國民教育暨「公民、經濟與社會」教師培訓知識增益研討會系列
National Education Cum "Citizenship, Economics and Society" Teacher Training Knowledge Enrichment Seminar Series

(1) 從《憲法》和《基本法》認識權利與義務
(1) Understanding Rights and Duties through the Constitution and the Basic Law

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今日分享的課題是「從中國的《憲法》與《中華人民共和國香港特別行政區基本法》（《基本法》）的角度看香港居民的基本權利和義務」。基本上，這個題目亦可以表述為「基本權利和義務與國際人權公約在香港的適用」。

Today's topic is "The Basic Rights and Duties of Hong Kong Residents from the Perspective of the *Constitution of the People's Republic of China* (the *Constitution*) and the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* (the *Basic Law*)". In essence, this topic can also be understood as "Basic Rights and Duties and the Application of International Human Rights Conventions in Hong Kong."

首先是介紹《憲法》的基本概念，包括中國《憲法》對於公民的權利與義務的規定。內容會涉及基本權利，及與其相關的人權這兩個法律概念。然後，會進一步了解中國《憲法》第二章內關於中國公民的基本權利與義務的規定。接著，再看《中華人民共和國香港特別行政區基本法》內關於香港居民的權利與義務的規定，以及相關的法治原則，包括在香港特別行政區實行的「普通法制度」如何理解「法治」這個觀念。此外，亦會提及與人權有關的國際條約或公約在香港特別行政區的實施，包括一些國際性的人權公約和國際性的勞工公約，亦包括《消除對婦女一切形式歧視公約》、《消除一切形式種族歧視國際公約》、《殘疾人權利公約》，以及《兒童權利公約》。其中會集中論述《消除對婦女一切形式歧視公約》和《兒童權利公約》兩項公約，從而讓大家了解這類國際性的、與人權相關的公約如何適用於香港和在香港實施。

First, the basic concepts of the *Constitution* will be introduced, including the provisions of the *Constitution* on the rights and obligations of citizens. The content will cover basic rights and the related legal concept of human rights. Then, we will understand the provisions in Chapter 2 of the *Constitution* regarding the basic rights and obligations of Chinese citizens. Next, we will look at the provisions in the *Basic Law* regarding the rights and duties of Hong Kong residents, as well as relevant principles of the "rule of law", including understanding the concept of "rule of law" in the context of the "common law system" implemented in the Hong Kong Special Administrative Region. Besides, the implementation of international treaties or conventions related to human rights in the Hong Kong Special Administrative Region will be mentioned, including some international human rights conventions and international labour conventions, as well as the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), the *International Convention on* the *Elimination of All Forms of Racial Discrimination* (ICERD), the *Convention on the Rights of Persons with Disabilities*, and the *Convention on the Rights of the Child*. Among these conventions, we shall focus on discussing CEDAW and the *Convention on the Rights of the Child* in order to help everyone understand how such international human rights-related conventions are applicable and implemented in Hong Kong.

公法和私法
Public Law and Private Law

首先介紹「憲法」的概念。「憲法」是整個法律體系中，不同部份的其中一環。要了解「憲法」，需要先了解甚麼是「法律」。不同國家都有屬於自己的法律制度，通常由該國的立法機關負責制定，然後由行政機關（即其政府）負責執行。由司法機關（即法院）負責審理案件或處理法律上的爭議。提到「法律」，它又可以區分為「公法」和「私法」。

The first to be introduced is the concept of "constitution". The "constitution" is one part of the entire legal system. To understand the "constitution", it is necessary to first understand the concept of "law". Different countries have their own legal systems, which are usually formulated by their legislative bodies and enforced by their executive branches, that is, their governments. The judicial branches, that is, their courts, are responsible for adjudicating cases or resolving legal disputes. When it comes to "law", it can be further divided into "public law" and "private law".

「公法」是有關政府權力，以及政府與人民關係的法律；「私法」就是對社會各種活動進行規範的法律，例如「合同法」、「財產法」等。「公法」最核心、最基礎的部份就是「憲法」。除了「憲法」之外，「公法」亦包括「行政法」。

例如在香港，我們常常聽到有人對於政府的措施提出司法覆核，即是要求法院去審查政府的措施是否合法，還是屬於越權。

"Public law" is the law related to government power and the relationship between the government and the people; while "private law" regulates various social activities, such as the "contract law", the "property law", etc. The core and fundamental part of "public law" is the "constitution". In addition to the "constitution", "public law" includes administrative law. For example, in Hong Kong, we often hear about people filing judicial review against government measures, seeking the court's examination of whether the government's measures are lawful or constitute an abuse of power.

刑法和民商法
Criminal Law and Civil and Commercial Law

另外，「刑法」也是法律的重要部份。法庭審判的案件，通常可以區分為「刑事案件」和「民事案件」。「刑事案件」就是政府或律政司向有關涉嫌犯法的人士提出檢控，然後交由法院審理，判決該被告人是否有罪。如果被告人被判有罪，法院會對其施以某些懲罰。

In addition, "criminal law" is an important part of the law. The court cases are usually classified as "criminal cases" and "civil cases". "Criminal cases" refer to cases in which the government or the prosecutor's office brings charges against individuals suspected of violating the law, and then submits them to the court for trial, to determine whether the accused is guilty or not. If the accused is found guilty, the court will impose certain punishments.

除了「刑法」之外，另一個重要的法律部份就是「民商法」。剛才提到的「合同法」、「財產法」等，都是「民商法」的範圍。香港是一個國際金融貿易中心，「民商法」對香港的經濟運作特別重要，如「公司法」、「銀行法」、一些規範證券市場（關於股票交易、公司上市）的法律等，均屬於「民商法」的範疇。

In addition to "criminal law", another important part of the law is "civil and commercial law". The "contract law" and "property law" mentioned earlier fall within the scope of "civil and commercial law". Hong Kong is an international financial and trading centre. "Civil and commercial law" is especially important to Hong Kong's economic operation. Laws such as the "companies ordinance", the "banking ordinance", and regulations governing the securities market, such as stock trading and company listings, are all within the scope of "civil and commercial law".

憲法的功能
Functions of the constitution

「憲法」作為一個特別的法律部份，它有甚麼功能或意義呢？「憲法」通常是一個國家的法律制度裏最基礎、最核心的法律。現今世界上有 190 多個國家，絕大部分國家都有自己本國的成文憲法。「成文憲法」是一部法律文件，稱為該國家的「憲法」。全球只有極少數國家沒有成文憲法，例如英國並沒有一部法律文件把其憲法完整地寫出來。但世界上很多其他國家都有成文憲法，如美國有《美國憲法》、我國有《中華人民共和國憲法》、法國有《法國憲法》、日本有《日本憲法》等。憲法的內容規範了一個國家的政治體制，以及這個國家公民的基本權利。有些國家的憲法亦會規定其公民的基本義務；而有些國家的憲法則會談及其建國目標和社會、經濟等各方面的政策。例如中國《憲法》便提及到中國的政治體制、中國公民的基本權利與義務、中華人民共和國建國的目標，以及一些基本的國策和社會、經濟等各方面的政策。上面提到一個國家的政治體制，這涉及到其行政、立法和司法機關如何產生、有甚麼權力、相互關係如何，以及各機關如何運作等。

As a special part of the law, what are the functions or significance of the "constitution"? The "constitution" is usually the most fundamental and core part of a country's legal system. Today, there are over 190 countries in the world, and the vast majority of them have their own written constitutions. A "written constitution" is a legal document called the "constitution" of the country concerned. Only a few countries in the world do not have a written constitution. For example, the United Kingdom does not have a single legal document that fully codifies its constitution. However, many other countries in the world have written constitutions, such as the United States has the *U.S. Constitution*, China has the *Constitution of the People's Republic of China*, France has the *French Constitution*, Japan has the *Japanese Constitution*, and so on. The content of a constitution regulates a country's political system, and the basic rights of its citizens. In some countries, the constitution also specifies the basic duties of its citizens. While in other countries, the constitution may address the founding goals of the country and various policies related to society, the economy, and other aspects. For example, the *Constitution* of China mentions the political system of China, the basic rights and obligations of Chinese citizens, the founding goals of the People's Republic of China, and some basic national policies related to society, the economy, and other aspects. As for the political system of a country, it involves how its executive, legislative and judicial branches are formed, what powers they have, their interrelationships, and how they operate.

憲法與公民
Constitution and Citizens

「憲法」是一個國家的最高法律，而「國家」是由這個國家的「公民」組成的，「公民」和「憲法」這兩個概念有著相當密切的關係。一個國家好比一個超級大型的社團。例如一個工會就是一個社團，負責承辦或者管理學校的是一個社團，公司亦是一個社團。每個社團都有其成員。譬如公司作為一個社團，其成員便是公司的股東。又譬如學校學生會是一個社團，其成員便是學校的學生。每個社團都有其管理架構，例如一個社團可能有理事會、執行委員會，或者幹事會。國家作為一個大型的「社團」亦有其管理架構，政府便是負責管理國家這個大型社團的機構或組織。至於國家的成員，就稱為國家的公民。而「憲法」則可以理解爲這個國家與其成員之間的社會契約，相當於一個合同，它釐定國家的政府具備甚麼功能、國家根據甚麼條款和原則組成、公民與公民之間的關係、公民與政府之間的關係、政府的權力有多大、政府如何運作，以及公民有甚麼權利和義務等。這些都是憲法會規範的基本內容。憲法對於公民的重要性，可以從個人由一個國家移民到另一個國家時反映出來。如果某人移居到另一國家，當入籍成為該國公民時，該國通常會要求申請入籍的人士要認識該國的憲法，甚至要求他宣誓效忠該國的憲法。

A “constitution” is the supreme law of a country, and the “nation” (or the “State”) is composed of the “citizens” of the country. The concepts of “citizens” and “constitution” are closely related. A country is like a super-large social organisation. For example, a trade union is an organisation; the entity responsible for running or managing a school is an organisation; and a company is also an organization. Each organisation has its members. For example, as an organisation, a company’s members are its shareholders. Similarly, in the case of a student union, its members are the students of the school. Each organisation has its management structure, such as a board of directors, an executive committee, or a council. As a large-scale organisation, a country also has its management structure. The government is the institution or organisation responsible for governing a country. As for the members of a country, they are called citizens of the country. A “constitution” can be understood as the social contract between the members of the country; it is equivalent to a contract. It establishes what functions the government of the country has, and the terms and principles on the basis of which the country is formed, the relationship between citizens, the relationships between citizens and the government, how much power the government has, how the government operates, and the rights and obligations of citizens, etc. These are the basic contents regulated by a constitution. The importance of a constitution to citizens can be reflected when individuals migrate from one country to another. When someone becomes a citizen of another country through migration, the receiving country usually requires the applicant to have an understanding of the country’s constitution and even requires the applicant to pledge allegiance to the country’s constitution.

中國《憲法》的歷史
The History of China's "*Constitution*"

「憲法」是現代的產物，在古代，無論西方或者中國，都沒有「憲法」（英文稱為 *Constitution*）這類文件。及至清末，當時的西方國家已經各自制訂屬於自己的憲法，而中國則有一場「立憲運動」。但這場「立憲運動」並沒有成功，因為清政府於 1911 年被推翻，中華民國成立。民國時期曾有幾部《中華民國憲法》相繼制定，惟礙於政局，譬如北洋政府時期，軍閥混戰，最终沒有一部《憲法》得到有效的實施，一直到抗戰勝利之後，國民政府於 1946 年在南京制定了一部《中華民國憲法》。然而，這部憲法因國民政府在立憲後不久便遷往臺灣，並沒有在中國大陸實施。

"Constitution" is a modern product. In ancient times, whether in the West or in China, there were no documents called a "constitution". Towards the end of the Qing Dynasty, Western countries had already established their constitutions, while China experienced a constitutional movement. However, this constitutional movement was not successful because the Qing government was overthrown in 1911, leading to the establishment of the Republic of China. During the Republic of China era, several "*Constitutions of the Republic of China*" were enacted. However, due to political instability, such as during the Beiyang government period marked by warlord conflicts, none of these constitutions were effectively implemented. It was not until after the victory in the War of Resistance against Japanese Aggression that the Nationalist Government, in 1946, adopted the "*Constitution of the Republic of China*" in Nanjing. However, shortly after the promulgation of the constitution, the People's Republic of China (PRC) was established. This constitution was not implemented on the Chinese Mainland.

