

NGO Alternative Report
For the 4th periodic report of Hong Kong, China
Human Rights Committee (CCPR)
135th session (27 June to 29 July 2022)
ICCPR - International Covenant on Civil and Political Rights

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Submitted by
Hong Kong Human Rights Information Centre
Hong Kong Rule of Law Monitor

Introduction

Background

In June 2020, civil society of Hong Kong made a joint submission to the Committee for the List of Issues, as it had done in the past decades. It was a coordinated effort among more than 25 Hong Kong NGOs to present to the Committee a comprehensive overview of the implementation of the ICCPR in Hong Kong.

Shortly after the joint submission was made, the National Security Law was imposed on Hong Kong. The free environment enabling civil society organisations to take part in UN treaty body reviews of Hong Kong without fear of serious reprisal has thus been destroyed.

Civil society has been dismantled by the authorities by way of prosecuting activists and organisations and freezing assets; what remain of the Hong Kong civil society have to be extremely cautious to avoid being accused of violating the NSL, or becoming a target of eradication, such as by striking off the society, company, or trade union registration of the organisation. Since making a submission to the UN, including its treaty bodies, could potentially be accused of colluding with a foreign element, or publishing seditious materials, Hong Kong activists' involvement in engaging with the Committee or merely taking part in consultation for a submission could be dangerous.

By participating in this submission, the writers and all who have contributed bear the risk of reprisal from the Hong Kong and Chinese governments, possibly for sedition, collusion with foreign elements, and subversion.

This Submission

This submission is jointly made by the Hong Kong Human Rights Information Centre¹ and the Hong Kong Rule of Law Monitor² to the Committee ahead of the review of Hong Kong. The writers of this submission are Hong Kong human rights defenders and observers who have left Hong Kong due to safety concern under the repressive regime against civil society and dissidents.

This submission responds to the List of Issues released in August 2020, and the Government's reply to the list of issues submitted in 2021, building upon the Joint Submission by Hong Kong NGOs submitted to the Committee for the consideration of the List of Issues in June 2020. This submission takes into account the development of issues raised in the List of Issues over the past two years. There are indeed drastic developments in many aspects following the introduction of the National Security Law on 30 June 2020.

This submission is based on information available in the public domain and consultation with civil society in Hong Kong. From a human rights perspective. We sincerely thank our civil society members who remain in Hong Kong

¹ Hong Kong Human Rights Information Centre (“**HKHRIC**”) is established in 2022 by a group of human rights defenders from Hong Kong with strong background in policy and legal research. The mission of HKHRIC is to provide credible information on the latest situation in Hong Kong, with reference to its legal, political, and human rights development, in order to support the resilient civil society in Hong Kong and defend the city's rights and freedoms in accordance with international human rights law and standards.

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² Hong Kong Rule of Law Monitor is a group of Hong Kong lawyers based overseas, watching the human rights situation and rule of law in Hong Kong.

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still for their insights and experiences on ground. The writers endeavour to verify facts and make observations and suggest recommendations based on their expertise in human rights issues in Hong Kong.

This submission reiterates all the points raised in the Joint Submission in June 2020 without repetition.

Due to the limited resources and inability to conduct wide range of consultation with civil society in Hong Kong, this submission cannot be as comprehensive as joint NGO submissions made by Hong Kong civil society in the past. The writers endeavour to focus on priority issues, while stressing that this submission is by means an exhaustive representation of the dire regression of protected rights under the ICCPR in Hong Kong.

Structure of this submission

The table of content is intentionally detailed to serve as a guide to the issues covered in this submission.

There is a list of priority recommendations following the table of content. The recommendations are extracted from the submission.

There are three substantive parts in this submission:

Part I focuses on issues related to the National Security Law, other laws related to national security, emergency law, and their implementation.

Part II focuses on priority issues other than the above.

Further issues are covered in Part III.

Otherwise, the format of this submission mirrors the Replies of Hong Kong, China to the list of issues for the Committee's easy reference.

After each issue, we try to propose recommendations for the Committee's consideration to include in the Concluding Observations, or to follow up with the State. These have been put into boxes for ease of identification.

Calls for action

In addition to making recommendations for improvement, we ask the Committee to, after the constructive dialogues with the State, **sternly declare all measures or inactions by the State that the Committee finds to be incompatible with the State's obligations under the ICCPR**. Such statements will be instrumental to the monitoring and efforts to uphold human rights standards in Hong Kong now that independent human rights discourse in Hong Kong is restricted.

Also, we ask the Committee to pro-actively use the follow-up procedure for all of the NSL related and priority issues submitted in this submission.

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List of abbreviations

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| 612 Humanitarian Relief Fund | 612 Fund |
| Anti-Extradition Law Amendment Bill protests | Anti-ELAB protests |
| Chief Executive | CE |
| China Media Group | CMG |
| Chinese University of Hong Kong Student Union | CUSU |
| Civil Human Rights Front | CHRF |
| Committee of Safeguard National Security | CSNS |
| Complaints Against the Police Office | CAPO |
| Correctional Services Department | CSD |
| Equal Opportunities Commission | EOC |
| Force Procedure Manual | FPM |
| Hong Kong Alliance in Support of Patriotic Democratic Movements of China | Hong Kong Alliance |
| Hong Kong Bar Association | HKBA |
| Hong Kong Confederation of Trade Unions | HKCTU |
| Hong Kong Journalists Association | HKJA |
| Hong Kong Law Society | Law Society |
| Hong Kong Professional Teachers' Union | HKPTU |
| Hong Kong Public Opinion Research Institute | PORI |
| Hong Kong University Students' Union | HKUSU |
| Hospital Authority Employees Alliance (“HAEA”), | HAEA |
| Implementation Rules of Article 43 of the National Security Law | IRs |
| Independent Police Complaints Council | IPCC |
| Judicial Officers Recommendation Committee | JORC |
| Legal Aid Department | LAD |
| Legislative Council | LegCo |
| Mass Transit Railway | MTR |
| National People's Congress | NPC |
| National Security Department | NSD |
| Radio Television Hong Kong | RTHK |
| Standing Committee of the National People's Congress | NPCSC |
| Secretary for Justice | SJ |
| Secretary for Security | SS |
| The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region | the National Security Law or NSL |
| Trade Unions Ordinance | TUO |
| University Grant Committee | UGC |
| University of Hong Kong | HKU |

List of Priority Suggested Recommendations

The Law of the PRC on Safeguarding National Security in the HKSAR

1. Reiterate the offence of secession, subversion and collusion with foreign forces created under NSL are incompatible with the rights enshrined in ICCPR.
2. HKSAR government should propose amendments of the NSL to the PRC authorities by removing the clause of “whether or not by force or threat of force” in Article 20 of the NSL, and by removing the clause of “or other unlawful means” in Article 22 of the NSL, to avoid covering non-violent activities falling into the categories of secession and subversion.
3. HKSAR government should cease all the prosecution of secession and subversion among the current NSL defendants linked to their non-violent activities, and not to charge individuals or organisations with non-violent acts of free expression, free peaceful assembly and free association in order to conform its practice to the requirement of the ICCPR.

Sedition, “Article 23” Legislation, and Treason

4. Express grave concern and regret that despite the Committee had repeatedly point out the inconformity of sedition with the Covenant, HKSAR government refused to adopt the Committee’s recommendations and frequently using sedition offence to arrest and prosecute dissents.
5. Given the ancient statutory wording for the treason offence, the existence of the NSL and the ongoing mass-prosecution of activists and civilians, HKSAR government should amend the offence to provide further clarification and to bring it in line with the ICCPR, or to abolish the offence altogether.

Police Power & the Implementation Rules of NSL Article 43

6. HKSAR government should amend Schedule 5 of IRs by narrowing the definition of foreign or Taiwan political organisations and agents, to prevent any civil society organisation abroad falling into such categories and thus restrict their free, peaceful international exchange with local individuals or groups. The same Schedule should also be amended by requiring the Commissioner of Police to provide reasons to justify his/her beliefs of any individual or organisations as foreign or Taiwan agents.
7. HKSAR government should amend Schedule 6 by adding a three-judge panel as well as the Surveillance Commissioner of Hong Kong to oversee the NSD’s acts of interception and surveillance, and by empowering judges and the Surveillance Commissioner to prohibit any misuse or abuse of surveillance by the NSD.
8. HKSAR government should publish regular report to provide information on scrutiny of interception and surveillance under NSL.
9. HKSAR government should publish regular report on the removal of website and electronic messages “endangering national security”, including details of the websites and messages.

Judicial Independence and the Right to Fair Trial under the NSL

10. HKSAR government should provide a publicly-available list of designated judges for NSL cases.
11. HKSAR government’s Secretary for Justice, who heads the Department of Justice, should not remove jury trials for upcoming national security cases to be tried at the High Court, including but not limited to the “47 pro-democracy primary” case, the “Apple Daily” case, and the “Hong Kong Alliance” case. Even if the Department of Justice sees a need to remove a jury from a NSL trial, it should provide reasons to justify such act, and the reasons should be made public; such acts are not prohibited by the NSL.
12. HKSAR government should propose to the PRC authorities to amend the bail provisions in Article 42 of the NSL by restoring the principle of presumption of bail in the provision.
13. HKSAR government should remind the judiciary of their commitments to judicial independence, fair trial and due process in accordance with the ICCPR and the Committee’s General Comments; the court should follow the

Committee's standards to uphold legal rights of defendants and prevent any abuses or lawful but arbitrary detention being imposed on defendants in national security cases. After all, in most cases, bail should be granted to defendants who cannot have their trials in time.

14. HKSAR government should enhance the rule of law by avoiding the public prosecutors to employ any pre-NSL activities as admissible facts in NSL trials, in order to uphold the government's promise of not implementing the NSL in a retrospective manner.

Emergency Regulations Ordinance

15. Express grave concern that the Prohibition on Face Covering Regulation made under ERO remain in effect since its introduction on 5 October 2019. HKSAR government should provide justification to the Committee why the regulation is not terminated given the social disturbance occurred between 2019 and 2020 has ceased. Reiterate the regulation should be terminated in the shortest time required to bring to an end of the public emergency.

16. HKSAR government should reference to General Comment 20 of the Committee and the Siracusa Principles regarding imposing limitation to the rights or freedoms enshrined in the Covenant in the time of public emergency.

Item 10: Unpublicised guidelines on Police use of force by Police

17. Police and other law enforcement agencies should adopt the recommendation made by UN Committee Against Torture on the use of force in its concluding observations on Hong Kong in 2016; Police should publicize the Police General Orders, Force Procedures Manual, and other related manuals on use of force and make sure that they are in conformity with international standards.

Item 10: Suspected case of torture was charged with alternative charges

18. Hong Kong government should comment on the case whether the acts of the perpetrators were prima facie amount to the crime of torture under Hong Kong law. Have the Department of Justice taken into account on the possible defence of "lawful authority, justification or excuse" of this case which in turns decided not to charge the perpetrators for the crime of torture

19. Hong Kong government should provide details of prosecution policy of the crime of torture in contrary to Crimes (Torture) Ordinance.

Item 11: Use of force by the police in contrary to international human rights standard

20. Reiterates that under international human rights law and international principles on the use of force, States are under an obligation to ensure that law enforcement officials are held accountable for their actions, including any decision to use force. HKSAR Government should conduct an independent investigation into the allegations of excessive use of force by the police during the so-called "Anti-Extradition Bill Movement" between 2019 and 2020.

21. Even the victim did not lodge any complaint regarding his or her suffering, government owed a positive obligation to investigate misconduct or unlawful use of force by Police based on available evidence and information, such as findings from judicial proceeding.

Item 11: Police complaint mechanism

22. Reiterates the existing mechanism of IPCC and CAPO is not an independent mechanism in handling complaints against Police;

23. Establish a fully independent mechanism mandated to receive and investigate complaints against all officials and ensure that there is no institutional or hierarchical relationship between the investigators of that particular body and the suspected perpetrators of the acts that form the basis of a complaint (CAT/C/CHN-HKG/CO/5, para 9). The mechanism should be empowered to formulate binding decisions in respect of investigations conducted and findings regarding such complaints (CCPR/C/CHN-HKG/CO/3, para 12).

24. The complaint mechanism should be able to provide legal protection to the complainant and witness for giving evidence. The evidence given by complainant and witness, should not be used against the complainant and witness in criminal and civil proceeding unless the proceedings are in relation to the false or misleading evidence given by the complainant and witness.

25. Point out the existing composition of the IPCC is not compliant with the Paris Principles, of which lacking participation of stakeholders from across the political spectrum.

Express concern on the expertise of the members of IPCC, reiterates the members should have sufficient knowledge in human rights.

Item 11: Police Unique Identification

26. Reiterates HKSAR government is responsible under international law for the actions and omissions of its law enforcement agencies. Uniformed law enforcement officials should always display an easily recognizable form of identification during assemblies. For example by wearing nametags or individually assigned service numbers.

27. Police should improve the visibility of the officer's identification number on the uniform. Current design of police uniform which display the officer's service number on the shoulder of a uniformed police is not prominent enough for identification purpose, especially in the context of public assembly. The number could be easily covered by police's tactical vest or other equipment.

28. Reiterates the Call-Sign is not an effective form for identifying individual police officer because of the complexity of the Call-Sign and it is not a unique identification to officers.

29. Reiterates any deployment of plain-clothed officers in assemblies must be strictly necessary in the circumstances and such officers must never incite violence. Before conducting a search, making an arrest, or resorting to any use of force, plain-clothed officers must identify themselves to the persons concerned.

Item 12: No follow-up after the court ruled a citizen was unlawfully killed by police officer

30. CCTV camera should be installed to cover custody facilities of arrestees and detainees, including police vehicle, police station, interview room, and detention cell. Police and other law enforcement agencies should ensure the CCTV camera is operational and record of video is duly stored and managed.

31. Where an investigation into the use of force by law enforcement officials reveals evidence that a death or injury may have been caused unlawfully, the State should ensure that perpetrators are prosecuted through a judicial process and, if convicted, given appropriate punishment (UN Guidance on Less-Lethal Weapons in Law Enforcement para 3.10)

32. Victims of the unlawful use of force by law enforcement officials shall have the right to an effective remedy, including compensation. Government must guarantee of non-repetition ((UN Guidance on Less-Lethal Weapons in Law Enforcement para 3.12).

Item 17: Obstructing arrestees from obtaining legal assistance

33. HKSAR government should ensure every arrested person understand that they have the right to access to lawyer without delay. Police officer should not in anyway obstruct any arrested person from accessing legal assistance
HKSAR government should introduce public-funded legal assistance service at police station.

Item 17: Torture and ill-treatment against arrestees

34. Express grave concern on the torture and ill-treatment that happened against arrested persons. HKSAR government should conduct independent investigation and conduct review on the police practice to ensure sufficient safeguards are in place to prevent torture and ill-treatment against arrested person.

35. HKSAR government should strengthen ongoing training for all law enforcement officers on the absolute prohibition of torture and ill-treatment on international standards on the use of force, as well as on their liability in the event of excessive use of force.

Item 17: Judicial Officers Recommendation Committee (JORC)

36. HKSAR government should enhance judicial independence by respecting the local legal professional bodies' engagement in the process of judicial recommendation.

Item 17: Legal Aid Policy Changes since 2021

37. LAD should ensure the right to choice of lawyers by abandon the changes of its lawyer assignment policy.

Item 17: Governmental pressure on the legal profession

The PRC and Hong Kong governments should be urged to:

38. expressly and publicly acknowledge that it is a legitimate function of the Law Society and HKBA (and the legal profession generally) to protect the rule of law and fundamental human rights, which includes, where necessary, making appropriate criticisms of government policies, legislative initiatives, and actions;

39. refrain from shutting down or restricting legitimate sources of funding (including public crowd-funding) for the legal representation of criminal defendants, under the guise of enforcing the National Security Law, money-laundering legislation, and other laws;

40. instead, identify and take measures (in compliance with Article 14(3)(d) of the ICCPR and paragraph 3 of the UN Basic Principles on the Role of Lawyers 1990) to ensure that criminal defendants who do not have sufficient means to pay for legal representation are provided with adequate funding to engage legal representation, which shall be (to the furthest extent practicable) counsel of the defendant's own choosing;

41. restore (including by amending the relevant legislation) the ability of the legal sector to freely elect its own legislative representative to the Hong Kong Legislative Council, without pre-screening by or interference from the PRC and Hong Kong governments; and

42. identify and take measures (in compliance with paragraph 23 of the UN Basic Principles on the Role of Lawyers 1990) to ensure that members of the legal community (including legal academics and legal advocacy groups) are not subjected to pressure, intimidation, or threats (such as the threat of prosecution under the National Security Law or the sedition offenses under the Crimes Ordinance) which hinder their ability to take part in public discussions of matters concerning the law, the administration of justice, and the promotion and protection of human rights.

Item 17: Constraints on Unpresented Defendants in Custody to Prepare for Trial

43. HKSAR government should protect defendants' rights to defend oneself, which is enshrined in Article 35 of the Basic Law, Article 14 of the ICCPR and in line with paragraph 37 of the General Comment No. 32, by ensuring equal and sufficient access to information in relation to one's preparation of trial, especially to those who are denied bail and remanded in custody.

Item 20: Press Freedom

44. HKSAR Government should shelve studies on legislation on misinformation. To beat misinformation, the Government should do so by other means including education and publicity, which could help enhance public understanding about misinformation for them to exercise self-monitoring.

45. Police should revoke the amendment of the definition of "media representatives" in the Police General Orders and genuinely facilitate the reporting of journalists.

46. HKSAR Government should speed up the enactment of an archives law and a freedom of information law that are effective in enhancing public access to information and archives.

47. The public broadcaster has been subject to directives inconsistent with the requirements of impartiality and non-discrimination with respect to political opinion. HKSAR government should take the necessary steps, including legislative measures, to ensure that RTHK enjoys broad discretion as to programming content, and that competing views, including those of political parties opposed to government policy, are appropriately reflected in the broadcaster's transmissions.

Item 20: Malicious complaints against teachers

HKSAR Government should

48. take any necessary steps to prevent teachers from harassment and intimidation and ensure that teachers, like other professions, can enjoy the freedom of expression and the freedom of opinion protected by the Covenant.

49. establish an independent self-regulatory body, of which members are elected by teachers, to formulate the professional code and handle complaints against teachers.

Items 20 & 22: Academic Freedom

50. The HKSAR Authorities, including the University Grant Committee, Research Grant Council, the government-owned media outlets, must refrain from exerting pressure and undue influence, and making any decisions against universities, academics, students and their speech, acts and activities for political reasons, or in the name of national security that are inconsistent with the General Comments No. 34 of the Committee and the ICCPR.

Items 23 & 24: The law on unauthorized assembly and its implementation

51. Reiterates that under international law, a failure to notify the authorities of an upcoming assembly, where required, does not render the act of participation in the assembly unlawful, and must not in itself be used as a basis for dispersing the assembly or arresting the participants or organizers, or for imposing undue sanctions, such as charging the participants or organizers with criminal offences. Where administrative sanctions are imposed on organizers for failure to notify, this must be justified by the authorities. Lack of notification does not absolve the authorities from the obligation, within their abilities, to facilitate the assembly and to protect the participants.

Items 23 & 24: Unlawful assembly and rioting

52. Reiterates the carrying by participants of objects of protective equipment is not necessarily sufficient to deem those participants' conduct violent (General Comment No. 37 Para. 81).

53. Express grave concern about (a) the broad and vague definition of the offence “disorder in public places”, “unlawful assembly”, and “rioting” in the Public Order Ordinance could unduly criminalise peaceful participants in public assemblies; (b) the application in practice of certain terms contained in the Public Order Ordinance, inter alia, “disorder in public places” or “unlawful assembly”, “rioting” which may facilitate excessive restriction to the Covenant rights, (c) the increasing number of arrests of, and prosecutions against, protestors.

54. Express grave concern on the heavy imprisonment imposed by the offence of unauthorised assembly, unlawful assembly, and rioting.

Item 24: Intimidate citizen from participating in public assemblies by stop and search, stop and frisk, arrest, and issuance of fix penalty notices

55. “Stop and search”, and “Stop and frisk” must be exercised based on genuine and reasonable suspicion of the commission or threat of a serious offence. Police should inform public on statistics of “Stop and search”, with respective figures of sex, age, race, reasons for search, and outcome.

56. Reiterate the role of journalists, human rights defenders, election monitors and others involved in monitoring or reporting on assemblies is of particular importance for the full enjoyment of the right of peaceful assembly. Those persons are entitled to protection under the Covenant. They may not be prohibited from, or unduly limited in, exercising these functions, including with respect to monitoring the actions of law enforcement officials. They must not face reprisals or other harassment, and their equipment must not be confiscated or damaged.

Item 24: Using COVID-19 preventive measures as an excuse to suppress protest activities

57. Hong Kong government should develop measures to facilitate the organising of public assembly for political expression in the time of public health crises, instead of banning it.

Item 25: Harassment to personnel who provides legal assistance and medical assistance

58. Reiterates human rights defenders, lawyers, medical personnel must not face reprisals or other harassment for their providing of humanitarian aid, medical support and legal assistance to participants of public assemblies.

Item 26: Freedom of association

59. Revise the relevant provisions of the Trade Union Ordinance, the Societies Ordinance and the National Security Law so that any decision to revoke the registration of a civil society group could be made through an open and fair procedure.

60. Ensure that the implementation of the Trade Union Ordinance, the Societies Ordinance, the National Security Law and other laws related to regulating civil society groups should be compatible with the ICCPR.

Item 27: Participation in public affairs

61. Declare the constitutional reform to be incompatible with State's obligation under the ICCPR.

62. Reiterate previous concluding observations and follow-up letters sent to the State party.

63. Ask the State to repeal the provision in the new election law, including criminalization of advocating for invalid vote, the establishment of the Candidate Eligibility Review Committee, the nomination methods for LegCo, Election Committee, and Chief Executive elections; etc.

64. Ask the State to ensure meaningful public consultation on legislations and policies that have significant impact on the enjoyment of rights, such as the national security legislation pursuant to Basic Law Article 23, regulations on "fake news", and further constitutional reforms.

65. Express grave concern on the practice of demanding paybacks from disqualified elected representatives for its chilling effect on free expression and participation in public office.

66. Restitute disqualified elected representatives and those who resigned pre-emptively to avoid the de facto pecuniary penalty.

Substantive Part

Part I: Issues related to the National Security Law

The Law of the PRC on Safeguarding National Security in the HKSAR

67. No clear definition of “national security” can be found in the provisions of the Law of the PRC on Safeguarding National Security in the HKSAR (“NSL”).³ “National security” is only defined in Hong Kong’s Societies Ordinance as “the safeguarding of the territorial integrity and the independence of the People’s Republic of China”.⁴

68. Consequently, the HKSAR government continuously stretches the concept of “national security” to different realms. In its celebration of the “National Security Education Day”, the HKSAR government follows the PRC’s “holistic view of national security” by introducing at least 16 domains of national security that go beyond the standard of international law.⁵

69. The lack of clear definition in the NSL, together with the state’s overbroad narratives of national security, give room for the authorities enforcing the NSL in an overbroad and arbitrary ways.

