>Re Au Kwok Hung</i>	8/12/2000	[2001] 1 HKLRD 169	CA	14(1)
<i>Ng Siu Tung and others v The Director of Immigration</i>	11/12/2000	CACV 415, 416 & 417/2000	CA	2, 3, 12(4), 15(1), 26
<i>Secretary for Justice and others v Chan Wah and others</i>	22/12/2000	[2000] 3 HKLRD 641; (2000) 3 HKCFAR 459	CFA	25

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Article(s) in ICCPR cited
<i>Mok Chi Hung and another v The Director of Immigration</i>	5/1/2001	[2001] 2 HKLRD 125	CFI	23(1)
<i>Chan Shu Ying v The Chief Executive of the Hong Kong Special Administrative Region</i>	26/2/2001	[2001] 1 HKLRD 405	CFI	25, 25(a)
<i>Leung Chak Sang v Lingnam University</i>	15/3/2001	[2001] 2 HKC 435; HCAL638/2000	CFI	General ref.
<i>HKSAR v Pun Ganga Chandra and others</i>	6/4/2001	[2001] 2 HKLRD 151	CA	9
<i>Chan To Foon and others v The Director of Immigration and another</i>	11/4/2001	[2001] 3 HKLRD 109	CFI	17, 23, 23(1) [BOR 14, 19]
<i>Wong Yan Hong and another v Hong Kong Housing Authority and another</i>	24/5/2001	HCAL1711/2000	CFI	23
<i>Equal Opportunities Commission v Director of Education</i>	22/6/2001	[2001] 2 HKLRD 690	CFI	26 [BOR 22]
<i>Gurung Kesh Bahadur v Director of Immigration</i>	29/6/2001	[2001] 3 HKLRD 32	CA	General ref.
<i>Fateh Muhammad v Commissioner of Registration</i>	20/7/2001	[2001] 2 HKLRD 659; (2001) 4 HKCFAR 278	CFA	26
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<i>Re Cheng Kai Nam Gary</i>	3/12/2001	[2002] 2 HKLRD 39	CFI	14 [BOR 11]
<i>Shum Kwok Sher v HKSAR</i>	10/7/2002	[2002] 2 HKLRD 793; (2002) 5 HKCFAR 381	CFA	9, 14.2, 14.3, 15, 26
<i>Lau Cheong and another v HKSAR</i>	16/7/2002	[2002] 2 HKLRD 612; (2002) 5 HKCFAR 415	CFA	9, 9(1)
<i>Gurung Kesh Bahadur v Director of Immigration</i>	30/7/2002	[2002] 2 HKLRD 775; (2002) 5 HKCFAR 480	CFA	12(4)
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<i>Yau Kwong Man v Secretary for Security</i>	9/9/2002	[2002] 3 HKC 457; HCAL1595/2001	CFI	9(4), 14(1)
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<i>Pang Yiu Hung Robert v Commissioner of Police and another</i>	2/12/2002	[2003] 2 HKLRD 125	CFI	14
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<i>HKSAR v Chiu Kwok Ho</i>	11/2/2004	[2004] 2 HKC 552	CA	8
<i>A Solicitor v The Law Society of Hong Kong</i>	18/2/2004	[2006] 2 HKC 40; CACV302/2002	CA	2(1), 2(3), 14, 14(1), 19
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<i>So Wing Keung v Sing Tao Ltd and another</i>	11/8/2004	HCMP1833/2004	CFI	9
<i>Re Kong Wah Holdings Ltd (in compulsory liquidation)</i>	7/9/2004	HCCW49, 50/2000	CFI	14.3(g)
<i>HKSAR v Leung Kwok Hung and others</i>	10/11/2004	[2004] 3 HKLRD 729	CA	21
<i>HKSAR v Yeung May Wan and others</i>	10/11/2004	[2004] 3 HKLRD 797	CA	9, 19, 21
<i>Re A Solicitor (Paul Tse: No 1)</i>	25/11/2004	[2006] 2 HKC 159; CACV280/2003	CA	19
<i>Julita F. Raza and others v Chief Executive in Council and others</i>	4/1/2005	[2005] 3 HKLRD 561	CFI	26, 28
<i>HKSAR v Lam Kwong Wai and another</i>	6/1/2005	CACC213/2003	CA	14.1, 14.2
<i>Ng Yat Chi v Max Share Ltd and another</i>	20/1/2005	[2005] 1 HKLRD 473; (2005) 8 HKCFAR 1	CFA	14, 14.1
<i>HKSAR v Lam Kwong Wai and another</i>	2/2/2005	CACC213/2003	CA	14.1, 14.2

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<i>Leung TC William Roy v Secretary for Justice</i>	24/8/2005	[2005] 3 HKLRD 657	CFI	2(1), 26
<i>To Kin Wah v Tuen Mun District Officer and others</i>	15/9/2005	CACV358/2004	CA	14
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<i>Chong Wai Lee Charles and another v The Insider Dealing Tribunal and another</i>	4/1/2006	HCAL116/2005	CFI	14(1), 14(3)
<i>Re Chan Wing Hing</i>	16/1/2006	[2006] 2 HKLRD 475	CA	12
<i>Giocondo Mario Mauriello v Andrew Kwong and another</i>	20/1/2006	DCCJ4662/2005	DC	General ref.
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<i>Dr Lau Koon Leung v Medical Council of Hong Kong</i>	14/3/2006	[2006] 3 HKLRD 225	CA	14, 14(1)
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<i>Dr Kwok-hay Kwong v The Medical Council of Hong Kong</i>	11/8/2006	[2006] 4 HKC 157	CFI	19

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<i>Secretary for Justice v Yau Yuk Lung Zigo and another</i>	17/7/2007	[2007] 3 HKLRD 903; (2007) 10 HKCFAR 335	CFA	2, 3, 26 [BOR 1(1), 22]
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<i>Dr Kwok-hay Kwong v The Medical Council of Hong Kong</i>	24/1/2008	[2008] 3 HKLRD 524	CA	19
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<i>HKSAR v Ng Po On and another</i>	7/3/2008	[2008] 4 HKLRD 176	CFA	14 [BOR 10]
<i>Koon Wing Yee v Insider Dealing Tribunal and another</i>	18/3/2008	[2008] 3 HKLRD 372	CFA	14, 14(1), 14(2), 14(3)(g), 40(4)
<i>Leung Lai Fong v Ho Sin Ying</i>	10/4/2008	[2008] 5 HKLRD 193	CA	23, 26

