

The Basic Rights and Obligations of Residents of the Hong Kong Special Administrative Region

WANG SHUWEN*

The delineation of the basic rights and obligations of residents of the Hong Kong Special Administrative Region (Hong Kong SAR) affects not only the vital interests of Hong Kong residents and others living in Hong Kong, but also has an impact upon the important objectives of ensuring China's national unification and maintaining Hong Kong's prosperity and stability. Therefore, people both inside and outside of the People's Republic of China (PRC), especially the people of Hong Kong, have followed this issue with great interest. As has already been noted in newspaper reports on "The Collection of Draft Provisions Proposed by the Special Panels Under the Drafting Committee of the Basic Law of the Hong Kong SAR" (Collection), the basic rights and obligations of the residents of the Hong Kong SAR are delineated in chapter three of the Basic Law. In the process of drafting this chapter, the members of the special subcommittees of the Drafting Committee have engaged in extensive research and discussion, while also seeking opinions and suggestions on all issues from various circles in Hong Kong. In the days to come we must continue to seek advice and make the necessary revisions. I would like to discuss my personal understanding of the basic rights and obligations of the residents of the Hong Kong SAR.

I. THE CHARACTERISTICS OF THE BASIC RIGHTS AND OBLIGATIONS OF RESIDENTS OF THE HONG KONG SAR

According to the Collection, the essential characteristic of the basic rights and obligations of Hong Kong SAR residents is embodied in the concept of "one country, two systems." As State Counselor Ji Pengfei pointed out in his speech at the first plenary session of the Hong Kong SAR Basic Law Drafting Committee, "the law we are going to draft, the Basic Law of the Hong Kong SAR of the People's Republic of China, will be a formulation in legal terms of the policy

* Director of the Legal Research Institute at the Chinese Academy of Social Sciences, Vice-Chairman of the China Law Society, member of the Hong Kong Basic Law Drafting Committee.

envisioned in the 'one country, two systems' principle. It is an unprecedented project." In order to ensure national unification, safeguard the nation's territorial integrity and maintain the prosperity and stability of Hong Kong, and in light of Hong Kong's historical and present conditions, it has been decided that when sovereignty over Hong Kong is restored to the People's Republic of China, the State will establish the Hong Kong SAR in accordance with Article 31 of the Constitution of the People's Republic of China.¹ This is provided in the Preamble of the Collection. Under the principle of "one country, two systems," a set of policies different from those currently in place in China will be established in Hong Kong and will remain unchanged for 50 years. In addition, the General Provisions (chapter one of the Collection), stipulate that in the Hong Kong SAR, the socialist system and socialist policies will not be implemented and the current capitalist system and lifestyle will be maintained. These provisions clearly indicate that the principle of "one country, two systems" will be implemented in the Hong Kong SAR.

The policy of safeguarding the basic rights and obligations of Hong Kong residents, as expressed in the Basic Law of the Hong Kong SAR, has the following characteristics:

A. The Basic Law will be the foundation for protecting the basic rights and freedoms of residents and non-residents² in the Hong Kong SAR. The General Provisions of the Collection explicitly provide that under Article 31 of the PRC Constitution, the policies and systems in the Hong Kong SAR, including the social and economic systems, the systems of protecting fundamental rights and freedoms, and the administrative, legislative and judicial systems, shall be formulated in accordance with the Basic Law.³ The General Provisions also stipulate that the Hong Kong SAR shall protect the rights and freedoms of residents and non-residents in the Hong Kong SAR. In addition, an entire chapter (chapter three) is devoted to the fundamental rights and obligations of Hong Kong SAR residents.

B. The Collection provisions on the rights and freedoms of residents and non-residents in the Hong Kong SAR are in complete accordance with the Chinese government's policy toward Hong Kong as set forth in the Joint Declaration on the Question of Hong Kong.⁴

1. THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA, art. 31 (1982) [hereinafter PRC CONST.]

2. For definitions of "residents" and "non-residents," see sec. II of this article.

3. PRC CONST., *supra* note 1, art. 31.

4. Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, 23 I.L.M. 1366 (1984) [hereinafter Joint Declaration].