70. Although Articles 4 and 5 of the NSL assures the ICCPR is still applicable in the implementation of the NSL, the four offences in the national security cover a wide range of non-violent political or public activities that are safeguarded by the rights to free expression, free association, and free peaceful assembly under the provisions of the ICCPR that are applicable in Hong Kong through the recognitions from the Basic Law and the Bill of Rights Ordinance.

71. Articles 20 and 22 cover offences of “secession” and “subversion” that include acts not by force or not by threat of force, such as altering by unlawful means the legal status of the HKSAR or disrupting or undermining the performance of duties and functions in accordance with the law by the body of the HKSAR. Articles 21 and 23 are offences of incitement to secession and subversion respectively. In this sense, calling for or attending unlawful but peaceful assemblies demanding constitutional amendments, as prescribed by the Basic Law, or peaceful strikes that occupied surroundings of government bodies could be regarded as committing the offences above.

72. The Committee’s decisions in previous communications and its General Comments, as well as soft laws including the Siracusa Principles and the Johannesburg Principles, provide that acts not inciting or provoking imminent violence shall not be considered as crimes endangering national security, and any acts that are perceived by the state as threat to national security must be specified.⁶ **The offences above do not conform with the international standards of free expression, free peaceful assembly and free association above.**

Examples

73. 47 pro-democracy activists were charged with conspiracy to subversion by hosting a citywide pro-democracy primary before the legislative council election in 2020.

³ The text of NSL can be accessed from the link below
<https://www.gld.gov.hk/egazette/pdf/20202448e/egn2020244872.pdf>

⁴ https://www.elegislation.gov.hk/hk/cap151?xpid=ID_1438402724927_002

⁵ https://www.nsed.gov.hk/national_security/?l=en&a=safety

⁶ United Nations Human Rights Committee, 1998, *Tae-Hoon Park v. Republic of Korea*, Comm No. 628/1995, 20 October 1998, para 10.3; United Nations Human Rights Committee, 2011, *General Comment No. 34*, CCPR/C/GC/34, para 30; The Siracusa Principles, Principle 29; The Johannesburg Principles, principle 6.

74. 3 members of the Hong Kong Alliance in Support of Patriotic Democratic Movements of China were charged with inciting subversion for their advocacy of “ending one-party dictatorship”.

75. Tong Ying Kit, an anti-government activist, was charged with inciting others to secession by displaying a flag with a slogan “Liberate Hong Kong, Revolution of Our Times”, which was regarded by the court as secessionist. He was sent to jail for 9 years, combined with his charge of terrorism.

Recommendations

76. Reiterate the offence of secession, subversion and collusion with foreign forces created under NSL are incompatible with the rights enshrined in ICCPR.

77. HKSAR government should propose amendments of the NSL to the PRC authorities by removing the clause of “whether or not by force or threat of force” in Article 20 of the NSL, and by removing the clause of “or other unlawful means” in Article 22 of the NSL, to avoid covering non-violent activities falling into the categories of secession and subversion.

78. HKSAR government should cease all the prosecution of secession and subversion among the current NSL defendants linked to their non-violent activities, and not to charge individuals or organisations with non-violent acts of free expression, free peaceful assembly, and free association in order to conform its practice to the requirement of the ICCPR.

Sedition, “Article 23” Legislation, and Treason (Gov Reply paras 40, 45)

79. We appreciate the Committee’s effort to address the flaws of the Crimes Ordinance in previous reviews on HKSAR’s implementations of the ICCPR. The Committee had repeatedly expressed its concern that, “the offences of treason and sedition under the Crimes Ordinance are defined in overly broad terms, thus endangering freedom of expression guaranteed under article 19 of the Covenant”.⁷ The Committee had also urged the Hong Kong authorities to amend the Crimes Ordinance regarding the treason and sedition offences to “bring it into full conformity with” the ICCPR.⁸ However, the Hong Kong government continues to ignore such observation and refuses to amend the overbroad provisions, and the worries of the Committee have become true.

80. Apart from the four offences in the NSL, the HKSAR authorities are reviving the offence of sedition as a new national security offence and expands the framework of the NSL to the non-NSL sedition cases. Since October 2020, the National Security Department (“NSD”) commenced to use the sedition law in the Crimes Ordinance to arrest and charge individuals and organisations on their public speeches and publications.⁹

⁷ UN Human Rights Committee, 1999, *Concluding Observation of the Human Rights Committee on Hong Kong Special Administrative Region*, CCPR/C/79/Add.117, November 15, para.18. The same observation can also be found in following Concluding Observations in 2006 and 2013.

⁸ UN Human Rights Committee, 2006, *Concluding Observation of the Human Rights Committee on Hong Kong Special Administrative Region*, CCPR/C/HKG/CO/2, April 21, para.14.

⁹ In paragraph 155 of the NGO Joint Submission to the Committee on List of Issues, it was reported that the then chairwoman of the Central and Western District Council, Cheng Lai-king, 61, was arrested for sedition for her post on social media calling for justice of a victim of police use of force. That was one of the first invocations of the archaic sedition law, prior to the imposition of the NSL. For her case, however, the police pressed another charge instead of sedition in the end. (<https://www.inmediahk.net/node/1078269>)

81. The sedition law was shelved in the local criminal law for decades, as the government was less motivated to re-use such law that would possibly be challenged as un-constitutional within the human rights framework of the Basic Law. However, after the NSD revived the use of sedition law, the Court of Final Appeal affirmed that the NSL framework, in terms of bail application in the criminal procedure, is applicable in non-NSL cases if those cases are related to crimes endangering national security, including treason and sedition in the Crimes Ordinance. As a result, sedition becomes a national security offence beyond the NSL.

82. International standards, in particular the Johannesburg Principles, require that only expression intended to incite imminent violence can be punished for endangering national security; yet none of the sedition cases in Hong Kong caused imminent violence at all.¹⁰ Moreover, the stretching of the NSL bail principle to non-NSL cases that are related to national security creates a clear pathway for further intrusions by the NSL into other areas of Hong Kong law.¹¹

83. Meanwhile, the HKSAR government has already hinted that the local legislation of Article 23 of the Basic Law, which is related to offences endangering national security, will commence in 2022.¹² It appears that the local authorities will introduce new national security offences, including espionage, connections with foreign political organisations, as well as incorporate treason and sedition from the Crimes Ordinance into the eco system of national security regime in Hong Kong.¹³

Examples

84. In *HKSAR v Lai Chee Ying* (FACC no.1/2021), the Court of Final Appeal asserted that acts endangering national security are covered in the sedition offences under Crimes Ordinance.¹⁴ Thus the bail principle under the NSL is applicable in cases of sedition.

85. In *HKSAR v Ng Hau Yi Sidney*, the Court of Final Appeal upheld that publishing seditious publication under the Crimes Ordinance is part of the acts endangering national security.¹⁵ Thus the bail principle under the NSL is applicable in cases of sedition.

86. An online database of the Center for Asian Law of Georgetown University Law Center reveals that, between October 2020 and April 2022, the NSD had arrested at least 33 individuals for sedition, including acts of seditious intent, publishing seditious publication, and uttering seditious words. At least 26 of them were charged with sedition, and the Stand News's proxy company Best Pencil Ltd was charged with publishing seditious publication as well.¹⁶ Alleged actions of those arrests, as reported by local news reports, include publishing children's cartoon books with metaphors of local anti-government protests, the Stand News's published opinion articles and interviews with

¹⁰ Eric Yan-ho Lai, 2021, "Hong Kong's Sedition Law is Back" *The Diplomat*, September 3, URL= <https://thediplomat.com/2021/09/hong-kongs-sedition-law-is-back/>.

¹¹ Thomas Kellogg, 2021, "How a ruling by Hong Kong's top court opens the door to a more intrusive security law" *Hong Kong Free Press*, December 17, URL= <https://hongkongfp.com/2021/12/17/how-a-ruling-by-hong-kongs-top-court-opens-the-door-to-a-more-intrusive-security-law/>.

¹² Hilary Leung, 2022, "Hong Kong to 'enhance' spy law to prevent acts of 'espionage and theft of state secrets,' security chief says", *Hong Kong Free Press*, January 26, URL= <https://hongkongfp.com/2022/01/26/hong-kong-to-enhance-spy-law-to-prevent-acts-of-espionage-and-theft-of-state-secrets-security-chief-says/>.

¹³ RTHK News, 2022, "National security covered in different laws: SJ", April 16, URL= <https://news.rthk.hk/rthk/en/component/k2/1644285-20220416.htm>.

¹⁴ *HKSAR v Lai Chee Ying* [2021] FACC 1/2021, para.53 & fn.40.

¹⁵ *HKSAR v Ng Hau Yi Sidney* [2021], FAMC 31/2021, paras.30-31.

¹⁶ Lai and Kellogg, 2022.

exiled activists, publication of anti-vaccination posts on social media platforms, and acts of “clapping hands” in a court hearing that involved CHOW Hang-tung, the deputy chairman of the Hong Kong Alliance.¹⁷

87. As of April 2022, the local court had already imprisoned two NSD arrestees, i.e., Chloe CHO and TAM Tak-chi, for publication seditious publication and uttering seditious words respectively. CHO, who pleaded guilty, was sentenced to jail for 13.5 months, while TAM, who pleaded not guilty, was jailed for 40 months, of which 21 months of jail sentence refers to his sedition crime.¹⁸ The evidence against TAM included his public speeches against the government, the law enforcement, and the Chinese Communist Party, yet no imminent violence happened after his speeches made in public sites.

Recommendations

88. Express grave concern and regret that despite the Committee had repeatedly point out the inconformity of sedition with the Covenant, HKSAR government refused to adopt the Committee’s recommendations and frequently using sedition offence to arrest and prosecute dissents.

89. HKSAR government should implement the Committee’s recommendations in previous Concluding Observations (1999, 2006 and 2013) that the offences of treason and sedition should be amended to “bring it into full conformity with the Covenant and ensure that the foreseen new legislation under article 23 of the Basic Law is fully consistent with the provisions of the Covenant.”¹⁹

Treason

90. Since 1999, the UN Human Rights Committee, in its First (1999), Second (2006) and Third (2013) Reviews of Hong Kong Special Administrative Region, and UN Special Rapporteurs (2000), had expressed their concerns about the broad wording of the definition of the offence of treason in the Crimes Ordinance (Cap. 200). No steps were taken by the HKSAR Government to amend the wording of the definition of treason in the Crimes Ordinance so as to bring it into full conformity with the Covenant. It is our view that the wording of the offence is too broad and imprecise. Concepts such as to “compel”, “instigate” or “assists by any means” does not define any conduct with sufficient clarity. It is not specified if “[levying] war against Her Majesty” is limited to circumstances where there is a public declaration of war. The provisions in relation to personal attacks on “Her Majesty” (i.e., kill, wound or cause bodily harm) is difficult to justify in the context of the HKSAR Government or Central People’s Government. In particular, “Parliament” being “intimidated” or “overawed” is too vaguely defined to be a workable element of a criminal offence.

¹⁷ Eric Yan-ho Lai, 2021, “Hong Kong’s Sedition Law is Back” *The Diplomat*, September 3, URL=<https://thediplomat.com/2021/09/hong-kongs-sedition-law-is-back/>; Hong Kong Free Press, 2021, “Stand News closes, content deleted following arrests and police raid; Chief Sec. slams ‘evil elements’”, December 29, URL=<https://hongkongfp.com/2021/12/29/breaking-stand-news-closes-website-inaccessible-following-arrests-and-police-raid-chief-sec-slams-evil-elements/>; Selina Cheng, 2022, “” Hong Kong Free Press, February 25, URL=<https://hongkongfp.com/2022/02/25/covid-19-hong-kong-national-security-police-arrest-2-for-sedition-over-anti-vaxx-posts/>; Kelly Ho, 2022, “Hong Kong national security police arrest 6 under sedition law over ‘causing nuisance’ during court hearings” *Hong Kong Free Press*, April 6, URL=<https://hongkongfp.com/2022/04/06/hong-kong-national-security-police-arrest-6-under-sedition-law-over-causing-nuisance-during-court-hearings/>.

¹⁸ *HKSAR v CHO Suet-sum Chloe and WONG Chun-wai* [2022], DCCC 767/2021; *HKSAR v TAM Tak Chi* [2022], DCCC 927,928&930/2020.

¹⁹ UN Human Rights Committee, 2013, *Concluding Observation of the Human Rights Committee on Hong Kong Special Administrative Region*, CCPR/C/CHN-HKG/CO/3, April 29, para.14.

91. Further, such blanket imposition of the HKSAR Government or Central People’s Government into the “shoes” of the British Monarch or Sovereign creates practical complications and difficulties in legal interpretation. For instance, as the Hong Kong Bar Association pointed out (para 22), the position of the President of China (as the head of state of the PRC) is different from that of the British Monarch (as the formal embodiment of the state). It is unnecessary and undesirable to transpose the notion of the British Monarch into any person or entity under a different Constitution. An overbroad enforcement or construction of the offence could foreseeably lead to unreasonable arrests and detentions.

92. The National Security Law (NSL) as promulgated in 2020 makes no mention of the word “treason”. Since January 2022 and again in March 2022, Secretary for Security of the HKSAR Government, Mr. Chris Tang Ping-Keung reiterated that the HKSAR government plans to introduce a national security bill in the second half of 2022, pursuant to Article 23 of the Basic Law and Article 7 of the NSL, which presumably would include the offence of treason. Whether or not the existing offence of treason under the Crimes Ordinance would be amended or replaced by this new legislation is unknown.

93. As far as we are aware, there has not been a prosecution for treason since 1997 in Hong Kong.

Recommendations

94. Given the ancient statutory wording for the treason offence, the existence of the NSL and the ongoing mass-prosecution of activists and civilians, HKSAR government should amend the offence to provide further clarification and to bring it in line with the ICCPR, or to abolish the offence altogether.

95. If the offence cannot be abolished, we submit that its scope should at least be minimized to provide clarity. For example, *mens rea* to overthrow the existing political regime should be necessary, and the accused’s action must involve violence in order to be liable to prosecution for the crime of treason.

Police Power & the Implementation Rules of NSL Article 43

(Articles 14 – 15, 22/ Question 4 of LOI)

96. Article 16 of the NSL creates the department for safeguarding national security, or the NSD in Hong Kong Police Force. NSD is responsible to takes up investigation, arrest and prosecution of suspects allegedly breaking the NSL, and offences related to national security according to Article 43 of the NSL. On 6 July 2020, i.e., six days after the NSL was implemented in Hong Kong, the local government introduced an “Implementation Rules of Article 43 of the NSL” (“**IRs**”) to empower the NSD taking measures to enforce the NSL.²⁰ The IRs was made by the Chief Executive in conjunction with the Committee of Safeguard National Security (“**CSNS**”) under Article 43 of the NSL. Yet, the drafting process for the IRs was entirely closed without public or legislative consultations.

97. As the IRs were introduced by the CSNS, which is immune from judicial review under Article 14 of the NSL, it appears that the court may not be able to handle administrative review of police acts under the IRs.

Power to Enter and Search Places for Evidence (Schedule 1 of IRs)

98. Section 3 of Schedule 1 of the IRs empowers police officers to enter, search, inspect, examine, seize, remove, and detain anything in the place that the officer reasonably believes to be specified evidence after obtaining a warrant from the magistrate courts, or without magistrate’s warrants if a senior police officer determines that “it would not be

²⁰ The full name of this executive rules is called “Implementation Rules for Article 43 of the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region”.

reasonably practicable to obtain a warrant”. It implies that, the NSD can always executive this power to search NSL criminal suspects without judicial scrutiny.

Power to Freeze and Confiscate of Property (Schedule 3 of IRs)

99. Section 3(1) of Schedule 3 of the IRs empowers the Secretary for Security (“SS”) to order a freezing of property without a court warrant in advance, if the SS has reasonable grounds to suspect that any property held by any person is offence related property. The court can only engage in this process in terms of extension of the SS’s order or appeal by the suspects. As of now, the freezing of assets under IRs had led to the closure of two media outlets which were financially insufficient to operate.

Examples

100. *In June 2021, the NSD charged 5 editors and senior members of the Apple Daily alongside three companies related to the Apple Daily and have frozen HKD\$18million of their assets.²¹ After the police acts, the Apple Daily decided its closure as it did not have enough cash to continue the operation.*

101. *In September, the NSD charged the Hong Kong Alliance in Support of Patriotic Democratic Movements of China and three of its leaders with inciting subversion and have frozen its assets worth of USD 282,000.²²*

102. *In December 2021, the NSD arrested former and current board members as well as editors of the Stand News and have frozen HKD61million of the outlet’s asset. The outlet followed by immediate closure.²³*

Power to Order Removal of Electronic Messages “Endangering National Security” (Schedule 4 of IRs)

103. Sections 6 and 7 of Schedule 4 of the IRs allow the Secretary for Security to approve the request from the Commissioner of Police to authorise police officers to require a person to remove a published electronic message that is likely to endanger national security on the electronic platform, to require the electronic platform service provider or the network service provider to disband the electronic message without a court warrant in advance. Section 9(2) of Schedule 4 of IRs allows police officers to require a service provider to provide identification record or decryption assistance for electronic message without a court warrant.

104. Such rules allow the executive authorities to prohibit any electronic messages or electronic platforms from public access in Hong Kong, if they consider the messages are “endangering national security”, which is a vague and overbroad concept at all.

105. In practice, the authorities had attempted to request electronic platform service provides and local network providers to block websites that were regarded as containing materials endangering national security, as ways of preventing free circulation of information and expression of political opinion among residents in Hong Kong.

²¹ Reuters, 2021, “Hong Kong's Apple Daily says only has cash for few weeks after assets frozen”, June 20, URL=<https://www.reuters.com/world/china/hong-kongs-apple-daily-says-only-has-cash-few-weeks-after-assets-frozen-2021-06-20/>.

²² Rhoda Kwan, 2021, “Hong Kong national security police freeze HK\$2.2 million worth of assets from Tiananmen Massacre vigil group, as leaders charged” *Hong Kong Free Press*, September 10 URL=<https://hongkongfp.com/2021/09/10/hong-kong-national-security-police-freeze-hk2-2-worth-of-assets-from-tiananmen-massacre-vigil-group-as-leaders-charged/>.

²³ Rhoda Kwan and Emma Graham-Harrison, 2021, “Hong Kong media outlet Stand News to close after police raid” *The Guardian*, December 29, URL=<https://www.theguardian.com/world/2021/dec/29/hong-kong-police-arrest-six-journalists-from-independent-media-outlet-stand-news>.

Examples

106. In January 2021, a local network provider Hong Kong Broadband Network admitted that they blocked an anti-government website known as “HKChronicles”, to comply with the national security law.²⁴

107. Several Taiwan-based websites were apparently blocked in Hong Kong in 2021, including the websites of Transitional Justice Commission, the Presbyterian Church of Taiwan, and the Democratic Progressive Party. The Security Bureau refused to comment.²⁵

108. In June 2021, former Hong Kong lawmaker and now exiled activist Nathan Law tweeted a copy of a police letter that requested website company Wix to remove a website known as “2021HKCharter”, as the police alleged the website containing messages “likely to constitute offences endangering national security”. Law’s tweet said the website was removed by Wix. Few hours after Law’s tweet, Wix stated that the removal was “by mistake”.²⁶

109. In February 2022, the website of a UK-based NGO Hong Kong Watch was partially blocked in Hong Kong.²⁷ One month after, the NGO received written request by the NSD demanding its website to shut down or otherwise bearing criminal consequences.²⁸

Power to Determine Foreign Agents or Agents of Foreign Political Organisation (Schedule 5)

110. Sections 2 and 3 of Schedule 5 of the IRs allow the Commissioner of Police, with the approval of the Secretary for Security, require a foreign political organization or Taiwan political organisation, or their agents, to provide personnel, financial or any relevant records.

111. Under Schedule 5, the terms in the definition of “foreign agent” or “Taiwan agent” excludes diplomats but still vague. For instance, the term “political organisation” could include foreign NGOs promoting universal human rights and the rule of law; the term “non-monetary rewards” could include reception of honorary awards given by overseas or international platforms for one’s commitments in defending basic rights and civil liberties in Hong Kong; the phrase activities “indirectly funded by” and “for the benefit of “foreign or Taiwan political organisation” can be interpreted broadly by the authorities to sweep any nonviolent activities in civil society.

112. Schedule 5 does not require the Commissioner of Police to provide reasons to explain why an individual or an organisation is believed as a foreign or Taiwan agent. The discretion gives broad space of interpretation for the Commissioner to request anyone or any organization to provide as much information as the Commissioner needs without a concrete reason.

²⁴ Tom Grundy, 2021, “Hong Kong Broadband Network admits it blocked website under national security law” *Hong Kong Free Press*, January 14, URL=<https://hongkongfp.com/2021/01/14/hong-kong-broadband-network-admits-it-blocked-website-under-national-security-law/>.

²⁵ Radio Free Asia, 2021, “Taiwan Church Website Blocked by Hong Kong National Security Police”, April 26, URL=<https://www.rfa.org/english/news/china/hongkong-taiwan-04262021140315.html>.

²⁶ AFP, 2021, “Hong Kong democracy site pulled ‘by mistake’” *Hong Kong Free Press*, June 4, URL=<https://hongkongfp.com/2021/06/04/hong-kong-democracy-site-pulled-by-mistake/>.

²⁷ Tom Grundy, 2022, “Website of NGO Hong Kong Watch partially blocked amid rising fears of internet censorship” *Hong Kong Free Press*, February 15, URL=<https://hongkongfp.com/2022/02/15/website-of-ngo-hong-kong-watch-appears-blocked-amid-rising-fears-of-internet-censorship/>.

²⁸ AFP, 2022, “Hong Kong demands UK-based rights group shut down website” *The Guardian*, March 14, URL=<https://www.theguardian.com/world/2022/mar/14/hong-kong-watch-rights-group-website-national-security-law-china-benedict-rogers>.

Examples

113. In August 2021, the Standing Committee members of the Hong Kong Alliance in Support of Patriotic Democratic Movements of China (“**Hong Kong Alliance**”) received letters from the NSD demanding provision of information under Schedule 5 of the IRs, as the Commissioner of Police had “sufficient reasons” to believe that the group was a foreign agent. However, the letters did not provide justifications of the sufficient reasons of such belief. The information required include activities and financial records involving other organisations such as China Human Rights Lawyer Concern Group, National Endowment for Democracy, National Democratic Institute and Asian Democracy Network.²⁹ In early September 2021, the Hong Kong Alliance refused to submit information as requested.³⁰

114. On 8 and 9 September 2021, the NSD arrested five Standing Committee members of the HKI for not submitting the requested information to the NSD.³¹ One of them pleaded guilty and was sentenced to jail for three months.³²

Interception and Surveillance (Schedule 6)

115. Part 2 of Schedule 6 of IRs allows police officers to carry out interception or covert surveillance without scrutiny of a special three-judge panel or the Commissioner on Interception of Communications and Surveillance.