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<i>Chan Kin Sum v Secretary for Justice and another</i>	8/12/2008	[2009] 2 HKLRD 166	CFI	25
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<i>Chan Kin Sum v Secretary for Justice and another</i>	11/3/2009	11/03/2009	CFI	25, 25(b)
<i>Lam Siu Po v Commissioner of Police</i>	26/3/2009	FACV9/2008	CFA	14.1
<i>HKSAR v Ma Pui Tung</i>	3/4/2009	HCMA1109/2008	CFI	7, 8, 10, 11, 16, 26
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<i>The Queen v Charles Cheung Wai Bun</i>	16/6/1992	[1993] 1 HKCLR 189	HC	14	GC No.13
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<i>The Commissioner of Inland Revenue, Hong Kong v Lee Lai Ping</i>	25/3/1993	DCCJ1541/1992; [1993] HKLY 178	DC	14	Communication No.112/1981
<i>The Queen v Chiu Te-ken, Deacon and another</i>	20/4/1993	[1993] 2 HKCLR 21	HC	14 [BOR 10, 11]	General ref.

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<i>Kwan Kong Co Ltd v Town Planning Board</i>	31/7/1995	[1995] 3 HKC 254	CFI	14.1 [BOR 10]	General ref.
<i>Lee Miu Ling and another v The Attorney General</i>	24/11/1995	[1996] 1 HKC 124; CACV145/1995; [1995] HKLY 196	CA	25 [BOR 10], 26	<i>S.W.M. Broeks v. The Netherlands</i> (Communication No.172/1984)

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<i>Ma Wan Farming Ltd v Chief Executive in Council and another</i>	26/3/1998	[1998] 1 HKLRD 514	CA	14(1)	<i>YL v. Canada</i> (Communication No.112/1981)
<i>Tse Kwan Sang v Pat Heung Rural Committee</i>	29/6/1999	[1999] 3 HKLRD 267	CFI	25, 25(a)	<i>Mikmaq Tribe Society v. Canada</i> (Communication No.205/1986)
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<i>Chan Shu Ying v The Chief Executive of the Hong Kong Special Administrative Region</i>	26/2/2001	[2001] 1 HKLRD 405	CFI	25	<i>Marshall v. Canada</i> (Communication No.205/1986); GC No.25 (1996)
<i>Equal Opportunities Commission v Director of Education</i>	22/6/2001	[2001] 2 HKLRD 690	CFI	General ref.	GC No.18(37), UN DOC CCPR/C/21/Rev.1/Add.1, 1989
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<i>Lau Cheong and another v HKSAR</i>	16/7/2002	[2002] 2 HKLRD 612; (2002) 5 HKCFAR 415	CFA	9, 9(1)	<i>Hugo van Alphen v. The Netherlands</i> (Communication No.305/1988; <i>A v Australia</i> (Communication 560/1993) 4 BHRC 210
<i>Yau Kwong Man v Secretary for Security</i>	9/9/2002	[2002] 3 HKC 457	CFI	9(4), 14(1)	<i>A v. Australia</i> (560/93)

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<i>HKSAR v Cheung Ting Bong</i>	7/7/2004	[2006] 3 HKLRD 171	CA	14(3)(e)	GC 13/21
<i>HKSAR v Leung Kwok Hung and others</i>	10/11/2004	[2004] 3 HKLRD 729	CA	19, 21	General ref.
<i>Julita F. Raza and others v Chief Exccutive in Council and others</i>	4/1/2005	[2005] 3 HKLRD 561	CFI	28	<i>Oulajin and Kaiss v. The Netherlands</i> (406 and 426/90)
<i>Yeung May Wan and others v HKSAR</i>	5/5/2005	[2005] 2 HKLRD 212; (2005) 8 HKCFAR 137	CFA	14.3(c), 14(5), 19, 21	<i>Rogerson v Australia UN Human Rights Committee</i> Reference 802/98 (15 April 2002)
<i>Leung Kwok Hung and others v HKSAR</i>	8/7/2005	[2005] 3 HKLRD 164; (2005) 8 HKCFAR 229	CFA	21, 22, 25	15 November 1999 Concluding Observations on Hong Kong, CCPR/C/79/Add.117
<i>Leung TC William Roy v Secretary for Justice</i>	24/8/2005	[2005] 3 HKLRD 657	CFI	2(1), 26	<i>Toonen v. Australia</i> (Vol.112 International Law Reports, 328; Communication No.488 of 1992)

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Article in ICCPR cited	Literature of HRC cited
<i>Leung Kwok Hung and another v Chief Executive of the HKSAR</i>	9/2/2006	HCAL107/2005	CFI	17	General ref.
<i>So Wai Lun v HKSAR</i>	18/7/2006	[2006] 3 HKLRD 394; (2006) 9 HKCFAR 530	CFA	9(1)	<i>Hugo van Alphen v. Netherlands</i> (Communication No.305/1988, 23 July 1990)
<i>Yeung Chung Ming v Commissioner of Police</i>	13/2/2007	[2007] 2 HKC 284	CA	14(2)	GC No.13 (1984)
<i>'A' v Director of Immigration</i>	15/6/2007	HCAL 100/2006 and 10, 11 and 28/2007	CFI	9, 9(1)	General ref.
<i>Financial Services and Systems Ltd v Secretary for Justice</i>	6/7/2007	HCAL101/2006	CFI	28	General ref.
<i>Koon Wing Yee v Insider Dealing Tribunal and another</i>	18/3/2008	[2008] 3 HKLRD 372	CFA	14, 14(1), 14(2), 14(3)(g), 40(4)	GC No.13 (1984); No.22 (2007)
<i>Chan Kin Sum v Secretary for Justice and another</i>	8/12/2008	[2009] 2 HKLRD 166	CFI	25	<i>Pietraroia v Uruguay</i> (Communication No.44/1979); GC No.25 (1996)
<i>Lam Siu Po v Commissioner of Police</i>	26/3/2009	FACV9/2008	CFA	14(1)	GC No.32 (2008)

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Article in ICCPR cited	Literature of HRC cited
<i>Ubamaka Edward Wilson v Secretary for Security and another</i>	5/5/2009	HCAL77/2008	CFI	14(7)	Communication No.204/1986; GC No.32 (2007)