中華人民共和國於 1949 年成立，當時有一部臨時憲法，即《中國人民政治協商會議共同綱領》。1954 年，全國人民代表大會制定中華人民共和國第一部《憲法》。至此以後，中華人民共和國憲法史上，還有另外三部《憲法》，包括 1975 年所謂「文革時期」的一部《憲法》；1978 年「文革」結束後，又制定一部新的《憲法》；然後到 1982 年鄧小平「改革開放」路線在中華人民共和國開始全面實施後，亦制定了一部新的《憲法》。

The People's Republic of China was established in 1949, and at that time, there was a provisional constitution known as the *Common Programme of the Chinese People's Political Consultative Conference*. In 1954, the first *Constitution of the People's Republic of China* was enacted by the National People's Congress. Since then, there have been three other versions of the *Constitution* in the history of the *Constitution of the People's Republic of China*, including the version in the so-called "Cultural

Revolution period" in 1975; another version in 1978 after the end of the "Cultural Revolution"; and a new version of the *Constitution* in 1982 after Deng Xiaoping's "Reform and Opening-up" policy began to be fully implemented in the People's Republic of China.

1982 年 12 月 4 日通過的《憲法》，即是現行《憲法》。這部《憲法》經歷過五次修訂，分別是 1988 年、1993 年、1999 年、2004 年及 2018 年。由於這部《憲法》於 1982 年 12 月 4 日通過，所以現時 12 月 4 日定為「國家憲法日」。香港在「國家憲法日」會有相關活動推廣《憲法》的內容，以及慶祝《憲法》的制定。香港根據《基本法》實行「一國兩制」，而「一國兩制」的憲制基礎，則來自這部 1982 年的《憲法》，當中《憲法》第三十一條規定：「國家在必要時得設立特別行政區。在特別行政區內實行的制度按照具體情況由全國人民代表大會以法律規定」。「香港特別行政區」是根據《憲法》第三十一條而設立，「香港特別行政區」的憲制基礎及法理基礎，是由《憲法》和《基本法》共同構成。

The current *Constitution* is the one that was adopted on 4 December, 1982. The *Constitution* has undergone five revisions, in 1988, 1993, 1999, 2004 and 2018. As the *Constitution* was adopted on 4 December, 1982, the date is now designated as "Constitution Day". On "Constitution Day" every year, there are activities in Hong Kong to promote the content of the *Constitution* and to celebrate its enactment. Hong Kong implements "one country, two systems" under the *Basic Law*, and the constitutional basis of "one country, two systems" comes from the *Constitution* (adopted in 1982). Article 31 of the *Constitution* stipulates that "the state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of the specific conditions". The "Hong Kong Special Administrative Region" was established in accordance with Article 31 of the *Constitution*. The constitutional and legal foundation of the "Hong Kong Special Administrative Region" is constituted by both the *Constitution* and the *Basic Law*.

香港特別行政區的憲制或法理基礎
The Constitutional or Legal basis of the Hong Kong Special Administrative Region

正因為《憲法》和《基本法》兩者共同構成香港特別行政區憲制或法理基礎，我們不能夠只看《基本法》而不看《憲法》。中國《憲法》的〈序言〉，是《憲法》的一個重要部分：這部序言是關於中國近代史、中華人民共和國建國過程和目標，以及當前國家的根本任務、一些基本的價值取向和指導思想等。

Because both the *Constitution* and the *Basic Law* jointly constitute the constitutional or legal basis of the Hong Kong Special Administrative Region, we

cannot only focus on the *Basic Law* without making reference to the *Constitution*. The "Preamble" of the *Constitution* is an important part of the *Constitution*. The Preamble is about modern Chinese history, the process and goals of the founding of the People's Republic of China, the fundamental tasks of the country, its basic orientations, and guiding ideology, etc.

《憲法》的〈序言〉之後，是第一章〈總綱〉，講述一些基本制度、基本原則、基本國策等。第二章是〈公民的基本權利和義務〉。第三章是〈國家機構〉，內容包括中國的權力機關（立法機關）、行政機關、司法機關等，以及全國人民代表大會或地方人民代表大會如何產生，又具有甚麼權力。最後，《憲法》第四章比較簡短，內容是關於中國的國旗、國歌、國徽和首都。

After the "Preamble" of the *Constitution*, Chapter One "General Principles" discusses some basic systems, principles, and national policies. Chapter Two is "Fundamental Rights and Obligations of Citizens". Chapter Three "State Institutions" includes China's power organ (legislative organ), executive, and judicial organs, etc., and how the National People's Congress or local People's Congresses are formed and their powers and functions. Finally, Chapter Four of the *Constitution* is relatively brief. Its content is about China's national flag, national anthem, national emblem, and the capital.

「人權」概念的興起
The Rise of the Concept of "Human Rights"

為甚麼世界各地的憲法都會規定公民的基本權利與義務呢？這是由於「人權」概念的興起，其實《憲法》內提及的「公民權利」包括公民的人權。要了解關於基本權利的規定，首先要追溯人權思想的興起。人權思想是現代的產物，在古代西方或者中國都沒有人權這個概念。人權概念的出現，可以追溯到 18 世紀。美國在獨立之前，是十三個位於北美洲的英屬殖民地，它們宣告脫離英國獨立，發表了《美國獨立宣言》，裏面提到「人人生而平等，造物主賦予他們若干不可剝奪的權利，其中包括生命權、自由權和追求幸福的權利」。這些「天賦權力」就是現代的「人權」概念。《美國獨立宣言》亦提到政府成立的目的，在於保障這些權利，這個是一個很重要的概念：國家或政府的成立的目標或使命，就是要保障公民的權利。另一邊廂的歐洲，法國於 1789 年法國大革命，制定了《人權和公民權利宣言》，提到人權「是自然的和不可動搖的權利」。人權的概念大致上可以追溯到這兩份文件。

Why do constitutions around the world all stipulate the basic rights and duties of citizens? This is due to the rise of the concept of human rights. In fact, the "rights of citizens" mentioned in the *Constitution* include to human rights. To understand the

provisions regarding basic rights, we need to trace the emergence of the concept of human rights. “Human rights” is a modern concept. There was no such concept in ancient Western or Chinese societies. The concept of human rights can be traced back to the 18th century. Before its independence, the United States was made up of thirteen British colonies in North America. They declared their independence from Britain and issued the “Declaration of Independence” which states that “all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.” These “unalienable rights” form the basis of the modern concept of “human rights”. The “Declaration of Independence” also mentions that the purpose of establishing government is to safeguard these rights. This is a very important concept: the purpose or mission for the establishment of a state or government is to protect the rights of citizens. On the other side, in Europe, France formulated the “Declaration of the Rights of Man and of the Citizen” during the French Revolution in 1789, which states that human rights are “natural and imprescriptible rights”. The concept of human rights can be largely traced back to these two documents.

在 19 世紀，除了沒有成文憲法的英國之外，其他歐洲國家相繼制定憲法，而且在憲法之中，承諾政府會保障國家公民的人權。當今世界各國的憲法都有關於公民權利的一些規定，很多國家的憲法同時規定公民的義務，至於沒有規定公民義務的國家，不表示公民沒有義務，只不過這些義務並沒有在憲法裏面規定，而是透過法律去規定。

In the 19th century, apart from Britain which did not have a written constitution, other European countries began enacting constitutions that promised to safeguard the human rights of their citizens. In today’s world, the constitutions of almost all countries have provisions regarding the rights of citizens. Many countries have included provisions regarding the obligations of citizens. In countries where obligations of citizens are not stipulated in the constitution, this does not mean that citizens have no obligations. It simply means that these obligations are not stipulated in the constitution but are instead regulated through laws.

第二次世界大戰之後，基於對戰時暴行的反省，世界各國形成了尊重與保障人權的共識。自此，人權的保障不單出現於各國憲法的層次，而且被提升至國際法的層次。國際社會訂立了一些關於人權保障的文件，這些文件的雛形便是 1945 年的《聯合國憲章》。

After the Second World War, reflecting upon the atrocities committed during the war, countries around the world formed a consensus on respecting and safeguarding human rights. Since then, the protection of human rights has not only been incorporated into national constitutions but has been elevated to the level of international law. The

international community has established some documents on the protection of human rights, and the prototype of these documents is the *United Nations Charter* of 1945.

今天，聯合國成員國共 190 多個國家，按照國際法都有義務遵守《聯合國憲章》。《聯合國憲章》於 1945 年制定的時候，提到需要保障及尊重基本人權、人格尊嚴和價值，各國應該促進全體人類之人權及基本自由之普遍尊重與遵守。由此可見，人權概念是基於對人格尊嚴和價值的尊重和重視，由於每個人都有自己的人格尊嚴和無上的價值，每個人都享有這些基本人權。人權與自由有著非常密切的關係，不少人權包含著自由的權利，而某些自由的權利也包含著人權。

Today, there are more than 190 member states of the United Nations. According to international law, they all have the obligation to abide by the *United Nations Charter*. When the *United Nations Charter* was established in 1945, it mentioned the need to protect and respect basic human rights, human dignity, and values, and that all countries should promote the universal respect and observance of human rights and fundamental freedoms for all. From this, it is evident that the concept of human rights is based on respect for human beings with emphasis placed on human dignity and human values. Since all individuals have their own human dignity and supreme value, they are all entitled to these basic human rights. Human rights are closely related to freedom (or liberty), as the rights to freedom are included in many human rights, and human rights are also included in many rights to freedom.

「人權」概念的演進
The Evolution of the Concept of "Human Rights"

1948 年，聯合國通過《世界人權宣言》，它比《聯合國憲章》更詳細列出哪些是我們需要尊重和需要承認的人權，即人權包括甚麼，或人權的內容。從 1948 年起至今，人權思想經歷了一個演進的過程。

In 1948, the United Nations adopted the *Universal Declaration of Human Rights*. Compared with the *United Nations Charter,* it provides a more detailed list of the human rights that we need to respect and recognize, including what human rights are and their content. Since 1948, the concept of human rights has undergone an evolutionary process.

「第一代人權」在 18 世紀法國大革命、美國獨立的時候已經予以承認。現在稱為「第一代人權」，例如人身自由、不受酷刑對待、言論自由、參政權和選舉權等。這些所謂「第一代人權」，亦即是現今的公民權利和政治權利。稍後會在《公民和政治權利的國際公約》詳細論述。

The “first generation of human rights” were recognised during the French Revolution and the American Independence in the 18th century. They are now called the “first generation of human rights”, including freedom of the person, freedom from torture, freedom of speech, the right to participate in politics, and the right to vote. These so-called “first generation human rights” are called civil and political rights today. They will be elaborated in the part of this talk on the *International Covenant on Civil and Political Rights*.

「第二代人權」是社會主義國家興起之後較受重視和強調的。「第二代人權」，主要是經濟、社會和文化方面的權利。《經濟、社會與文化權利國際公約》就是關於所謂「第二代人權」，包括工作的權利、享有合理工資的權利、組織工會的權利，以及享有醫療、教育和社會保障的權利等。「第二代人權」的特點就是要求政府向公民提供服務，例如政府向公民提供社會保障，或者向沒有能力負擔有關費用的公民提供醫療或者教育方面的服務和機會。

The “second generation of human rights” received more attention and emphasis after the rise of socialist countries. The “second generation of human rights” mainly include economic, social, and cultural rights. The *International Covenant on Economic, Social and Cultural Rights* belongs to the “second generation of human rights”, which includes the right to work, the right to receive a reasonable wage for work, the right to form trade unions, and the right to enjoy healthcare, education, and social security. The characteristic of the “second generation of human rights” is the demand for the government to provide services to citizens, such as the provision of social security, or the provision of healthcare and education services and opportunities to citizens who are unable to afford them.

