

Submissions of Asian Academy of International Law to UPR Working Group  
on the Independence of Judiciary under “One Country, Two Systems”

1. The Basic Law of the Hong Kong SAR provides for the constitutional legal basis upon which the common law system is maintained in the Hong Kong SAR. This marks the uniqueness of the Hong Kong SAR in that it is the only jurisdiction in China to practise common law.
2. The Basic Law not only provides for transition of the common law to the newly established SAR, it confers on the SAR an independent judicial power, including the power of final adjudication. Thus, the judiciary of the Hong Kong SAR retains the final say on cases that come within its jurisdiction.
3. Recognizing the fact that the Hong Kong SAR is a small common law jurisdiction, the Basic Law expressly provides that judges may refer to the case law of other common law jurisdictions. In addition, the Basic Law also permits foreign common law judges to sit on the Court of Final Appeal and it also provides that judges may be recruited from other common law jurisdictions.
4. Judicial independence is the cornerstone of the rule of law. On that, the Basic Law expressly provides that judges are to exercise powers independently free from any interference. Judicial immunity is provided

for under the Basic Law. In terms of judicial appointments, they are done by the Chief Executive on the recommendation of an independent commission composed of judges, legal practitioners and other eminent persons. Judicial appointments are permanent and judges can only be removed for inability to discharge duties or misbehavior.

5. The Hong Kong SAR treasures judicial independence that has been jealously guarded since its establishment. Currently, there are 15 non-permanent judges of the Court of Final Appeal, 11 of them come from overseas jurisdictions namely the UK, Australia and Canada. The mechanism permitting foreign judges to be an indispensable part of the judiciary puts beyond doubt the confidence and commitment in maintaining judicial independence. Those non-permanent judges, together with other local judges, discharge their judicial duties diligently and independently.
6. In the 2022 World Justice Project Rule of Law Index, the overall ranking of the Hong Kong SAR remains high in the index, attaining the 6<sup>th</sup> in East Asia and the Pacific, and 22<sup>nd</sup> out of 140 countries and jurisdictions. In addition, the SAR has all along been one of the top 5 popular seats for arbitration according to the International Arbitration Surveys of the Queen Mary University. These achievements could not have been possible without a strong and independent judiciary.

7. Unfortunately, the SAR's judiciary has been experiencing threats seeking to undermine its independence: it is reported that two British non-permanent judges were forced to resign under pressure from their home jurisdiction, and that some foreign politicians saw fit to threaten imposing sanctions on, among others, judges of the SAR. These attacks are met with steadfast and united rebuke not only by the judiciary but also the two legal professions and the SAR Government. Despite all these challenges, it is proud to say that all remaining judges remain committed to their roles and duties and their work is supported by the two independent legal professions (the Bar and the Law Society).
8. Recently, there have also been (unfounded) criticism against the independence of the judiciary. However, when one looks closer to the "criticism", it is nothing more than bias and misconceptions. Judges are to decide the cases in hand without fear or favor in accordance with the laws and procedures in force. The fact that one does not like the outcome of a case cannot by itself be regarded as a signal of failure of the system.
9. To conclude, judicial independence has been, and remains, one of the most important core values maintained by the Hong Kong SAR. It is not just supported by the constitutional framework but also fiercely guarded in practice.