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Case	Date of Judgment (dd.mm.yy)	Citation	Court	Article(s) in ECHR cited
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<i>Her Majesty's Attorney General in and for the United Kingdom v South China Morning Post Ltd and others</i>	8/9/1987	[1988] 1 HKLR 143	CA	10
<i>The Queen v Ng Po Lam</i>	21/8/1991	DCCC101/1991	DC	6(2)
<i>R v Sin Yau Ming</i>	30/9/1991	[1992] 1 HKCLR 127	CA	1, 11(d)
<i>The Queen v Willima Hung</i>	14/4/1992	[1992] 2 HKCLR 90	HC	5, 5(1)(c), 5(3), 6(1)
<i>The Queen v Charles Cheung Wai Bun</i>	16/6/1992	[1993] 1 HKCLR 189	HC	6(1)
<i>The Queen v Fu Yan</i>	23/6/1992	[1992] 2 HKCLR 59	CA	6(3)(c)
<i>The Queen v Chandra Thanwardas Mirchandani</i>	28/7/1992	[1992] 2 HKCLR 174	CA	General ref.
<i>Ng Hung Yiu v Government of the United States of America</i>	30/7/1992	[1992] 2 HKLR 383	HC	6
<i>The Queen v Wong Hiu Chor and another</i>	4/12/1992	[1993] 1 HKCLR 107	CA	6(2)
<i>In re Commission Ordinance</i>	8/1/1993	HCMP3039/1992	HC	6
<i>The Commissioner of Inland Revenue, Hong Kong v Lee Lai Ping</i>	25/3/1993	DCCJ1541/1992; [1993] HKLY 178	DC	5(4), 6(1), 14
<i>The Commissioner of Inland Revenue, Hong Kong v Lee Lai Ping</i>	25/3/1993	DCCJ1541/1992	DC	6(1)

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<i>Attorney General of Hong Kong v Lee Kwong-kut and others</i>	19/5/1993	[1993] AC 951; [1993] 2 HKCLR 186	PC	General ref.
<i>Wong King Lung and others v Director of Immigration</i>	22/6/1993	[1994] 1 HKLR 312	CA	3, 8, 64
<i>Auburntown Ltd v Town Planning Board</i>	18/4/1994	[1994] 2 HKLR 272	HC	6(1)
<i>Business Rights Ltd v The Building Authority</i>	19/5/1994	[1994] 2 HKLR 341	CA	6(1)
<i>R v To Kwan Hang and another</i>	9/9/1994	[1994] 2 HKC 293; HCMA945/1993	CA	General ref.
<i>The Queen v To Kwan-hang and another</i>	9/9/1994	[1995] 1 HKCLR 251	CA	General ref.
<i>Lau San Ching v Apollonia Liu, the Returning Officer of Kwai Tsing District</i>	19/1/1995	(1995) 5 HKPLR 23; HCMP3215/1994	HC	Protocol 1, Article 3
<i>Attorney General v Tang Yuen Lin</i>	14/2/1995	[1995] 2 HKCLR 157	CA	6, 6(3)(a)
<i>R v Chan Suen Hay</i>	22/3/1995	[1995] 1 HKC 847; DCMP83/1994	DC	7(1)
<i>The Queen v Chan Suen-hay</i>	22/3/1995	DCCC83/1994	DC	7(1)
<i>R v Lift Contractors' Disciplinary Board, ex p Otis Elevator Co (HK) Ltd</i>	11/4/1995	(1995) 5 HKPLR 78	CA	6(1)
<i>A Solicitor v Law Society of Hong Kong</i>	16/6/1995	[1995] 2 HKC 541; CACV40/1995	CA	7
<i>R v Ming Pao Newspaper Ltd and others</i>	5/7/1995	HCMA514/1995	CA	10

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<i>Kwan Kong Co Ltd v Town Planning Board</i>	31/7/1995	HCMP1675/1994; (1995) 5 HKPLR 261	HC	1, 6(1)
<i>R v Cheung Ka Fei & others</i>	22/8/1995	[1995] 2 HKCLR 184	CA	8(1)
<i>Eastweek Publisher Ltd and another v Cheung Ng Sheong, Steven</i>	20/10/1995	(1995) 5 HKPLR 428; CACV198/1994	CA	10
<i>R v Kwong Kui Wing & ors</i>	8/2/1996	(1996) 6 HKPLR 125	DC	6(2)
<i>Ming Pao Newspapers Limited and others v Attorney General of Hong Kong</i>	20/5/1996	[1996] 2 HKLR 239	PC	10
<i>R v The Town Planning Board and another, Ex parte The Real Estate Developers Association of Hong Kong</i>	8/6/1996	[1996] 2 HKLRD 267	HC	6(1)
<i>Fok Lai Ying v Governor in Council and others</i>	26/9/1996	HCMP940/1996	HC	Protocol 1, Article 1
<i>Fok Lai Ying v Governor in Council and others</i>	4/12/1996	[1997] HKLRD 111	CA	8; Protocol 1, Article 1
<i>Hong Kong Polytechnic University and others v Next Magazine Publishing Ltd and another</i>	10/12/1996	[1997] HKLRD 102	HC	10
<i>Attorney General v Cheung Kim Hung and another</i>	20/3/1997	[1997] HKLRD 472	HC	10

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<i>Harvest Sheen Ltd and another v The Collector of Stamp Revenue</i>	30/5/1997	[1997] HKLRD 889	CFI	6
<i>Cheung Lai Wah and others v The Director of Immigration</i>	9/10/1997	[1997] HKLRD 1081	CFI	7(1)
<i>Ma Wan Farming Ltd v Chief Executive in Council and another</i>	26/3/1998	[1998] 1 HKLRD 514	CA	6, 6(1)
<i>Cheung Lai Wah v The Director of Immigration</i>	2/4/1998	CACV203, 216, 217/1997	CA	7(1)
<i>The Secretary for Justice v The Oriental Press Group Ltd and Others</i>	23/6/1998	[1998] 2 HKLRD 123	CFI	10(2)
<i>Yip Ku v Kwan Kuk Lin</i>	22/12/1998	HCMC5/1997	CFI	General ref.
<i>Wong Yeung Ng v The Secretary for Justice</i>	9/2/1999	[1999] 2 HKLRD 293	CA	10, 10(2)
<i>Xie Xiaoyi v The Director of Immigration</i>	16/3/2000	[2000] 2 HKLRD 161	CA	8
<i>HKSAR v Maria Remedios Coady</i>	11/4/2000	[2000] 2 HKLRD 195	CA	5
<i>Chan Mei Yee v Director of Immigration</i>	13/7/2000	HCAL77/1999	CFI	8
<i>Lui Tat Hang Louis v The Post-Release Supervision Board and another</i>	21/7/2000	HCAL154/1999	CFI	7, 7(1)
<i>HKSAR v Lee Ming Tee and another</i>	21/7/2000	HCCC191/1999	CFI	General ref.