116. This practice contravenes the existing Surveillance Ordinance that requires the involvement of the three-judge panel or the Commissioner above. The exclusion of the judicial branch and the Surveillance Commissioner from any oversight role fails to uphold a robust checking mechanism against potential power abuses by the NSD. As of now, the government has not provided remedies to strength due diligence of the NSD in this front.

117. Commissioner on Interception of Communications and Surveillance is required to publish report annually on Commissioner’s findings regarding the application of interception and covert surveillance by law enforcement agencies, and if any irregularity was found under the Commissioner’s supervision. However, there is no such requirement under IRs. The CSNS, the supervising body established in accordance with NSL, is not required to disclose any information relating to its work and its decision is also not subject to judicial review.

²⁹ 明報[Ming Pao] “警指支聯「外國代理人」 索歷來成員資料 促交帳目及「與境外組織活動內容」 鄒幸彤：指控荒謬” [Police claimed HKI as “foreign agent”, demanding records of past committee members, finance and activities; CHOW Hang-tung commented the accusation ridiculous], August 26, URL=<https://news.mingpao.com/pns/%E8%A6%81%E8%81%9E/article/20210826/s00001/1629915266130>.

³⁰ Candice Chau, 2021, “Organisers of Hong Kong’s Tiananmen Massacre vigil refuse to comply with national security police data request” *Hong Kong Free Press*, September 6, URL=<https://hongkongfp.com/2021/09/06/organisers-of-hong-kongs-tiananmen-massacre-vigil-refuse-to-comply-with-national-security-police-data-request/>.

³¹ Helen Davidson, 2021, “Hong Kong: police arrest senior members of group that organised Tiananmen vigils” *The Guardian*, September 7, URL=<https://www.theguardian.com/world/2021/sep/08/hong-kong-police-arrest-leader-of-democracy-group-alliance>.

³² Candice Chau, 2021, “Ex-member of Tiananmen Massacre vigil group jailed after refusing to cooperate with national security police data request” *Hong Kong Free Press*, December 22, URL=<https://hongkongfp.com/2021/12/22/ex-member-of-tiananmen-massacre-vigil-group-jailed-after-refusing-to-cooperate-with-national-security-police-data-request/>.

Example

118. In January 2021, Azizul Suffiad, the Commissioner on Interception of Communications and Surveillance publicly confirmed that he has “no say” in the oversight of surveillance in NSL cases and suggested that the CSNS and the CE would be responsible for handling any cases of non-compliance.³³

Recommendations

119. HKSAR government should explain whether IRs are subject to administrative review in local courts, given the fact that IRs are executive orders in nature, instead of a national law from PRC.

120. HKSAR government should amend Schedules 1, 3 and 4 of the IRs by removing the clauses of warrantless search, warrantless freezing of asset, and warrantless removal of electronic messages; and replace them with a provision that the NSD must secure a warrant of the Court of First Instance before taking any actions prescribed in the Schedules above.

121. HKSAR government should amend Schedule 5 of IRs by narrowing the definition of foreign or Taiwan political organisations and agents, to prevent any civil society organisation abroad falling into such categories and thus restrict their free, peaceful international exchange with local individuals or groups. The same Schedule should also be amended by requiring the Commissioner of Police to provide reasons to justify his/her beliefs of any individual or organisations as foreign or Taiwan agents.

122. HKSAR government should amend Schedule 6 by adding a three-judge panel as well as the Surveillance Commissioner of Hong Kong to oversee the NSD’s acts of interception and surveillance, and by empowering judges and the Surveillance Commissioner to prohibit any misuse or abuse of surveillance by the NSD.

123. HKSAR government should publish regular report to provide information on scrutiny of interception and surveillance under NSL.

124. HKSAR government should publish regular report on the removal of website and electronic messages “endangering national security”, including details of the websites and messages.

Judicial Independence and the Right to Fair Trial under the NSL

(Articles 2, 14 – 15, 26 / Also item 3 of LOI)

Designation of NSL Judges by the Chief Executive

125. Article 44 of the NSL provides the Chief Executive (“CE”) to designate judges to hear NSL cases. Such designated judges are selected for one-year term of office. They can be removed from the designated list if they make statements or take actions that “endanger national security”.

126. Although the HKSAR responded to the Committee that the CE “may consult the Committee for Safeguarding National Security of the HKSAR and the Chief Justice before doing so”, this practice is only place upon the discretion

³³ “截取通訊專員：無權監督所有國安法截取通訊、秘密監察 [Interception of Communications Commissioner: No Authority to Oversee All NSL Interceptions, Covert Surveillance],” Stand News, January 4, 2021.

of the CE and is not binding. As of now, the Chief Executive did not publicly promise she will exercise such power after consultations of the Chief Justice.

127. Although the HKSAR defended the designation of judges for NSL trials as a practice of forming "a list of judges to hear cases in a particular area" that is "something that have already had in place in Hong Kong for a long time", the list of NSL designated judges has never been released to the public, unlike the conventional practice of releasing the full list of civil and criminal judges in public, which is something that have already had in place in Hong Kong for a long time.

128. Before the NSL, the CE can only appoint judges with advice from the Judicial Officers Recommendation Committee ("JORC"), which consists of judges, representatives from the Bar and the Law Society as well as externs. The duty of designating judges to handle cases was completely a matter of the Judiciary. Now, the CE can designate any judges of his or her choice, and consultation with the Judiciary or the JORC is not mandatory. The designation of NSL judges by the executive authorities instead of the judiciary *per se* certainly damages fair trial in national security cases as the city's chief executive can screen and decide which judge to handle those cases.

129. Since the NSL was imposed, the HKSAR government has refused to disclose the list of designated judges to public, despite the fact that the local Judiciary always discloses the list of judges in public. The government claimed that such disclosure could create security risks judges who have been so named.³⁴

Example

130. *In February 2021, media reports revealed that Andrew Cheung, the Chief Justice of Hong Kong as well as a NSL judge designated by the then Chief Executive Carrie Lam, was found of having a one-to-one meeting with the Chief Executive four days before he heard the bail appeal of NSL defendant Jimmy Lai at the Court of Final Appeal.*³⁵ *Although Lam denied any discussion of NSL cases in that meeting, lawyers and legal scholars questioned such meeting undermines the court's impartiality and integrity in handling those NSL cases.*³⁶

Recommendations

131. HKSAR government should ensure the chief executive's designation of NSL judges is made after consultation with and only with the chief justice or the JORC, since such practices are not disallowed by the NSL.

132. HKSAR government should publicise the list of designated judges for NSL cases.

³⁴ Alvin Lum, 2020, "司法機構公開民刑事法官名單 特首辦：毋須公開國安法官名單" [The Judiciary publishes list of civil and criminal judges, whereas the CE office said not necessary to disclose the list of NSL judges], CitizenNews, May 30, URL= <https://hkcnews.com/article/36675/指定法官-港版國安法-公開資料守則-36683/司法機構公開民刑事法官名單-特首辦：毋須公開國安法官名單>

³⁵ Chris Lau, 2021, "Hong Kong leader Carrie Lam denies interference suggestion, after reportedly meeting chief justice ahead of Jimmy Lai hearing" *South China Morning Post*, February 2, URL= <https://www.scmp.com/news/hong-kong/politics/article/3120192/hong-kong-leader-carrie-lam-categorically-denies>.

³⁶ Tommy Walker, 2022, "Legal Experts Question Hong Kong Chief Justice's Independence Claims" *Voice of America*, January 27, URL= <https://www.voanews.com/a/legal-experts-question-hong-kong-chief-justice-s-independence-claims-/6416303.html>.

Removal of Jury Trial by the Secretary for Justice in National Security Cases

133. Article 46 of the NSL allows national security cases to be tried without a jury at the level of High Court, if the Secretary for Justice (“SJ”) believes that such a move is necessary to protect state secrets, to prevent external interference, or to avoid risks of the jurors-elect and their family members. This provision does not specifically require SJ to provide reasons of the grounds for removing a jury trial in those cases.

134. Article 86 of the Basic Law provides that “the principle of trial by jury previously practiced in Hong Kong shall be maintained”. The Court of First Instance of the High Court is the only criminal court that jury trial is mandatory, as the High Court can impose life imprisonment. The mandatory presence of jury is to enhance accountability and public scrutiny in those cases, and to safeguard the integrity of trials from politically motivated prosecutions.³⁷ In previous years, jury also tried rioting cases that were highly politically sensitive in a fair and safe manner.³⁸ Local court also appreciated jury trial is essential to bolster judicial independence in Hong Kong.³⁹

135. Now, Article 46 of the NSL empowers the executive authority, in which the SJ is a political appointee from the PRC, to depart from the existing criminal justice system by removing jury from NSL cases. One scholar specialised in counterterrorism suggests that the creation of a non-jury trial for NSL cases at the High Court establishes a *de facto* special court in Hong Kong.⁴⁰

136. The SJ’s power and practice of removing a jury trial for NSL cases is inconsistent with the UN Human Rights Committee’s decision in *Kavanagh v Ireland* of 2001.⁴¹ 15 years later, the Committee continued to criticise the Irish authorities which decided to establish a second non-jury Special Criminal Court.⁴²

Example

137. *TONG Ying Kit*, a young protestor arrested on 1 July 2020, was charged with inciting others to secession and committing acts of terrorism, and he was tried without a jury at the Court of First Instance of the High Court upon the SJ’s order.⁴³ Before his criminal trial, Tong filed a judicial review against the SJ’s decision that was not embedded with concrete reasons for removing a jury trial in Tong’s case. The court refused to grant leave for Tong’s judicial review as the NSL does not require the SJ to be obliged to “hear or at least to notify an accused before she can exercise her power under NSL 46(1)” (removal of jury trial).⁴⁴ Tong’s appeal for such decision above was also rejected by the Court of Appeal, which recognised the SJ can choose not to disclose the reason of removing a jury if

³⁷ Thomas Kellogg and Eric Yan-ho Lai, “Death by a Thousand Cuts: Chipping Away at Due Process Rights in HK NSL Cases,” *Lawfare*, May 28, 2021, URL= <https://www.lawfareblog.com/death-thousand-cuts-chipping-away-due-process-rights-hk-nsl-cases>.

³⁸ *HKSAR v Leung Tin Kei and Others* [2018], HCCC 408/2016.

³⁹ *HKSAR v Lee Ming-tee and another* [2001], FACC 8/2000, paragraph 175.

⁴⁰ Kent Roach, 2021, “Echoes that Build to a Cacophony: Hong Kong’s New Security Law Compared to Illiberal Elements of the Security Laws of Liberal Democracies”, January 9, pp.7-8, available at SSRN, URL=<https://ssrn.com/abstract=3763099> or <http://dx.doi.org/10.2139/ssrn.3763099>.

⁴¹ *Kavanagh v Ireland* [2001], U.N. Doc. CCPR/C/71/D/819/1998, paras 10.1-10.3.

⁴² Mary Minihan, 2015, “UN committee criticises plan for new non-jury court” *The Irish Times*, October 30, URL=<https://www.irishtimes.com/news/politics/un-committee-criticises-plan-for-new-non-jury-court-1.2410768>.

⁴³ *HKSAR v Tong Ying Kit* [2021], HCCC 280/2020.

⁴⁴ *Tong Ying Kit v Secretary for Justice* [2021], HCAL 473/2021, para. 26

he or she considers such decision “may involve classified information...that would not be in the public interest to disclose”.⁴⁵

Recommendations

138. HKSAR government’s Secretary for Justice, who heads the Department of Justice, should not remove jury trials for upcoming national security cases to be tried at the High Court, including but not limited to the “47 pro-democracy primary” case, the “Apple Daily” case, and the “Hong Kong Alliance” case. Even if the Department of Justice sees a need to remove a jury from a NSL trial, it should provide reasons to justify such act, and the reasons should be made public; such acts are not prohibited by the NSL.

Bail & Arbitrary Detention in National Security Cases

(Articles 7, 9 – 10, 14 – 15, 25/Also items 17 & 20 of LOI)

Presumption against Bail

139. Contrary to the principle of presumption of bail in Hong Kong’s criminal court, which conventionally denies bail if it believes the defendant would reoffend or abscond, Article 42(2) of the NSL states that, “(n)o bail shall be granted to a criminal suspect or defendant unless the judge has sufficient grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security.” This provision creates a *presumption against bail* in NSL cases at the beginning of the implementation of the NSL; later, such principle was also applied by the court in other cases related to national security.

140. The Court of Final Appeal ruled that, Article 42(2) *does* in fact create a presumption against bail, contrary to existing Hong Kong law.⁴⁶ In that context, the threshold for bail for NSL crimes is much more stringent, in that a judge must be decide that she or he has “sufficient grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security”. The judicial inquiry can be a broad-based one beyond the elements of the NSL offences.⁴⁷

141. The new principle of presumption against bail was also applied in non-NSL sedition cases. In *HKSAR v Ng Hau Yi Sidney* (FAMC 31/2021), the court reaffirmed that the charge of publishing seditious publication under the Crimes Ordinance is part of the acts endangering national security (paragraphs 30-31), and thus the bail principle in the NSL is also applicable in those cases related to acts of endangering national security, such as sedition.

142. The new bail principle under the NSL makes defendants almost impossible to prove they would not do anything endangering national security if they are granted bail before the court. The term “endanger national security” is overbroad, and the court accepts a wide range of activities as endangering national security and thus denied bail of many NSL defendants. As a result, most of the defendants related to national security offences are undergoing pre-trial detention. Many of them have not been assigned dates of formal trials yet, leading to a *de facto* long term arbitrary detention.

⁴⁵ *Tong Ying Kit v Secretary for Justice* [2021], CACV 293/2021, para.64.

⁴⁶ *HKSAR v Lai Chee Ying* (FACC 1/2021)

⁴⁷ Lydia Wong, Thomas E. Kellogg and Eric Yan-ho Lai, 2021, *Hong Kong’s National Security Law and the Right to Fair Trial: A GCAL Briefing Paper*, Center for Asian Law, Georgetown University Law Center, June 28, URL=<https://www.law.georgetown.edu/law-asia/wp-content/uploads/sites/31/2021/06/HongKongNSLRightToFairTrial.pdf>.

Examples

143. In *HKSAR v Mo Man Ching Claudia* (HCCC 134/2021), the court denied Mo's bail application as the court saw there were insufficient grounds for believing that the Mo will not continue to commit acts endangering national security if bail is granted, and one of the examples provided by the prosecution was her WhatsApp conversations with foreign journalists.

144. In *HKSAR v Tam Man Ho Jeremy* (HCCC 114/2021), Tam was denied bail as the court considered the prosecution's submission of which Tam received email invitations from the United States Consulate in Hong Kong for meetings, even though Tam did not reply to the emails.

145. In *HKSAR v Cheung Kim Hung* (HCCC 418/2021), Cheung was denied bail as he was believed of having close ties with foreign governments, when the UK Foreign Secretary and the US Department of State issued statements related to the police raid and the following closure of the Apple Daily where Cheung served.

146. According to an online database from the Center for Asian Law at Georgetown University Law Center, as of 28 March, 84 of 113 defendants charged with NSL or sedition were denied bail under the NSL bail principle (74.3%); among those being denied bail, more than half of them have been detained for more than a year without trial.⁴⁸

Prosecution-led Pre-trial Detention

147. The long-term pretrial detention for defendants in NSL and sedition cases, as illustrated above, appears to be attributed to repeated adjournments of those cases. For some instances, the adjournments of trial were due to covid pandemic outbreak.⁴⁹ Yet some obvious NSL cases that were repeatedly adjourned upon the requests of the prosecution. Although the court sometimes addressed the disturbing situation of long-term delay of trial, the court has not done any meaningful remedies; instead, the court continues to approve the prosecutors' requests to adjourn the cases. The objective effect is that, those cases are excessively delayed trial; since many of them were denied bail, the repeated prosecution's request of adjournments, as well as the court's approval of those requests, are turning such NSL cases into long term detention without trial.

148. Such practice of the intersection between denial of bail and long term detention without trial is ostensibly inconsistent with the Committee's decisions in previous communications and its General Comment on arbitrary detention (No.35, para.12): "The notion of "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality. For example, remand in custody on criminal charges must be reasonable and necessary in all the circumstances. Aside from judicially imposed sentences for a fixed period of time, the decision to keep a person in any form of detention is arbitrary if it is not subject to periodic re-evaluation of the justification for continuing the detention."⁵⁰

Examples

149. In the 47 pro-democracy primary cases, 47 individuals were charged with conspiracy to subversion on February 28, 2021. More than 2/3 of the defendants were denied bail. 10 months later, the prosecutor requested the court to adjourn the case to 7 February 2022, as the prosecution had yet prepared the translation of the written materials

⁴⁸ Lai and Kellogg, 2022.

⁴⁹ Kelly Ho, 2022, "Hong Kong democrats' subversion case adjourned to late April, courts may close amid Covid-19" *Hong Kong Free Press*, March 4, URL= <https://hongkongfp.com/2022/03/04/hong-kong-democrats-subversion-case-adjourned-to-late-april-courts-may-close-amid-covid-19/>.

⁵⁰ United Nations Human Rights Committee, 2014, *General Comment No.35: Article 9 (Liberty and Security of Person)*, CCPR/C/GC/35, para. 12.

to all parties.⁵¹ Although the court rejected the written request and insisted to have a hearing on the scheduled date of 29 November 2021, during that hearing, the court finally decided to adjourn the case until 8 February 2022.⁵² The same case has been adjourned again to April 2022, and now to June 2022.⁵³

150. In the Hong Kong Alliance's case where which 5 core members of the organisation refused to submit information requested by the national security police and thus be charged, 3 of them were denied bail and remain in custody for more than 6 months, but the maximum sentence for not submitting information requested by the national security police is 6 months only.⁵⁴

Disproportionate Bail Conditions

151. For some of those cases in which bail was granted, the individuals had to agree on a broad checklist of bail condition that bars them from any nonviolent public participation such as making public political comments, speaking to journalists, or engaging in social organisations; otherwise, their bail would be revoked.

Examples

152. On 13 January 2022, Owen Chow, activist and one of the 47 democrats charged with subversion on 28 February 2021, had his bail revoked and then be detained in custody, for the court found him breaching bail terms by publishing speech that could be regarded as endangering national security. Local media reported that Chow made political comments on social media, and that led to his bail being revoked.⁵⁵

⁵¹ Inmediahk, 2021, “【初選 47 人案】律政司申押後明年 羅德泉回信拒絕兼反問文件進度” [[Primary 47 Case] DOJ requests adjournments to 2022, Judge Peter Law rejects and asks the progress of document preparation], November 16, URL=<https://www.inmediahk.net/node/%E7%A4%BE%E9%81%8B/%E3%80%90%E5%88%9D%E9%81%B847%E4%BA%BA%E6%A1%88%E3%80%91%E5%BE%8B%E6%94%BF%E5%8F%B8%E7%94%B3%E6%8A%BC%E5%BE%8C%E6%98%8E%E5%B9%B4-%E7%BE%85%E5%BE%B7%E6%B3%89%E5%9B%9E%E4%BF%A1%E6%8B%92%E7%B5%95%E5%85%BC%E5%8F%8D%E5%95%8F%E6%96%87%E4%BB%B6%E9%80%B2%E5%BA%A6> .

⁵² Jessie Pang and James Pomfret, 2021, “Trial of 47 Hong Kong democracy activists charged with conspiracy to commit subversion adjourned till March” *Reuters*, November 29, URL= <https://www.reuters.com/world/china/trial-47-hong-kong-democracy-activists-charged-with-conspiracy-commit-subversion-2021-11-29/>; Inmediahk, 2021, “【初選 47 人案】再押後至明年 3 月提訊 多名被告鼓譟” [Primary 47 Case] Hearing is adjourned again until March 2022, many defendants were discontent], November 29, URL=<https://www.inmediahk.net/node/%E7%A4%BE%E9%81%8B/%E3%80%90%E5%88%9D%E9%81%B847%E4%BA%BA%E6%A1%88%E3%80%91%E5%86%8D%E6%8A%BC%E5%BE%8C%E8%87%B3%E6%98%8E%E5%B9%B43%E6%9C%88%E6%8F%90%E8%A8%8A-%E5%A4%9A%E5%90%8D%E8%A2%AB%E5%91%8A%E9%BC%93%E8%AD%9F>.

⁵³ Kelly Ho, 2022, “47 democrats’ subversion case adjourned to June” *Hong Kong Free Press*, April 28, URL=<https://hongkongfp.com/2022/04/28/47-democrats-subversion-case-adjourned-to-june/>.

⁵⁴ <https://www.bbc.com/news/world-asia-china-58522326>

⁵⁵ Peter Lee, 2022, “Hong Kong democrat Owen Chow awaiting national security trial has bail revoked for violating terms”, *Hong Kong Free Press*, January 13, URL= <https://hongkongfp.com/2022/01/13/hong-kong-democrat-owen-chow-arrested-by-national-security-police-again-for-allegedly-violating-bail-terms/>.

153. On 8 March, Winnie Yu, a former union leader and one of the 47 democrats charged with subversion above, had her bail revoked as the court found her violating the bail term.⁵⁶

154. **On 24 December 2021, A 16-year-old boy charged with conspiracy to inciting subversion under the NSL was granted bail, after nearly three months in custody awaiting his trial. However, his bail conditions included “not sharing, commenting on, or “liking” social media posts or otherwise expressing any opinion related to politics and current affairs”.**⁵⁷

Restriction of Media Report on NSL Bail Hearings

155. Given the bail hearings related to the NSL and sedition offences have produced very substantial evaluations of the NSL’s stricter bail terms, the admissibility of evidence, the shifting prosecution charges, and the restrictions against defendants in terms of exercising their right to free association, expression and peaceful political participation, it is expected that the court’s bail hearings shall be more open and transparent, so the public can see how the court handled the cases and whether it can protect the integrity of trial under the NSL.⁵⁸ However, in many of those cases, the court rejected to lift media reporting restrictions on bail hearings under section 9(P) of the Criminal Procedure Ordinance (Cap.221), even despite repeated applications by defendants to lift the restrictions.⁵⁹ In ordinary criminal trials, such rules are supposed to protect a defendant from potential prejudice.⁶⁰ However, it is debatable whether restricting reporting of the bail hearings fit the “interests of public justice” under the same law, instead of lifting the reporting restrictions.⁶¹

156. Without transparency, there is no way to monitor the situation of reprisals against democracy and human rights advocates, as well as the substantive restrictions of the defendants’ rights to free expression and free political participation, in which necessity and proportionality tests shall be considered.

Recommendations

157. HKSAR government should propose to the PRC authorities to amend the bail provisions in Article 42 of the NSL by restoring the principle of presumption of bail in the provision.

158. HKSAR government should enhance judicial independence, especially fair trial and due process, by reminding the prosecution to act consistently with its prosecution guidelines; the prosecution is headed by the Secretary for Justice as a principal official appointed by the PRC State Council, should guarantee the

⁵⁶ Candice Chau, 2022, “National security: ex-Hospital Authority union chief remanded in custody for violating bail terms” *Hong Kong Free Press*, March 8, URL= <https://hongkongfp.com/2022/03/08/national-security-ex-hospital-authority-union-chief-remanded-in-custody-for-violating-bail-terms/>.