第二次世界大戰後，隨著一些西方國家在亞洲和非洲的殖民地相繼獨立，出現了「第三代人權」的思想，例如「民族自決權」。「民族自決權」是指一些以往的殖民地有權脫離殖民統治，而建立自己的國家。二次大戰前，近乎全非洲都是西方國家的殖民地；即使亞洲亦大部分如是，例如印尼曾是荷蘭的殖民地，現在的中南半島曾是法國的殖民地，還有現在的馬來西亞和新加坡曾是英國的殖民地等。

After the Second World War, with the successive independence of colonies of Western countries in Asia and Africa, the concept of the “third generation of human rights” emerged, such as the “right to self-determination”. The “right to self-determination” refers to the right of former colonies to break away from colonial rule and establish their own nations. Before the Second World War, almost the entire Africa was colonized by Western countries; and the same was true for parts of Asia. For instance, Indonesia was once a Dutch colony, the Indochinese Peninsula was once a

French colony, and Malaysia and Singapore were once British colonies.

除了「民族自決權」外，「第三代人權」亦包括「經濟發展權」與「和平權」，以及比較新的「享有環境保護」的權利等。眾所周知，世界各國可以分為較富裕、工業化發達國家，以及比較貧窮、發展中國家。對於發展中國家來說，經濟發展權作為「第三代人權」是比較重要的。

In addition to the right to self-determination, the "third generation of human rights" also include the "right to economic development", the "right to peace", and the relatively new "right to environmental protection". It is widely recognised that countries around the world can be divided into relatively wealthy, industrialised developed countries, as well as relatively poor, developing countries. For developing countries, the right to economic development as one of the "third generation of human rights" is relatively important.

中國《憲法》的公民的基本權利和義務
The Basic Rights and Obligations of Citizens in the Chinese *Constitution*

中國《憲法》第二章是有關保障公民的基本權利和義務。1954 年制定的第一部《憲法》，把公民的基本權利和義務放在第三章，當時第二章是關於國家的機關。1982 年全面修憲時，當時的學者和參與修憲人士提議，將公民的基本權利和義務放於第二章，即是在國家機關之前的一章。因為他們認為公民基本權利和義務在國家裏處於一個核心的地位，政府成立和政府存在的目的，在一定程度上是為了保障公民的基本權利，以及保證公民履行他們的義務，正因為公民的基本權利和義務是非常重要，所以把它從第三章提前放在第二章。第二章的第一條，即《憲法》第三十三條指出：「凡具有中華人民共和國國籍的人都是中華人民共和國公民。中華人民共和國公民在法律面前一律平等。國家尊重和保障人權。任何公民享有憲法和法律規定的權利，同時必須履行憲法和法律規定的義務。」

Chapter 2 of the *Constitution* is about safeguarding the basic rights and obligations of citizens. The first *Constitution* enacted in 1954 placed the basic rights and obligations of citizens in Chapter 3, with Chapter 2 being about the state's organs. When the *Constitution* was comprehensively revised in 1982, scholars and people participating in the amendment of the *Constitution* suggested that the basic rights and obligations of citizens be placed in Chapter 2, before the chapter on the state's organs. This was suggested because they believed that the basic rights and obligations of citizens have a central position within the state. The purposes of the establishment and existence of the government, to a certain extent, are to safeguard the basic rights of citizens and ensure that citizens fulfil their obligations. Due to the importance of citizens' basic rights and obligations, their respective contents were moved from Chapter 3 to Chapter 2. The

first article of Chapter 2, that is, Article 33 of the *Constitution*, states that "all persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China. All citizens of the People's Republic of China are equal before the law. The state shall respect and protect human rights. Every citizen shall enjoy the rights prescribed by the Constitution and the law and must fulfill the obligations prescribed by the Constitution and the law."

《憲法》第三十三條可算是第二章中最重要的一條，因為它定義了中國公民：「凡具有中華人民共和國國籍的人都是中華人民共和國公民」。就香港來說，《基本法》並沒有規定誰是中國公民，因為中國公民的身份是按照《中華人民共和國國籍法》來決定，並非按照《基本法》決定。《基本法》只是規定誰是香港特別行政區永久性居民。香港特別行政區永久性居民其實分為兩種，一種是具有中國國籍的永久性居民，另外一種就是具有外國國籍的永久性居民。

Article 33 of the *Constitution* can be considered the most important article in Chapter 2, as it defines Chinese citizens: "All persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China". With respect to Hong Kong, the *Basic Law* does not define who is a Chinese citizen, as Chinese citizenship is determined according to the *Nationality Law of the People's Republic of China*, rather than the *Basic Law*. The *Basic Law* only defines who is a permanent resident of the Hong Kong Special Administrative Region (HKSAR). Permanent residents of the HKSAR fall into two categories: those who hold Chinese nationality and those who hold foreign nationality.

例如一些在香港工作的外籍人士（《入境條例》第 2(4)條提及的家庭傭工和若干其他職業類別外籍傭工除外），當他們在香港居住和工作滿 7 年之後，就可以申請成為香港特別行政區永久性居民，但他們仍然保留他們的外國國籍。根據《中華人民共和國國籍法》，在香港出生的華裔人士都是中國公民。無論他在回歸之前或之後出生，他都是中國公民，這些中國公民絕大部分亦是香港特別行政區永久性居民。

For example, some foreign nationals working in Hong Kong (excluding domestic helpers and certain other categories of foreign workers provided for in Section 2(4) of the Immigration Ordinance) can apply to become permanent residents of the HKSAR after residing and working in Hong Kong for seven years. However, they still retain their foreign nationality. According to the Nationality Law of the People's Republic of China, persons of Chinese ethnicity born in Hong Kong are Chinese citizens. Regardless of whether they were born before or after the handover, they are Chinese citizens, and the majority of these Chinese citizens are also permanent residents of the HKSAR.

除了基本人權外，《憲法》第三十三條亦同時規定權利與義務的相應性原則，即是不能只著重公民的權利，亦要留意公民相應的義務。他們的義務主要是履行《憲法》和法律規定的義務。在權利與義務相應的原則下，相關的第二章第五十一條指出：「中華人民共和國公民在行使自由和權利的時候，不得損害國家的、社會的、集體的利益和其他公民的合法的自由和權利」。故此，我們有個人的自由與權利，同時亦要顧及國家社會和集體的利益，及其他公民合法的自由與權利，這些都需要達到一個平衡。

In addition to providing for fundamental human rights, Article 33 of the *Constitution* also sets out the principle of the correspondence of the rights and the duties of citizens. This means that the focus should not only be on the rights of citizens, but also on their corresponding obligations. Their obligations primarily involve fulfilling the obligations of the *Constitution* and laws. Under the principle of corresponding rights and duties, Article 51 of Chapter 2 states that "when exercising their freedoms and rights, citizens of the People's Republic of China shall not undermine the interests of the state, society or collectives, or infringe upon the lawful freedoms and rights of other citizens". Therefore, while we have personal freedoms and rights, we must also consider the interests of the state, society, and collectives, as well as the lawful freedoms and rights of other citizens, in order to achieve a balance.

《憲法》列出多種公民義務，其中《憲法》第五十二條和五十四條與香港特別行政區有比較密切的關係。中國是一個多民族的國家，有五十六個民族。第五十二條指出：「中華人民共和國公民有維護國家統一和全國各民族團結的義務」。《憲法》第五十四條指出：「中華人民共和國公民有維護祖國的安全、榮譽和利益的義務，不得有危害祖國的安全、榮譽和利益的行為」。現行的《香港國安法》，便是體現了《憲法》第五十二條和五十四條的公民義務。

The *Constitution* lists various civic obligations, among which Articles 52 and 54 of the *Constitution* have a closer relationship with the HKSAR. China is a multi-ethnic country with 56 ethnic groups. Article 52 states: "Citizens of the Republic of China shall have the obligation to safeguard national unity and the solidarity of all the country's ethnic groups". Article 54 of the *Constitution* states: "Citizens of the People's Republic of China shall have the obligation to safeguard the security, honor and interests of the motherland; they must not behave in any way that endangers the motherland's security, honor and interests". The *Hong Kong National Security Law* embodies the civic obligations outlined in Articles 52 and 54 of the *Constitution*.

中國公民的基本權利有哪些種類？中國公民「在法律面前一律平等」的權利，可見於第三十三條；政治權利與自由，包括選舉權、言論集會結社等權利，可見

於第三十四和第三十五條。第三十七條確立「人身自由」，即不可以隨便剝奪個人的人身自由，例如要拘捕或逮捕某人，是需要經過法定的程序。第三十六條規定了宗教信仰的自由；文化和教育方面的權利，可見於第四十六和第四十七條。關於社會和經濟方面的權利，可見於第四十二、第四十三、第四十四和第四十五條。對於政府的「監督權」，以及對政府提出申訴的權利，包括訴訟權利，載於第四十一條；另外，婦女或者兒童作為特定主體，他們的權利亦於《憲法》第四十八、第四十九和第五十條有所規定。值得留意的是，當我們談及「權利」時，這些「權利」並不是絕對或無限的。

What are the types of basic rights for Chinese citizens? The "right to equality before the law" for Chinese citizens can be seen in Article 33. Political rights and freedoms, including the right to vote, freedom of speech, assembly and association, can be found in Articles 34 and 35. Article 37 establishes "freedom of the person", which means that freedom of the person cannot be arbitrarily deprived of. For example, the arrest or detention of an individual must be carried out according to legal procedures. Article 36 provides for the freedom of religious belief. Rights related to culture and education can be found in Articles 46 and 47. Social and economic rights can be found in Articles 42, 43, 44 and 45. The right of citizens to supervise the government, as well as the right to file complaints, including the right to make charges, are provided in Article 41. In addition, the rights of women or children as specific subjects are also stipulated in Articles 48, 49 and 50 of the *Constitution*. It should be noted that when we talk about "rights", these "rights" are not absolute or unlimited.

一般來說，根據「國際法」和「國內法」，都可以根據某些大家都承認的目的，去限制有關的基本權利。這些可以用以限制權利的目的，包括維護社會秩序、保障國家安全，以及維護公共利益。以下我們以《公民權利和政治權利國際公約》作為例子，世界各國都承認這一條國際公約，它亦於香港實施。

Generally speaking, according to "international law" and "domestic law", basic rights can be limited according to certain recognised purposes. These purposes include maintaining social order, safeguarding national security, and maintaining public interests. Taking the *International Covenant on Civil and Political Rights* as an example, this covenant is recognised by countries all over the world and is also implemented in Hong Kong.

《公民權利和政治權利國際公約》第十九條是關於言論自由。第十九第一款：「人人有保持意見不受干預之權利」及第二款：「人人有發表自由之權利」，這些權利並不是沒有限制的，正如第三款指出：「本條第二項所載權利之行使，附有特別責任及義務，故得予以某種限制，但此種限制以經法律規定…..為限」。第一，要尊重他人的權利或名譽，例如不可以對他人進行誹謗，因為會損害到他人的名

譽；第二，要保障國家安全、公共秩序、公共衛生或風化。所以如果有些言論被認為對國家安全、公共秩序、公共衛生或風化有所危害，都可以對有關權利設定一些限制。

Article 19 of the *International Covenant on Civil and Political Rights* pertains to freedom of speech. The rights mentioned in Paragraph 1 of Article 19 ("Everyone shall have the right to hold opinions without interference") and Paragraph 2 ("Everyone shall have the right to freedom of expression") are not unlimited. As Paragraph 3 states, "the exercise of the rights provided for in Paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions". First, it is necessary to respect the rights and reputation of others, such as not making defamatory remarks about others, which would damage their reputation. Second, it is necessary to safeguard national security, public order, public health, or morals. If certain expressions are deemed to be harmful to national security, public order, public health, or morals, limitations can be imposed on these rights.