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<i>Re Au Kwok Hung</i>	8/12/2000	[2001] 1 HKLRD 169	CA	6(1)
<i>HKSAR v Pun Ganga Chandra and others</i>	6/4/2001	[2001] 2 HKLRD 151	CA	General ref.
<i>Chan To Foon & others v Director of Immigration & another</i>	11/4/2001	[2001] 3 HKLRD 109	CA	General ref.
<i>Equal Opportunities Commission v Director of Education</i>	22/6/2001	[2001] 2 HKLRD 690	CFI	General ref.
<i>HKSAR v Lau Cheong and another</i>	4/7/2001	[2001] 2 HKLRD 869	CA	3, 5
<i>HKSAR v Shum Kwok Sher</i>	14/8/2001	[2001] 3 HKLRD 399	CA	10, 10(2)
<i>Tse Wai Chun Paul v Solicitors Disciplinary Tribunal and another</i>	27/8/2001	HCAL636/2001	CFI	6(1)
<i>Ng Siu Tung v The Director of Immigration</i>	10/1/2002	[2002] 1 HKLRD 561; (2002) 5 HKCFAR 1	CFA	8(1)
<i>Kaisilk Development Ltd v Urban Renewal Authority</i>	12/3/2002	HCA10017/2000	CFI	Protocol 1, Article 1
<i>Shum Kwok Sher v HKSAR</i>	10/7/2002	[2002] 2 HKLRD 793; (2002) 5 HKCFAR 381	CFA	7, 10, 10(2)
<i>Lau Cheong and another v HKSAR</i>	16/7/2002	[2002] 2 HKLRD 612; (2002) 5 HKCFAR 415	CFA	General ref.
<i>HKSAR v Yeung Kwai Kuen</i>	2/8/2002	[2002] 3 HKLRD 91	CA	6(1)

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Article(s) in ECHR cited
<i>Yau Kwong Man & anor v Secretary for Security</i>	9/9/2002	[2002] 3 HKC 457	CFI	5(4)
<i>Tse Wai Chun Paul v Solicitors Disciplinary Tribunal and another</i>	11/9/2002	[2002] 3 HKLRD 712	CA	5(4), 6(1)
<i>Yook Tong Electric Co Ltd v Commissioner for Transport</i>	7/2/2003	HCAL94/2002	CFI	Protocol 1, Article 1
<i>HKSAR v Lau San Ching and others</i>	14/3/2003	[2004] 1 HKLRD 683	CFI	6(1)
<i>Chow Shun Yung v Wei Pih Stella and another</i>	14/5/2003	(2003) 6 HKCFAR 299; [2004] 1 HKLRD 1	CFA	6(1)
<i>Lau Kwok Fai Bernard v Secretary for Justice</i>	10/6/2003	HCAL180/2002	CFI	6(1)
<i>Swire Properties Ltd and others v The Secretary for Justice</i>	7/7/2003	[2003] 2 HKLRD 986; (2003) 6 HKCFAR 236	CFA	6
<i>Dr Ip Kay Lo, Vincent v The Medical Council of Hong Kong</i>	28/7/2003	[2003] 3 HKLRD 851	CA	6
<i>Lai Hung Wai v Superintendent of Stanley Prison</i>	14/8/2003	HCAL24/2003	CFI	3, 5
<i>HKSAR v Lee Ming Tee (No.2)</i>	22/8/2003	(2003) 6 HKCFAR 336; [2004] 1 HKLRD 513	CFA	6(1), 6(3)(b)
<i>Allied Group Ltd and another v The Secretary for Justice and another</i>	10/10/2003	CACV1/2003	CA	10(1)

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<i>Michael Reid Scott v The Government of the Hong Kong Special Administrative Region</i>	7/11/2003	HCAL188/2002	CFI	Protocol 1, Article 1
<i>Lau Wai Wo v HKSAR</i>	19/12/2003	[2004] 1 HKLRD 372; (2003) 6 HKCFAR 624	CFA	10
<i>Tse Mui Chun v HKSAR</i>	19/12/2003	[2004] 1 HKLRD 351; (2003) 6 HKCFAR 601	CFA	6(1), 6(3)(d)
<i>HKSAR v Chiu Kwok Ho</i>	11/2/2004	[2004] 2 HKC 552; CACC178/2003	CA	5(2)
<i>A Solicitor v The Law Society of Hong Kong</i>	18/2/2004	[2006] 2 HKC 40; CACV302/2002	CA	General ref.
<i>So Wing Keung v Sing Tao Ltd and another</i>	10/8/2004	HCMP1833/2004	CFI	10
<i>So Wing Keung v Sing Tao Ltd and another</i>	11/10/2004	[2005] 2 HKLRD 11	CA	6
<i>Interasia Bag Manufacturers Ltd v Commissioner of Inland Revenue</i>	18/10/2004	[2004] 3 HKLRD 881	CFI	General ref.
<i>Yau Kwong Man v The Long Term Prison Sentence Review Board</i>	27/10/2004	HCAL34/2004	CFI	5(4), 6
<i>HKSAR v Yeung May Wan and others</i>	10/11/2004	[2004] 3 HKLRD 797	CA	11
<i>HKOSAR v Leung Kwok Hung and others</i>	10/11/2004	[2004] 3 HKLRD 729	CA	General ref.
<i>The Law Society of Hong Kong v A Solicitor</i>	25/11/2004	[2006] 2 HKC 159; CACV280/2003	CA	10