⁵⁷ <https://hongkongfp.com/2021/12/24/16-year-old-national-security-defendant-granted-bail-by-hong-kong-court-but-with-long-list-of-conditions/>

⁵⁸ AFP, 2022, “Hong Kong activists fade from view as national security case drags”, April 7, URL= <https://www.france24.com/en/live-news/20220407-hong-kong-activists-fade-from-view-as-national-security-case-drags>.

⁵⁹ Gwyneth Ho <https://www.scmp.com/news/hong-kong/law-and-crime/article/3147974/jailed-hong-kong-opposition-activist-ditches-bail-plan>; and Chow Hang-tung, see UN Special Procedures communication to China UA CHN 10/2021

⁶⁰ Ibid.

⁶¹ According to section 9(P) of the Criminal Procedure Ordinance, “[u]nless it appears to the court that the interests of public justice otherwise require, no person shall publish in Hong Kong a written report, or broadcast in Hong Kong a report, of any bail proceedings containing any matter other than that permitted”, such as the name of the bail applicant or the result of the bail proceeding.

prosecution, in its submission to the court bail hearings, to narrow down the scope of activities, which include acts of free expression, free association and free political participation, that could be considered as endangering national security and thus become grounds of denying bail by the court.

159. HKSAR government should remind the judiciary of their commitments to judicial independence, fair trial and due process in accordance with the ICCPR and the Committee's General Comments; the court should follow the Committee's standards to uphold legal rights of defendants and prevent any abuses or lawful but arbitrary detention being imposed on defendants in national security cases. After all, in most cases, bail should be granted to defendants who cannot have their trials in time.

160. HKSAR government should uphold the integrity of the NSL trials since the government plays *de facto* roles in designation of judges and the operation of the Department of Justice. The HKSAR government's public prosecutors and the court should also be reminded that, even it sometimes addressed the problem of long-term delay of NSL trials, they need to take meaningful measures to act as gatekeepers of defendant's legal right, instead of keeping giving green lights to prosecutors' repeated requests to adjourn the NSL trials that objectively creates long term detention without trial among those defendants.

Retrospectiveness in NSL Trials

(Articles 14 – 15/Questions 17 & 20 of LOI)

161. Although the then chief executive Carrie Lam vowed on June 30, 2020 to the UN Human Rights Council, and although the HKSAR government replied to the Committee in 2021 that the NSL would have no retrospective effect, however, when a local media questioned the CE office again in August 2021, the questions were referred to the local police for response, and the police spokesperson only told the media that “[i]n conducting any operation, Police will act on the basis of actual circumstances and according to the law”, without answering the questions on whether the NSL has been being applied retroactively.⁶² In practice, the national security police often requested information from individuals and groups of their pre-NSL activities and records. At least two NSL cases are found of which the prosecutor and even the court accepts facts before the imposition of NSL as evidence of the convicted charges. The retrospective elements in the NSL cases damages fair trial and the certainty of the law, which are fundamental principles of the rule of law, since many pre-NSL activities quoted by the prosecutors and the court were regarded as lawful exercises of free expression, free association, and free peaceful assembly in Hong Kong.

Example

162. *In 香港特別行政區訴鍾翰林 [HKSAR v Chung Hon-lam], the prosecutor provided a 69-page summary of facts to the court, in which 41 pages of the facts were descriptions of the defendant's activities before the imposition of the NSL on June 30, 2020. The designated judge Stanley Chan ruled that, when he gave his oral verdict, the agreed facts about the defendant's words and deeds before the imposition of the NSL had made him easier to understand the*

⁶² Tom Grundy, 2021, “Hong Kong authorities evade questions over ‘retrospective’ security law, despite Lam comments to UN” *Hong Kong Free Press*, August 18, URL= <https://hongkongfp.com/2021/08/18/hong-kong-authorities-evade-questions-over-retrospective-security-law-despite-lam-comments-to-un/>.

defendants' acts after the NSL being in effect, and then Chan sentenced the defendant to 43 months of jail.⁶³ In other words, the judge considered pre-NSL activities in sentencing.

Recommendation

163. HKSAR government should enhance the rule of law by avoiding the public prosecutors to employ any pre-NSL activities as admissible facts in NSL trials, in order to uphold the government's promise of not implementing the NSL in a retrospective manner.

Electoral rights eroded under NSL

164. The NSL provides pretext for arbitrarily disqualifying an election candidate or removing an elected representative from office.

165. NSL article 6 stipulates that election candidates or people assuming public office shall confirm in writing or take an oath to uphold the Basic Law and swear allegiance to HKSAR of the People's Republic of China. In assessing whether the oath was genuinely taken, the authorities may make assessment with no subjective standard.

166. NSL article 35 provides that if a LegCo member, District Council member, a judge, public servant etc is convicted of an offence endangering national security by a court, he or she shall be removed from his or her office upon conviction". Such cases are heard by National Security Law designated judges. The questionable independence of judiciary and the broad definitions of offences endangering national security provide for arbitrary removal of elected representatives, judges, public servants etc.

167. Furthermore, the NPCSC made a decision in November 2020, creating four new grounds for LegCo member disqualification, including immediate expulsion.⁶⁴ The new grounds include advocating for Hong Kong's independence, lobbying foreign actors to interfere in Hong Kong affairs, or otherwise endangering national security. The decision was framed as a further interpretation of Article 104 of the Basic Law, but relied on other legal and constitutional authorities, including NSL article 35. It effectively expands NSL article 35, which requires a conviction by a court of law, to "determined according to law" to have violated the aforementioned prohibitions.

168. The NPCSC decision in November 2020 led to the immediate expulsion of four incumbent legislators – Dennis Kwok, Alvin Yeung, Kwok Ka-ki, and Kenneth Leung. The "determination according to law" of violations was the returning officers' decision that they did not genuinely pledge to uphold the Basic Law when they submitted their nominations for the LegCo election 2020. It was not a judicial decision.

⁶³ *Headline Daily*, 2021, "鍾翰林認分裂國家及洗黑錢 官指若非被捕或會繼續犯案判囚 43 月" [Chung Hon-lam pleads guilty for secession and money laundering, the judge sentences Chung to 43 months of jail] November 23, URL=<https://hd.stheadline.com/news/realtime/hk/2279041/%E5%8D%B3%E6%99%82-%E6%B8%AF%E8%81%9E-%E9%8D%BE%E7%BF%B0%E6%9E%97%E8%AA%8D%E5%88%86%E8%A3%82%E5%9C%8B%E5%AE%B6%E5%8F%8A%E6%B4%97%E9%BB%91%E9%8C%A2-%E5%AE%98%E6%8C%87%E8%8B%A5%E9%9D%9E%E8%A2%AB%E6%8D%95%E6>.

⁶⁴ NPCSC Clarifies "Allegiance" Requirements for Hong Kong Legislators, Disqualifies Pro-Democracy Legislators, <https://npcobserver.com/2020/11/11/npcsc-clarifies-allegiance-requirements-for-hong-kong-legislators-disqualifies-pro-democracy-legislators/>

Freedom of religion at dire risk under NSL

169. We feel the urgency of raising concern on religious repression in Hong Kong that may worsen in a flash. The alarm has been sounded by a few press articles recently.⁶⁵

170. Hong Kong used to enjoy a large degree of religious freedom, in contrast to the heavy religious repression in mainland China. However, as the One Country Two Systems principle is eroded, and the Chinese Government assumes greater control over matters in Hong Kong, the rights and freedoms that used to be enjoyed are at dire risks, including the rights protected under ICCPR Article 18.

171. Christianity has been at the forefront of such erosion, probably because of the active participation of Christians and some Christian groups in social movements. Pro-democracy advocates such as Joshua Wong and media mogul Jimmy Lai have cited their faith as the moral compass for their activism.

172. During the 2019 pro-democracy protests, pastors would lead their adherents in sit-ins, prayers and singing of “Hallelujah to the Lord,” imploring the government to meet protesters’ demands for accountability and universal suffrage. The hymn became a symbol of peaceful protests and the freedom of assembly.

Worrying Trends

173. An unprecedented formal meeting between Hong Kong’s Catholic leaders and their mainland counterparts was organized by the Central Government Liaison Office in Hong Kong in October 2021. The meeting was monitored by the State Administration of Religious Affairs and described to be “Beijing’s most assertive move yet in its attempts to influence Hong Kong’s diocese”.⁶⁶

174. Some religious groups and leaders have always been active in social justice issues in Hong Kong. For example, Cardinal Zen of the Catholic Church is a prominent supporter of democracy in Hong Kong. Pro-Beijing newspapers in Hong Kong have accused some church leaders of supporting violent protests.⁶⁷

Self-censorship among churches:

175. A study by the Hong Kong Church Renewal Movement last year revealed that over a third of churches were now more inclined to adjust the content of their preaching in light of the political situation in the city.⁶⁸

176. According to 18 pastors and religious experts interviewed by The Washington Post, churches have been pushed into censoring themselves and avoiding appointing pastors deemed to have political views, and at least one major church is restructuring itself in case the government freezes its assets.

⁶⁵ South China Morning Post, Should Hong Kong’s Christian groups be worried about national security law curbs? <https://www.scmp.com/news/hong-kong/society/article/3176490/should-hong-kongs-christian-groups-be-worried-about-national>; CNA, Religious repression in Hong Kong could soon worsen, Christian cleric warns <https://www.catholicnewsagency.com/news/250353/religious-repression-in-hong-kong-could-soon-worsen-christian-cleric-warns>; Hudson Institute, China Now Threatens Religious Freedom in Hong Kong <https://www.hudson.org/research/17673-china-now-threatens-religious-freedom-in-hong-kong>; The Washington Post, Hong Kong churches no longer off-limits as Beijing tightens grip on dissent <https://www.washingtonpost.com/world/2022/05/13/hong-kong-church-crackdown-catholic-dissent/>

⁶⁶ <https://www.reuters.com/world/china/exclusive-historic-conclave-chinese-bishops-priests-brief-hong-kong-clerics-xis-2021-12-30/>

⁶⁷ <http://www.takungpao.com.hk/news/232109/2020/0707/471583.html>

⁶⁸ <https://www.hkchurch.org/post/時勢牧言：如果宣講沒有了情境> (Chinese only); reported by Washington Post at <https://www.washingtonpost.com/world/2022/05/13/hong-kong-church-crackdown-catholic-dissent/>

177. the Financial Times reported that Catholic leaders in Hong Kong recently decided to cancel the commemoration for the victims of the Tiananmen Square Massacre on June 4, 1989, this year. The church has organized such commemorations for the past three decades.⁶⁹ On June 4 last year, Hong Kong Catholic diocese organized the mass in seven Catholic churches.

178. Setting up a government religious committee, which some worry could come to resemble China's overbearing religious bureau. Pastors expressed worries that the new committee will be a tool to tighten the state's grip on churches. "Setting up a religious committee could be a convenient way to control the churches...The authorities could strip away their status as a registered church if they disobey."

179. State-media Ta Kung Pao published four articles about Catholicism in Hong Kong in January 2022. The newspaper article categorized Zen as an enemy of the Chinese Communist Party, China's ruling party, in the same vein as Falun Gong, a highly persecuted religious minority in China. The paper also called for Hong Kong's religious institutions to be placed under government control, AsiaNews reported.

180. Hong Kong National Security Law stresses on the management and monitoring of "social organisations", which has always included religious groups in mainland China.

181. Charity guidelines: A significant amendment in the tax guide last September made it clear that any group involved in activities detrimental to national security would not be recognised as a charitable organisation. Income of churches would be hit hard if the government revoked the tax-exempt status of donations they received.

182. Christian schools: at the height of the unrest in Hong Kong in November 2019, People.cn, a website supporting the Communist Party organ People's Daily, ran a particularly "harsh" commentary attacking the city's church-run schools. It said a considerable portion of these schools had been brainwashing children with secession ideas and hatred towards the country. Ta Kung Pao's article in January 2022 echoed those views in an attempt to portray Christianity as being allowed to control an unfair share of the education sector because of favouritism by the colonial government.⁷⁰

Recommendations:

183. Ensure that all religious groups can fully exercise their rights protected by the Covenant, including promoting human rights or expressing their views on public affairs without fears of facing reprisal or intimidation.

Censorship of movies and books

(ICCPR Article 19(2))

Censoring Movies

184. Even before the NSL became effective, two documentaries "Taking Back the Legislature" and "Inside the Red Brick Wall" were ordered by the Office for Film, Newspaper and Article Administration⁷¹ to include an official

⁶⁹ <https://www.ft.com/content/c9a564c5-54e1-4167-8283-9e720f48c173>

⁷⁰ Reported by <https://www.scmp.com/news/hong-kong/society/article/3176490/should-hong-kongs-christian-groups-be-worried-about-national>

⁷¹ the governmental body responsible for enforcing the film classification system under the Film Censorship Ordinance (Cap. 392)

warning on the screen that the documentaries were depicting acts that may constitute offences. In June 2021, screening permit of the movie “Far from Home” as refused unless the plot of the movie was changed; the director refused and was forced to cancel its screening. The three movies are about the anti-extradition movement in 2019.

185. In the Pride Month of 2021 (dedicated to celebrating LGBTQ+), the EU Office in HK & Macau intended to screen a documentary, “Taiwan Equals Love”, featuring the gay marriage movement in Taiwan. The HK government’s Film Censorship Authority only allowed the edited version to be screened. There’s no official explanation of which part of the movie was of issue to the general public; it’s speculated that content related to referendum, protests, Taiwan government etc in the movie could be of issue. The organiser refused the Film Censorship Authority’s request and decided to cancel the screening.

186. In October 2021, the government introduced rules to the Film Censorship Ordinance for obeying the NSL, expressly mandating inspectors to consider whether a movie could “endanger national security” before allowing its screening. There is no appeal allowed against a decision of refusal.

187. The documentary “Revolution of Our Times” and the movie “May You Stay Forever Young” have been screened out of Hong Kong over concerns of violating the NSL. The director of the former revealed that, after considering the risk, different measures were adopted, including destroying all relevant clips in HK, carrying those clips and the completed product to the UK, relocating its copyrights and the umbrella term “Hong Kongers” were used to refer to the producers, to avoid being retaliated.

188. This incident shows how movie production is intensely restricted under white terror.

Censoring books

189. After the enactment of the NSL, various books have been removed from public libraries, including “Hong Kong Nationalism”, “Theory of the Hong Kong City-state”, “I don’t want to be Chinese again”, “For Those Dressed in Black”, “Resistance amid Travelling and Dining” (by former lawmaker Tanya Chan), June-Fourth incident related books, the Apple Daily, and publications of those prosecuted under the NSL, including Joshua Wong and Jimmy Lai. Reportedly over a hundred books have been withheld, but the government refused to provide the number or the list.

Chilling effect and self-censorship on schools in relation to reading materials for students

190. Such measures have caused chilling effect and self-censorship in schools in relation to school libraries and books for students. While the Education Bureau issued a letter reminding schools not to possess literature that could endanger national security, it has not provided a list of “prohibited books”. The schools can only decide on their own whether a book is offending the law, which inevitably leads to self-censorship. This limits the free flow of books and prevents students from reading those books.

Banning an independent publisher from major book exhibition

191. In 2022, the annual major book exhibition has refused a publisher to take part in it. The publisher, Hillway Culture, has been managed by Mr Yeung Tsz Chun (who has been prosecuted for taking part in an unlawful assembly). The publisher was seen as the only publisher which sold social movement related books in last year’s exhibition. There were complaints against it. This year it can no longer set up a stall in the exhibition, but to organise its exhibition entitled “Exhibition of Hong Kongers” somewhere else. It reflects how freedom of press and expression has been heavily thwarted.

Emergency Regulations Ordinance

(LOI item 5)

192. In December 2020, the Hong Kong Court of Final Appeal held that both the Anti-Mask Law and the power under the ERO invoked by the Chief Executive in Council were constitutional. Since then, the Chief Executive in Council has invoked the Emergency Regulations Ordinance in three more occasions:

- (a) Emergency (Date of General Election) (Seventh Term of the Legislative Council) Regulation – to postpone the Legislative Council elections by one year, allegedly due to COVID-19.
- (b) Emergency (Exemption from Statutory Requirements) (Covid-19) Regulation - to allow the Chief Secretary for Administration to exempt people and projects from relevant statutory requirements so the government could draw upon mainland China’s support in combating the “very dire epidemic situation”. Exemptions made include allowing doctors and nurses from the Chinese mainland to practice in Hong Kong without having to pass local exams and licensing regulations; building a temporary China-Hong Kong bridge⁷² etc
- (c) Emergency (Date of Election) (Sixth Term Chief Executive) Regulation – to postpone the Chief Executive election from end of March 2022 to 8 May 2022, allegedly due to COVID-19.
- (d) The anti-mask law remains in effect.

193. The invocations of the Emergency Regulations Ordinance set dangerous precedents for the use of this executive law-making power. Some observers have questioned whether the decision to use the law will encourage the administration to govern by decree rather than consensus-building.

194. While the Hong Kong Government replied to the Committee that regulations made under the Ordinance have to be laid before LegCo for negative vetting, and LegCo may by resolution amend or repeal such regulations, such resolutions are deemed to be motions or amendments introduced by individual Members, and shall require a majority vote of each of the following two groups of Members present: Members returned by the Election Committee, and those returned by functional constituencies and by geographical constituencies through direct elections. The threshold to amend or repeal such regulations is therefore significantly higher than in positive vetting, where only a majority vote of the Legislative Council Members present is required. Not to mention the revamped composition of the Legislative Council has effectively ruled out any opposition.

195. The Government’s reply also stated that the exercise of power under the Ordinance and emergency regulations is amenable to judicial review. Judicial review requires an applicant who has a sufficient interest in the matter. Any such person may fear reprisal from the Government for bringing such challenge. Furthermore, judicial review is extremely costly. In the judicial review brought by LegCo members over the ERO and anti-mask law, the case went all the way to the Court of Final Appeal. According to Government paper, the legal cost incurred by the Hong Kong Government is over 3 million Hong Kong dollars (approximately USD390 thousands);⁷³ When the Court of Final Appeal ruled in favour of the Government, the Government applied to the Court to make cost order against the applicants, i.e. the LegCo members who brought the case would have to pay the Government’s legal costs, on top

⁷² Covid-19: Work on temporary China-Hong Kong bridge began before emergency law was invoked, satellite images show, URL= <https://hongkongfp.com/2022/04/03/covid-19-work-on-temporary-china-hong-kong-bridge-began-before-emergency-law-was-invoked-satellite-images-show/>

⁷³ <https://www.legco.gov.hk/yr20-21/english/fc/fc/papers/fi21-04e.pdf>, p.2

of their own legal costs.⁷⁴ While in that case the applicants successfully pleaded public interest litigation exception, there is no guarantee of success in future attempts. Not to mention that the applicants' own legal costs are already burdensome.

196. **ERO may also be used to create offences that could be regarded as a national security offence, hence attracting the reduced rights protection in criminal investigations and procedures.**

Recommendation

197. Express grave concern that the Prohibition on Face Covering Regulation made under ERO remain in effect since its introduction on 5 October 2019. HKSAR government should provide justification to the Committee why the regulation is not terminated given the social disturbance occurred between 2019 and 2020 has ceased. Reiterate the regulation should be terminated in the shortest time required to bring to an end of the public emergency.

198. HKSAR government should reference to General Comment 20 of the Committee and the Siracusa Principles regarding imposing limitation to the rights or freedoms enshrined in the Covenant in the time of public emergency.

Part II: Priority Issues

Item 1

NPC explanations and NPCSC decisions

(Gov Reply paras 1-5)

199. The NPC and NPCSC have made a number of decisions and explanations in the past two years that are legally binding and have constitutional significance, similar effect to NPCSC's interpretations of the Basic Law. Other than the decision on 28 May 2020 on imposing the NSL on Hong Kong, **the Government has failed to mention the other NPCSC decisions and NPC explanations in their reply to the List of Issues.**

200. These decisions are included in the full text of the Basic Law by the Hong Kong Government:

201. *Decision of the Standing Committee of the National People's Congress on the Continuing Discharge of Duties by the Sixth Term Legislative Council of the Hong Kong Special Administrative Region* (adopted on 11 August 2020)⁷⁵. **This decision effectively amended the Basic Law to extend the term of the LegCo to five years, following the decision to postpone the LegCo elections in 2020 by one year, exceeding the Basic Law Article 69's stipulation that the term of office of the LegCo shall be four years.**

202. *Decision of the Standing Committee of the National People's Congress on Issues Relating to the Qualification of the Members of the Legislative Council of the Hong Kong Special Administrative Region* (Adopted on 11 November 2020)⁷⁶ **This decision effectively removed four serving LegCo members from office, and provided for new**

74 *Kwok Wing Hang and 23 Others v. Chief Executive in Council and Another* (22/03/2021, FACV6/2020) (2021)

24 HKCFAR 93, [2021] HKCFA 11

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=134356&QS=%28%7Bkwok+wing+hang%7D+%25parties%29&TP=JU

⁷⁵ https://www.basiclaw.gov.hk/filemanager/content/en/files/basiclawtext/basiclawtext_doc28.pdf

⁷⁶ https://www.basiclaw.gov.hk/filemanager/content/en/files/basiclawtext/basiclawtext_doc29.pdf

criteria for the removal of LegCo members on top of existing procedures and article 35 of the NSL. See Electoral rights eroded under NSL under Part I, and Item 27 Participation in public affairs of this submission.

203. *Explanations on the Draft Decision of the National People's Congress on Improving the Electoral System of the Hong Kong Special Administrative Region* (Adopted at the Fourth Session of the Thirteenth National People's Congress on 5 March 2021)⁷⁷

204. *Decision of the National People's Congress On Improving the Electoral System of the Hong Kong Special Administrative Region* (Adopted at the Fourth Session of the Thirteenth National People's Congress on 11 March 2021)⁷⁸ **The explanations by NPC and decision by NPCSC dictated a political reform without consultation with the Hong Kong people, and is opposite to the promise of universal and equal suffrage.**

205. These decisions and explanations override the Basic Law, local legislations, and are not subject to judicial review by Hong Kong courts.

Item 10

Unpublicised guidelines on Police use of force by Police

(Gov Reply para 66)

206. The Committee Against Torture recommended Hong Kong government should publicize the police general orders and related guidelines on the use of force and make sure that they are in conformity with international standards⁷⁹. However, the relevant regulations and guidelines on use of force remain unavailable for public inspection.

207. September 2019, Police amended the Force Procedure Manual (“FPM”) under the Police General Orders (“PGO”) on use of force including an amendment on what situation the use of lethal force could be justified⁸⁰. The legislature and public did not have any knowledge about the changes until media uncover the changes from leaked document. Public consultation and scrutiny from legislature were absent before and after the amendment of the use of force guideline.

208. Police has been strongly criticised by public for excessive use of force and violation of weapon guidelines in reference to international standard and principles. However, it is difficult for the public to monitor the use of force by police, and to hold perpetrators accountable if the guidelines are not available to public.

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| Recommendation: |
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⁷⁷ https://www.basiclaw.gov.hk/filemanager/content/en/files/basiclawtext/basiclawtext_doc30.pdf

⁷⁸ https://www.basiclaw.gov.hk/filemanager/content/en/files/basiclawtext/basiclawtext_doc31.pdf

⁷⁹ UNCAT Committee against Torture (2016), Concluding observations on the fifth periodic report of China with respect to Hong Kong, China, para 15.