中國公民有哪些基本義務？根據內地學者對《憲法》第二章的分析，可以列出以下的公民的基本義務，例如維護國家統一與民族團結的義務（第五十二條）、遵守憲法與法律的義務（第五十三條）、維護祖國安全、榮譽和利益的義務（第五十四條）、依法服兵役的義務（第五十五條）、依法納稅的義務（第五十六條）等。至於其他的公民義務，在第二章或其他章節有作出規定，例如勞動的義務、受教育的義務、夫妻雙方實行計劃生育的義務、父母撫養教育未成年子女的義務，以及成年子女有贍養扶助父母的義務等。

What are the basic obligations of Chinese citizens? According to the analysis of Chapter 2 of the *Constitution* by Mainland scholars, the following basic obligations of citizens are listed, such as the obligation to safeguard national unity and the solidarity of all the country's ethnic groups (Article 52), the obligation to abide by the *Constitution* and the law (Article 53), the obligation to safeguard the security, honour, and interests of the motherland (Article 54), the obligation to perform military service in accordance with law (Article 55), and the obligation to pay taxes in accordance with law (Article 56), etc. As for other civic obligations, they are stipulated in Chapter 2 or other chapters, for example, the obligation to work, the obligation to receive education, the obligation of both husband and wife to practise family planning, the obligation of parents to raise and educate their minor children, and the obligation of adult children to support and assist their parents, etc.

《基本法》的立法背景和整體內容
The Legislative Background and Overall Content of the Basic Law

《中華人民共和國香港特別行政區基本法》在 1990 年由全國人民代表大會通過，在此之前，中英兩國簽訂了《中華人民共和國政府和大不列顛及北愛爾蘭聯合王國政府關於香港問題的聯合聲明》。中華人民共和國政府於一九九七年七月一日對香港恢復行使主權，而《基本法》乃基於《憲法》第三十一條而制定。

The *Basic Law of the Hong Kong Special Administrative Region of the PRC* was passed by the National People's Congress in 1990. Before that, China and the U.K. signed the *Joint Declaration of the Government of the People's Republic of China and the Government of the United Kingdom of Great Britain and Northern Ireland on the Question of Hong Kong*. On 1 July 1997, the Government of the People's Republic of China resumed the exercise of sovereignty over Hong Kong. The *Basic Law* was enacted on the basis of Article 31 of the *Constitution.*

香港居民的權利和義務
Rights and Duties of Hong Kong Residents

《基本法》包含序言、九章，以及三個附件。《基本法》如何保障香港居民的權利以及規定他們的義務呢？《基本法》規定的一些基本權利包括：言論、集會、結社等的權利和自由（第二十七條）、人身自由不受侵犯（第二十八條）、住宅不受侵犯（第二十九條）、通訊自由和通訊秘密受法律的保護（第三十條）、遷徙的自由（第三十一條）、宗教信仰的自由（第三十二條）、選擇職業的自由（第三十三條）、進行學術研究自由（第三十四條）、向法院提起訴訟的權利（第三十五條）、依法享有社會福利的權利（第三十六條）、婚姻自由和自願生育的權利（第三十七條）、香港特別行政區永久性居民依法享有選舉權和被選舉權（第二十六條）等。另外，通過在香港產生的全國人大代表，香港居民亦有參與國家事務管理的權利。

The *Basic Law* consists of a preamble, nine chapters, and three annexes. How does the *Basic Law* protect the rights of Hong Kong residents and define their duties? Some of the basic rights stipulated by the *Basic Law* include: freedom of speech, of assembly, and of association (Article 27), the freedom of the person of Hong Kong residents shall be inviolable (Article 28), their homes shall be inviolable (Article 29), the freedom and privacy of communication shall be protected by the law (Article 30), freedom of movement (Article 31), freedom of religious belief (Article 32), freedom of choice of occupation (Article 33), freedom to engage in academic research (Article 34), the right to confidential legal advice (Article 35) and the right to social welfare in accordance with law (Article 36), the freedom of marriage and their right to raise a family freely (Article 37), and permanent residents of the HKSAR shall have the right to vote and the right to stand for election in accordance with law (Article 26), etc. Furthermore, Hong Kong residents have the right to participate in the management of national affairs

through Hong Kong deputies to the National People's Congress.

另外，《基本法》第四十一條規定：「在香港特別行政區境內的香港居民以外的其他人，依法享有本章規定的香港居民的權利和自由」。《基本法》中還有一條是很重要的，就是第三十九條。《基本法》第三十九條提到兩條國際人權公約：《公民權利和政治權利國際公約》和《經濟、社會與文化權利的國際公約》。這兩條國際公約，以及國際勞工公約，在 1997 年之前已適用於香港，《基本法》第三十九條規定它們繼續有效，並通過香港特別行政區的法律予以實施。而且《基本法》第三十九條第二款提到香港居民享有的權利與自由，除依法規定外不得限制，此種限制不得與本條第一款規定抵觸。1991 年，香港立法局制定了《香港人權法案條例》，將《公民權利和政治權利國際公約》適用於香港的條文，納入香港本地法律。

In addition, Article 41 of the *Basic Law* stipulates: "Persons in the Hong Kong Special Administrative Region other than Hong Kong residents shall, in accordance with law, enjoy the rights and freedoms of Hong Kong residents prescribed in this Chapter". There is another important article in the *Basic Law*, which is Article 39. Article 39 of the *Basic Law* refers to two international human rights covenants: the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights.* These two international covenants and international labour conventions were applicable to Hong Kong before 1997. Article 39 of the *Basic Law* stipulates that they shall remain in force and shall be implemented through the laws of the HKSAR. Moreover, Paragraph 2 of Article 39 of the *Basic Law* states that 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. In 1991, the Hong Kong Legislative Council enacted the *Hong Kong Bill of Rights Ordinance*, which incorporated the relevant provisions of the *International Covenant on Civil and Political Rights* into the local law of Hong Kong.

「普通法」制度及其法治原則
Common Law System and Its Rule of Law

香港作為「一國兩制」之下的一個法律管轄區，其實行的「普通法制度」，與中國內地的社會主義法律制度有所不同。「普通法」在回歸之前已於香港實施，《基本法》第八條和第十八條都保障了「普通法」在 1997 年後繼續適用。2022 年香港回歸 25 周年，習近平主席在香港參與回歸慶典的講話裏提到香港「普通法制度」對於「一國兩制」的重要性，認為「一國兩制」可以長期堅持。

Hong Kong, as a legal jurisdiction under "one country, two systems", implements

a “common law” system, which is different from the socialist legal system on the Chinese Mainland. The “common law” system has been implemented in Hong Kong before its return to the motherland. Article 8 and Article 18 of the *Basic Law* guarantee that the “common law” system will continue to apply after 1997. In 2022, when President Xi Jinping participated in the celebration of the 25th anniversary of the establishment of the HKSAR, he emphasised the significance of the “common law” system in “one country, two systems”. He expressed the view that “one country, two systems” can be upheld in the long term.

《基本法》第四章第四節是對於司法機關和司法制度的規定，其中亦包括不少「普通法」的元素，例如終審法院可根據需要邀請其他普通法適用地區的法官參加審判（第八十二條）、任何人被合法拘捕後，享有盡早接受司法機關公正審判的權利、未經司法機構判罪之前均假定無罪（第八十七條第二款），以及原本香港實行的陪審制度予以保留（第八十六條）。

Chapter 4, Section 4 of the *Basic Law* includes provisions on the judiciary and the judicial system, including many elements of “common law”. For example, the Court of Final Appeal may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal (Article 82). Anyone who is lawfully arrested shall have the right to a fair trial by the judicial organs without delay and shall be presumed innocent until convicted by the judicial organs (Paragraph 2 of Article 87). And The principle of trial by jury previously practised in Hong Kong shall be maintained (Article 86).

「普通法」制度裏面其中一個核心概念就是法治的概念。在此簡單綜合法治概念的一些主要元素。雖然不同學者對法治的論述未必是完全相同，但以下的要點，都是法治概念的重要部分，應該沒有太大爭議。

One of the core concepts in the “common law” system is the concept of the rule of law. Here is a brief summary of the key elements of the concept of the rule of law. While different scholars may have different interpretations of the rule of law, the following points are important aspects of the concept of the rule of law, which are not subject to significant controversy.

首先是法律究竟是從何而來？社會為什麼需要法律？法律的目的又在哪裏呢？法律是由立法機關制定，目的在於維護社會成員的共同利益，從而令社會各成員得以在社會秩序之中共同生活。

First of all, where does the law come from? Why does society need laws? And what is the purpose of laws? The law is formulated by the legislative body with the aim of safeguarding the common interests of members of society, and enabling them to live

together within a social order.

法律面前，人人平等
Equality Before the Law

法律一方面保障社會成員的個人權利，另一方面亦保障社會的公眾利益。當法律制定之後，所有人（包括市民、政府和公務人員）都必須尊重及遵守法律。法律面前，人人平等，換句話說，在執行法律時，不應作出差別對待。例如處理案件時，無論被告人富有或者貧窮，他都得到平等的對待，亦不會因為被告人的性別、種族、宗教、語言、社會地位等等，而產生差別的對待，這就是法律面前，人人平等。

On one hand, the law safeguards the rights of individual members of society, and on the other hand, it also safeguards the public interest of society. Once the law is made, everyone, including citizens, government, and civil servants, must respect and abide by the law. Before the law, everyone is equal, which means that no one should be treated differently when enforcing the law. For example, when handling a case, regardless of whether the defendant is wealthy or poor, they should receive equal treatment. They should not be treated differently simply because of their gender, race, religion, language, social status, and so on. This is what we call equality before the law.

至於政府以及其公務人員，如果他們要作出任何影響到人民權益的行為，都必須事先得到法律授權。政府去做某些行為，必須有法律授權才可以做。政府所有的權力，都是來自法律的授權。從市民角度來看，除非有法律規定某些特定的言行是違法的，否則人民的言行是不會受到法律追究的，這個原則是對於人民自由的一個重要保障。只要他們的言行在法律上並非違法，他們作出的言行便不會受到法律的追究。當然，這些言行會否不道德呢？會否違反社會上大家都接受的道德倫理標準，則是另外一回事。

As for the government and its officials, when taking any action that affects people's rights and interests, they must have prior authorisation from the law. Any kind of government actions must be authorised by the law. All the powers of the government come from the authorisation of the law. From the perspective of citizens, unless a specific kind of speech or behaviour is defined as illegal by the law, people will not be subject to legal sanctions for their speech or behaviour. This is aan important guarantee of people's freedom. As long as their speech or behaviour is not illegal according to the law, they will not be subject to legal sanctions. However, whether such speech or behaviour is immoral or violates the moral and ethical standards accepted by society is another matter.

法律的條文必須清晰明確
The Law must be Clear and Explicit

另外，法律的條文必須清晰明確，讓人民可以預見他們言行的法律後果。如果法律條文寫得太模糊，令人民無所適從，這就不符合法治的原則。

In addition, the provisions of the law must be clear and explicit, allowing people to foresee the legal consequences of their words and actions. If the provisions of the law are too vague, making it difficult for people to understand and comply with, this does not meet the requirement of the rule of law.

司法獨立
Judicial Independence

「司法獨立」亦是法治的核心概念之一，法院在審理案件的時候必須大公無私，公正地、獨立地審判並依法作出判決。法院的審理案件和判決過程不受任何人或其他機關或勢力的干預。

"Judicial independence" is also one of the core concepts of the rule of law. When the court is hearing a case, it must apply the relevant laws to the facts of the case impartially, fairly, and independently, and decide the case according to the law. The court's trial of cases and the process of making judgments are not subject to any interference from individuals, other organisations, or forces.