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<i>HKSAR v Lam Kwong Wai and another</i>	6/1/2005	CACC213/2003	CA	6, 6(2)
<i>Ng Yat Chi v Max Share Ltd and another</i>	20/1/2005	[2005] 1 HKLRD 473; (2005) 8 HKCFAR 1	CFA	6
<i>Tsang Wai Ping v HKSAR</i>	11/3/2005	[2005] 1 HKLRD 825; (2005) 8 HKCFAR 80	CFA	6(2)
<i>Re Li Man Tak and others</i>	22/4/2005	DCCC689/2004	DC	8, 8(1)
<i>Yeung May Wan and others v HKSAR</i>	5/5/2005	[2005] 2 HKLRD 212; (2005) 8 HKCFAR 137	CFA	5(1)
<i>HKSAR v Hung Chan Wa</i>	23/6/2005	[2005] 3 HKLRD 291	CA	6, 6(2)
<i>Leung Kwok Hung and others v HKSAR</i>	8/7/2005	[2005] 3 HKLRD 164; (2005) 8 HKCFAR 229	CFA	9, 11; Protocol 1, Article 1
<i>Liu Pik Han v Hong Kong Federation of Insurers Appeals Tribunal and another</i>	11/7/2005	HCAL50/2005	CFI	6
<i>HKSAR v Mo Yuk Ping and others</i>	23/8/2005	DCCC367, 1334, 1360/2004 & 636/2005	DC	6
<i>Leung TC William Roy v Secretary for Justice</i>	24/8/2005	[2005] 3 HKLRD 657	CFI	8, 14
<i>Yeung Chung Ming v Commissioner of Police</i>	14/12/2005	HCAL125/2003	CFI	6(2)
<i>Lau Luen Hung Thomas v The Insider Dealing Tribunal and another</i>	4/1/2006	HCAL 116, 122/2005	CFI	6, 6(1)
<i>HKSAR v Chan Kau Tai</i>	26/1/2006	[2006] 1 HKLRD 400	CA	6, 6(1)

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Article(s) in ECHR cited
<i>Leung Kwok Hung and another v Chief Executive of the HKSAR</i>	9/2/2006	HCAL107/2005	CFI	General ref.
<i>Dr Lau Koon Leung v Medical Council of Hong Kong</i>	14/3/2006	[2006] 3 HKLRD 225	CA	6(1)
<i>The Stock Exchnage of Hong Kong Ltd v New World Development Co Ltd and others</i>	6/4/2006	[2006] 2 HKLRD 518; (2006) 9 HKCFAR 234	CFA	5(4)
<i>Three Weekly Ltd v Commissioner for Television and Entertainment Licensing Authority</i>	29/6/2006	HCAL42, 43/2003	CFI	6(1)
香港特別行政區 訴 林康國及另二人	21/7/2006	CACC528/2004	CA	6, 8
<i>Dr Kwok-hay Kwong v The Medical Council of Hong Kong</i>	11/8/2006	[2006] 4 HKC 157	CFI	10
<i>HKSAR v Lam Kwong Wai anf another</i>	31/8/2006	[2006] 3 HKLRD 808; (2006) 9 HKCFAR 574	CFA	6
<i>HKSAR v Hung Chan Wa and another</i>	31/8/2006	[2006] 3 HKLRD 841; (2006) 9 HKCFAR 614	CFA	6(2)
<i>Fine Tower Associates Ltd v Town Planning Board</i>	8/9/2006	[2006] 4 HKLRD 347	CFI	Protocol 1, Article 1
<i>HKSAR v Li Man Tak and another</i>	13/9/2006	CACC303/2005	CA	6, 6(1)
香港特別行政區 訴 陳光昇	19/9/2006	HCMA1214/2005	CFI	6

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Article(s) in ECHR cited
<i>Secretary for Justice v Yau Yuk Lung Zigo and another</i>	20/9/2006	[2006] 4 HKLRD 196	CA	6, 14
<i>Leung T C William Roy v Secretary for Justice</i>	20/9/2006	[2006] 4 HKLRD 211	CA	8, 14
<i>HKSAR v Mo Yuk Ping and another</i>	14/11/2006	CACC26/2006	CA	7
<i>Capital Rich Development Ltd and another v Town Planning Board</i>	18/1/2007	[2007] 2 HKLRD 155	CA	General ref.
<i>Yeung Chung Ming v Commissioner of Police</i>	13/2/2007	(2007) 12 HKPLR 99; CACV13/2006	CA	6(2)
<i>Worth Achieve Associates Ltd v Huang Sheng Yi</i>	14/3/2007	[2007] 3 HKLRD 797	CFI	6
<i>Chu Woan Chyi and others v Director of Immigration</i>	23/3/2007	(2007) 12 HKPLR 213; HCAL32/2003	CFI	General ref.
<i>Izumo Mokko Co, Ltd and another v T. S. Lines Ltd</i>	30/4/2007	[2007] 2 HKLRD 363	DC	14
<i>The Democratic Party v The Secretary for Justice</i>	21/5/2007	[2007] 2 HKLRD 804	CFI	8
<i>Koon Wing Yee v Insider Dealign Tribunal and another</i>	30/5/2007	CACV 358, 360/2005	CA	6
<i>Chan Mei Yiu, Paddy and another v Secretary for Justice and others</i>	28/6/2007	[2007] 3 HKLRD 549	CFI	General ref.
<i>Financial Services anf Systems Ltd v Secretary for Justice</i>	6/7/2007	HCAL101/200	CFI	14

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<i>Mo Yuk Ping v HKSAR</i>	25/7/2007	[2007] 3 HKLRD 750; (2007) 10 HKCFAR 386	CFA	General ref.
<i>Fine Tower Associates Ltd v Town Planning Board</i>	27/7/2007	[2008] 1 HKLRD 553	CA	Protocol 1, Article 1
<i>Lau Luen Hung Thomas v Insider Dealing Tribunal and another</i>	11/9/2007	HCMP1161/2007	CA	6
<i>Hong Kong Kam Lan Koon Ltd v Realray Investment Ltd</i>	11/10/2007	HCA15824/1999	CFI	Protocol 1, Article 1
<i>Tsang Yiu Kai and others v Insider Dealing Tribunal</i>	18/12/2007	HCMP1322/2007	CA	6
<i>Tong Yu Lam v The Long-Term Prison Sentences Review Board and another</i>	7/1/2008	CACV203/2006	CA	3, 5
<i>Dr Kwok-hay Kwong v The Medical Council of Hong Kong</i>	24/1/2008	[2008] 3 HKLRD 524	CA	10
<i>W v H and another</i>	29/2/2008	HCMC1/2006	CFI	Protocol 7, Article 5
<i>HKSAR v Ng Po On and another</i>	7/3/2008	[2008] 4 HKLRD 176	CFA	6(2)
<i>HKSAR v Ng Po On and another</i>	7/3/2008	[2008] 4 HKLRD 176	CFA	6(2)
<i>Koon Wing Yee v Insider Dealing Tribunal and another</i>	18/3/2008	[2008] 3 HKLRD 372	CFA	6
<i>Leung Lai Fong v Ho Sin Ying</i>	10/4/2008	[2008] 5 HKLRD 193	CA	8
<i>Leung Lai Fong v Ho Sin Ying</i>	10/4/2008	[2008] 5 HKLRD 193	CA	8