As Ji Pengfei, chairman of the Hong Kong SAR Basic Law Drafting Committee pointed out at its second plenary session, "[T]he Chinese government's Hong Kong policy, which is set forth in the Sino-British Joint Declaration, constitutes the government's current policy and will not change. During the entire drafting process we must formulate the Hong Kong SAR Basic Law in accordance with this policy." The Joint Declaration states that under Hong Kong SAR law such freedoms of the person, speech, publication, assembly, association, travel, movement, communication, religion and freedom to strike, choose one's profession, and pursue academic research shall be protected.⁵ The law shall also protect the ownership of private property and private enterprises, the right to lawful inheritance and overseas investments. All of these are contained in the relevant provisions of the Collection. In addition, based on comments and suggestions from various circles in Hong Kong, new additions have been made to chapter three, which include guarantees of equality before the law, journalistic freedom, freedom of literary and artistic creation, and workers' welfare treatment.

C. There are significant differences between, on the one hand, the rights and freedoms of residents and non-residents in Hong Kong as provided for by the Basic Law and, on the other hand, the rights and freedoms of PRC nationals provided for by the PRC Constitution. First of all, the rights under the Basic Law are applicable to Chinese nationals, non-Chinese nationals, Hong Kong residents and non-Hong Kong residents. Further, the rights differ significantly in content. For example, the right of property ownership, the right to vote and to stand for election, political freedom, freedom of movement, travel, religion, the right to raise a family freely and other provisions are drafted with a view to the actual situation prevailing in Hong Kong. This point will be referred to later.

D. The obligations set forth in the Hong Kong SAR Basic Law for residents and non-residents in Hong Kong differ from the obligations imposed on citizens of the PRC by the PRC Constitution. Among the basic obligations under the PRC Constitution are the duties to safeguard the unity of the country and the unity of all its nationalities, to abide by the Constitution and the law, to protect state secrets, to protect public property, to observe labor discipline and public order, to respect social ethics, to safeguard the security, honor and interest of the state, to defend the motherland, to perform military service according to the law and to pay taxes.⁶ In contrast, chap-

5. *Id.*, Annex I, art. XIII.

6. PRC CONST., *supra* note 1, arts. 52-56.

ter three of the Collection stipulates only one obligation: residents and non-residents in Hong Kong must abide by the law of the Hong Kong SAR. This means that whatever duties are required of residents and non-residents in the Hong Kong SAR should be stipulated in the laws of the Hong Kong SAR. Chapter three contains no special provisions on the issue of complying with the PRC Constitution and national laws, since this is explicitly dealt with in other parts of the Collection. Chapter two of the Collection also stipulates that armed forces stationed in Hong Kong shall abide by both the national laws and the laws of the Hong Kong SAR. Chapter two also provides that all personnel of Hong Kong offices or departments of the central government, the provinces, the autonomous regions, and municipalities directly under the central government shall abide by the laws of the Hong Kong SAR.

II. THE MEANING OF "RESIDENTS AND NON-RESIDENTS IN THE HONG KONG SPECIAL ADMINISTRATIVE REGION"

For a long time Hong Kong has been a free port, a separate customs territory and a center of international finance. As a result, the situation of the people living in Hong Kong is quite complex. Based on the current state of affairs in Hong Kong, the people may be divided in three different ways: (1) while the majority are Chinese nationals, some are non-Chinese nationals; (2) apart from Hong Kong residents, there are non-Hong Kong residents; (3) among Hong Kong residents, there are permanent and non-permanent residents. Undoubtedly, the rights and freedoms of all these people should be protected by the law. At the same time, since their situations are not entirely identical, it is necessary to have different provisions for each group. Therefore, in drafting provisions on the basic rights and obligations of the residents of the Hong Kong SAR, the primary issue we needed to clarify was the meaning of "residents and non-residents in the Hong Kong SAR."

Chapter three of the Collection begins with a clear definition of "residents of the Hong Kong SAR." Residents include permanent and non-permanent residents of the Hong Kong SAR.