國際法
International Law

在這部分，我會介紹國際條約如何適用於香港，尤其是與人權相關的國際條約。甚麼是國際條約？國際條約與「國際法」有密切的關係，之前提到《憲法》以及法律的不同部門：例如公法、私法、民商法、刑法等，都是指一個國家的國內法。不同國家的國內法都有所不同，例如中國的法律與美國的法律有明顯的分別。而當代世界，還有一種法律稱為「國際法」，是國際社會普遍承認為具有法律效力的一些規範，這些「國際法」主要是規範各國政府的行為。「國際法」與國內法不同，國內法主要針對一個國家裏面的公民、團體、公司，以及政府的行為。而「國際法」主要針對世界各國政府需要遵守的一些行為規範。「國際法」與國內法可以稱為當代法律的兩大體系。

In this part, I shall introduce how international treaties apply to Hong Kong, especially those related to human rights. What are international treaties? International treaties are closely related to "international law". Previously, I mentioned that the *Constitution* and different branches of law, such as public law, private law, civil and

commercial law, criminal law, etc., comprise the domestic laws of a country. Different countries have different domestic laws. For example, there are significant differences between the laws of China and the laws of the United States. In the contemporary world, there is also a kind of law known as "international law", which refers to norms that are generally recognised and have legal effect in the international community. These "international laws" mainly regulate the behaviour of governments of various countries. "International law" is different from domestic law which mainly focuses on behaviour of citizens, organisations, companies, and the government within a country. "International law" mainly focuses on the norms of behaviour that governments of all countries need to comply with. "International law" and domestic law can be considered as the two major systems of contemporary law.

「國際法」從何而來？「國際法」的規範又是如何？「國際法」主要包括國際條約和國際習慣法兩方面，國際條約是國與國之間訂立的合同。條約其實是一種合同。公司與公司之間、公司與個人之間、或個人與個人之間都可以訂立合同，例如僱傭關係是由僱傭合約所規範；在國際社會裏，國與國之間的合同稱為條約，或稱國際協議。條約可分為兩類：第一種是雙邊條約，即兩個國家之間簽訂一項條約，譬如中國與美國可以簽訂一項條約；另一種是多邊條約，由很多不同國家一起簽訂，例如《公民權利和政治權利國際公約》、《經濟、社會與文化權利國際公約》、國際勞工公約等。這些條約都是由很多國家、可能多達一百幾十個國家共同簽訂，因此稱為「國際公約」。

Where does "international law" come from? How are its norms established? "International law" mainly consists of two sources: international treaties and customary international law. International treaties are contracts concluded between countries. In fact, treaties are a type of contract. Contracts can be concluded between companies, between companies and individuals, or between individuals. For example, employment relationship is governed by an employment contract. In the international community, contracts between countries are called treaties, or international agreements. There are two types of treaties. The first type is bilateral treaty, which is signed between two countries, such as, a treaty signed between China and the United States. The other type is a multilateral treaty, which is signed by many different countries together, such as, the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, some international labour conventions, etc. These treaties are signed by numerous countries, possibly more than a hundred countries, and are therefore called "international conventions".

「國際法」的主要淵源就是國際公約或其他國際條約；而另外一個淵源就是國際習慣法。有些國際法規範並不是寫在條約裏，而是通過各國的做法和行為建

立慣例，而各國政府都認為這些慣例是有法律效力，以及必須遵守，這些就稱為國際習慣法。無論是國際條約或者國際習慣法，都構成國際法的一些有效規範。所有國家的政府都有法律上的義務遵守這些規範。如果某些國家不遵守這些規範，可能會受到其他國家的制裁。

The main source of "international law" is international conventions or other international treaties; the other source is customary international law. Some international legal norms are not written in treaties but are established as customs through the practices and behaviours of various countries. Governments of different countries consider these customs to have legal effect and must be complied with, and these are called customary international law. Whether it is an international treaty or customary international law, they constitute some effective norms of international law. The governments of all countries have a legal obligation to comply with these norms. If some countries do not comply with these norms, they may be subject to sanctions from other countries.

現代世界最常用的制裁方式就是經濟制裁，當然在少數的情況下，違反「國際法」的國家可能被告上荷蘭海牙的國際法院。如果某個國家接受了國際法院的管轄權，與另外一個接受國際法院管轄權的國家發生糾紛的時候，則可以由國際法院對他們之間的糾紛作出一個裁決。有些多邊條約，即是由多個國家簽訂的條約，亦有一些解決紛爭的機制，例如世界貿易組織（世貿）有一百多個成員，香港作為中國的一個特別行政區，也是世貿其中一個成員。2020 年《香港國安法》通過後，美國對香港作出一些制裁。香港特區政府就認為這些制裁違反了世貿有關的規範，於是向世貿提出訴訟，由世貿的糾紛解決的機構去處理和作出裁決。

The most common form of sanctions used in the modern world is economic sanctions. In rare cases, countries that violate international law may be taken to the International Court of Justice in The Hague, Netherlands. If a country accepts the jurisdiction of the International Court of Justice and a dispute arises between it and another country that also accepts the jurisdiction of the Court, the Court can make a ruling on the dispute between them. Some multilateral treaties, which are treaties signed by multiple countries, also have mechanisms for resolving disputes. For example, the World Trade Organization (WTO) has over a hundred members. Hong Kong, as a special administrative region of China, is also a member of the WTO. After the enactment of the *Hong Kong National Security Law* in 2020, the United States imposed some sanctions on Hong Kong. The Hong Kong Special Administrative Region (HKSAR) government believes that these sanctions violate the norms of the WTO. Therefore, it filed a lawsuit with WTO. The WTO institution for dispute settlement will handle and make a ruling on the matter.

這些國際法，尤其是國際條約，怎樣適用於香港特別行政區呢？根據《基本法》，條約的簽訂是屬於外交事務，而外交事務屬於中央管轄權的範圍。《基本法》第十三條規定，中央人民政府負責管理與香港特別行政區有關的外交事務，同時中央人民政府授權香港特別行政區依照《基本法》自行處理有關的「對外事務」。至於哪些「對外事務」屬於香港特別行政區被授權處理的範圍，便要看一看《基本法》第七章。當中有很多條文界定香港特別行政區可以自行處理哪些對外事務。例如第一百五十三條提到：「中華人民共和國締結的國際協議，中央人民政府可根據香港特別行政區的情況和需要，在徵詢香港特別行政區政府的意見後，決定是否適用於香港特別行政區」；另外，「中華人民共和國尚未參加但已適用於香港的國際協議仍可繼續適用，中央人民政府根據需要授權或協助香港特別行政區政府作出適當安排，使其他有關國際協議適用於香港特別行政區」。例如，如果這些協議要求香港特別行政區履行某一些義務，或者就這些義務的履行向有關的國際機構提交報告，中央人民政府會授權及協助香港特別行政區政府處理。以《公民權利和政治權利國際公約》為例，這公約要求締約成員向根據公約成立的人權委員會提交報告，中央人民政府亦授權香港特別行政區就這條公約在香港特別行政區的實施，向人權委員會提交報告。其他與人權相關的國際公約，都有要求香港特別行政區提交關於如何實施這類公約的報告，這亦需得到中央人民政府授權。不同的國際公約在香港特別行政區實施的報告，可以在特區政府的網頁找到。另外，如果國際協議是屬於經濟、貿易、金融、航運、通訊、旅遊、文化以及體育領域，根據《基本法》香港特別行政區得到中央人民政府的授權，以「中國香港」的名義與世界各國、各地區及有關國際組織保持及發展關係、簽訂和履行有關的國際協議。

How do these international laws, particularly international treaties, apply to the HKSAR? According to the *Basic Law*, the signing of treaties is a matter of foreign affairs and fall within the scope of the central government's jurisdiction. Article 13 of the *Basic Law* stipulates that the Central People's Government is responsible for managing foreign affairs related to the HKSAR; it also authorises the HKSAR to manage certain "external affairs". As for which external affairs are within the authorised scope of the HKSAR, it is necessary to refer to Chapter VII of the *Basic Law*. There are many articles in Chapter VII that define what external affairs the HKSAR is authorised to conduct on its own. For example, Article 153 states: "The application to the Hong Kong Special Administrative Region of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Region, and after seeking the views of the government of the Region". In addition, "International agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may continue to be implemented in the Hong Kong Special Administrative Region. The Central People's Government shall, as

necessary, authorize or assist the government of the Region to make appropriate arrangements for the application to the Region of other relevant international agreements". For example, if these agreements require the HKSAR to fulfil certain obligations or submit reports to relevant international organisations on the fulfilment of these obligations, the Central People's Government will authorise and assist the HKSAR government to fulfil related obligations. Taking the *International Covenant on Civil and Political Rights* as an example, this covenant requires contracting parties to submit reports to the Human Rights Committee established under the Covenant. The Central People's Government also authorises the HKSAR to submit reports to the United Nations Human Rights Committee on the implementation of this covenant in the HKSAR. Other international covenants related to human rights also require the HKSAR to submit reports on the implementation of these covenants, which also require authorisation from the Central People's Government. Reports on the implementation of different international conventions in the HKSAR can be found on the website of the HKSAR government. In addition, if the international agreement belongs to the fields of economy, trade, finance, shipping, communication, tourism, culture, and sports, the HKSAR is authorised by the Central People's Government to maintain and develop relations with all foreign states and regions and relevant international organisations in the name of "Hong Kong, China" and conclude and implement relevant international agreements.

至於《公民權利和政治權利國際公約》及國際勞工公約在香港的適用，已經在《基本法》第三十九條作出明確規定。現在舉出兩條公約作為例子，說明國際公約是如何保障相關的人權。第一條就是《消除對婦女一切形式歧視公約》，第二條就是《兒童權利公約》。《兒童權利公約》適用於 18 歲以下的未成年人，對於中學或者小學來說應該是特別重要，因為學生全部是《兒童權利公約》定義下的「兒童」。至於《消除對婦女一切形式歧視公約》亦有其重要性，因為人權包括「平等權」，當「平等權」實施的時候，其中一個最重要的領域就是「男女平等」。當然亦有其他平等的範疇，例如不同種族人士的平等、反對對於殘疾人士的歧視等都與「平等權」有關。

As for the application of the *International Covenant on Civil and Political Rights* and international labour conventions in Hong Kong, it has been clearly stipulated in Article 39 of the *Basic Law*. Two examples are now provided to show how international covenants safeguard relevant human rights. The first is the *Convention on the Elimination of All Forms of Discrimination against Women*, and the second is *the Convention on the Rights of the Child*. The *Convention on the Rights of the Child* applies to minors under the age of 18. It should be particularly important for secondary school or primary school students, as all students fall under the definition of "children"

as defined by the *Convention on the Rights of the Child*. The *Convention on the Elimination of All Forms of Discrimination against Women* is also important as human rights include the "right to equality". When implementing the "right to equality", one of the most important areas is "gender equality". Of course, there are also other areas of equality, such as equality for people of different races, prohibtion of discrimination against people with disabilities, etc., which are also related to the "right to equality".