⁸⁰ Hong Kong Free Press, Hong Kong police relaxed guidelines for using lethal force a day before officer shot student—reports <https://hongkongfp.com/2019/10/03/hong-kong-police-relaxed-guidelines-using-lethal-force-day-officer-shot-student-reports/>;

The Washington Post, Read the Hong Kong Police Force's guidelines on use of force <https://www.washingtonpost.com/context/read-the-hong-kong-police-force-s-guidelines-on-use-of-force/bd338108-d1df-4e97-88e0-cfc12c5613a1/>

209. Police and other law enforcement agencies should adopt the recommendation made by UN Committee Against Torture on the use of force in its concluding observations on Hong Kong in 2016; Police should publicize the Police General Orders, Force Procedures Manual, and other related manuals on use of force and make sure that they are in conformity with international standards.

Changes of use of force guidelines with looser requirement on the use of lethal force

(Gov Reply para 66)

210. It was uncovered by media that the Police issued amendments to the FPM on use of force on 30 September 2019⁸¹. In the previous version of the guidelines, officers were required to ascertain whether the assailant had “intent” to cause death or serious injury before lethal force could be used. The new version omitted the requirement to assess the assailant’s intent. Officers are permitted to use lethal force such as live rounds when facing an assault that causes, or is “relatively likely” to cause, death or serious injury. It is of the view that the new version allows a greater flexibility for an officer to decide whether lethal force should be applied, and the intent of the assailant can be neglected in the assessment.

Recommendation

211. Reiterate intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. Beside assessing the consequence of the assailant’s action, the intent of the assailant should also be considered by the police officer in deciding whether lethal force should be used.

Suspected case of torture was charged with alternative charges

(Gov Reply para 67)

212. On 15 October 2014, pro-democracy activist Ken Tsang was beaten by Police officers in Tamar Park, Admiralty, after being arrested in a police dispersal operation during the 2014 Hong Kong protests. The seven police officers were charged and found guilty of assault occasioning actual bodily harm on 14 February 2017. Trial of the case revealed that Ken Tsang was beaten by five Police officers under the watch of two senior officers who were the leader and the officer-in-charge of the team⁸². The court stated that these two senior officers did not take part in the assault but watched what happened, what they did was intended to and did encourage and support the officers of their team to carry out the assault on Tsang, intending Tsang to sustain unlawful personal violence.⁸³

⁸¹ *ibid*

⁸²

Para 701, DCCC 980/2015, URL:

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=108064&QS=%2B&TP=RV

⁸³ Para 6-7, Reasons for sentence, DCCC 980/2015, URL:

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=108134&QS=%2B&TP=RS

213. Given the assault was against a person who was arrested and controlled by a group of police officers; The victim was suffered serious pain from stamping, kicking, and stabbing with baton by officers. In light of the collective action and the fact that two senior officers passively permit the assault by watching the crime without stopping it, it is reasonable to question why the perpetrators were not charged for the crime of torture.

Recommendation

214. Hong Kong government should comment on the case whether the acts of the perpetrators were *prima facie* amount to the crime of torture under Hong Kong law. Have the Department of Justice taken into account on the possible defence of “lawful authority, justification or excuse” of this case which in turns decided not to charge the perpetrators for the crime of torture.

215. Hong Kong government should provide details of prosecution policy of the crime of torture in contrary to Crimes (Torture) Ordinance.

Item 11

Use of force by the police in contrary to international human rights standard

(Gov Reply paras 70-76)

216. There are reports published by credible media outlets, human rights organisations that reveal unlawful and excessive use of force and less-lethal weapon by police in the protests arise out of the “Anti-Extradition Bill Movement” between 2019 and 2020⁸⁴. It is important to have the Committee to reiterate the international standard and firmly point out examples of potential unlawful use of firearms and less-lethal weapons by Police.

217. It was uncovered in a court judgement held on 31 October 2020 that a protestor who was a defendant of the case, he was surrounded by 5 to 6 police officers at the time of being arrested and was injured and had bleeding from his head because of baton strike. The judge criticised the police officers were using excessive force against the defendant. The Judge was of the view that the police officers can control the defendant with bare hands, given he did not carry any weapon and was surrounded by five to six police officers⁸⁵. The injury is avoidable.

⁸⁴ Amnesty International, Verified: Hong Kong police violence against peaceful protesters <https://www.amnesty.org/en/latest/news/2019/06/hong-kong-police-violence-verified/>

New York Times, Did Hong Kong Police Abuse Protesters? What Videos Show <https://web.archive.org/web/20220426011107/https://www.nytimes.com/2019/06/30/world/asia/did-hong-kong-police-abuse-protesters-what-videos-show.html>

Physicians for Human Rights, The Reckless use of Tear Gas by Hong Kong Police in Confined Spaces is Dangerous and Patently Unlawful

<https://phr.org/our-work/resources/the-reckless-use-of-tear-gas-by-hong-kong-police-in-confined-spaces-is-dangerous-and-patently-unlawful/>

South China Morning Post, The truth about tear gas: how Hong Kong police violated all guidelines for the ‘non-lethal weapon’ <https://web.archive.org/web/20210429002902/https://www.scmp.com/magazines/post-magazine/long-reads/article/3022942/truth-about-tear-gas-how-hong-kong-police>

⁸⁵ 香港特別行政區 訴 余德穎及另七人 (31/10/2020, DCCC12/2020) [2020] HKDC 992, para. 117-120 (https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=131565&currpage=&loc=p117)

Recommendation

218. Reiterates that under international human rights law and international principles on the use of force, States are under an obligation to ensure that law enforcement officials are held accountable for their actions, including any decision to use force. HKSAR Government should conduct an independent investigation into the allegations of excessive use of force by the police during the so-called “Anti-Extradition Bill Movement” between 2019 and 2020.

219. Even the victim did not lodge any complaint regarding his or her suffering, government owed a positive obligation to investigate misconduct or unlawful use of force by Police based on available evidence and information, such as findings from judicial proceeding.

220. Express grave concern on reports of police officers were collectively striking batons to disperse protestors which resulted injuries at protestors’ head. Reiterate it is unlawful to strike baton to protestors’ head and neck in dispersing or arresting protestors.

221. Express grave concern on reports of police officers shooting impact rounds from dangerous angle which made the rounds much more likely hitting at the head or upper body of the protestors. Reiterate shooting kinetic impact projectiles at the head, face or neck could be unlawful.

222. Express grave concern on reports of police officers shooting tear gas in confined area, residential area, area near school and hospital.

223. Express grave concern on reports of police officers fired tear gas canister horizontally against protestors and shooting pepper ball at the head of protestors. Reiterate that irritant projectiles should generally not be fired at an individual. In any event, projectiles should not be fired at the head or face, owing to the risk of death or serious injury from impact trauma⁸⁶.

224. Express grave concern on reports of some police officers were equipped with automatic rifles in handling protests despite there is no evidence the police fired protestors with automatic rifles in operations⁸⁷. Reiterates the use of firearms to disperse an assembly is always unlawful⁸⁸.

⁸⁶ United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, Para.7.3.5

⁸⁷ South China Morning Post, Police respond to more menacing mob attacks by bringing out lethal anti-riot weapons not used earlier in unrest, <https://web.archive.org/web/20210228180518/https://www.scmp.com/news/hong-kong/law-and-crime/article/3038453/police-respond-deadlier-mob-attacks-bringing-out>

⁸⁸ United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, Para.6.3.4

Police complaint mechanism

(Gov Reply paragraphs 70-76)

225. There is no improvement of the Police complaint mechanism since the last review by the Committee. The function and credibility of the IPCC is even further declined due to the lack of diversity of its members. There is no appointment and re-appointment of pro-democracy figures and legislators to the membership of Independent Police Complaints Council (“**IPCC**”) since 2017. The Council is overwhelmingly dominated by pro-government figures and legislators, and most of them have no professional training in law and human rights.

226. 19 November 2020, the Court of First Instance ruled in a judicial review that “the Government of the HKSAR is under a duty, pursuant to Article 3 of the Hong Kong Bill of Rights, to establish and maintain an independent mechanism capable of conducting effective investigation into complaints of suspected ill-treatment by police officers in contravention of Article 3 of the Hong Kong Bill of Rights, and that the existing complaints mechanism involving the Complaints Against the Police Office (“**CAPO**”), with oversight by the Independent Police Complaints Council, is inadequate to discharge this obligation.”⁸⁹ Article 3 of the Hong Kong Bill of Rights is cross-reference to article 7 of the ICCPR.

227. In addition to the lack of independency, both IPCC and CAPO are not mandated to provide legal protection to prevent self-criminalisation when the complainant or witness give evidence to IPCC and CAPO. The potential risk of self-incrimination makes complainant reluctant to follow-up his/her complaint⁹⁰.

Recommendation:

228. Reiterates the existing mechanism of IPCC and CAPO is not an independent mechanism in handling complaints against Police.

229. Establish a fully independent mechanism mandated to receive and investigate complaints against all officials and ensure that there is no institutional or hierarchical relationship between the investigators of that particular body and the suspected perpetrators of the acts that form the basis of a complaint⁹¹. The mechanism should be empowered to formulate binding decisions in respect of investigations conducted and findings regarding such complaints⁹².

230. The complaint mechanism should be able to provide legal protection to the complainant and witness for giving evidence. The evidence given by complainant and witness, should not be used against the

⁸⁹ HCAL 2915/2019 para.124 https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=131964&currpage=T

⁹⁰ HK01, 梁定邦義務舉報論惹質疑 監警會澄清資料絕不交警方 <https://www.hk01.com/sns/article/350377>

明報,【逃犯條例】民權觀察：市民投訴警察隨時「原告變被告」

<https://news.mingpao.com/ins/%E6%B8%AF%E8%81%9E/article/20190706/s00001/1562395375369>

⁹¹ UNCAT Committee against Torture (2016), Concluding observations on the fifth periodic report of China with respect to Hong Kong, China, Para. 9

⁹² Human Rights Committee (2013), Concluding observations on the third periodic report of Hong Kong, China, Para. 12

complainant and witness in criminal and civil proceeding unless the proceedings are in relation to the false or misleading evidence given by the complainant and witness.

231. Point out the existing composition of the IPCC is not compliant with the Paris Principles, of which lacking participation of stakeholders from across the political spectrum.

232. Express concern on the expertise of the members of IPCC, reiterates the members should have sufficient knowledge in human rights.

Police Unique Identification

(Gov Reply para 75)

233. Regarding the controversy of police officers not displaying their unique identification number on uniform in handling protests, the Court of First Instance ruled in a judicial review in November 2020⁹³ that the “failure of the Commissioner [of Police] to establish and maintain an effective system to ensure that every police officer deployed in carrying out non-covert duties in Operation TIDERIDER wears and prominently displays an identification number or mark which is unique to that officer violates Article 3 of the Hong Kong Bill of Rights”. Operation TIDERIDER is a police operation begun in June 2019 to handle protests arising out of the Extradition Bill.

234. Since the Operation TIDERIDER, Police has introduced an operational call-sign as an alternative way for identification. The Call-Sign is not a unique number to individual police officer but shared by a team of officers, the Call-Sign based on a combination of information such as the officer’s district, platoon/team and position within the platoon/team - e.g., “C T3 Coy 2ic” stands for “Central District Tier 3 Company, second-in-charge”⁹⁴.

Recommendation

235. Reiterates HKSAR government is responsible under international law for the actions and omissions of its law enforcement agencies. Uniformed law enforcement officials should always display an easily recognizable form of identification during assemblies. For example, by wearing nametags or individually assigned service numbers.

236. Police should improve the visibility of the officer’s identification number on the uniform. Current design of police uniform which display the officer’s service number on the shoulder of a uniformed police is not prominent enough for identification purpose, especially in the context of public assembly. The number could be easily covered by police’s tactical vest or other equipment.

237. Reiterates the Call-Sign is not an effective form for identifying individual police officer because of the complexity of the Call-Sign and it is not a unique identification to officers.

238. Reiterates any deployment of plain-clothed officers in assemblies must be strictly necessary in the circumstances and such officers must never incite violence. Before conducting a search, making an arrest, or resorting to any use of force, plain-clothed officers must identify themselves to the persons concerned.

⁹³ HCAL 2671/2019, para. 123

https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=131964&currpage=T

⁹⁴ HCAL 2671/2019, para. 24, https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=131964&currpage=T

Item 12

No follow-up after the court ruled a citizen was unlawfully killed by police officer

(Gov Reply para 77(c))

239. The Coroner's Court decided on 25 October 2018 that a citizen was unlawfully killed by a police officer in an arrest in 2012⁹⁵. This is **contrary to Government's reply paragraph 77(c)** which states that none of the cases of death in Police custody examined by the Coroner was found to be caused by unlawful killing.

240. It is peculiar why the Government reply submitted in 2021 include data between 2011 and 2019 only (in paragraphs 77 and 78).

241. In the aforementioned case, the Court recommended Police to install security camera on police vehicle. As of May of 2022, there is no public acknowledged action taken by Police regarding the potential criminality of the concerned police officer, as well as the follow-up of installation of security camera on police vehicle.

Recommendation

242. Security camera should be installed to cover custody facilities of arrestees and detainees, including police vehicle, police station, interview room, and detention cell. Police and other law enforcement agencies should ensure the security camera is operational and record of video is duly stored and managed.

243. Where an investigation into the use of force by law enforcement officials reveals evidence that a death or injury may have been caused unlawfully, the State should ensure that perpetrators are prosecuted through a judicial process and, if convicted, given appropriate punishment⁹⁶.

244. Victims of the unlawful use of force by law enforcement officials shall have the right to an effective remedy, including compensation. Government must guarantee of non-repetition.⁹⁷

Item 13

Amendments to the Immigration Ordinance to prevent asylum seekers from entering HK

(Gov reply para 84)

245. The Immigration (Amendment) Bill 2020 was passed and became effective on 1 August 2021. It empowers the government to bar a passenger or a member of a crew from boarding a transportation carrier to enter or leave the territory. Secretary for Security John Lee (as he then was) pledged that the arrangement targets “inbound flights to Hong Kong, but not outbound flights departing the city”. The Hong Kong Bar Association warned that the bill would grant the director of immigration “extraordinary power” that would be incompatible with the Basic Law; People are worried that the amendment would give authorities carte blanche to stop residents from leaving city.

⁹⁵ <https://hongkongfp.com/2018/10/25/taxi-driver-died-police-grabbed-neck-unlawfully-killed-jurors-rule/>

⁹⁶ *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, Para. 3.10

⁹⁷ *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, Para. 3.12

246. The government has dismissed those fears as "complete nonsense," saying the legislation merely aims to screen illegal immigrants at source amid a backlog of asylum applications and does not affect constitutional rights of free movement.⁹⁸

247. The law, however, included no provision to assist those with legitimate fears of persecution in other countries.

248. The Government is intentionally and explicitly avoiding non-refoulement protection, its obligation under ICCPR article 7.

Item 17

(Please also refer to Part I's "Judicial Independence under the NSL")

Obstructing arrestees from obtaining legal assistance

249. During the Anti-Extradition Law Amendment Bill protests ("**Anti-ELAB protests**"), various barristers said they had encountered difficulties in meeting their clients when dealing with cases involving protesters. It was reported that Hong Kong Bar Association sent two letters to former Commissioner of Police Stephen Lo Wai-chung in August 2019 to raise concern about police officers hampering the work of barristers, including intentionally misleading them that the arrested persons had refused legal assistance from lawyers. In addition, frontline officers have also been preventing barristers from visiting clients, claiming barristers could not meet with clients without the presence of solicitors or their clerk, which was a misinterpretation of the barrister's code of conduct⁹⁹.

250. It was very common that arrested protestors in the Anti-ELAB protests took statement with police without presence of lawyers. They were told by police with different reasons which misled or discouraged them from contacting lawyers in the police station, such as "it will take longer time to release if you want a lawyer", "hire a lawyer is very costly, you can handle it by yourself", "You will be released very soon after taking statement with the police"

Recommendation

251. HKSAR government should ensure every arrested person understand that they have the right to access to lawyer without delay. Police officers should not in any way obstruct arrested person from accessing legal assistance

252. HKSAR government should introduce public-funded legal assistance service at police station.

Torture and ill-treatment against arrestees

253. Reports from human rights organisations show torture and ill-treatment against arrested protestors during Anti-ELAB protests by police officers. There were cases of torture or serious physical abuses during questioning at

⁹⁸ <https://www.reuters.com/world/asia-pacific/hong-kong-passes-immigration-bill-raising-alarm-over-exit-bans-2021-04-28/>

⁹⁹ South China Morning Post, Hong Kong barristers challenge police chief Stephen Lo over accusations officers are curbing access to clients arrested amid protests, <https://web.archive.org/web/20210922005210/https://www.scmp.com/news/hong-kong/law-and-crime/article/3027842/hong-kong-barristers-challenge-police-chief-stephen-lo>

police station,¹⁰⁰ including beatings while the police were asking questions or taking statements from the arrested protestors, and a police officer used a torch to shine light closely into the arrestee’s eye when he refused to answer questions.

254. *Please also refer to paragraphs 65-72 of the Joint Submission for other examples of torture and ill-treatment happened at police station.*

Recommendation

255. Express grave concern on the torture and ill-treatment that happened against arrested persons. HKSAR government should conduct independent investigation and conduct review on the police practice to ensure sufficient safeguards are in place to prevent torture and ill-treatment against arrested person.

256. HKSAR government should strengthen ongoing training for all law enforcement officers on the absolute prohibition of torture and ill-treatment on international standards on the use of force, as well as on their liability in the event of excessive use of force.

Judicial Officers Recommendation Committee (“JORC”)

257. Section 6 of the Judicial Officers Recommendation Committee Ordinance (Cap.92) explains that JORC is responsible for advising or making recommendations to the CE regarding the filling of vacancies in judicial offices. It consists of the chief justice, the SJ, and appointees of the CE, including judges, a barrister, a solicitor, and individuals not connected with the practice of law. Conventionally, the CE would appoint barristers and solicitors upon the recommendations from the Hong Kong Bar Association and the Law Society of Hong Kong respectively.

258. In August 2021, Senior Counsel Philip Dykes, who was the Bar Chairman being critical of the government during the 2019 protests and the imposition of the NSL in 2020, resigned from JORC for personal reasons. Since then, the CE had not appointed a new barrister member for the JORC until March 2022, despite the fact that the Bar had already recommended another barrister Neville Sarony, who was regarded as another outspoken figure in public, to succeed Dykes.¹⁰¹ Finally, on 25 March 2022, the CE appointed Victor Dawes, the new Bar Chairman in the same year, as a member of JORC.¹⁰²

259. The appointment was regarded as the CE’s rejection of the recommendation from the previous leadership of the Bar, and such rejection had led to a long absence of the barrister community’s presence in the work of JORC.

¹⁰⁰The Standard, Rights group says cops systematically torturing protesters <https://www.thestandard.com.hk/breaking-news/section/4/147217/Rights-group-says-cops-systematically-torturing-protesters>; Amnesty International, Hong Kong: Arbitrary arrests, brutal beatings and torture in police detention revealed <https://www.amnesty.org/en/latest/news/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed/>; Civil Rights Observer, Policing Protest in Hong Kong: Torture, cruel, inhuman or degrading treatment or punishment https://web.archive.org/web/20210507092309/http://www.hkcro.org/wp-content/uploads/2020/07/cidtp_final.pdf

¹⁰¹

Greg Torode, 2022, “Exclusive: Hong Kong leader delays filling post, raising questions about judiciary’s independence”, *Reuters*, January 31, URL= <https://www.reuters.com/world/asia-pacific/exclusive-hong-kong-leader-delays-filling-post-raising-questions-about-2022-01-31/>.

¹⁰² HKSAR, 2022, “Press Release: Appointments to Judicial Officers Recommendation Commission”, March 25, URL= <https://www.info.gov.hk/gia/general/202203/25/P2022032500229.htm?fontSize=2>.

Recommendations

260. HKSAR government should enhance judicial independence by respecting the local legal professional bodies' engagement in the process of judicial recommendation.

Legal Aid Policy Changes since 2021

(ICCPR Article 14, LOI Item 17, in furtherance to Joint Submission 2020 paras 131-133)

261. Legal Aid Department (“LAD”) has changed its lawyer assignment policy for legal aid applicants which has significant implication to the legal right of a person, especially the right to the choice of legal representative.¹⁰³ Articles 10 and 11 of the Hong Kong Bill of Rights guarantee the right to a fair hearing and minimum standards in protecting the rights of persons charged with criminal offences (**ICCPR Article 14**). Article 35 of the Basic Law provides that Hong Kong residents shall have the **right to ... choice of lawyers** for timely protection of their lawful rights and interests or representation in the courts.

262. **In criminal cases, an applicant can no longer nominate a lawyer of his/her choice unless exceptional circumstances are present, such as the nominated lawyer having represented the defendant in lower court(s)** (previously an applicant could reject a lawyer selected by LAD and nominate his/her lawyer, the LAD would normally accede to and not reject an applicant's choice of solicitor/barrister unless there were compelling reasons to do so, e.g. such as conflict of interest, having previous records of unsatisfactory performance in handling legal aided cases or currently handling an overwhelming number of legal aid cases¹⁰⁴)

263. **Assignment limits are imposed on lawyers funded by legal aid. For example, a solicitor can take a maximum of 5 cases of judicial review and 3 cases for a barrister in a year on judicial review related legal aid cases.** The LAD changed its longstanding policy on the choice of lawyers for no good reason but as a respond to criticism that pro-democracy lawyers are benefit from the legal aid system by representing defendants in protest related cases and judicial reviews against Government's decision.

264. **LAD is deepening the disparity between judicial review applicants and the public authorities:** LAD acknowledges the rarity and complexity of judicial reviews.¹⁰⁵ It is the natural reasons why only a very limited number of lawyers have the required competence to represent judicial review applicants against the public authorities. Actually, it has been the government's own policy to always engage only a handful of senior practitioners in representing it in judicial reviews. By drastically restricting the number of judicial reviews those experienced practitioners can handle in a year, LAD is creating an unequal playfield between the applicants and the public authorities. Indeed, if LAD genuinely wants to enlarge the pool of qualified lawyers, LAD can assign more lawyers to applicants in each judicial review for those extra lawyers to gain experience.

¹⁰³ Chief Secretary for Administration's Office & Legal Aid Department, 'Proposed Enhancement Measures to the Legal Aid System in Hong Kong' (LC Paper No. CB(4)1677/20-21(01), Oct 2021) <https://www.legco.gov.hk/yr20-21/english/panels/ajls/papers/ajls20211026cb4-1677-1-e.pdf>

¹⁰⁴ Ibid, para 16; see also Legislative Council Secretariat, 'Background brief on Measures to prevent the misuse of the legal aid system in Hong Kong and assignment of lawyers in legal aid cases' (LC Paper No. CB(4)1386/16-17(04), July 2017) para 32, 33 and 41

¹⁰⁵ See footnote 103, para 9

Recommendation

265. LAD should ensure the right to choice of lawyers by abandon the changes of its lawyer assignment policy.

Governmental pressure on the legal profession

266. There has been fierce and mounting pressure on the two professional associations that represent lawyers in Hong Kong (the Hong Kong Law Society (“**Law Society**”) and the Hong Kong Bar Association (“**HKBA**”)) to: (i) elect leaders who are submissive to the regime; and (ii) refrain from vocally challenging the PRC and Hong Kong governments’ violation of human rights.