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Article(s) in ECHR cited
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<i>A v Director of Immigration</i>	18/7/2008	[2008] 4 HKLRD 752	CA	5
<i>Yeung Chung Ming v Commissioner of Police</i>	25/7/2008	[2008] 4 HKC 383	CFA	6(2); 11th Protocol
<i>HKSAR v Mohammed Saleem</i>	26/9/2008	[2009] 1 HKLRD 369	CA	General ref.
<i>Securities and Futures Commission v "C" and others</i>	22/10/2008	HCMP727/2008	CFI	Protocol 1, Article 1
<i>HKSAR v Lai Kam Wai</i>	28/10/2008	HCMA538/2008	CFI	6
<i>Chan Kin Sum v Secretary for Justice and another</i>	8/12/2008	[2009] 2 HKLRD 166	CFI	14; Protocol 1, Article 3
<i>Secretary for Justice v Ocean Technology Ltd and others</i>	12/12/2008	HCMA173/2008	CFI	10
<i>Secretary for Justice v Richard Ethan Latker</i>	29/1/2009	HCMA521/2008	CFI	6, 6(1)
<i>Commissioner of Inland Revenue v Nam Tai Trading Co Ltd</i>	3/2/2009	DCTC4250/2008	DC	6(1)
<i>Secretary for Justice v Lam Chiu Fong</i>	9/2/2009	[2009] 2 HKLRD 484	CA	6(2)
<i>Secretary for Justice v Kanjanapas Chong Kwong Derek and others</i>	12/2/2009	CACC 248/2006; CACC 140/2007; CAAR 8/2006; CACC 248/2006	CA	6(3)(b)
<i>LWY v Guardianship Board and another</i>	20/2/2009	[2009] 3 HKLRD 30	CFI	5, 8

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<i>Lam Siu Po v Commissioner of Police</i>	26/3/2009	FACV9/2008	CFA	1, 6(1), 14
<i>Yu Siu Cheuk v Realray Investments Ltd</i>	31/3/2009	HCA277/2007	CFI	1
<i>Yu Siu Cheuk v Realray Investments Ltd</i>	31/3/2009	HCA277/2007	CFI	Protocol 1, Article 1
<i>Ubamaka Edward Wilson v Secretary for Security and another</i>	5/5/2009	HCAL77/2008	CFI	3

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<i>Re Wong Chun Sing and another</i>	13/1/1984	[1984] HKLR 71	HC	10
<i>Re Wong Chun Sing and anothers</i>	13/3/1984	[1985] 2 HKC 581	CA	10
<i>R v Sin Yau Ming</i>	30/9/1991	[1992] 1 HKCLR 127	CA	General ref.
<i>Kwan Kong Co Ltd v Towning Planning Board</i>	31/7/1995	[1995] 3 HKC 254	HC	General ref.
<i>Tran Van Tien and others v The Director of Immigration and another</i>	31/7/1996	(1996) 7 HKPLR 186	HC	General ref.
<i>Tse Jeekeen v "H.K. Alliance in Support of Patriotic Democratic Movement of China" & Its Chairman Mr Szeto Wah and others</i>	2/9/1999	CACV90/1999	CA	General ref.
<i>Mok Chi Hung and another v The Director of Immigration</i>	5/1/2001	[2001] 2 HKLRD 125	CFI	25(2)
<i>Wong Tai Wai David v The Hong Kong SAR Government</i>	7/9/2004	CACV19 and 247/2003	CA	General ref.
<i>Leung Kwok Hung and others v HKSAR</i>	8/7/2005	[2005] 3 HKLRD 164; (2005) 8 HKCFAR 229	CFA	29

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<i>HKSAR v Pearce</i>	2/11/2005	[2005] 4 HKC 105	Magistrate	General ref.
<i>C and ors v Director of Immigration</i>	18/2/2008	[2008] 2 HKC 165	CFI	14(1)
<i>RV v Director of Immigration and another</i>	10/3/2008	[2008] 4 HKLRD 529	CFI	14(1)
<i>HKSAR v Ma Pui Tung</i>	8/12/2008	HCMA1109/2008	CFI	General ref.
<i>Chan Kin Sum v Secretary for Justice and another</i>	8/12/2008	[2009] 2 HKLRD 166	CFI	General ref.

Table 5 Cases citing the International Covenant on Economic, Social and Cultural Rights

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Article(s) in ICESCR cited
<i>Tam Hing Yee v Wu Tai Wai</i>	8/7/1991	DCCJ6250/1989	DC	General ref.
<i>The Queen v William Hung</i>	14/4/1992	[1992] 2 HKCLR 90	HC	General ref.
<i>The Queen v Charles Cheung Wai Bun</i>	16/6/1992	[1993] 1 HKCLR 189	HC	General ref.
<i>Cheung Kuk Ching v Director of Immigration</i>	21/6/1993	HCMP1697/1993	CFI	10
<i>HKSAR v Ng Kung Siu and another</i>	23/3/1999	[1999] 1 HKLRD 783	CA	General ref.
<i>HKSAR v Ng Kung Siu and another</i>	15/12/1999	[1999] 3 HKLRD 907; (1999) 2 HKCFAR 442	CFA	General ref.
<i>Chan Wah & another v Hang Hau Rural Committee & others</i>	26/1/2000	[2000] 1 HKLRD 411	CA	General ref.
<i>Gurung Kesh Bahadur v Director of Immigration</i>	30/5/2000	HCAL11/2000	CFI	General ref.
<i>Lau Fong v The Director of Immigration</i>	29/6/2000	HCAL128/1999	CFI	General ref.
<i>Chan Mei Yee v Director of Immigration</i>	13/7/2000	HCAL77 and 99/1999	CFI	10(1)
<i>Lui Tat Hang Louis v The Post-Release Supervision Board and another</i>	21/7/2000	HCAL154/1999	CFI	General ref.
<i>Yu Pik Ying and another v Director of Immigration Department</i>	21/9/2000	HCAL1804/2000	CFI	General ref.
<i>Mok Chi Hung and another v The Director of Immigration</i>	5/1/2001	[2001] 2 HKLRD 125	CFI	10(1)