In accordance with Annex I of the Joint Declaration⁷, chapter three of the Collection lists the following six categories of people as permanent residents of the Hong Kong SAR:

1. Chinese nationals born in Hong Kong before or after the establishment of the Hong Kong SAR;
2. Chinese nationals who have ordinarily resided continuously

7. Joint Declaration, *supra* note 4, Annex 1, art. XIV and explanatory notes, ¶ 49.

in Hong Kong for a period of at least seven years before or after the establishment of the Hong Kong SAR;

3. Children of Chinese nationals born outside Hong Kong to members of categories 1 and 2;

4. Non-Chinese nationals who have ordinarily resided continuously in Hong Kong for a period of at least seven years before or after the establishment of the Hong Kong SAR and who regard Hong Kong as their permanent residence;

5. Children under 21 years of age born in Hong Kong to members of category 4 before or after the establishment of the Hong Kong SAR;

6. People outside of categories 1 to 5 who only had the right of abode in Hong Kong before the establishment of the Hong Kong SAR.

Chapter three also states that the above residents enjoy the right of abode, and will be qualified under Hong Kong SAR law to obtain permanent resident identity cards which state the right of abode. These provisions offer a complete definition of the term "permanent residents of Hong Kong."

What should be explained here is the concept of "Chinese national" mentioned in categories 1 and 2. According to the memorandum concerning the nationality problem exchanged between China and the United Kingdom on December 19, 1984,⁸ the PRC Ministry of Foreign Affairs memorandum points out that, under the Nationality Law of the PRC, all Hong Kong Chinese compatriots are Chinese nationals, whether or not they are holders of the "British Dependent Territories Citizens Passport."⁹

Categories 2 and 4 above contain the concept of "ordinarily resided continuously in Hong Kong." This term means that any person who temporarily leaves Hong Kong for various reasons — such as seeking education in other countries and regions — will still be regarded as having "ordinarily resided continuously in Hong Kong."

According to provisions of chapter three, non-permanent residents of the Hong Kong SAR are those who are qualified to obtain resident identity cards under Hong Kong SAR law, but do not have the right of abode.

The distinction between permanent and non-permanent residents of the Hong Kong SAR, therefore, lies in the right of abode. Under

8. *Id.*, Exchange of Memoranda, Chinese Memorandum.

9. Nationality Law of the People's Republic of China (Zhonghua Renmin Gongheguo Guojifa) art. 4 (promulgated July 10, 1984) THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA 1979-82.

chapter three permanent residents have the right of abode, and are qualified to obtain the permanent resident identity card which states the right of abode. Non-permanent residents do not have the right of abode, but are, under Hong Kong SAR law, qualified to obtain a Hong Kong resident identity card. The term “qualified to obtain” is in reference to current Hong Kong law, which provides that residents under eleven years of age need not obtain an identity card even though they are so qualified. By applying this term in the Basic Law, children under eleven are included as Hong Kong residents.

Some people believe there is no need to divide the residents of the Hong Kong SAR into permanent and non-permanent residents categories. This view is questionable because, first of all, under current Hong Kong law there are already two types of residents: permanent residents and ordinary residents. More importantly, under the relevant provisions of the Basic Law, the rights of permanent residents and those of non-permanent residents are not entirely identical. The main differences are: (1) The administrative and legislative bodies of the Hong Kong SAR shall be composed of only permanent residents; (2) Only permanent residents of the Hong Kong SAR shall enjoy the right to vote and stand for election; (3) Positions as chief executive and principal officials in the Hong Kong SAR shall only be filled by Chinese nationals who are permanent residents of the Hong Kong SAR and who have ordinarily lived in Hong Kong for the legally stipulated number of years; and (4) Except as otherwise provided by law, public servants in the Hong Kong SAR governmental organs must be permanent residents of the Hong Kong SAR.

Apart from residents of the Hong Kong SAR, there are also non-residents. Of course, the “non-residents” mentioned here are those who live in the Hong Kong SAR, not those who reside in other countries and regions. The distinction between non-residents and non-permanent residents is that non-permanent residents of Hong Kong have resident identity cards while non-residents do not. Some maintain it is not necessary to distinguish between non-permanent residents and non-residents in the Hong Kong SAR. This view is also questionable because non-residents are not entitled to some of the rights enjoyed by the non-permanent residents of Hong Kong. For example, no visas are required for non-permanent residents to enter Hong Kong, and non-permanent residents receive social welfare benefits.