267. Ahead of its annual leadership election in August 2021, the Law Society (the representative association for solicitors) was warned by PRC state media to draw a clear line between itself and “*anti-China and chaotic Hong Kong elements*”, and they hinted that if the Law Society failed to do so, it would suffer the same fate as the recently-disbanded Hong Kong Professional Teachers’ Union.¹⁰⁶ This warning was echoed by Hong Kong’s Chief Executive (who suggested that the government would consider severing links with the Law Society if it allowed “*politics to hijack their legal profession*”)¹⁰⁷ and Secretary for Justice (who cautioned the lawyers associations to eschew “*politicisation*”).¹⁰⁸

268. A week before the election, an incumbent council member of the Law Society (who was regarded as relatively independent of the government) suddenly withdrew his re-election bid, citing fears for his and his family’s safety.¹⁰⁹ His running mates, who were also in the independent camp, similarly suffered vicious attacks by PRC state media and other pro-Beijing outlets (including labelling them as advocates of Hong Kong independence, an activity punishable by life imprisonment under the National Security Law).¹¹⁰

269. Ultimately, the election resulted in all available seats being won by candidates who had close ties with Beijing. By contrast, all candidates in the independent camp were defeated. Consequently, the governing council of the Law Society is now heavily dominated by members with pro-government links.¹¹¹

270. The pressure on the Law Society continued even after the election. The week following the election, another incumbent council member belonging to the independent camp resigned his seat.¹¹²

¹⁰⁶ <https://hongkongfp.com/2021/08/16/hong-kongs-justice-sec-warns-law-societies-to-steer-clear-of-politics-after-chinese-state-media-blasts-barristers/>

¹⁰⁷ <https://www.rfi.fr/en/hong-kong-leader-tells-legal-body-to-stay-out-of-politics>

¹⁰⁸ <https://hongkongfp.com/2021/08/16/hong-kongs-justice-sec-warns-law-societies-to-steer-clear-of-politics-after-chinese-state-media-blasts-barristers/>

¹⁰⁹ <https://asia.nikkei.com/Politics/Candidate-pulls-out-of-Hong-Kong-lawyer-group-election-on-safety-fears>

¹¹⁰ <https://www.reuters.com/world/china/hong-kong-law-society-election-underscores-tensions-over-china-legal-system-2021-08-24/>

¹¹¹ <https://www.lawgazette.co.uk/news/liberal-candidates-defeated-in-watershed-hong-kong-law-society-election/5109601.article>; <https://hongkongfp.com/2021/08/25/hong-kong-law-society-members-with-establishment-ties-now-dominate-its-council-after-liberals-suffer-election-defeat/>

¹¹² <https://hongkongfp.com/2021/08/31/hong-kong-law-society-respects-top-legal-scholar-eric-cheungs-resignation-from-its-council/>

271. Of the two bodies, the HKBA (representing the city’s barristers) has traditionally been more outspoken in its defence of the rule of law and human rights. Likely for this reason, the HKBA came under even more ferocious attack from the government authorities and PRC state media.

272. In January 2021, Paul Harris (a prominent human rights lawyer who had expressed moderate criticisms of the National Security Law) was elected as chairman of the HKBA. After taking office, he was subjected to a constant torrent of attacks by PRC government bodies and state media, who denounced him as “*an anti-China politician with intimate foreign connections*” who had “*made a mockery*” of the association.¹¹³ The HKBA itself was lambasted as having been “*hijacked by a majority of anti-China troublemakers*”,¹¹⁴ and being on “*a road of no return*”.¹¹⁵ Hong Kong’s Chief Executive also hinted that the government could intervene if the HKBA engaged in illegal activities.¹¹⁶

273. In August 2021, PRC state media labelled the HKBA as a “*street rat*” who was on a “*dead-end path*” and faced certain defeat.¹¹⁷ In the same month, Harris was removed as defence counsel for a high-profile trial (one of the first prosecutions under the National Security Law) by the government’s Legal Aid Department, even though the defendant himself had insisted on engaging Harris. (The defendant was ultimately convicted and sentenced to 5 years and 9 months’ imprisonment for making speeches advocating Hong Kong independence.)

274. In January 2022, Harris left the post after just one year (compared to the usual term of 2 years)¹¹⁸. He was replaced as HKBA chairman by a commercial lawyer who espoused warmer ties with Beijing and warned the association not to discuss politics.¹¹⁹ Since then, the HKBA has been noticeably muted in its criticisms of the Hong Kong and PRC governments’ human rights record.

275. Again, the pressure continued even after the change of leadership. In March 2022, Harris was brought in for questioning by the Hong Kong police for alleged breaches of the National Security Law. He was eventually cautioned and released from police custody. Within a few hours, he hastily left Hong Kong and flew to another country.¹²⁰ While at the Hong Kong airport, he was followed around by reporters from PRC state media (who appear to have been tipped off in advance about his departure), who questioned him about why he was leaving “so suddenly”.¹²¹ In reaction to

¹¹³ <https://www.theguardian.com/world/2021/apr/27/beijing-calls-hong-kong-bar-association-chief-an-anti-china-politician>

¹¹⁴ *Ibid.*

¹¹⁵ <https://hongkongfp.com/2021/04/26/beijing-attacks-head-of-hong-kong-bar-assoc-over-politicised-comments-on-peaceful-protest/>

¹¹⁶ <https://www.theguardian.com/world/2021/apr/27/beijing-calls-hong-kong-bar-association-chief-an-anti-china-politician>

¹¹⁷ <https://hongkongfp.com/2021/08/16/hong-kongs-justice-sec-warns-law-societies-to-steer-clear-of-politics-after-chinese-state-media-blasts-barristers/>

¹¹⁸ <https://www.ft.com/content/4947c416-1d16-40a4-94d2-3b4c7dff1584>; <https://www.theguardian.com/world/2021/apr/27/beijing-calls-hong-kong-bar-association-chief-an-anti-china-politician>

¹¹⁹ <https://hongkongfp.com/2022/01/21/hong-kong-bar-association-should-not-discuss-politics-new-chairman-says/>

¹²⁰ <https://www.ft.com/content/0f70fb83-89e3-467f-87c1-106c14fb077f>; <https://hongkongfp.com/2022/03/02/hong-kong-bar-assoc-ex-chief-paul-harris-reportedly-leaves-city-hours-after-meeting-with-national-security-police/>

¹²¹ <https://www.ft.com/content/0f70fb83-89e3-467f-87c1-106c14fb077f>

Harris' departure, a senior lawyer called it "*frightening*" and having a "*silencing effect*", with parts of the legal community considering whether it was still safe to remain in Hong Kong.¹²²

276. Later the same month, Hong Kong's Chief Executive announced that she had rejected the HKBA's original choice of representative (who had been nominated during Harris' tenure) to a powerful panel that chooses the city's judges. Instead, the Chief Executive filled the post with the HKBA's new chairman (who, as mentioned above, had promised a friendlier stance toward Beijing).¹²³

277. Apart from the professional associations, the PRC and Hong Kong authorities have also exerted pressure on lawyers in other ways. The pro-democracy legislator who had represented the legal sector in the Hong Kong Legislative Council since 2012 was repeatedly denounced by government organs and state media. He was eventually expelled as a legislator by diktat from the PRC government in November 2020¹²⁴, and then fled into exile abroad in April 2021.¹²⁵

278. Lawyers had been highly active in providing legal representation for the 2019 pro-democracy protesters and advocating more generally for upholding fundamental human rights. However, in the face of widescale attacks on civil society groups, legal advocacy groups such as the Progressive Lawyers Group were forced to disband.¹²⁶ In December 2019, Spark Alliance (a non-profit group that raised funds to provide legal and other support to arrested protestors) had their assets frozen by the Hong Kong police, and a number of their leaders were arrested for alleged money-laundering.¹²⁷ In July 2021, the 612 Humanitarian Relief Fund (another legal assistance fund) was also forced to cease operations.¹²⁸ In May 2022, the latter fund's trustees were arrested on suspicion of "collusion with foreign forces" (a charge which carries a maximum sentence of life imprisonment under the National Security Law)¹²⁹; the police also lodged "professional misconduct" complaints to the Law Society and the HKBA against several lawyers who had provided legal services in connection with the fund.¹³⁰

279. In April 2022, another veteran human rights lawyer, Michael Vidler who had represented many of Hong Kong's pro-democracy activists as well as victims of police brutality, suddenly announced the closure of his law firm

¹²² *Ibid.*

¹²³ <https://www.reuters.com/world/asia-pacific/exclusive-hong-kong-leader-delays-filling-post-raising-questions-about-2022-01-31/>; <https://www.reuters.com/world/china/hong-kong-leader-rejects-barrister-nominee-sensitive-judges-panel-appoints-2022-03-25/>

¹²⁴ <https://hongkongfp.com/2020/11/11/breaking-hong-kong-govt-ousts-four-democratically-elected-lawmakers-from-legislature/>

¹²⁵ <https://hongkongfp.com/2021/04/10/ousted-hong-kong-democrat-dennis-kwok-surfaces-in-canada/>

¹²⁶ <https://hongkongfp.com/2021/07/06/security-law-at-least-8-hong-kong-pro-democracy-groups-disband-in-past-2-weeks-including-lawyers-group/>

¹²⁷ <https://hongkongfp.com/2019/12/19/hong-kong-police-arrest-4-for-money-laundering-and-freeze-hk70m-used-to-support-pro-democracy-protesters/>

¹²⁸ <https://hongkongfp.com/2021/07/06/security-law-at-least-8-hong-kong-pro-democracy-groups-disband-in-past-2-weeks-including-lawyers-group/>

¹²⁹ <https://www.amnesty.org/en/latest/news/2022/05/hong-kong-arrests-of-activists-including-90-year-old-cardinal-a-shocking-escalation-of-repression/>

¹³⁰ <https://www.reuters.com/world/asia-pacific/hong-kong-police-file-complaints-lawyer-groups-over-national-security-case-2022-05-12/>

(which had been operating for 19 years).¹³¹ A few days after the announcement, he abruptly left Hong Kong by airplane.¹³² While waiting for his departure flight at the airport, he was (in a similar scene to Harris' earlier departure – see above) hounded by reporters from pro-Beijing media outlets, who had apparently been tipped off about his departure.¹³³

280. Even academic lawyers who had previously spoken out on human rights issues in the past were largely rendered silent due to the escalating intimidation from the regime.¹³⁴

281. The heavy pressure which the PRC and Hong Kong authorities have exerted on the city's lawyers and professional legal associations is in violation of paragraphs 16¹³⁵, 23¹³⁶, and 24¹³⁷ of the UN Basic Principles on the Role of Lawyers 1990.

Recommendations

The PRC and Hong Kong governments should be urged to:

282. refrain from further interference (including interference via state-owned media) in the elections of the Law Society and HKBA.

283. identify and take measures to ensure that future elections of the Law Society and HKBA are conducted in a fair manner which is free of external interference (particularly from government organs and other government-linked bodies).

284. expressly and publicly acknowledge that it is a legitimate function of the Law Society and HKBA (and the legal profession generally) to protect the rule of law and fundamental human rights, which includes, where necessary, making appropriate criticisms of government policies, legislative initiatives, and actions.

285. refrain from shutting down or restricting legitimate sources of funding (including public crowdfunding) for the legal representation of criminal defendants, under the guise of enforcing the National Security Law, money-laundering legislation, and other laws.

286. instead, identify and take measures (in compliance with Article 14(3)(d) of the ICCPR and paragraph 3 of the UN Basic Principles on the Role of Lawyers 1990) to ensure that criminal defendants who do not have

¹³¹ <https://hongkongfp.com/2022/04/21/hong-kong-law-firm-vidler-co-which-handled-protest-related-cases-to-close-after-19-years/>

¹³² Oriental Daily, 律師韋智達離港 律師行擬 6 月停業 [Solicitor Michael Vidler has left Hong Kong and his firm will be closed in June 2022] <https://hk.news.yahoo.com/%E5%BE%8B%E5%B8%AB%E9%9F%8B%E6%99%BA%E9%81%94%E9%9B%A2%E6%B8%AF-%E5%BE%8B%E5%B8%AB%E8%A1%8C%E6%93%AC-6-%E6%9C%88%E5%81%9C%E6%A5%AD-225102732.html>

¹³³ <https://twitter.com/ThomasHHChan/status/1518608179697172481>

¹³⁴ Professor Michael C. Davis, “Testimony before the US-China Economic and Security Review Commission”, 8 September 2021, p.6, https://www.uscc.gov/sites/default/files/2021-08/Michael_Davis_Testimony.pdf

¹³⁵ “Governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference...”

¹³⁶ “Lawyers...shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights...”

¹³⁷ “The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.”

sufficient means to pay for legal representation are provided with adequate funding to engage legal representation, which shall be (to the furthest extent practicable) counsel of the defendant’s own choosing.

287. restore (including by amending the relevant legislation) the ability of the legal sector to freely elect its own legislative representative to the Hong Kong Legislative Council, without pre-screening by or interference from the PRC and Hong Kong governments.

288. identify and take measures (in compliance with paragraph 23 of the UN Basic Principles on the Role of Lawyers 1990) to ensure that members of the legal community (including legal academics and legal advocacy groups) are not subjected to pressure, intimidation, or threats (such as the threat of prosecution under the National Security Law or the sedition offenses under the Crimes Ordinance) which hinder their ability to take part in public discussions of matters concerning the law, the administration of justice, and the promotion and protection of human rights.

Constraints on Unrepresented Defendants in Custody to Prepare for Trial – The case of Chow Hang-tung

(Article 14 of the ICCPR / Question 17 of LOI)

289. The consequences of restrictions to meaningful access to legal representation by the government legal aid reform as well as influencing the choice of legal representation are also reflected in cases where defendants, who are serving their jail sentence for other offences or being denied bail, choose not to appoint a legal representative but instead deal with the proceedings un-represented. In some instances, they were denied access to information for preparation of trials when they are being remanded. The denial of access to information by the Correctional Services Department against NSL defendants choosing in-person defence ostensibly damages fair trial in terms of equal access to information related to the case.

Examples

290. CHOW Hang-tung, a barrister and deputy chairperson of the Hong Kong Alliance in Support of the Patriotic Democratic Movement of China and a remanded defendant in a case of inciting subversion, told the public on her Patreon (an online platform) that, the Correctional Services Department (“CSD”) rejected CHOW to access to three books, which were sent by her friends for her preparation of in-person defence. The decision was made by CSD’s “publications adjudication committee”. Two of the three books, “Tiananmen 1989” and “Szeto Wah The Guardian”, were alleged of being “capable of affecting order in prison”, while another book, “A Mighty River Flowing Eastward: Memoir of Szeto Wah”, was alleged of “containing content of subversive acts”.¹³⁸ CHOW filed an appeal to the CSD; but in January 2022, the decision was upheld by the appeal committee.¹³⁹ CHOW filed an appeal again and is still pending for result, but her pre-trial hearings still go on, and her next pre-trial hearing will be held on 31 May 2022.

Recommendations

291. HKSAR government should guarantee the right to legal representation of choice by not interfering the defendants’ choice of lawyers in any means.

¹³⁸ CHOW Hang-tung, 2021, “June 4, Uncle Wah and order in prison: Correctional Services Department’s censorship of books”, October 23, URL=<https://www.patreon.com/posts/liu-si-hua-shu-57754351>.

¹³⁹ CHOW Hang-tung’s Facebook Post (managed by her support team), 2022, February 13, URL=<https://www.facebook.com/tonyeechow/posts/10160386017949301>.

292. HKSAR government should protect defendants' rights to defend oneself, which is enshrined in Article 35 of the Basic Law, Article 14 of the ICCPR and in line with paragraph 37 of the General Comment No. 32, by ensuring equal and sufficient access to information in relation to one's preparation of trial, especially to those who are denied bail and remanded in custody.

Item 20

Press Freedom

(Gov reply paras 122, 128)

293. Freedom of the press has seen acute deterioration in the past 2 years. Journalists had been working in a hostile and dangerous environment for covering news in the Anti-ELAB protests. HKSAR government targeted journalists and media outlets with the National Security Law and other related laws, the Government is also actively discrediting mass media and journalists. The public broadcaster in Hong Kong has been turned into a government propaganda apparatus. Journalists' associations are at risk of being banned. The Government claimed certain independent media to be spreading "fake news", and that there are "fake journalists". Journalists and media outlets are also accused of using press freedom as disguise, a narrative often adopted by authoritarian governments.

Violence against journalist in the Anti-ELAB protests

294. Hong Kong Journalists Association ("HKJA") filed a judicial review¹⁴⁰ against the Police for their failing to facilitate, and in certain cases actively hindering, lawful journalistic activities, which in breach of Articles 27 and 28 of the Basic Law, and Articles 3 and 16 of the Hong Kong Bill of Rights. Despite the judicial review was failed and the court did not rule on the evidence provided by HKJA, the court's decision revealed that HKJA had provided evidence to the Court with 13 Journalist Statements, photographs and contemporaneous video evidence, that in the course of carrying out their reporting duties in relation to the public order events, journalists have been subjected to ill-treatment by police officers, including being: (1) shot with rubber bullets and "beanbag" rounds; (2) repeatedly struck by police officers with truncheons and shields; (3) targeted with tear gas, both fired from tear gas launchers and hand-thrown canisters, both at close range; (4) pepper-sprayed, and shot with "pepper-ball" projectiles; (5) struck by bursts of water discharged from high-powered water cannon; (6) arrested or threatened with arrest; (7) subjected to verbal abuse; (8) subjected to tactics designed to frustrate proper reporting of police operations, including the use of high intensity lights and strobe lighting to interfere with visual recording equipment, and exclusion from relevant scenes and locations; and (9) repeatedly and systematically met with refusals by police officers purporting to exercise public powers to produce a warrant card, including by officers either wearing police uniforms without any visible unique identification markings, or plain clothes police officers discharging non-covert duties (e.g. when making arrests, dispersing crowds or clearing areas).

Editorial Independence of Hong Kong Public Broadcaster, Radio Television Hong Kong ("RTHK") quashed

295. Following a government review of the governance and management of Radio Television Hong Kong, the public broadcaster in Hong Kong, the government appointed a new Director of Broadcasting, Patrick Li, who is a former bureaucrat with no experience in media in March 2021. Li soon announced policies that all programs going forward would need to be reviewed and approved personally by him, and that employees would have to foot the bill if executives decided not to air the content they produced, with the expenses taken out of their pay. Since then,

¹⁴⁰ HCAL 2915/2019 para.7,
https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=132513&QS=%2B&TP=JU&ILAN=en.

numerous productions have been pulled off air, hundreds of episodes have been deleted from RTHK’s archives, social media accounts have been censored.

296. HK Government further announced that RTHK is partnering with China Media Group (“CMG”) in order to boost “the understanding” of the Chinese Communist Party and to nurture “a stronger sense of patriotism” in Hong Kong.

297. *RTHK has lost its independence as per its charter; and has possibly transformed into a government mouthpiece.*

Media outlets shutdown and self-censorship

298. Apple Daily and Stand News were forced to shut down after their senior staff were arrested for national security offences. The cases involve imputing ideas of interviewees onto the reporter, and ideas of opinion pieces onto the media. Following that, newspaper Ming Pao felt the imperative to print a disclaimer on its column section; Radio Free Asia, US-funded news outlet, announced the suspension of the commentary section based in HK.¹⁴¹ Citizen News, a relatively new online media founded by veteran journalists, felt compelled to shut down due to legal risks.

Journalists Association under attack, at risk of being banned

299. The HKJA and the Foreign Correspondents’ Club, Hong Kong are both vocal on the state of press freedom in Hong Kong and welfare of journalists in Hong Kong. Both have been threatened that they violate the National Security Law.

300. The HKJA is considering disbanding considering the risks. Since 2019, the HKJA has come under attacks from authorities and pro-Beijing press regarding journalists covering the mass protests against the Extradition Bill. The authorities said there were “fake journalists” obstructing police, or even were protestors pretending to be journalists. The Hong Kong police force amended one of its general orders to allow police to decide for themselves whether someone was an accredited journalist.

301. In January 2022, the Registry of Trade Unions, a government body regulating labour unions in the city, launched an investigation into HKJA and asked the group to provide information about its activities which are suspected to be inconsistent with the Trade unions ordinance and/or union rules.¹⁴² Such a request can be understood to be a prequel of possible further crackdown as seen in other cases.

302. Pro-Beijing media have accused the Hong Kong Journalists Association of colluding with foreign powers, including by producing annual reports on the state of press freedom in Hong Kong, that are cited widely by foreign governments and organisations to criticize Hong Kong Government.

303. During John Lee’s election campaign for Chief Executive, he refused to meet with the Hong Kong Journalists Association, saying that any meeting would have to take place after the Registry of Trade Union’s probe is completed. It has effectively cut ties with the Journalists Association.

¹⁴¹ The memo read, “Given the dire situation in Hong Kong, locally based commentators and hosts face increased risks. It has been clear over the past year that the ‘national security red lines’ are everywhere in Hong Kong... The freedom of speech accorded to commentators and hosts under Hong Kong’s basic law is not protected by Hong Kong and Chinese laws.” (<https://hongkongfp.com/2022/02/10/us-funded-news-service-to-suspend-cantonese-op-eds-and-programmes-over-dire-situation-in-hong-kong/>)

¹⁴² <https://cpj.org/2022/04/hong-kongs-largest-journalist-association-considers-disbanding-amid-government-investigation/>

Human Rights Press Awards suspended, citing legal risks

304. The Human Rights Press Awards is an annual award held by the Hong Kong Journalists Association, Amnesty International Hong Kong and the Foreign Correspondents' Club, Hong Kong. Amnesty International closed its offices in Hong Kong in 2021; the Hong Kong Journalists Association withdrew from organising the awards due to risks. Days before the announcement of the awards, the Foreign Correspondents' Club announced that it decided to suspend the awards this year, citing fear of violating national security offences, especially because Stand News, the online media busted for sedition, has won numerous awards.

Upcoming new national security legislation, regulation of “fake news”, and possible licensing requirement of media outlets and journalists

305. In addition to the National Security Law, the Hong Kong Government will introduce another national security legislation pursuant to Article 23 of the Basic Law. The Government has stated already that the espionage offence will not provide public interest exemption. We will prepare a supplementary submission once the content of the proposed legislation becomes available.

306. The Hong Kong Government has called opposite news reporting and opinion pieces “fake news” and vowed to introduce legislations or regulations about it.

307. Further to the amendment to Police General Orders allowing police officers to determine whether someone was an accredited journalist, it is possible that the Government would introduce some form of registration or licensing requirement for journalists and media outlets.