《消除對婦女一切形式歧視公約》
The *Convention on the Elimination of All Forms of Discrimination against Women*

《消除對婦女一切形式歧視公約》分為〈序言〉和具體條文。《公約》的條文共有 30 條，現介紹一些具有代表性、或者比較值得留意的條文。首先，《公約》的〈序言〉對於了解該公約甚為重要，因為〈序言〉將該公約的基本精神、宗旨，以及所反映的基本價值信念寫出來，所以要研究《公約》，首先要研讀該公約的〈序言〉。《公約》的〈序言〉指出，《世界人權宣言》於 1948 年制定，「申明不容歧視的原則，並宣布人人生而自由，在尊嚴和權利上一律平等，且人人都有資格享受《世界人權宣言》所載的一切權利和自由，不得有任何區別，包括男女的區別。」所以男女都應該同等享有《世界人權宣言》規定的權利和自由，不應該因為性別而受到歧視。「有關人權的各項國際公約的締約國有義務去保證男女平等」，所以「男女平等」是《消除對婦女一切形式歧視公約》的最基本原則。

The *Convention on the Elimination of All Forms of Discrimination against Women* consists of the Preamble and specific articles. There are a total of 30 articles in the *Convention*, and now some representative or noteworthy articles will be introduced. Firstly, the Preamble is important for understanding the *Convention*. The Preamble outlines the fundamental principles, objectives, and core values reflected in the *Convention*. Therefore, to study the *Convention*, it is necessary to study its preamble first. The Preamble of the *Convention* points out that the *Universal Declaration of Human Rights*, adopted in 1948, already "affirmed the principle of inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex". So men and women should equally enjoy all the rights and freedoms set forth in the *Universal Declaration of Human Rights* and should not be discriminated against on the basis of their gender. "The States Parties to the *International Covenant on Human Rights* have the obligation to ensure the equal rights of men and women". Therefore, "gender equality" is the basic principle of the *Convention on the Elimination of All Forms of Discrimination against*

Women.

「一國的充分和完全的發展，世界人民的福利以及和平的事業，需要婦女和男子平等充分參與所有各方面的工作。」《消除對婦女一切形式歧視公約》特別提到「婦女對家庭的福利及社會的發展所作出的巨大貢獻」。《公約》又指出「父母在家庭和在養育子女方面」負有義務。「婦女不應因為生育而受到歧視，因為養育子女是男女及整個社會的共同責任」，而不是婦女單方面的責任。為了充分實現「男女平等」，《公約》的〈序言〉指出：很多國家有「需要同時改變男子和婦女在社會上及家庭中的傳統任務」，即有些國家傳統上對於男、女兩性在社會上和家庭上的角色的理解，並不完全符合現代「男女平等」的原則，所以需要作出一些改變。

"The full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields.". The *Convention on the Elimination of All Forms of Discrimination against Women* specifically mentions the "great contribution of women to the welfare of the family and to the development of society". The *Convention* also refers to "the role of both parents in the family and in the upbringing of children", and mentions that "the role of women in procreation should not be a basis for discrimination", and "the upbringing of children requires a sharing of responsibility between men and women and society as a whole". Hence the upbringing of childeren is not just the responsibility of women. In order to fully achieve "equality between men and women", the Preamble of the *Convention* points out that "a change in the traditional role of men as well as the role of women in society and in the family is needed" in many countries. This means that in some countries, the traditional understanding of the roles of men and women in society and in the family does not fully conform to the principle of "equality between men and women". Therefore, some changes are necessary.

《消除對婦女一切形式歧視公約》的具體條文比較多，以下是一些例子。首先，《公約》指出各國應該採取一切適當措施消除對婦女的歧視，保證婦女得到充分發展和進步，確保她們在與男子平等的基礎上，行使和享有人權和基本自由。所以此處強調反對對婦女的歧視，提倡男女應該平等。在家庭層面來說，《公約》的條文提到要「保證家庭教育應包括正確了解母性的社會功能和確認教養子女是父母的共同責任，當然在任何情況下都應首先考慮子女的利益」。舉例來說，在父母離婚之後，他們未成年子女的撫養權應交予男方還是女方呢？在處理這方面問題時，法庭案例都不斷強調需要優先考慮子女的利益，而不是父母雙方的利益或者意願。

There are many articles in the *Convention on the Elimination of All Forms of Discrimination against Women*. The following are some examples. First, the

Convention states that State Parties shall take all appropriate measures to eliminate discrimination against women, ensure their full development and progress, and guarantee their exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. Therefore, it emphasises opposition to discrimination against women and promotes gender equality. At the family level, the *Convention* mentions the need "to ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases". For example, should the custody of a minor be given to the father or the mother after the parents' divorce? When dealing with this kind of problems, court cases consistently emphasise the need to give priority to the consideration of the interests of the children rather than the interests or wishes of the parents.

在教育方面，《消除對婦女一切形式歧視公約》規定締約國需要保證婦女享有與男子平等的權利。另外《公約》亦對於運動或體育有特別規定，締約國要在「男女平等」的基礎上，保證男女積極參加運動和體育的機會相同。至於就業方面，締約國有責任採取適當的措施消除在就業方面對於婦女的歧視，保證婦女在「男女平等」的基礎之上享有相同的權利。在工作各方面，包括「同工同酬」，以及評定工作表現等，男女都應該享有平等待遇的權利。締約國需要禁止以懷孕或者產假為理由去解僱女性僱員，亦禁止以婚姻狀態為理由予以解僱的歧視。另外《公約》鼓勵各締約國提供必要的輔助性社會服務，特別是通過促進建立和發展托兒設施和系統，使父母得以兼顧家庭義務和工作責任，並參與公共事務。

In the field of education, the *Convention on the Elimination of All Forms of Discrimination against Women* stipulates that States Parties shall ensure women enjoy equal rights as men. In addition, the *Convention* has provisions for sports and physical education, requiring States Parties to ensure that men and women have equal opportunities to participate in sports and physical education. As for employment, States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, that women enjoy the same rights. In all aspects of work, including "equal pay for equal work" and evaluation of work performance, men and women should have equal rights to treatment. States Parties shall prohibit the dismissal of female employees due to pregnancy or maternity leave, as well as on the basis of marital status. In addition, the *Convention* encourages States Parties to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities, in particular through promoting the establishment and development of a network of child-care facilities.

在保健方面，《消除對婦女一切形式歧視公約》規定各締約國需要採取適當措施去消除在保健方面對於婦女的歧視，保證她們在「男女平等」基礎上，取得各種保健服務包括有關計劃生育的保健服務。

In the field of healthcare, the *Convention on the Elimination of All Forms of Discrimination against Women* stipulates that State Parties shall take measures to eliminate discrimination against women in the field of health care in order to ensure, on the basis of "equality between men and women", women's access to health care services, including those related to family planning.

在娛樂方面，《消除對婦女一切形式歧視公約》規定男女有參與娛樂生活、運動，以及文化生活的相同權利。此外，法律之前應該人人平等，男女都應該在法律面前享有平等的地位。

In terms of entertainment, the Convention on the *Elimination of All Forms of Discrimination against Women* states that men and women have the same rights to participate in recreational activities, sports, and all aspects of cultural life. Besides, everyone should be equal before the law. Both men and women shall enjoy equal status under the law.

在婚姻範疇，《消除對婦女一切形式歧視公約》規定，男女雙方都應該享有自由選擇配偶的權利。若要締結婚姻，必須基於雙方自由意願，表示他們想締結這段婚姻，以及完全同意這段婚姻。以往在傳統上有許多由父母安排的婚姻，這就不符合現代關於婦女權利的原則。男女雙方在結婚之後均有相同的權利自由去決定子女的人數和生育的間隔。如果子女需要監護或者看管或者收養的安排，男女雙方均有相同的權利和義務處理，並需要考慮到子女的利益。此外，夫婦雙方就財產方面的各種權利都應該相同。有些地方的法律制度，會將婚後夫婦財產權完全歸於丈夫一方，這樣亦不符合《公約》的要求。

In terms of marriage, the *Convention on the Elimination of All Forms of Discrimination against Women* stipulates that both men and women shall have the right to freely choose their spouse. If they want to enter into marriage, it must be based on the free will of both parties and their consent to the marriage. Traditionally, in the past, there were many arranged marriages by parents, which do not conform to modern principles of women's rights. Both men and women have the same rights and freedoms to decide on the number and spacing of birth of children after marriage. If there is a need for custody or adoption of children, both men and women have the same rights and obligations to handle it and there is a need to consider the interests of the children. In addition, both parties in a marriage should have the same rights in property ownership. In some legal systems, all the property rights of the married couple are

assigned to the husband, which does not meet the requirements of the *Convention*.

平等機會委員會及四部反歧視法例
The Equal Opportunities Commission and Four Anti-discrimination Ordinances

香港在回歸之前已經實施《消除對婦女一切形式歧視公約》。自 90 年代以來，香港的立法機關制定了一系列反歧視的法例。國際公約在國際法的層次，對於有關國家政府有約束力。在簽署國際公約之後，政府是有義務在本地法或者國內法的層次去制定相關法例以實施國際公約。香港亦有立法以實施《消除對婦女一切形式歧視公約》、《消除一切形式種族歧視國際公約》、《殘疾人權利公約》等。與這些公約相關的法例，大部分都是 90 年代制定的，例如《性別歧視條例》。香港政府設立了平等機會委員會（平機會），負責執行和推廣《性別歧視條例》。平機會是香港人權領域中一個非常重要的組織，另外還有個人資料私隱專員公署，因為私隱權亦是一項重要的人權。

Hong Kong had already implemented the *Convention on the Elimination of All Forms of Discrimination against Women* before its return to China. Since the 1990s, the legislative body in Hong Kong has enacted a series of anti-discrimination ordinances. International conventions have binding force on governments at the international law level. After signing the international conventions, governments have an obligation to enact relevant laws at the local or domestic level to implement the international conventions. Hong Kong has also enacted legislation to implement the *Convention on the Elimination of All Forms of Discrimination against Women*, the *International Convention on the Elimination of All Forms of Racial Discrimination*, and the *Convention on the Rights of Persons with Disabilities*, etc. Most of the legislation related to the conventions was enacted in the 1990s, such as the *Sex Discrimination Ordinance*. The Hong Kong government has established the Equal Opportunities Commission (EOC) to enforce and promote the *Sex Discrimination Ordinance*. The EOC is a very important organisation in the field of human rights in Hong Kong. In addition, there is also the Office of the Privacy Commissioner for Personal Data, as privacy rights are also an important human right.

在《性別歧視條例》制定後，香港立法機關又制定了以下三項反歧視法例。第一，《殘疾歧視條例》，保障不會對殘疾人士作出歧視。第二，《家庭崗位歧視條例》，保障有關人士不會因為他們的家庭崗位，例如已婚或未婚、有否養育子女等理由受到歧視。第三，《種族歧視條例》保障香港少數族裔人士不會受到歧視。至於如何保障他們不會受到歧視，可以瀏覽平機會網頁。

After the enactment of the *Sex Discrimination Ordinance*, the legislature in Hong Kong also enacted the following three anti-discrimination ordinances. First, the

Disability Discrimination Ordinance protects people with disabilities from discrimination. Second, the *Family Status Discrimination Ordinance* protects relevant persons from discrimination based on their family status, such as being married or unmarried or having or not having children. Third, the *Race Discrimination Ordinance* protects ethnic minorities in Hong Kong from discrimination. To know more about how people are protected from discrimination, you can visit the EOC website.

有關《性別歧視條例》的主要內容，以下是一些例子。例如，在招聘員工時，僱主不可以使用帶有性別歧視的工種名稱，例如航空公司不應以「空姐」作招聘，應該改為招聘「空中服務員」。「空中服務員」的工作不一定必須要由女性擔任，男性也都可以擔任。另外，《性別歧視條例》亦禁止任何招聘廣告明示或暗示必須由某性別的人士擔任有關職位，除非該職位基於「真正的職業資格」，必須要求某一個性別的僱員出任。例如，演藝事業需要招聘一個女性演員擔任女性角色演出，在這個情況下，就可把性別視為真正的職業資格，因此僱主在招聘廣告列明招聘女性，便不受到《性別歧視條例》的約束。反之，如果僱主招聘一名秘書或護士，其實男女都可以勝任這個崗位，此情況便受到《性別歧視條例》的約束。《性別歧視條例》的規定，不單只保障女性，同時亦保障男性。

Regarding the main contents of the *Sex Discrimination Ordinance*, the following are some examples. For example, during the recruitment of employees, employers are not allowed to use job titles with gender discrimination. For example, an airline company should not use “air stewardess” in its recruitment advertisement, but rather use “cabin crew”. The job of a “cabin crew” does not necessarily have to be filled by a woman; men can also fulfil the job requirements. In addition, the *Sex Discrimination Ordinance* prohibits any recruitment advertisement from indicating or implying that only a particular gender can fill a particular position, unless a person’s sex is a “genuine occupational qualification” for the job. For example, a company in the performing arts industry is going to recruit an actress to perform a female role. In this case, sex is considered a genuine occupational qualification, and the employer is not prohibited by the *Sex Discrimination Ordinance* to state in the recruitment advertisement that they are recruiting a female employee. However, if an employer is recruiting a secretary or a nurse whose job duties can be performed by either a female or male employee, the recruitment advertisement is bound by the above rule in the *Sex Discrimination Ordinance*. These provisions of the *Sex Discrimination Ordinance* not only protect women but also men.