In view of this situation, the Collection aims to protect the legitimate rights and interest of these three categories of people, while preserving the distinctions between them in the following manner:

A. The title of chapter three is “The Basic Rights and Obligations of Residents of the Hong Kong SAR.” This title gives promi-

nence to those who are residents of the Hong Kong SAR. Because the residents of the Hong Kong SAR (including permanent and non-permanent residents) comprise the vast majority of the population of Hong Kong, they are the main group and should be given prominence. Some believe the title should read "The Basic Rights and Obligations of Chinese Citizens in Hong Kong." This view fails to take into account the people of other than Chinese nationality residing in Hong Kong. On the other hand, some feel that the title should be "The Basic Rights and Obligations of Residents and Non-Residents in Hong Kong." This approach fails to give prominence to the main group, and does not conform to the legislative practices of most countries. A general survey of the constitutions and laws of different countries of the world reveals that the relevant titles usually read "The Rights and Obligations of Citizens" without mentioning aliens residing in their countries. Generally, the legal status of foreigners are set forth in special provisions. For example, the title of chapter two of the PRC Constitution reads, "The Fundamental Rights and Obligations of Citizens."¹⁰ At the same time, the General Principles of the PRC Constitution stipulate that "[t]he People's Republic of China protects the legitimate rights and interests of foreigners within Chinese Territory and while on Chinese territory foreigners must abide by the law of the People's Republic of China."¹¹

B. The provisions preceding chapter three emphasize the rights and freedoms of Hong Kong residents. A special provision is then made for non-residents, explicitly indicating that, according to law, non-residents in the Hong Kong SAR enjoy the same rights and freedoms granted to Hong Kong residents. Again, to emphasize, except when otherwise specially provided by law — as in certain above mentioned rights — non-residents in Hong Kong will enjoy the same rights and freedoms as residents of Hong Kong.

C. The provisions concerning the rights and freedoms of Hong Kong residents, which are intended to apply only to permanent residents of the Hong Kong SAR, will explicitly state their limited applicability. For instance, as mentioned above, it is clearly stipulated that only permanent residents of the Hong Kong SAR will enjoy the right to vote and stand for election, hold positions in the administrative and legislative bodies or in the public service of the Hong Kong SAR. Provisions concerning the rights and freedoms of the "residents of the Hong Kong SAR" are intended to apply to both permanent and non-permanent residents.

10. PRC CONST., *supra* note 1, ch. 2.

11. *Id.*, art. 32, cl. 1.

D. Some of the provisions for the rights and freedoms of Hong Kong SAR residents are intended to apply only to Chinese nationals. There are two types of such provisions. One type applies only to Chinese nationals who are also permanent residents of the Hong Kong SAR. For instance, the chief executive and principal officials of the Hong Kong SAR shall be Chinese nationals who are also permanent residents of the Hong Kong SAR. The other type of provisions applies to all Chinese nationals who are residents of the Hong Kong SAR. For example, chapter two provides that Chinese nationals who are residents of the Hong Kong SAR have the right to participate in the management of State affairs.

III. THE RIGHTS AND FREEDOMS OF RESIDENTS AND NON-RESIDENTS IN THE HONG KONG SAR

Under the relevant provisions of the Collection, residents of the Hong Kong SAR will enjoy broad rights and freedoms. These rights and freedoms embrace various aspects of political, personal, economic, cultural, social and family life. Chapter one of the Collection (General Provisions) clearly stipulates that the property rights of residents and non-residents in the Hong Kong SAR will be protected. As mentioned above, chapter two (The Relationship Between the Central Government and the Hong Kong SAR) provides that Hong Kong SAR residents of Chinese nationality will have the right to participate in the management of State affairs. In addition, chapter three (The Basic Rights and Obligations of Residents of the Hong Kong SAR) focuses on the rights and obligations of Hong Kong SAR residents. The principal rights and freedoms provided for in the above-mentioned chapters are summarized below.