Recommendations:

308. The Chinese National People's Congress should review the implementation of the NSL taking into account the change of circumstances and the anxieties of Hong Kong people. The NPC should study amendments and supplementary provisions, in particular making public interest as a defence for journalists. That will safeguard press freedom.

309. Reiterate the role of journalists involved in monitoring or reporting on assemblies is of particular importance for the full enjoyment of the right of peaceful assembly. Those persons are entitled to protection under the Covenant. They may not be prohibited from, or unduly limited in, exercising these functions, including with respect to monitoring the actions of law enforcement officials. They must not face reprisals or other harassment, and their equipment must not be confiscated or damaged. Even if an assembly is declared unlawful or is dispersed, that does not terminate the right to monitor¹⁴³. HKSAR government should protect and facilitate journalist to exercise their right to monitor and cover news events. Police officer should receive sufficient training in respecting and facilitating journalist to carry out their reporting work.

310. HKSAR Government should allow media access to public data as they had been before. Doing so will help journalists get information for reporting activities and thus be able to play their role of monitoring in society.

311. HKSAR Government should shelve studies on legislation on misinformation. To beat misinformation, the Government should do so by other means including education and publicity, which could help enhance public understanding about misinformation for them to exercise self-monitoring.

312. Police should revoke the amendment of the definition of “media representatives” in the Police General Orders and genuinely facilitate the reporting of journalists.

¹⁴³ General Comment No. 37 para. 30

313. HKSAR Government should speed up the enactment of an archives law and a freedom of information law that are effective in enhancing public access to information and archives.
314. HKSAR Government should stop putting pressure on RTHK and respect its editorial autonomy.
315. The public broadcaster has been subject to directives inconsistent with the requirements of impartiality and non-discrimination with respect to political opinion.
316. HKSAR government should take the necessary steps, including legislative measures, to ensure that RTHK enjoys broad discretion as to programming content, and that competing views, including those of political parties opposed to government policy, are appropriately reflected in the broadcaster's transmissions.¹⁴⁴

Malicious complaints against teachers

(Article 19)

317. Since the beginning of the Anti-ELAB movement, the Hong Kong Government has been accusing teachers for inciting young people to protest against the government. The pro-Beijing politicians mobilised their supporters to lodge malicious complaints against teachers to the Education Bureau. Teachers who expressed their views on social affairs or criticism of the government on their personal social media accounts were doxed and their personal information was publicly disclosed on the internet.

318. From June 2019 to December 2021, the Education Bureau received 344 complaints against teachers in relation to the social movement, of which 189 cases were found substantiated. The cases are mainly about teachers commenting on social affairs on their personal social media accounts or using textbooks or teaching materials containing any content which is regarded as "inappropriate" by the Bureau¹⁴⁵.

319. The complaints were investigated and processed by Education Bureau. The openness and fairness of the complaint procedure and the impartiality of the Bureau are highly questionable.

320. If the cases are found substantiated, teachers may, depending on the seriousness of the cases, receive reprimand letters, warning letters, advisory letters, or verbal reminders. In addition, Education Bureau is empowered to deregister a teacher in accordance with the Education Ordinance if they believe that the teacher is not fit for teaching or is incompetent as a teacher.

321. A deregistered teacher can appeal to the Appeal Boards Panel, of which the members are appointed by the Chief Executive. Should the appeal be dismissed by the Panel, the teacher can still appeal to the Chief Executive in council. After the appeals, the teacher can still consider applying for judicial review to challenge the decision of the Education Bureau.

322. As the Appeal Boards Panel's members are selected by the Chief Executive and the second tier of the appeal procedure is handled by the Chief Executive in council, the independence of the appeal procedure is in doubt.

323. From June 2019 to December 2021, 3 teachers were deregistered by the Education Bureau following their complaint case being found substantiated.

¹⁴⁴ Concluding Observations for Moldova, CCPR/CO/75/MDA

¹⁴⁵ LCQ12: Procedure for handling complaints against teachers

URL : <https://www.info.gov.hk/gia/general/202010/28/P2020102800382.htm>

324. One of the cases involved a teacher providing erroneous information to students. In April 2020, a primary school teacher gave a distorted history of the opium war to students in a pre-recorded online learning video. After the soundtrack of the video was uploaded and spread on the internet, the teacher and the school received widespread criticism from the pro-Beijing politicians, their supporters, and the state media¹⁴⁶.

325. Although the school and the teacher apologised for providing the erroneous information to students, in November 2020, the Education Bureau decided to cancel the teacher’s registration permanently, claiming that the teacher had “completely neglected his basic duty” and was “incompetent and unfit to be a teacher.”¹⁴⁷

326. The disproportional punishment of the teacher raised huge concerns in the education sector that making any mistake, even though it is unintentional, could put themselves into a political controversy and lead them to be deregistered. They are also afraid of being secretly reported by students, parents or colleagues for anything they do in lessons.

327. In view of some teachers under investigation because of expressing their political views on social media, many teachers now choose not to express their views or post any political content on their social media accounts so as to avoid being a target of pro-Beijing supporters. Under the chilling effect, teachers can no longer enjoy their freedom of expression and freedom of opinion without fear.

Recommendation

HKSAR Government should

328. take any necessary steps to prevent teachers from harassment and intimidation and ensure that teachers, like other professions, can enjoy the freedom of expression and the freedom of opinion protected by the Covenant.

329. establish an independent self-regulatory body, of which members are elected by teachers, to formulate the professional code and handle complaints against teachers.

330. revise the appeal mechanism in relation to teachers’ complaint cases so as to ensure the openness and fairness of the procedure.

Items 20 & 22

Academic Freedom

(Articles 19, 20 & 21)

331. Academic freedom is protected under Article 137 of the Basic Law, which is a freedom vested in Hong Kong’s educational institutions. Individuals’ academic freedom and freedom of expression is further protected by Articles 27 and 34 of the Basic Law and Articles 1(1) and 16 of the Hong Kong Bill of Rights (provided in section 8 of the Hong Kong Bill of Rights Ordinance (Chapter 383)).

¹⁴⁶ Xinhua Net, 2020, “香港各界严厉批评教师歪曲鸦片战争历史” [Different sectors in Hong Kong criticised the teacher who distorted the history of the Opium War] 1 May URL: http://www.xinhuanet.com/2020-05/01/c_1125933993.htm

¹⁴⁷ The press release of the EDB, 2020, “EDB cancels registration of teacher”, 12 Nov, URL: <https://www.info.gov.hk/gia/general/202011/12/P2020111200664.htm>

332. As set out in *Secretary for Justice v Commission on Inquiry Re Hong Kong Institute of Education*¹⁴⁸, academic freedom is vested in Hong Kong’s educational institutions and the faculty of academics that form the community of the academic institution itself. It enables educational institutions to determine for themselves on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to stay; and gives academics freedom to pursue the search for knowledge without fear of external sanction.

333. Despite the guarantees under the Basic Law and the Hong Kong Bill of Rights, academic freedom in Hong Kong’s universities is subject to a real and imminent risk under the national security law (NSL). Liberal academics are targeted by government-owned media outlets, intimidated, and arrested by the national security police.

FACTS

Scholars engaged in public affairs terminated by universities

334. At least 3 scholars, who are well-known as outspoken critique in Hong Kong, were sacked by a public-funded university (Lingnan University) without giving proper reasons. Dr. IP Iam Chong, who founded an independent media outlet “inmediahk” in Hong Kong, and who had taught in Lingnan University for nearly 20 years, was refused of renewing his teaching contract by the university without a concrete reason.¹⁴⁹ Also, Dr. LAW Wing Sang and Dr. HUI Po Keung, who are outspoken scholars in the city, were also terminated of their contracts with the same university. HUI was a trustee of the 612 Humanitarian Relief Fund. LAW told local reporters that he received the decision from the university few days after he published an opinion essay on Hong Kong’s national security law and the election overhaul in Ming Pao Daily.¹⁵⁰

Attack on scholars by government-owned and pro-government media

335. At least 14 prominent Hongkong-based scholars were named and attacked by government-owned newspapers (Wen Wei Po and Tai Kung Pao) and pro-government media outlets for spreading “pro-independence” and “anti-China” beliefs or inciting students to involve in unlawful activities through their teaching, research outputs or public commentaries. Many of them decided to resign from their serving universities and then left Hong Kong for safety reasons.

336. To name a few, Dr. Brian FONG, an ex-associate professor in the Education University of Hong Kong (“HKU”), was attacked by government-owned media outlet Tai Kung Pao of colluding with foreign forces and of

¹⁴⁸ HCAL 108/2007.

¹⁴⁹ Ming Pao Daily, 2021, “丟職葉蔭聰：不解「特殊對待」 嶺大傷害緊自己” [IP Iam Chong lost his job, said he did not understand such special treatment, saw Lingnan University is hurting itself], October 1, URL=<https://news.mingpao.com/pns/%E8%A6%81%E8%81%9E/article/20211001/s00001/1633025271848/%E4%B8%9F%E8%81%B7%E8%91%89%E8%94%AD%E8%81%B0-%E4%B8%8D%E8%A7%A3%E3%80%8C%E7%89%B9%E6%AE%8A%E5%B0%8D%E5%BE%85%E3%80%8D-%E5%B6%BA%E5%A4%A7%E5%82%B7%E5%AE%B3%E7%B7%8A%E8%87%AA%E5%B7%B1>.

¹⁵⁰ Ming Pao Daily, 2021, “嶺大終止羅永生許寶強合約 羅活躍撰時評 許任 612 基金信託人 校方沒講原因” [Lingnan University terminates LAW Wing-sang and HUI Po-keung’s contracts], October 1, URL=<https://news.mingpao.com/pns/%E8%A6%81%E8%81%9E/article/20211001/s00001/1633025269898/%E5%B6%BA%E5%A4%A7%E7%B5%82%E6%AD%A2%E7%BE%85%E6%B0%B8%E7%94%9F%E8%A8%B1%E5%AF%B6%E5%BC%B7%E5%90%88%E7%B4%84-%E7%BE%85%E6%B4%BB%E8%BA%8D%E6%92%B0%E6%99%82%E8%A9%95-%E8%A8%B1%E4%BB%BB612%E5%9F%BA%E9%87%91%E4%BF%A1%E8%A8%97%E4%BA%BA-%E6%A0%A1%E6%96%B9%E6%B2%92%E8%AC%9B%E5%8E%9F%E5%9B%A0>

conducting research projects on “territorial autonomies” as inciting Hong Kong independence.¹⁵¹ Four days after the news report above, FONG resigned from Education University of Hong Kong.¹⁵²

337. Also, Professor FU Hualing, the current Dean of Faculty of Law, University of Hong Kong Law School, was accused by the government-owned media outlet Tai Kung Pao of receiving fundings from the local Research Grant Council to conduct “anti-China” research, including a project on “709 Crackdown on Human Rights Lawyers”, and hired an “anti-China” scholar Ryan Thoreson, who was labelled by the same media outlet as “inciting Hong Kong Independence”.^{153[6]}

338. Dr. CHUNG Kim Wah, a deputy director of the Hong Kong Public Opinion Research Institute (“PORI”), an independent polling research centre in the city, decided to leave Hong Kong for safety, after CHUNG himself was asked to meet national security police several times.¹⁵⁴ The PORI was accused by government-owned media as “using ‘so-called ‘public opinion’ to hijack society” during the new “patriots-only” legislative council elections in 2021.¹⁵⁵

339. Overseas scholars concerning Hong Kong’s development were also named and targeted by government-owned media outlets. Among them, Professor Ryan Thoreson, who is a researcher in Human Rights Watch that is sanctioned by PRC, and then hired by the HKU Law School, was denied visa to teach in Hong Kong by local authorities.¹⁵⁶

340. Dr. AU Ka Lun, a professional consultant in the School of Journalism of the Chinese University of Hong Kong, also known as a public intellectual, was arrested by national security police for allegedly conspire to publish seditious publications. News reports said his arrest was related to his opinion essays in the Stand News case.¹⁵⁷

Publicly funded universities required to introduce mandatory national security education

341. Last but not the least, 8 universities in Hong Kong are publicly funded through the University Grant Committee (“UGC”), which is the non-statutory body advising the HKSAR government on the funding and strategic

¹⁵¹ Tai Kung Pao, 2022, “教资会黑幕 1 | 被境外势力渗透 教资会公款资助港独” [University Grant Committee “Black Curtain” : UGC is infiltrated by external forces to fund “Hong Kong independence”] February 7, URL=<http://www.takungpao.com/news/232109/2022/0207/683713.html>.

¹⁵² Tai Kung Pao, 2022, “「港獨」學者方志恒離任教大” [“Hong Kong independence” scholar Brian Fong leaves Education University of Hong Kong] February 11, URL=<http://www.takungpao.com.hk/news/232109/2022/0211/685235.html>.

¹⁵³ Tai Kung Pao, 2022, “離晒譜 教資會淪亂港學棍「提款機」” [University Grant Committee “Black Curtain” 2: University Grant Committee Becomes an ATM for Hong-kong-troubling scholars] , February 8, URL=<http://www.takungpao.com.hk/news/232109/2022/0208/684110.html>.

¹⁵⁴ Hilary Leung, 2022, “Senior member of Hong Kong pollster leaves city for the UK, citing ‘red lines’” *Hong Kong Free Press*, April 25, URL= <https://hongkongfp.com/2022/04/25/senior-member-of-hong-kong-pollster-leaves-city-for-the-uk-citing-red-lines/>.

¹⁵⁵ Selina Cheng, 2021, “Hong Kong pollster vows to press on with surveys after China’s party mouthpiece accuses it of influencing election turnout” *Hong Kong Free Press*, December 10, URL=<https://hongkongfp.com/2021/12/10/hong-kong-pollster-vows-to-press-on-with-surveys-after-chinas-party-mouthpiece-accuses-it-of-influencing-election-turnout/>.

¹⁵⁶ AFP, 2022, “US human rights law scholar says Hong Kong gov’t denied him visa to teach at HKU” *Hong Kong Free Press*, February 2, URL= <https://hongkongfp.com/2022/02/02/us-human-rights-law-scholar-says-hong-kong-govt-denied-him-visa-to-teach-at-hku%E2%82%AC%E2%82%80%BD/>.

¹⁵⁷ Chen Qingqing, 2022, “Former RTHK show host Allan Au arrested, ‘linked to Stand News’” *Global Times*, April 11, URL=<https://www.globaltimes.cn/page/202204/1258987.shtml>.

development of higher education in Hong Kong. In May 2025, the UGC requests each publicly funded university to introduce national security education as a mandatory module for all students. Each university can decide the module on its own.¹⁵⁸

Recommendation

342. Academic freedom, freedom of thought and expression must be upheld by HKSAR authorities, including its University Grant Committee and Research Grant Council, as well as its public-funded universities in accordance with the ICCPR.

343. University vice-chancellors, management bodies, academics and students should not be condemned or sanctioned for exercising their freedom of expression and academic freedom.

344. The HKSAR Authorities, including the University Grant Committee, Research Grant Council, the government-owned media outlets, must refrain from exerting pressure and undue influence, and making any decisions against universities, academics, students and their speech, acts, and activities for political reasons, or in the name of national security that are inconsistent with the General Comments No. 34 of the Committee and the ICCPR.

Items 23 &24

Right of peaceful assembly

(arts. 7, 9, 10, 19 and 21)

345. In between June 2020 and June 2022, we see more organizers and participants of peaceful assembly arrested, charged, and jailed. Some of them were even charged and convicted in respect of several incidents resulting a much longer sentence in total. Besides, the offence of unauthorized assembly in the Public Order Ordinance used to be tried in the Magistracy the maximum penalty of its jurisdiction is only two-year imprisonment. However, in the past two years, most of the cases involving this offence were tried in the District Court the maximum penalty of its jurisdiction is seven-year imprisonment, resulting a general and substantial increase of the sentence. The offence of unauthorized assembly involves peaceful assembly.

The law on unauthorized assembly and its implementation

(Gov reply paras 134-137, 140-141, 143-145)

346. As mentioned in paragraphs 187-188 of the Joint Submission and referred to in paragraph 24 of the List of Issues, 15 prominent pro-democracy figures were arrested on 28 February and 18 April 2020 for organizing and participating in several peaceful unauthorized assemblies held on 18 August 2019, 31 August 2019, 1 October 2019 and 20 October 2019.

347. On 20 August 2020, 20 pro-democracy politicians and activists were arrested for organizing and participating in the peaceful unauthorized assembly held on 4 June 2020. Later, 8 more activists for arrested for organizing and participating in the peaceful unauthorized assembly held on 30 June 2020.

348. Among them, there are senior barrister, academics, trade union leaders, independent publisher, lawyers, former legislators, young activists and human right defenders. Some of them had been arrested twice or more. In less

¹⁵⁸ Apple Daily, 2021, “教資會倡大學必修國安教育” [University Grant Committee asks Universities to introduce mandatory national security education], May 25, URL=<https://collection.news/appledaily/articles/4I7CYHSLOBCFZDLOF6D7U5FQJY>.

than 6 months, a total of more than 30 pro-democracy politicians, social activists and political party members who have long engaged in human rights work were arrested and prosecuted. Some of them were tried for four or more of offences in relation to different peaceful protests resulting severe punishment in longer term of imprisonment:

349. For Leung Kwok Hung, he was sentenced to a total of more than 50 months' imprisonment in respect of 5 cases and even after the totality principle, he was jailed for more than 20 months for participating in peaceful assemblies. For Lai Chi Ying, Lee Cheuk Yan, Chan Ho Wun, Ho Chun Yan and Ho Sau Lan Cyd, each of them was sentenced to a total of more than 40 months' imprisonment and even after the totality principle, each of them was jailed for more than 10 months.

350. It has long been recognized that the right to peaceful assembly imposes on States an obligation to facilitate and accommodate the exercise of this right and thus authorities should accommodate, as oppose to punish those participating in, even unlawful assemblies as long as these are peaceful and isolated acts of violence by some protesters should not attributed to other peaceful protesters. See General Comment No. 37. What had happened to the pro-democracy politician and activists as outlined above is a serious and blatant breach of this article by the Hong Kong Government.

Recommendation

351. Reiterates that under international law, a failure to notify the authorities of an upcoming assembly, where required, does not render the act of participation in the assembly unlawful, and must not in itself be used as a basis for dispersing the assembly or arresting the participants or organizers, or for imposing undue sanctions, such as charging the participants or organizers with criminal offences. Where administrative sanctions are imposed on organizers for failure to notify, this must be justified by the authorities. Lack of notification does not absolve the authorities from the obligation, within their abilities, to facilitate the assembly and to protect the participants.

352. Reiterates excessive punishment could cause a chilling effect to the exercising of the right to peaceful assembly.

The law on public nuisance and its implementation

353. By using common law principles of secondary liability such as incitement, conspiracy, encouragement, and joint enterprise, the Hong Kong government has imposed serious criminal consequences even for individuals protesting peacefully or calling for protests. The below are examples of this trend.

354. The "Occupy Central" case stemmed from the Umbrella Revolution of 2014, in which nine democracy leaders were convicted of various charges including incitement to commit public nuisance, conspiracy to commit public nuisance, and incitement to incite public nuisance. They received varying sentences from 16 months' imprisonment, to suspended imprisonment, to a community service order. The leaders were calling for a peaceful assembly around Hong Kong's government headquarters. They did not advocate for or participate in any form of violence. What transpired was an occupation of roadways around government headquarters lasting over 2 months.

355. This was the first instance in which the common law offence of "public nuisance" was used in Hong Kong. It carried the maximum sentence of 7 years, in contrast with a statutory offence of the same name carrying the maximum sentence of 3 months (Summary Offences Ordinance (Cap. 228) s 4).

356. On appeal, the defence argued *inter alia* that these charges a) lacked legal certainty, or b) were not proportional considering the chilling effect of premature arrest or prosecution of a person planning or advocating a

peaceful assembly. The Court of Appeal dismissed these and other constitutional challenges in its judgment handed down on 30 April 2021 (case no.: CACC 128/2019). All appeals against sentence were also dismissed.

357. Subsequently, the offence of “inciting public nuisance” was used in respect of posts on the instant messaging app Telegram. In DCCC 853/2020, Siu Cheung-lung was convicted on his own plea of various charges including incitement to commit arson, incitement to commit public nuisance, incitement to commit riot and others by making related posts on a Telegram channel. The charge of incitement to commit public nuisance was based on his posts calling on others to interfere with public transport. The judge considered that, in view of widespread protests at the time, this incitement would severely impact public transport, and cause severe inconvenience and even danger to others. He reached this conclusion without citing any evidence. Making reference to the Occupy Central case, the judge adopted a starting point of 6 months’ imprisonment, which was reduced upon Siu’s guilty plea.

358. In DCCC 212/2021, Ng Man-ho was convicted after trial of incitement to commit public nuisance and other charges, also on the basis of Telegram posts.¹⁵⁹ The District Court judge jailed Ng for between 1½ and six years for each charge before imposing a total term of 6½ years, having considered a District Court judge can at most pass a jail sentence of seven years.¹⁶⁰

359. Common law principles of secondary liability are hence used as tools to impose criminality on peaceful protests, and also multiply the seriousness of offences and sentences imposed.

Unlawful assembly and rioting

360. Based on figures provided by Police in 2021¹⁶¹, at least 750 people were charged for rioting and 403 people were charged for unlawful assembly. Given the broad definition of the offence “rioting” and “unlawful assembly”, a person could be convicted for unlawful assembly or rioting merely based on the wearing of clothes, possession of personal protective equipment, helmet, gas mask, and first-aid kit, instead of proving the violent intent or violent act the defendant committed in the assembly. The sentencing of unlawful assembly and rioting has been greatly increased in recent years. Sentencing of unlawful assembly and rioting varied from 3-18 months and 3-7 years of imprisonment respectively.

Recommendation

361. Reiterates the carrying by participants of objects of protective equipment is not necessarily sufficient to deem those participants’ conduct violent.¹⁶²

362. Express grave concern about (a) the broad and vague definition of the offence “disorder in public places”, “unlawful assembly”, and “rioting” in the Public Order Ordinance could unduly criminalise peaceful participants in public assemblies; (b) the application in practice of certain terms contained in the Public Order Ordinance, inter alia, “disorder in public places” or “unlawful assembly”, “rioting” which may facilitate excessive restriction to the Covenant rights, (c) the increasing number of arrests of, and prosecutions against, protestors.

¹⁵⁹ TG 現煽動暴動頻道 官排除機械人帳戶或盜用身份 裁管理員罪成 | 香港 01
<https://www.hk01.com/sns/article/741528>

¹⁶⁰ https://www.scmp.com/news/hong-kong/law-and-crime/article/3178371/telegram-channel-operator-gets-6-1/2-years-jail?utm_source=copy_link&utm_medium=share_widget&utm_campaign=3178371

¹⁶¹ <https://udn.com/news/story/7331/5521107>; <https://www.hk01.com/sns/article/541459>

¹⁶² General Comment No. 37 Para. 81

363. Express grave concern on the heavy imprisonment imposed by the offence of unauthorised assembly, unlawful assembly, and rioting.

