

# Are We Protected?

The Adequacy of Existing Legal Frameworks for Protecting Privacy  
in the Biometric Age

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# Overview

- The law of privacy: Article 17 of the *International Covenant on Civil and Political Rights (1966)*
- Privacy impact of biometric data usage
- Biometrics in Hong Kong SAR and Mainland China

## Article 17 ICCPR

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

# Article 17 ICCPR

- The right to privacy is neither:
  - Absolute; nor
  - Non-derogable.
- However, strict conditions for limitation:
  - “In law” (i.e. legislation); and
  - “Not arbitrary”

# Article 17 ICCPR

- “Arbitrary” synonymous with “unreasonable” (*per* UNHRC):
  - Rational connection to a legitimate purpose
  - Restriction on the right must be no more than is necessary to accomplish the legitimate purpose
  - Proportionality

## Article 17 ICCPR - Sources

- UN Human Rights Committee General Comment No. 16 (Right to Privacy) 1988
- **Toonen v Australia** [1994] IHLR 27 (UNHRC Communication No. 488/1992)
- **Leung Kwok Hung & Anor. v Chief Executive of the HKSAR** (Unreported, 9 February 2006, HCAL107/2005)(Affirmed by the Court of Final Appeal in [2006] 3 HKLRD 455)

# Biometrics and privacy

- Characteristics intrinsic to biometric data
- Collateral impact of employing biometrics:
  - Secondary data functions
  - Trend towards centralisation/collation
  - ‘Function (or specification) creep’

# Biometric Hong Kong ID Cards

- Mandatory to possess and carry at all times (Registration of Persons Ordinance)
- Introduced “temporarily” for 1949 mass-migration: law and order, food distribution, etc.
- Now smart, may be checked without probable cause (including fingerprint scanner match) with auxiliary functions

# Data privacy in the PRC

- No unified data protection law
- Some piecemeal developments:
  - Amended *PRC Criminal Law*
  - Amended *Tort Law*
- Prediction: developments likely to be subject to wide State security exceptions