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Article(s) in ICESCR cited
<i>Chan To Foon and others v The Director of Immigration and another</i>	11/4/2001	[2001] 3 HKLRD 109	CFI	10(1)
<i>Wong Yan Hong and another v Hong Kong Houding Authority and another</i>	24/5/2001	HCAL1711/2000	CFI	10(1), 11(1)
<i>Gurung Kesh Bahadur v Director of Immigration</i>	29/6/2001	[2001] 3 HKLRD 32	CA	General ref.
<i>Tam Nga Yin and others v The Director of Immigration</i>	20/7/2001	[2001] 2 HKLRD 644; (2001) 4 HKCFAR 251	CFA	10, 11
<i>Tse Wai Chun Paul v Solicitors Disciplinary Tribunal</i>	27/8/2001	HCAL636/2001	CFI	General ref.
<i>Ma Bik Yung v Ko Chuen</i>	5/10/2001	[2002] 2 HKLRD 1; (2006) 9 HKCFAR 888	CFA	2(2)
<i>Government Park and Playgrdoun Keepers Union and others v Secretary for Justice</i>	10/6/2003	HCAL180/2002	CFI	General ref.
<i>Lau Kwok Fai Bernard v Secretary for Justice</i>	10/6/2003	HCAL177/2002	CFI	General ref.
<i>Allied group Ltd and another v The Secretary for Justice and another</i>	10/10/2003	CACV1/2003	CA	General ref.
<i>A Solicitor v The Law Society of Hong Kong</i>	18/2/2004	CACV302/2002	CA	General ref.
<i>So Wing Keung v Sing Tao Ltd and another</i>	11/8/2004	HCMP1833/2004	CFI	9
<i>HKSAR v Leung Kwok Hung and others</i>	10/11/2004	[2004] 3 HKLRD 729	CFI	General ref.

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Article(s) in ICESCR cited
<i>HKSAR v Yeung May wan and others</i>	10/11/2004	[2004] 3 HKLRD 797	CFI	General ref.
<i>Leung TC William Roy v Secretary for Justice</i>	24/8/2005	[2005] 3 HKLRD 657	CFI	General ref.
<i>Ho Choi Wan v Hong Kong Housing Authority</i>	21/11/2005	[2005] 4 HKLRD 706; (2005) 8 HKCFAR 628	CFA	11(1)
<i>HKSAR v Chan Kau Tai</i>	26/1/2006	[2006] 1 HKLRD 400	CA	General ref.
<i>Leung Kwok Hung and another v Chief Executive of the HKSAR</i>	10/5/2006	CACV73 and 87/2006	CA	General ref.
<i>Julita F. Raza and others v Chief Executive in Council and others</i>	19/7/2006	CACV218/2005	CA	General ref.
<i>The Catholic Diocese of Hong Kong also known as The Bishop of the Roman Catholic Church in Hong Kong Incorporation v Secretary for Justice</i>	23/11/2006	[2007] 4 HKLRD 483	CFI	13
<i>Chan Xiu Mei v Li Siu Wo and another</i>	5/1/2007	[2007] 1 HKLRD 331	DC	General ref.
<i>Chu Woan Chyi and others v Director of Immigration</i>	23/3/2007	[2007] 3 HKC 168	CFI	General ref.
<i>Chan Noi Heung and others v The Chief Executive in Council</i>	16/5/2007	HCAL126/2006	CFI	7
<i>M v Secretary for Justice</i>	16/7/2007	DCEO8/2004	DC	General ref.
<i>Clean Air Foundation Ltd and another v The Government of the HKSAR</i>	26/7/2007	HCAL35/2007	CFI	12

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Article(s) in ICESCR cited
<i>Yeung Chung Ming v Commissioner of Police</i>	25/7/2008	[2008] 4 HKC 383	CFA	General ref.
<i>Right to Inherent Dignity Movement Association and another v HKSAR and others</i>	31/10/2008	HCAL104, 108 and 123/2008	CFI	General ref.
<i>Commissioner of Inland Revenue v Nam Tai Trading Co Ltd</i>	3/2/2009	DCTC4250/2008	DC	General ref.

Table 6 Cases citing the Canadian Charter of Rights and Freedoms

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Section(s) in Charter cited
<i>The Queen v Lam Chi-ming and others</i>	27/3/1991	[1991] 2 AC 212	PC	General ref.
<i>In Re the Hong Kong and Shanghai Banking Corporation Ltd and others</i>	8/8/1991	[1992] HKDCLR 37	DC	8
<i>The Queen v Ng Po Lam</i>	21/8/1991	DCCC101/1991	DC	11(d)
<i>R v Sin Yau Ming</i>	30/9/1991	[1992] 1 HKCLR 127	CA	1, 11(d)
<i>Attorney General v Lorraine Esme Osman Dato Mohammed Shamsuddin and others</i>	28/10/1991	[1992] 1 HKCLR 35	HC	7
<i>The Queen v Wan Kit Man</i>	18/2/1992	[1992] 1 HKCLR 224	HC	11(h)
<i>R v Lam Wan-kow</i>	25/3/1992	[1992] 1 HKCLR 272	CA	1
<i>R v Wong Cheung Bun and others</i>	9/4/1992	[1992] 1 HKCLR 240	HC	7, 10(b), 11(d)
<i>Re Thongchai Sanguandikul</i>	26/5/1992	[1994] 1 HKCLR 1	HC	12
<i>Attorney General v Lee Kwong Kut</i>	18/6/1992	HCMA90/1992	HC	11(d)
<i>The Queen v Fu Yan</i>	23/6/1992	[1992] 2 HKCLR 59	CA	7, 10(b), 11(d)
<i>The Queen v Man Wai Keung (No.2)</i>	7/7/1992	[1992] 2 HKCLR 207	CA	15
<i>Re Suthipong Smittachartch and another</i>	12/10/1992	[1993] 1 HKLR 93	HC	7
<i>Re Tse Chu Fai Ronald</i>	20/11/1992	[1993] HKLR 453	HC	8
<i>The Queen v Wong Hiu-chor and others</i>	4/12/1992	[1993] 1 HKCLR 107	CA	1, 11(d)
<i>The Queen v Ko Chi Yuen</i>	22/12/1992	HCCC286/1991	HC	11, 11(d), 11(f)