A. *Property Rights*

According to chapter one, property rights shall be protected by law. Property rights include the rights of acquiring, using and disposing of property, the right to inherit property, and the right to compensation if property has been expropriated according to law. Compensation shall be commensurate with the actual value of the property, the amount paid may be freely converted and the payment may not be unreasonably delayed.

B. *The Right To Participate In The Management of State Affairs*

Under chapter two, Chinese nationals of the Hong Kong SAR may participate in the management of State affairs according to law. Hong Kong SAR representatives to the National People's Congress shall be elected from among the Chinese nationals who are residents

of Hong Kong. The number of Hong Kong SAR representatives allowed, and the method for creating such positions, shall be specified by the Standing Committee of the National People's Congress.

C. The Right To Vote And The Right To Stand For Election

Under chapter three, only permanent residents of the Hong Kong SAR shall enjoy the right to vote and the right to stand for election. Therefore, non-permanent residents of the Hong Kong SAR and non-residents will not enjoy these rights. With regard to the minimum voting age, under current Hong Kong law a person must be 21 years of age to vote or stand for election. However, some people have suggested that the voting age be lowered to 18. Others have suggested that the Basic Law should not contain a specific provision on the voting age; they say that more flexibility is gained by waiting for the Hong Kong SAR legislature to specify the voting age in the future. This latter opinion is worthy of consideration.

D. Political Freedom

Chapter three guarantees Hong Kong SAR residents political freedom in the following three respects: (a) freedom of speech, publication and journalistic freedom, (b) freedom of association, and freedom to organize and join in trade unions and strikes, and (c) freedom of assembly and demonstration.

E. Freedom Of The Person

Chapter three emphasizes that the Hong Kong residents' freedom of person shall be inviolable. It explicitly stipulates that Hong Kong residents will not suffer unlawful arrests, detention or imprisonments. This chapter also forbids the use of any method to unlawfully deprive residents of their personal freedom or to restrict it in any way, and forbids the unlawful search of a resident's person.

F. Inviolability Of The Home

Chapter three provides that Hong Kong residents' dwellings shall not be violated. It forbids the unlawful search of or entry into Hong Kong residents' homes. This chapter also protects other dwellings of Hong Kong residents from infringement including, for example, his or her place of work or rest.

G. Freedom Of Communication

Chapter three protects the freedom and privacy of communication of Hong Kong residents. Except for cases where the relevant governmental organ is engaged in an investigation of communications

in accordance with the procedures prescribed by law to meet the needs of public security or in the course of a criminal investigation, no department or individual may, on any grounds, infringe upon the freedom and privacy of communication of residents of Hong Kong. This includes not only letters, but also telegrams, telephone calls and other means of communication.

H. Freedom Of Movement

Chapter three clearly stipulates that residents of Hong Kong shall have freedom of movement within the Hong Kong SAR and freedom to emigrate to other countries or regions. In addition, Hong Kong residents holding valid travel documents are free to travel to and from Hong Kong. Unless restrained by law, all residents who hold valid travel documents shall be free to leave the Hong Kong SAR without special authorization.

I. Freedom Of Religion

Chapter three provides that residents of Hong Kong shall enjoy freedom of religion. This chapter specifically stipulates that Hong Kong residents will be free to engage in missionary work, and openly hold and participate in religious activities. In addition, chapter six of the Basic Law provides that the Hong Kong SAR government shall not interfere in the internal affairs of religious organizations and shall not impose restrictions on religious activities which do not contravene laws of the Hong Kong SAR. Religious organizations by law shall enjoy property rights — the right to acquire, use and dispose of property, the right to inherit property, as well as the right to receive financial assistance. The existing rights and interests in property held by religious organizations shall be maintained and protected. Religious organizations may, in accordance with existing Hong Kong practice, continue to establish religious and other educational institutions, hospitals and welfare organizations, and to provide other social services. Furthermore, religious organizations and religious believers within the Hong Kong SAR may maintain and further develop relations with religious organizations and religious believers elsewhere. The relationship between Hong Kong SAR religious organizations and other religious organizations in the PRC shall be based on the principles of non-subordination, non-interference and mutual respect.