另外，僱員入職後，《性別歧視條例》規定男女同工同酬，以及禁止性騷擾的行為。《性別歧視條例》不單止適用於僱傭範疇，亦適用於教育、商業、商品買賣及服務、物業出租，以及其他的社會活動。所以，所有教育活動或者商業活

動，甚至物業租賃均不可以性別理由去歧視某一方，不可以因為對方是男或女而作出區別對待。

Moreover, the *Sex Discrimination Ordinance* stipulates equal pay for equal work, and prohibits sexual harassment. The *Sex Discrimination Ordinance* does not only apply to the employment sector, but also to education, commerce, the buying and selling of goods and services, property leasing, and other social activities. Therefore, in all educational or commercial activities, including property leasing, it is unlawful to discriminate against any party on the basis of their sex.

以教育為例，曾有一個案例，是由香港平機會提出訴訟，被告為教育當局。鑑於小學畢業時，女生一般考試成績都比男生好，當時的教育局為了平衡中學班級的男女生比例，為保證多數人想入讀的中學和著名的中學的男女生比例不會過於失衡，教育當局對學生升中的分數按性別作出調整，令男生即使分數稍為差於女生，都同樣有機會入到心儀的中學。經過平機會提出訴訟，法院裁定這個做法是違反《性別歧視條例》的。由此可見，《性別歧視條例》適用於教育領域，以保障男女平等和享有平等的權利。

Taking education as an example, there was a case in which the EOC of Hong Kong filed a lawsuit against the education authorities. At the time of primary school graduation, girls generally performed better than boys and had better examination results. In order to balance the male-female ratio in secondary school classes and ensure that the male-female ratio in the most popular and famous secondary schools would not be too imbalanced, the education authorities at that time made adjustments to the score requirements for admission to secondary schools based on the sex of students, so that even if boys scored slightly lower than girls, they would still have the same opportunity to enter a preferred secondary school. After the EOC filed the lawsuit, the court ruled that this practice was in violation of the *Sex Discrimination Ordinance*. This shows that the *Sex Discrimination Ordinance* applies to the field of education in order to ensure equality between men and women and the enjoyment of equal rights for both sexes.

除了《性別歧視條例》外，《殘疾歧視條例》亦作出類似的保障。例如僱主招聘員工的時候，不可以歧視殘疾人士，如果有些工作殘疾人士都可以勝任，就不可以在廣告內列明殘疾人士不可以申請。但亦有例外，例如航空業，飛機師一定要視力健全，視力有問題的殘疾人士當然不適合做這份工作。另外，如果殘疾人士的身體狀況不影響他們的工作表現，是不可以因為殘疾而在薪酬或待遇方面對他們作出歧視，亦不可因此影響他們升遷和受訓的機會。《家庭崗位歧視條例》都有類似的保障，規定有家庭責任的人士不受歧視，即僱主不可以因為僱員已婚，或者需要照顧子女，而對他們有所歧視。

In addition to the *Sex Discrimination Ordinance*, the *Disability Discrimination*

Ordinance also provides similar protection. For example, employers are not allowed to discriminate against persons with disabilities in recruitment process. If persons with disabilities are capable of doing the job, the hiring advertisement cannot specify that persons with disabilities are ineligible to apply. However, there are exceptions. For example, in the aviation industry, pilots must have good eyesight. People with a visual impairment are hence not suitable for the job. Moreover, if the physical conditions of people with physical disabilities do not affect their job performance, it is prohibited to discriminate against them in terms of salary or remuneration package, or promotion and training opportunities. The *Family Status Discrimination Ordinance* provides similar protection for persons with family responsibilities. Employers shall not discriminate against employees because they are married or need to take care of children.

《殘疾歧視條例》和《家庭崗位歧視條例》不單適用於工作和僱傭，亦適用於教育、商業、物業租賃等範疇。老師向學生介紹平機會以及相關的反歧視法例時，應該説明反對對婦女歧視、種族歧視、保障兒童權益、對於殘疾人士權利的保障等，已在香港本地立法的層面得到實施。

The *Disability Discrimination Ordinance* and the *Family Status Discrimination Ordinance* are not applicable only to work and employment, but also to education, commerce, property leasing, etc. Teachers may introduce the EOC and relevant anti-discrimination ordinances to their students. They should explain that legislation to prohibit discrimination against women and racial discrimination, and to protect children's rights and rights of persons with disabilities has been introduced in Hong Kong.

《兒童權利公約》
The *Convention on the Rights of the Child*

18 歲以下的未成年人都是兒童，他們均受到《兒童權利公約》的保障。《兒童權利公約》的〈序言〉展示它的基本精神及包含的價值觀。〈序言〉一開首指出《聯合國憲章》所宣佈的原則：「對人類家庭所有成員的固有尊嚴及其平等和不移的權利的承認，乃是世界自由、正義與和平的基礎」。《兒童權利公約》特別提到《世界人權宣言》中有一個規定，就是兒童有權享受特別照顧和協助。家庭作為社會的基本單元，需要為家庭所有成員，特別是兒童的成長，提供必要的保護和協助。為了充分而和諧地發展兒童的個性，應該讓兒童在家庭環境裏，在幸福、親愛和諒解的氣氛之中成長，亦應該充分培養兒童可以在社會上獨立生活，並在《聯合國憲章》宣佈的理想的精神下，特別是在和平、尊嚴、寬容、自由、平等和團結的精神下，撫養他們成長。

Children under the age of 18 are considered as minors and they are protected by

the provisions of the *Convention on the Rights of the Child*. The Preamble of the *Convention on the Rights of the Child* demonstrates its fundamental spirit and embedded values. The Preamble begins by pointing out that the principles proclaimed in the *United Nations Charter* include: "Recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world". The *Convention on the Rights of the Child* specifically mentions a provision in the *Universal Declaration of Human Rights,* which provides that children are entitled to special care and assistance. As the fundamental group of society, the family should be afforded the necessary protection and assistance for its members, especially children's growth. For the full and harmonious development of his or her personality, a child should grow up in a family environment, in an atmosphere of happiness, love and understanding. The child should also be fully prepared to live an independent life in society, and brought up in the spirit of the ideals proclaimed in the *Charter of the United Nations*, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.

《兒童權利公約》的〈序言〉列出如何對待兒童，以及教育和培養他們的一些基本原則。《兒童權利公約》的條文，內容相當豐富，總共有 54 條。其中一些特別值得大家注意。《兒童權利公約》指出，締約國應該採取措施確保兒童得到保護，以及不應因為兒童父母的身份或信仰，而對兒童作出歧視。締約國要確保兒童享有其幸福所必須的保護和照顧，所以對兒童的保護和照顧是《兒童權利公約》的核心概念。

The Preamble of the *Convention on the Rights of the Child* sets forth some basic principles on how children should be treated and educated. The *Convention on the Rights of the Child,* with a total of 54 articles, is quite comprehensive. Here are some noteworthy provisions. The *Convention on the Rights of the Child* states that States Parties shall take measures to ensure that children are protected and not discriminated against on the basis of their parents' status or their beliefs. Protecting and caring for children is the core concept of the *Convention on the Rights of the Child*.

《兒童權利公約》第六條指出：「締約國確認每個兒童均有固有的生命權。締約國應最大限度地確保兒童的存活與發展」。第九條指出：「締約國應確保不違背兒童和父母的意願而使兒童與父母分離」。當然，在父母離異的情況下，兒童可能需要與他的父親或母親分離。而法院在處理這種情況，是需要考慮什麼安排最符合兒童的最大利益。如果有些父母被發現虐待子女，政府可能需要採取措施去干預，令該名兒童不再與父母居住，這就是第九條第一款最後一句的情況：由於父母的虐待、疏忽或因父母分居而必須決定兒童居所的特定情況下，可能需要由法院作出一個裁決。

Article 6 of the *Convention on the Rights of the Child* points out: "States Parties recognize that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child". Article 9 states: "States Parties must ensure that a child shall not be separated from his or her parents against their will". However, in case of parental divorce, a child may be separated from his father or mother. Here the court is required to consider the best interests of the child. If parents are found to have abused their child, the government may need to intervene and take measures to ensure that the child will no longer live with the parents. This is the situation described in the last sentence of Paragraph 1 of Article 9*:* "Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence".

兒童和成年人均享有一些基本自由，包括言論自由、結社、和平集會自由，以及保障私隱權等。《兒童權利公約》亦對兒童的自由作出一些限制，例如《公約》第十三條第二款指出：自由發表言論的權利「可受某些限制約束，但這些限制僅限於法律所規定並為以下目的所必需：(a)尊重他人的權利和名譽；(b)保護國家安全或公共秩序或公共衛生或道德」。同樣地，《公約》規定可以為了保護公共安全、秩序、衛生、或者道德、或者其他人的基本權利和自由，而對宗教信仰自由作出某些限制。兒童享有結社自由和集會自由，但亦可以根據國家安全、公共安全、公共秩序、公共衛生、道德等等，對他們的自由作出限制。兒童的私隱權、家庭、住宅或通訊都不應受到任意或者非法干預，兒童的榮譽和名譽不應受到非法攻擊；網上對於兒童的欺凌行為是違反了兒童權利。另外，《公約》亦規定了大眾傳媒的作用，兒童可以從傳媒之中獲得相關資訊。

Children and adults both enjoy certain basic freedoms, including freedom of speech, association, assembly, and privacy. The *Convention on the Rights of the Child* also imposes some limitations on children's freedom. For example, Paragraph 2 of Article 13 states that the exercise of the right to freedom of expression "may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; or (b) for the protection of national security or of public order (*ordre public*), or of public health or morals". Similarly, the *Convention* imposes certain limitations on the freedom of religion or beliefs in order to protect public safety, public order, public health, or morals, or rights and freedoms of others. Children have the freedom of association and freedom of peaceful assembly. In the interests of national security, public safety, public order, the protection of public health or morals, restrictions may be placed on the exercise of these rights. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour

and reputation. Online bullying of children is a violation of their rights. Besides, the *Convention* also defines the function of the mass media, which can provide children with relevant information.