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Section(s) in Charter cited
<i>In re Commission Ordinance</i>	8/1/1993	HCMP3039/1992	HC	7, 8
<i>In re Lau Wing-wo</i>	18/2/1993	[1994] 1 HKLR 119	HC	11(f)
<i>Lee Kwok Hung, ex parte</i>	19/2/1993	[1993] HKLR 51	CA	1
<i>Attorney General of Hong Kong v Lee Kwong-kut and others</i>	19/5/1993	[1993] AC 951	PC	1, 11(d)
<i>Lau Shek To and Others v Director of Immigration</i>	22/6/1993	HCMP564/1993	HC	7
<i>Wong King Lung and Others v Director of Immigration</i>	22/6/1993	[1994] 1 HKLR 312	HC	7
<i>The Queen v Kwok Hing-man</i>	9/6/1994	[1994] 2 HKCLR 160	CA	General ref.
<i>R v Chu Kam To and another</i>	21/6/1994	[1994] 1 HKC 775	HC	7
<i>Attorney General v Fong Chin Yue and ors</i>	25/10/1994	[1995] 1 HKC 21	HC	7, 11(d), 12
<i>Re Thanat Phaktiphat</i>	24/11/1994	HCMP2904/1994	HC	12, 24(1), 24(2), 32
<i>Lau San Ching v Liu, Apollonia</i>	19/1/1995	(1995) 5 HKPLR 23	HC	2, 3
<i>Attorney General v Tang Yuen Lin</i>	14/2/1995	[1995] 1 HKC 209	CA	12
<i>R v Chan Suen Hay</i>	22/3/1995	(1995) 5 HKPLR 345	DC	11(h)
<i>R v Kwong Kui Wing and ors</i>	8/2/1996	(1996) 6 HKPLR 125	DC	1, 11(d)
<i>R v Ng Wing Keung Paul and anor</i>	21/5/1996	(1996) 6 HKPLR 299	DC	General ref.
<i>Attorney General v Tsang Wai Keung</i>	29/10/1996	(1996) 7 HKPLR 163	HC	11(c)
<i>The Secretary for Justice v. The Oriental Press Group Ltd. and Others</i>	23/6/1998	[1998] 2 HKLRD 123	HC	2(b)

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Section(s) in Charter cited
<i>Wong Yeung Ng v The Secretary for Justice</i>	9/2/1999	[1999] 2 HKLRD 293	CA	General ref.
<i>HKSAR v Pun Ganga Chandra and others</i>	1/6/1999	[1999] 2 HKLRD 648	CFI	7, 11
<i>HKSAR v Chan Chui Mei</i>	11/6/1999	[1999] 3 HKC 502	CFI	7, 11(d)
<i>HKSAR v Mok Tsan Ping and others</i>	29/7/1999	HCCC427/1998	CFI	7, 11(d)
<i>HKSAR v Maria Remedios Coady</i>	11/4/2000	[2000] 2 HKLRD 195	CA	7
<i>Secretary for Justice v Lam Tat Ming and another</i>	26/6/2000	[2000] 2 HKLRD 431; (2000) 3 HKCFAR 168	CFA	7
<i>HKSAR v Lam Tat Ming and another</i>	7/2/2001	[2001] 2 HKLRD 557	DC	7
<i>HKSAR v Lee Mung Tee and another</i>	22/3/2001	[2001] 1 HKLRD 599; (2001) 4 HKCFAR 133	CFA	7, 13
<i>HKSAR v Shum Kwok Sher</i>	14/8/2001	[2001] 3 HKLRD 399	CA	1, 7
<i>Ma Bik Yung v Ko Chuen</i>	5/10/2001	[2002] 2 HKLRD 1; (2006) 9 HKCFAR 888	CFA	1, 2(b), 15
<i>Re Cheng Kai Nam, Gary</i>	3/12/2001	[2002] 2 HKLRD 39	CFI	General ref.
<i>Li Defan and another v HKSAR</i>	14/3/2002	[2002] 1 HKLRD 527; (2002) 5 HKCFAR 320	CFA	General ref.
<i>Shum Kwok Sher v HKSAR</i>	10/7/2002	[2002] 2 HKLRD 793; (2002) 5 HKCFAR 381	CFA	General ref.
<i>Lau Cheong and another v HKSAR</i>	16/7/2002	[2002] 2 HKLRD 612; (2002) 5 HKCFAR 415	CFA	7, 12
<i>HKSAR v Lee Ming Tee (No.2)</i>	22/8/2003	(2003) 6 HKCFAR 336; [2004] 1 HKLRD 513	CFA	7

Case	Date of Judgment (dd.mm.yy)	Citation	Court	Section(s) in Charter cited
<i>Town Planning Board v Society for the Protection of the Harbour Ltd</i>	9/1/2004	(2004) 7 HKCFAR 1; [2004] 1 HKLRD 396	CFA	1
<i>A Solicitor v The Law Society of Hong Kong</i>	18/2/2004	[2006] 2 HKC 40	CA	32, 32(1)
<i>HKSAR v Lam Kwong Wai and another</i>	6/1/2005	CACC213/2003	CA	1
<i>Leung TC William Roy v Secretary for Justice</i>	24/8/2005	[2005] 3 HKLRD 657	CFI	15(1)
<i>HKSAR v Hung Chan Wa</i>	26/1/2006	CACC 411/2003 and 61/2004	CA	24
<i>So Wai Lun v HKSAR</i>	18/7/2006	[2006] 3 HKLRD 394; (2006) 9 HKCFAR 530	CFA	1, 7, 15, 28
香港特別行政區 訴 林康國及另二人	21/7/2006	CACC528/2004	CA	7
<i>Dr Kwok-hay Kwong v The Medical Council of Hong Kong</i>	11/8/2006	[2006] 4 HKC 157	CFI	1, 2(d)
王子鑫 訴 香港警務處長鄧竟成及另一人 (<i>Wong Tsz Jam v Commissioner of Police</i>)	20/6/2008	[2008] 5 HKLRD 164	CA	1
<i>HKSAR v Nancy Ann Kissel</i>	6/10/2008	CACC414/2005	CA	13
<i>FB v Director of immigration and another</i>	5/12/2008	[2009] 1 HKC 133	CFI	7
<i>Chan Kin Sum v Secretary for Justice and another</i>	8/12/2008	[2009] 2 HKLRD 166	CFI	General ref.

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