J. Freedom of Choice of Occupation

Chapter three states that residents of Hong Kong shall have freedom of choice of occupation. In order to safeguard this freedom, other chapters of the Collection provide that all public servants serv-

ing in Hong Kong in all governmental departments before the establishment of the Hong Kong SAR and judicial personnel may stay on in their positions and retain their seniority. Their salaries, allowances, benefits and conditions of service shall be no less favorable than before. Those who have acquired occupational and professional qualifications before the establishment of the Hong Kong SAR may retain these qualifications. All personnel holding positions in subsidized organizations in Hong Kong may, in accordance with the existing system, continue to serve.

K. Academic Freedom

Chapter three provides that residents of Hong Kong shall have the freedom to engage in scientific research, literary and artistic creation, and other cultural pursuits. In addition, chapter six provides that the Hong Kong SAR shall formulate its own policy on science and technology to protect patents, inventions, and other fruits of scientific and technological research. The Hong Kong SAR shall also formulate its own cultural policy to protect the legitimate rights and interests of artists and writers in their works.

L. The Right To Sue

According to chapter three, residents of Hong Kong shall have the right to seek confidential legal advice, to sue in courts, to seek the prompt protection of their lawful rights and interests through the hiring of a lawyer of their own choice, to representation in the courts by lawyers of their own choice, and the right to obtain judicial remedies. Hong Kong residents also have the right to appeal in court against actions taken by an administrative department or by administrative personnel. This right to sue is extremely important in protecting the lawful rights of Hong Kong SAR residents through judicial procedures.

M. The Right To Social Welfare

Chapter three stipulates that Hong Kong residents shall have the right to enjoy social welfare. The welfare benefits of laborers shall be protected by law. In addition, chapter six states that the Hong Kong SAR shall maintain Hong Kong's present social welfare system and shall formulate its own policy for developing and reforming this system in light of economic conditions and social needs. The Hong Kong SAR shall also formulate its own labor laws and policies in light of the level of economic development, existing social needs, and the status of labor-management relations.

N. Freedom of Marriage

Under chapter three the freedom of marriage of Hong Kong residents is guaranteed by law. The right to raise a family freely is also protected. This differs from the PRC Constitution which mandates family planning for PRC citizens in order to bring population growth in line with economic and social development.¹² This constitutional provision is the product of the actual situation faced by our nation. Excessively rapid population growth in China over a long period of time has had some negative effects on economic development. Therefore, the Constitution has adopted family planning as a national policy. The situation in Hong Kong, however, does not necessitate the implementation of a family planning program. Therefore, the Collection clearly stipulates that Hong Kong SAR residents have the right to raise a family freely.

IV. BROAD SAFEGUARDS

In addition to the explicit provisions enumerated above, the Draft Collection also contains the following four safeguards to guarantee the broad rights and freedoms enjoyed by Hong Kong SAR residents.

A. After enumerating various basic rights and freedoms enjoyed by Hong Kong SAR residents, chapter three goes on to provide that other rights and freedoms will be also be guaranteed. Although currently in Hong Kong there is no specific law on the rights and freedoms enjoyed by Hong Kong residents, these rights and freedoms are protected through the operation of many separate laws. These laws shall remain in force, save any that contravene the Basic Law and subject to any amendment by the Hong Kong SAR legislature. In addition, the Hong Kong SAR legislature may enact laws in accordance with the Basic Law to safeguard the rights and freedoms of Hong Kong residents.

B. The relevant provisions of The International Covenant On Civil And Political Rights¹³ and The International Covenant On Economic, Social and Cultural Rights¹⁴ which are applicable to Hong Kong shall be implemented through Hong Kong SAR legislation. The fourteen groups of rights and freedoms enumerated in the Basic Law already encompass the greater part of these two conventions. The relationship between these two conventions and the Basic Law is provided in principle in the Basic Law, so that the rights and freedoms of

12. *Id.*, art. 49.

13. 4 UN MONTHLY CHRONICLE, Feb. 1967, at 41-72.