父母雙方對於兒童的養育和發展負有共同責任。《兒童權利公約》第十九條非常重要：「締約國應採取一切適當的立法、行政、社會和教育措施，保護兒童在受父母、法定監護人或其他任何負責照管兒童的人的照料時，不致受到任何形式的身心摧殘、傷害或凌辱，忽視或照料不周，虐待或剝削，包括性侵犯」，這條文在香港或者其他地方有著實質的作用，對於法制亦有提出一些要求。這個是重要的原則，因為現實社會中，的確有一些兒童受到父母或法定監護人的不當對待，例如兒童院舍裡照顧者對兒童作出恐嚇、虐待、忽視、照顧不周、傷害、凌辱等行為。香港和其他地方曾經發生過這些不幸情況，因此《兒童權利公約》特別就這些情況有所規定。《兒童權利公約》第十九條第 2 款亦提到：政府應該「採取有效程序以建立社會方案，向兒童和負責照管兒童的人提供必要的支助，採取其他預防形式，查明、報告、查詢、調查、處理和追究前述的虐待兒童事件，以及在適當時進行司法干預」。第二十條提到：如有「暫時或永久脫離家庭環境的兒童，或為其最大利益不得在這種環境中繼續生活的兒童，應有權得到國家的特別保護和協助」。第二十三條第二款指出：「締約國確認殘疾兒童有接受特別照顧的權利，應鼓勵並確保在現有資源範圍內，依據申請斟酌兒童的情況和兒童的父母或其他照料人的情況，對合格兒童及負責照料該兒童的人提供援助」。第二十四條指出「締約國確認兒童有權享有可達到的最高標準的健康，並享有醫療和康復設施，締約國應努力確保沒有任何兒童被剝奪獲得這種保健服務的權利」。第二十六條要求：「締約國應確認每個兒童有權受益於社會保障，包括社會保險，並應根據其國內法律採取必要措施充分實現這一權利」。第二十七條要求：「締約國確認每個兒童均有權享有足以促進其生理、心理、精神、道德和社會發展的生活水平」。第二十八條指出：「締約國確認兒童有受教育的權利，為在機會均等的基礎上逐步實現此項權利，締約國尤應實現全面的免費義務小學教育；鼓勵發展不同形式的中學教育、包括普通和職業教育，使所有兒童均能享有和接受這種教育」。

Both parents have a shared responsibility for the upbringing and development of children. Article 19 of the *Convention on the Rights of the Child* is very important: “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”. This provision has substantial legal implications in Hong Kong and other places. It also imposes some requirements on the legal system. This is an important principle because in reality, some children are indeed subjected to improper treatment by their parents or legal guardians. For example, caregivers in children’s homes may

engage in behaviours such as intimidation, abuse, neglect, inadequate care, harm, or humiliation of children. Such unfortunate situations had occurred in Hong Kong and elsewhere in the past, so the *Convention on the Rights of the Child* specifically addresses these situations. Paragraph 2 of Article 19 of the *Convention* also states that the government should take "effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement". Article 20 states: "A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State". Paragraph 2 of Article 23 states: "States Parties recognise the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child". Article 24 states: "States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services". Article 26 requires that "States Parties shall recognise for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realisation of this right in accordance with their national law". Article 27 requires that "States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development". Article 28 states: "States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular, make primary education compulsory and available free to all".

《兒童權利公約》第二十九條亦是非常重要的，它涉及兒童教育的目的，所有學校的老師都應該留意這一條：「締約國一致認為教育兒童的目的應是：(a)最充分地發展兒童的個性、才智和身心能力；(b)培養對人權和基本自由以及《聯合國憲章》所載各項原則的尊重；(c)培養對兒童父母、兒童自身的文化認同、語言和價值觀、兒童所居住國家的民族價值觀、其原籍國以及不同於其本國的文明的尊重；(d)培養兒童本著各國人民、族裔、民族和宗教群體以及原為土著居民的人之間諒解、和平、寬容、男女平等和友好的精神，在自由社會裏過有責任感的生活；(e)培養對自然環境的尊重」。國民教育的推行，正好符合第二十九條第(c)款，

有關培養對於兒童所居住國家的民族價值觀，或者培養兒童的文化認同。

Article 29 of the *Convention on the Rights of the Child* is very important as it is about the purposes of children's education, which all teachers in schools should pay attention to. It states: "States Parties agree that the education of the child shall be directed to: (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the *Charter of the United Nations*; (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; and (e) The development of respect for the natural environment". The implementation of national education is exactly in line with Paragraph (c) of Article 29, which is about the development of national values of the country in which the child is living, or the development of cultural identity.

《兒童權利公約》第三十二條具有現實意義，就是「締約國確認兒童有權受到保護，以免受經濟剝削和從事任何可能妨礙或影響兒童教育或有害兒童健康或身體、心理、精神、道德或社會發展的工作」。現實來說，兒童未必適合從事某些類別的工作。19 世紀工業革命時代有很多童工，這是完全不符合現代的兒童權利觀念，當時英國很多童工擔任採礦的工作，後世認為完全違反兒童權利。《兒童權利公約》規定各國都需要通過法律規定受僱的最低年齡，不能僱用低於某一年齡的兒童做任何工作。即使兒童符合年齡可以做工作，對於他們的工作時間和條件，亦需要有特別的保障。香港的《僱傭條例》也體現了這些要求。《兒童權利公約》第三十三條涉及到毒品的問題，在香港，有兒童因為被人利用販毒而受到檢控以及判刑，毒品問題不容忽視。《兒童權利公約》要「保護兒童不致非法使用有關國際條約中界定的麻醉藥品和精神藥物，並防止利用兒童從事非法生產和販賣此類藥物」。

Article 32 of the *Convention on the Rights of the Child* has practical significance. It states: "States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development". It is recognised that children may not be suitable for certain types of work. During the Industrial Revolution in the 19th century, there were many child labours, which is completely inconsistent with the contemporary view on children's rights. At that time, many child labourers in Britain. were employed

in mining, which was considered by later generations to be a violation of children's rights. The *Convention on the Rights of the Child* requires that countries should provide for a minimum age for employment through legislation and prohibit the employment of children below a certain age for any work. Even if children are of age to work, special safeguards are needed for their working hours and conditions. These requirements are reflected in Hong Kong's *Employment Ordinance*. Article 33 of the *Convention on the Rights of the Child* concerns drug issues. In Hong Kong, some children have been prosecuted and sentenced for drug trafficking. The drug problem cannot be ignored. The *Convention* aims to "protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances".

在網絡時代下,《兒童權利公約》第三十四條顯得非常重要:「締約國承擔保護兒童免遭一切形式的色情剝削和性侵犯之害,為此目的,締約國尤應採取一切適當的國家、雙邊和多邊措施,以防止:(a)引誘或強迫兒童從事任何非法的性活動;(b)利用兒童賣淫或從事其他非法的性行為;(c)利用兒童進行淫穢性表演和充當淫穢題材」。對於網上色情,包括:第一,利用兒童拍攝色情影片,在香港絕對是犯法;第二,有人指出,如果讓兒童觀看網上色情影片,亦是妨礙兒童的身心發展,政府應該就這些方面作出規範。

In the Internet era, Article 34 of the *Convention on the Rights of the Child* is particularly important. It states: "States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; (c) the exploitative use of children in pornographic performances and materials". Regarding online pornography, it includes: first, using children to film pornographic videos is illegal in Hong Kong; second, some people have pointed out that allowing children to watch online pornography also hinders their physical and mental development, and the government should establish regulations in this area.

《兒童權利公約》第三十五條指出:「締約國應採取一切適當的國家、雙邊及多邊措施,以防止為任何目的或以任何形式誘拐、買賣或販運兒童」。這些情況在香港並不普遍,但在其他地方仍有誘拐、買賣及販運兒童的刑事活動。《兒童權利公約》第三十七條指出:「締約國應確保所有兒童不受到酷刑或其他形式殘忍、不人道或有辱人格的待遇或處罰」。就此而言,兒童享有這方面的權利與成年人是一樣的。對於兒童的逮捕或者拘禁,《兒童權利公約》亦有作出規定,對於被剝奪自由的兒童,是應該受到人道的待遇。這些被剝奪自由的兒童,他的

人格尊嚴應該受到尊重，是有權獲得法律上的援助。

Article 35 of the *Convention on the Rights of the Child* states: "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form". These situations are not common in Hong Kong, but the criminal activities of abduction, sale and trafficking of children still occur in other places. Article 37 of the *Convention on the Rights of the Child* states: "States Parties shall ensure that children will not be subjected to torture or other cruel, inhuman or degrading treatment or punishment". In this regard, children enjoy the same rights as adults. With regard to the arrest or detention of children, the *Convention on the Rights of the Child* stipulates that children who are deprived of their liberty should be treated with humanity. The dignity of these children should be respected, and they have the right to legal assistance.

《兒童權利公約》第三十九條就兒童受到任何形式的虐待之後，政府要協助他們康復。如果兒童犯法被判刑呢？《兒童權利公約》第四十條指出：在他們服刑後，政府應該促進他們重返社會；被指控犯法的兒童亦應該受到各種刑事程序的保障，例如無罪推定、依法得到公正審訊、不可以強迫他作口供或者認罪等。

Article 39 of the *Convention on the Rights of the Child* requires that the government shall take all appropriate measures to promote the recovery of children victims of any form of abuse. What about children who commit crimes and are sentenced to imprisonment? Article 40 of the *Convention on the Rights of the Child* states that the government should promote their reintegration into society after serving their sentences. Children who are accused of crimes should also receive various safeguards in criminal procedures, such as the presumption of innocence, fair trial, and not to be compelled to give testimony or to confess guilt, etc.

最後，我想列舉一個例子說明《兒童權利公約》如何在本地實施作結。香港法例中，《侵害人身罪條例》的第二十六條：「遺棄兒童以致生命受危害」，以及第二十七條：「對所看管兒童或少年人虐待或忽略」是反映《兒童權利公約》的實施的明顯的例子。《侵害人身罪條例》第二十六條指出：「任何人非法拋棄或遺棄不足 2 歲的兒童，以致該兒童的生命受危害，或以致該兒童的健康蒙受或相當可能蒙受永久損害，即屬犯罪」，可判處監禁 10 年。而《侵害人身罪條例》第二十七條：「任何超過 16 歲而對不足該年歲的任何兒童或少年人負有管養、看管或照顧責任的人，如故意襲擊、虐待、忽略、拋棄或遺棄該兒童或少年人，或導致、促致該兒童或少年人受襲擊、虐待、忽略、拋棄或遺棄，其方式相當可能導致該兒童或少年人受到不必要的苦楚或健康損害（包括視力、聽覺的損害或喪失，肢體、身體器官的傷損殘缺，或精神錯亂）… …循公訴程序定罪後，可處監禁 10 年。」此外，「凡超過 16 歲而對不足該年歲的任何兒童或少年人負有管養、看管

或照顧責任的父母或其他人，如沒有為該兒童或少年人提供足夠的食物、衣物或住宿，或如本身不能以其他方式提供該等食物、衣物或住宿，卻明知及故意不採取步驟，向負責提供衣食住予有需要的兒童或少年人的主管當局、社團或機構取得此等供給，即當作忽略該兒童或少年人而其方式相當可能導致該兒童或少年人的健康受損害」，這些行為都是觸犯了《侵害人身罪條例》第二十七條。

Finally, I would like to give an example of local legislation to illustrate how the *Convention on the Rights of the Child* is implemented. In Hong Kong legislation, Section 26 of the *Offences against the Person Ordinance*: "Exposing child whereby life is endangered" and Section 27 of *the Crimes Ordinance*: "Ill-treatment or neglect by those in charge of child or young person" provide obvious examples of the implementation of the *Convention on the Rights of the Child*. Section 26 states: "Any person who unlawfully abandons or exposes any child, being under the age 2 years, whereby the life of such child is endangered, or the health of such child is or is likely to be permanently injured, shall be guilty of an offence and shall be liable to imprisonment for 10 years". Article 27 of the *Offences against the Person Ordinance* states: "If any person who is over the age of 16 years who has the custody, charge or care of any child or young person under that age wilfully assaults, ill-treats, neglects, abandons or exposes such child or young person or causes or procures such child or young person to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause such child or young person unnecessary suffering or injury to his health (including injury to or loss of sight, or hearing, or limb, or organ of the body, or any mental derangement)…, are punishable on conviction on indictment to imprisonment for 10 years". Furthermore, "a parent or other person over the age of 16 having the custody, charge or care of a child or young person under that age shall be deemed to have neglected him in a manner likely to cause injury to his health if he fails to provide adequate food, clothing or lodging for the child or young person, or if, being unable otherwise to provide such food, clothing or lodging, he knowingly and wilfully fails to take steps to procure the same to be provided by some authority, society or institution which undertakes to make such provision for necessitous children or young persons". These acts violate Article 27 of the *Offences against the Person Ordinance*.