14. *Id.*

Hong Kong SAR residents will have even broader and more comprehensive guarantees. Some people were of the opinion that these two conventions should be directly applied in their entirety to the Hong Kong SAR. However, this approach would not comport with the Joint Declaration or with the actual situation in Hong Kong. When Britain signed and ratified these two international conventions, it stated that these conventions would apply to Hong Kong, but with some reservation. Therefore, Annex I to the Joint Declaration clearly points out that the relevant provisions of these international conventions applicable to Hong Kong remain in effect.¹⁵ However, under Hong Kong's present legal system, these conventions are not self-executing, and can only be implemented through Hong Kong legislation.¹⁶ Therefore, the Basic Law stipulates that the relevant provisions of these two international conventions as applicable to Hong Kong can be implemented through Hong Kong SAR legislation.

C. Chapter three states that the rights and freedoms enjoyed by Hong Kong SAR residents may not be restricted except as provided by law. Such restrictions shall be limited to those that are necessary to safeguard national security, public order, safety, health and morals, and also to safeguard the rights and freedoms of other people. This provision was drafted with reference to the relevant provisions of the two international conventions mentioned above and the constitutions of various countries. According to this provision, the rights and freedoms of Hong Kong residents may be limited only by law. Were the Hong Kong SAR legislature ever to promulgate a law that would restrict existing freedoms, it would have to adhere to the following preconditions: it must be required to safeguard national security, public order, safety, health and morals, and also to safeguard the rights and freedoms of other people. This provision has great significance for the safeguarding of the rights and freedoms of Hong Kong SAR residents.

D. Chapter three stipulates that all residents of Hong Kong shall be equal before the law regardless of nationality, race, ethnic origin, native tongue, sex, occupation, religious beliefs, political views, level of education, or financial condition. At the outset, this provision emphasizes that residents of all nationalities will be equal before the law. This was mentioned first due to the special character of Hong Kong as a place of residence of people of various nationalities. Equality before the law in this context refers to the application and obser-

15. Joint Declaration, *supra* note 4, Annex I, art. XI.

16. Address by the UK representative to the UN Commission on Human Rights (1978).

vance of laws, not to legislation itself. In legislation, different laws may be established and different provisions made in different situations and for different people. Once a law is established, however, it shall be applied evenhandedly. Before the law, no resident shall enjoy special privileges and none shall be discriminated against.

The above mentioned rights and freedoms apply to Hong Kong residents. As mentioned earlier, chapter three has a specific provision which clearly states that all of these rights may be enjoyed by non-residents in the Hong Kong SAR, except certain ones which only Hong Kong residents may enjoy. Therefore, the scope of rights enjoyed by non-residents in the Hong Kong SAR is quite broad.

Beyond the above mentioned rights and freedoms, chapter three goes on to provide that the lawful and traditional rights and interest of original residents of the New Territories shall be protected. Among the rights and freedoms of Hong Kong residents, the present Hong Kong law stipulates that, with regard to the special circumstances in the New Territories, original residents of the New Territories enjoy certain lawful and traditional rights. Annex III of the Joint Declaration concerns land leases, and provides that: in the case of old schedule lots, village lots, small houses and similar rural holdings, where the property was on June 30, 1984 held by, or, in the case of small houses granted after that date, the property is granted to a person descended through the male line from a person who was, in 1898, a resident of an established village in Hong Kong, the rent shall remain unchanged so long as the property is held by that person or by one of his lawful successors in the male line.¹⁷ This provision is also contained in chapter five of the Collection (The Economic System of the Hong Kong SAR). The Basic Law protection of the lawful and traditional rights and interests of residents of the New Territories will help increase Hong Kong's unity, stability and prosperity.

In conclusion, the provisions of the Collection on the rights and freedoms of residents and non-residents in the Hong Kong SAR are embodied in the concept of "one country, two systems," and are in keeping with the actual situation in Hong Kong. These provisions have great significance for the safeguarding of China's sovereignty and territorial integrity, and for maintaining Hong Kong's stability and prosperity.

17. Joint Declaration, *supra* note 4, Annex III.