Item 24

Prohibition on Face Covering Regulation

(Government Reply paragraph 142)

364. Hong Kong government banned face covering in public assembly since 5 October 2019 by issuing regulation in accordance with Emergency Regulations Ordinance (Cap 241). The regulation was challenged by judicial review which the Court of Final Appeal held that it is constitutional for the regulation prohibits wearing of facial coverings at unauthorised assemblies, public meetings, and public processions, which aims to prevent and deter violence before a peaceful public gathering had deteriorated into violence. Maximum penalty of the offence under the regulation is \$25,000 Hong Kong dollars and 1 year of imprisonment. As of 29 May 2022, the regulation remain effective despite the claimed public danger is no longer exist.

Recommendation

365. Regulation made under the Emergency Regulations Ordinance should be terminated as soon as possible when the reason for such regulation no longer exists.

366. Reiterates the wearing of face coverings or other disguises by assembly participants, such as hoods or masks, or taking other steps to participate anonymously may form part of the expressive element of a peaceful assembly or serve to counter reprisals or to protect privacy. The use of disguises should not in itself be deemed to signify violent intent.¹⁶³

367. Express concern on the prohibition of face covering in unauthorized assembly¹⁶⁴ imposed unnecessary and excessive criminal liability to participants of peaceful assembly.

Intimidate citizen from participating in public assemblies by stop and search, stop and frisk, arrest, and issuance of fix penalty notices

368. During and after the Anti-ELAB protests, Police has been using different strategies to discourage, intimidate, and punish citizens who want to exercise their right to peaceful assemblies or making political expression in public places. Police intentionally exercised their power arbitrarily and indiscriminately in order to stop or deter peaceful flash mobs and spontaneous collective actions (such as singing protest-related songs in shopping mall, strolling together on the street for “shopping”). Several strategies were observed:

- (a) Deploy a large number of police officers to conduct stop and search at the exits of the Mass Transit Railway (“MTR”) stations and on the street nearby and at a place of protest (even there was no protest at that time).

¹⁶³ General Comment No.37

¹⁶⁴ A public assembly is deemed as an unauthorised assembly if the assembly is carried out without duly notifying the police or obtained a letter of no objection from the Police. It is an offence under the Public Order Ordinance (Cap. 245)

- (b) Cordon off a block of street or a large area to stop and search, frisk and question every citizen who were trapped in the containment. The whole process could be last for hours.
- (c) Arbitrarily and indiscriminately issue fix penalty for violation of gathering ban to citizens who are in the area that a public assembly was happening, regardless of whether such person is a participant, bystander or just passing-by.
- (d) Human rights observers and journalists were being dispersed from the place of protest, and faced search and arrest by police. Journalists were fined by fix penalty notice for violation of gathering ban.

Recommendation

369. Express grave concern on the practice of “Stop and search”, “Stop and frisk” and containment which pose intimidation and chilling effect for the exercising of freedom to peaceful assembly.
370. “Stop and search”, and “Stop and frisk” must be exercised based on genuine and reasonable suspicion of the commission or threat of a serious offence. Police should inform public on statistics of “Stop and search”, with respective figures of sex, age, race, reasons for search, and outcome.
371. Reiterate the role of journalists, human rights defenders, election monitors and others involved in monitoring or reporting on assemblies is of particular importance for the full enjoyment of the right of peaceful assembly. Those persons are entitled to protection under the Covenant. They may not be prohibited from, or unduly limited in, exercising these functions, including with respect to monitoring the actions of law enforcement officials. They must not face reprisals or other harassment, and their equipment must not be confiscated or damaged.

Using COVID-19 preventive measures as an excuse to suppress protest activities

372. Hong Kong Police has been citing COVID-19 as a reason to reject applications for organising peaceful assemblies, and selectively exercised their powers under the group gathering ban (the Cap.599G Prevention and Control of Disease (Prohibition on Gathering) Regulation) to suppress protests rather than to promote social distancing. Since the first wave of the epidemic appeared in Hong Kong in early 2020, the Hong Kong Government has been imposing group gathering ban (the Cap.599G Prevention and Control of Disease (Prohibition on Gathering) Regulation) to prohibit any group gathering of size more than 2 to 50 people (changed intermittently).

Government refused to exempt protest applications from group gathering ban

373. Some exemptions are given (for example gatherings for the purposes of or related to transportation, work, funeral or obtaining healthcare service); the Chief Secretary for Administration is empowered by s.5 of the Regulation to permit group gathering that serves the public interest of Hong Kong. Hong Kong Journalists Association (“HKJA”) applied to Police for holding a protest in November 2020 over the arrest of a reporter. Police rejected the application, but the Appeal Board on Public Meetings and Processions reached a conditional decision in favour of the HKJA, the public meeting could be held provided the Chief Secretary gave his approval, citing the chief secretary can make conditional exceptions in accordance with the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation, for an event serves the public interest. However, the Chief Secretary rejected the application.¹⁶⁵

¹⁶⁵ <https://www.scmp.com/news/hong-kong/politics/article/3109814/fate-protest-hong-kong-journalists-groups-hangs-approval>

Police used group gathering ban to disperse or prosecute peaceful protestors

374. Since the introduction of the group gathering ban, Police has been frequently citing the regulation to prevent group gatherings and disperse peaceful protest activities, including issue fixed penalty notices to people who allegedly participated in protest activities. Should people refuse to pay the penalty, they could be charged for breaching the regulation and could be sentenced to jail.

375. On 1 May 2020, 8 activists from the Labour Party and the League of Social Democrats were issued fixed penalty notices after protesting in two groups outside the government headquarters for labour rights. They were prosecuted after refusing to pay the fixed fine, arguing that they did not violate the ban as they divided into two groups and kept 1.5 meters distance from one another during the protest. However, the judge said even though they kept social distance during the protest, they still had a “common purpose” for the gathering, so they had violated the group gathering ban. As a result, the 8 activists were given suspended jail sentence for two weeks¹⁶⁶.

376. This case shows that the group gathering ban, with an ambiguous definition of “group gathering”, provides a tool for the police to punish peaceful protestors and disperse peaceful assembly. In some other events, police issued fixed penalty notices arbitrarily to peaceful assembly participants, bystander, passer-by, and even journalists who only covered the activities.

Banning 4 June Tiananmen Vigils and 1 July Protest Rallies citing public health concern

377. It is noteworthy that both the annual 4 June Tiananmen vigil and the 1 July protest rally were banned by the police citing pandemic concerns in 2020 and 2021, although the infection rate in Hong Kong remained low at that moment. For example, from 25 May to 24 June 2020, there were only 114 infection cases, of which 102 were imported cases in Hong Kong. At the same time, the social distancing measures were relaxed, including reopening swimming pools, beaches and two theme parks¹⁶⁷. In June 2021, the situation was even better as only two cases with unknown source were recorded from 23 April to late June¹⁶⁸. A number of large-scale events were allowed to take place instead of protest rallies or assemblies.

378. Although article 21 of the ICCPR states that the right of peaceful assembly could be restricted on the ground of the protection of public health, it should be noted that the General Comment No.37 by the UN Human Rights Committee further explained that the restrictions were justified when “gatherings are **dangerous**” or there is “a **substantial** health risk to the general public” during the assembly. (Emphasis added) Since other usual business activities were allowed at that time and the government failed to provide concrete evidence proving that protest activities could pose a more dangerous threat than other activities, it is difficult to justify the government’s decision on banning the protest activities on the ground of protecting public health.

Recommendations

379. Express grave concern on the excessive restriction of peaceful assembly by the Prevention and Control of Disease (Prohibition on Gathering) Regulation, especially the ambiguous definition of “group gathering” in the regulation.

380. Hong Kong government should develop measures to facilitate the organising of public assembly for political expression in the time of public health crises, instead of banning it.

¹⁶⁶ <https://www.scmp.com/news/hong-kong/law-and-crime/article/3124913/coronavirus-eight-hong-kong-opposition-activists-get>

¹⁶⁷ https://www.news.gov.hk/eng/2020/06/20200625/20200625_154951_295.html

¹⁶⁸ <https://www.ceo.gov.hk/eng/pdf/article20210627.pdf>

Item 25

Improper dispersal tactics endanger participants of public assemblies

(Gov reply 146-153)

381. A recent court trial revealed a human stampede with a height of 1.7 meter and involved around 30 people may be happened in a vigorous confrontation between police and protestors on 18 November 2019. Police officers at that time were trying to make arrest and disperse protestors with tear gas¹⁶⁹. 33 people were hospitalised in that night and two of them were unconscious at the time of being sent to hospital.

382. Reports of using of tear gas and water cannon indiscriminately and excessively, as well as the use of kettling tactics had been covered by reports of civil society organisation and media outlets.

Recommendation

383. Reiterates that less-lethal weapons with wide-area effects, such as tear gas and water cannons, tend to have indiscriminate effects. When such weapons are used, all reasonable efforts should be made to limit risks, such as causing a stampede or harming bystanders. Such weapons should be used only as a measure of last resort, following a verbal warning, and with adequate opportunity given for assembly participants to disperse.

384. Express grave concern on the Police's tactics of crowd control and use of force in excessive and indiscriminate manner, could escalate confrontation between police and protestors, which in turns, resulted escalation of violence from both sides.

Harassment to personnel who provides legal assistance and medical assistance

(Gov reply para 152)

385. At least one voluntary first aider was charged and convicted for rioting. The court was of the view that the defendant was supporting a riot by providing first-aid to injured protestors¹⁷⁰. Five trustees of the 612 Humanitarian Relief Fund (“**612 Fund**”) were arrested by police of national security department for alleged conspiracy to collude with foreign powers, an offence under the National Security Law¹⁷¹.

386. The Fund was disbanded in 2021 after the national security police demanded it hand over operational details, including information about its donors and beneficiaries. The Fund was established to provide financial assistance for

¹⁶⁹DCCC 768/20, DCCC 409/21;

[https://news.mingpao.com/pns/%E6%B8%AF%E8%81%9E/article/20220423/s00002/1650651265979/%E6%B6%88%E9%98%B2%E7%9D%B9%E6%B2%B9%E9%BA%BB%E5%9C%B0%E4%BA%BA%E8%B8%A9%E4%BA%BA-%E4%BA%BA%E5%A0%86%E9%AB%981-7%E7%B1%B3-%E5%9C%8D%E7%90%86%E5%A4%A7%E6%A1%88%E4%BD%9C%E4%BE%9B-%E7%A8%B1%E6%B2%92%E7%95%99%E6%84%8F%E8%AD%A6%E6%96%B9%E6%9C%89%E5%90%A6%E5%8D%94%E5%8A%A9DCCC 768/20, DCCC 409/21;](https://news.mingpao.com/pns/%E6%B8%AF%E8%81%9E/article/20220423/s00002/1650651265979/%E6%B6%88%E9%98%B2%E7%9D%B9%E6%B2%B9%E9%BA%BB%E5%9C%B0%E4%BA%BA%E8%B8%A9%E4%BA%BA-%E4%BA%BA%E5%A0%86%E9%AB%981-7%E7%B1%B3-%E5%9C%8D%E7%90%86%E5%A4%A7%E6%A1%88%E4%BD%9C%E4%BE%9B-%E7%A8%B1%E6%B2%92%E7%95%99%E6%84%8F%E8%AD%A6%E6%96%B9%E6%9C%89%E5%90%A6%E5%8D%94%E5%8A%A9DCCC%20768%2F%20DCCC%20409%2F%20)

<https://news.mingpao.com/pns/%E6%B8%AF%E8%81%9E/article/20220423/s00002/1650651265979> - A fireman gave witness statement before court on a trial of rioting case happened in November 2019

¹⁷⁰

DCCC 770/2020, para.129-133

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=143579&QS=%2B&TP=RV.

¹⁷¹ <https://hongkongfp.com/2022/05/12/a-political-show-beijing-hits-back-at-western-criticism-of-hong-kong-national-security-arrests/>

humanitarian relief, including medical treatment, psychological counselling, legal advice and representation and related hardship to those who are injured, arrested, or affected during Anti-Extradition Law Amendment Bill (Anti-ELAB) protests.

387. Lawyers and civil society organisation were alleged for supporting the Anti-ELAB protests by providing legal support for protestors who were arrested or prosecuted for taking part in the protests. Police filed complaints to the governing bodies of legal professional in Hong Kong over dozens of solicitors and barristers who had received fund from 612 fund for providing legal services to protesters involved in the Anti-ELAB protests¹⁷².

Recommendation

388. Reiterate medical personnel, whether they are acting officially or as volunteers, should be provided with safe access to attend to any injured individuals.

389. Reiterates human rights defenders, lawyers, medical personnel must not face reprisals or other harassment for their providing of humanitarian aid, medical support and legal assistance to participants of public assemblies.

Item 26

Freedom of association (art. 22)

(Joint Submission for Adoption of List of Issues (June 2020) paragraphs 204-225 / Gov reply paras 154-156)

390. Since last joint submission in June 2020, oppression and deprivation of freedom of association continues, in particular by way of the threats of possible violation of the national security laws and cancellation of registration under Societies Ordinance (Cap.151), Trade Unions Ordinance (Cap.332) or companies law and the chilling effect. Over 50 organisations including human rights groups, unions, political parties, media groups, student societies and churches disbanded and/or under investigation by the authority.¹⁷³

Forcing unions to disband by intimidation

391. On 10 August 2021, the city's biggest single-industry union with over 95,000 members, Hong Kong Professional Teachers' Union ("HKPTU"), announced its dissolution in view of immense political pressure and threat after the Chinese official media outlet, the People's Daily and news wire Xinhua attacked the Union by describing it

¹⁷² <https://hongkongfp.com/2022/05/12/national-security-police-probing-protester-relief-fund-claim-misconduct-by-lawyers-ex-lawmaker-arrested-in-jail/>

¹⁷³ Organisations and groups under investigation, intended cancellation or disbanded are Civil Human Rights Front (CHRF) (disbanded in Aug 2021); Hong Kong Confederation of Trade Union (HKCTU) (disbanded); Hospital Authority Employees Alliance (HAEA) (disbanded); Hong Kong Alliance in Support of Patriotic Democratic Movements of China (disbanded in Sept 2021); General Union of Hong Kong Speech Therapist (disbanded); Hong Kong Professional Teachers' Union (HKPTU) (disbanded in Aug 2021); Hong Kong Journalists Association (HKJA) and various universities' student unions. <https://hongkongfp.com/2021/11/28/explainer-over-50-groups-gone-in-11-months-how-hong-kongs-pro-democracy-forces-crumbled/>; <https://safeguarddefenders.com/en/blog/ccp-crushing-hong-kong-civil-society>

as “poisonous tumour” which must be eradicated. The police chief warned of national security investigation over the union.¹⁷⁴

392. Following the dissolution of the HKPTU, on 19 September 2021, the Hong Kong Confederation of Trade Unions (“**HKCTU**”), a pro-democracy coalition which has also been a target of pro-Beijing media outlets, announced its plan to disband. The chairman of the HKCTU Joe Wong Nai-yuen said at the press conference that they received threatening messages which made them worry about their personal security. A day before, the director of the HKCTU Mung Siu-tat confirmed he had resigned and left Hong Kong due to safety concerns.¹⁷⁵

Societies Ordinance (Cap.151) invoked to compel information from NGOs

393. Section 15 of the Societies Ordinance has been triggered constantly by the authority requiring office-bearers of human rights or pro-democracy groups to furnish such information like “the income, the source of the income and the expenditure of the society or its branch”. Failing to comply is a criminal offence. Two examples are: (1) **Civil Human Rights Front (“CHRF”)** which has organized some of the biggest pro-democracy peaceful demonstrations in HK’s history and was disbanded in August 2021¹⁷⁶, and (2) **HKCTU**, HK’s largest independent trade union founded in 1990 and was disbanded in October 2021¹⁷⁷.

394. In the case of HKCTU, due to its failure to comply with the request and suspect of having received financial support from overseas organisations and organized strikes during the 2019 protests, in March 2022, its office was searched, and its ex-leaders were taken by the national security police for investigation and were ordered to surrender their passports upon bail. Due tools of both local law and national law were employed in the restriction of the freedom of association.

395. Section 8 of the Societies Ordinance was also referred to when the authority purported to prohibit the operation of the **Hong Kong Alliance in Support of Patriotic Democratic Movements of China (“Hong Kong Alliance”)**, a group established in 1989 to support the pro-democracy movement in Beijing and had organized the yearly Tiananmen commemoration vigil in HK for the past 30 years, on the ground that “it would be necessary in the interests of national security”.¹⁷⁸ The definition of ‘national security’ is only vaguely defined in the Ordinance¹⁷⁹ and the threshold to appeal and/or review the merits of prohibition or cancellation is impossibly high.

174HKFP, ‘Hong Kong’s largest teachers’ union to disband following pressure from gov’t and Chinese state media’, (10 August 2021) <https://hongkongfp.com/2021/08/10/breaking-hong-kongs-largest-teachers-union-to-disband-following-pressure-from-govt-and-chinese-state-media/>

175 SCMP, ‘Hong Kong’s largest opposition trade union confirms disbandment, expects to fold by early October’, (19 Sept 2021) <https://www.scmp.com/news/hong-kong/politics/article/3149319/hong-kongs-largest-opposition-trade-union-confirms>

¹⁷⁶ <https://hongkongfp.com/2021/08/15/breaking-organiser-of-mass-hong-kong-demos-civil-human-rights-front-disbands-citing-unprecedented-challenges/>; Former convener of the CHRF, Figo Chan was charged and fined for CHRF’s failure to furnish information as requested.

¹⁷⁷ <https://www.reuters.com/world/asia-pacific/hong-kong-trade-union-disbands-impact-security-law-deepens-2021-10-03/>

¹⁷⁸ <https://hongkongfp.com/2021/09/11/hong-kong-govt-seeks-to-strike-tiananmen-massacre-vigil-group-off-companies-registry-amid-national-security-charges/>

¹⁷⁹ See s2(4): “national security ... means the safeguarding of the territorial integrity and the independence of the People’s Republic of China”

Arbitrary de-registration and striking off under companies laws and Trade Unions Ordinance

Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap.32)

396. Hong Kong Alliance, which was registered as a company, was struck off by the HK government in October 2021.

397. On 25 August 2021, the police national security unit sought information of the Alliance pursuant to the National Security Law (NSL).¹⁸⁰ After having defied the request, key members of the Alliance were then arrested and charged on 8 September 2021 and one of them was jailed for 3 months on 11 May 2022.¹⁸¹ On 10 September 2021, the Alliance and three of its leaders were then further charged with the offence of ‘incitement to subversion’ under the NSL accusing the Alliance of working as a ‘foreign agent’.¹⁸² On the same day, the Security Bureau notified the Alliance that it would seek the Chief Executive in Council to strike off the Alliance from the Companies Registry.¹⁸³ On 25 September 2021, the Alliance decided to disband after months of pressure from the authorities and the arrest of its leadership.¹⁸⁴ On 26 October 2021, the Alliance was officially struck off by the HK government with its assets frozen and property seized.¹⁸⁵ On 11 May 2022, the court ruled that the prosecution is not required to identify whom the Alliance is accused of working with.

Trade Unions Ordinance (Cap.332) (“TUO”)

Union investigated upon alleged using fund for political purpose, violating s.34 of the TUO

398. Independent trade unions have played an active role and taken up a significant part in HK civil society. In the past two years, existing pro-democracy unions have been targeted by the authority including closely monitoring and investigating their finance and activities. Under s.34 of TUO, registered trade unions are prohibited from applying funds for any political purpose. The meaning of ‘political’ is not statutorily defined. The ambiguity of this crucial criteria becomes the tool to control dissident unions and undermine the freedom of association. In addition, a trade union’s registration could be cancelled by the Registry of Trade Unions in accordance with s.10(1)(b), if the registrar of the view that the trade union’s funds have been expended for any unlawful purpose or inconsistent with the trade union’s objects or rules.

399. One of the examples: Hospital Authority Employees Alliance (“HAEA”), a pro-democracy hospital workers union founded in late 2019. HAEA had once organised strike to urge the government for a full border closure with

¹⁸⁰ <https://hongkongfp.com/2021/08/25/hong-kong-national-security-police-demand-info-from-tiananmen-massacre-vigil-organiser/>

¹⁸¹ <https://hongkongfp.com/2021/09/08/4-members-of-hong-kong-group-behind-tiananmen-massacre-vigil-arrested-a-day-after-vowing-to-defy-police-probe/>; the court denied bail two days later on 10 September 2021: <https://hongkongfp.com/2021/09/10/hong-kong-tiananmen-massacre-vigil-leaders-plead-not-guilty-to-refusing-national-security-data-probe-bail-denied/>; <https://hongkongfp.com/2022/05/11/hong-kong-tiananmen-activist-jailed-for-3-months-for-refusing-national-security-data-demand/>

¹⁸² <https://hongkongfp.com/2021/09/10/hong-kong-tiananmen-massacre-vigil-group-leader-denied-bail-over-inciting-subversion-national-security-charge/>

¹⁸³ <https://hongkongfp.com/2021/09/11/hong-kong-govt-seeks-to-strike-tiananmen-massacre-vigil-group-off-companies-registry-amid-national-security-charges/>

¹⁸⁴ <https://hongkongfp.com/2021/09/25/breaking-hong-kong-tiananmen-massacre-vigil-group-disbands-following-pressure-from-authorities/>

¹⁸⁵ <https://www.info.gov.hk/gia/general/202110/26/P2021102600601.htm>

mainland China following the first outbreak of the COVID-19 in February 2020.¹⁸⁶ A year later, its chairwoman Winnie Yu was arrested for having participated in the 2020 HK pro-democracy primary election for the Legislative Council election and was later charged for the offence of subversion under the NSL.¹⁸⁷

400. In early September 2021, pursuant to s.34 of TUO the Registry of Trade Unions demanded HAEA to submit information on 8 events it held, suspecting that the union has used its funds for political purposes and thus violated the law. Those events under investigation include the strike held in January 2020, Winnie Yu's participation in the primaries, the union's social media posts on Covid-19 vaccines, a film screening etc.¹⁸⁸

Union disbanded upon alleged publication of seditious children's picture books, violating s.10 of the TUO

401. Another trade union which was disbanded by the authority is The General Union of Hong Kong Speech Therapist. In July 2021, leaders of the union were charged and remanded in custody for committing the offence of "conspiring to publish seditious publications" under section 10 of the Crimes Ordinance.¹⁸⁹ The publications in question were three children's picture books based on the 2019 protests and the hospital workers' strike.¹⁹⁰ A month later, the authority decided to cancel the union's registration on the ground that the union is being used for purposes inconsistent with its objects or rules in breach of the ordinance.¹⁹¹ In October 2021, the union's registration was formally revoked.¹⁹² The chilling effect of all these incidents is more than just the disbandment of the union or organisation but a combination of the use of the NSL and domestic laws in the allegation and/or prosecution of their leaders resulting in their loss of personal liberty.

Disappearance of student societies amidst the dismantling of the civil society

402. Between May 2021 and May 2022, several university student unions in Hong Kong disbanded. Among them are the Hong Kong University Students' Union ("HKUSU") and the Chinese University of Hong Kong Student Union ("CUSU"), student unions at two of HK's oldest and most prestigious universities. HKUSU was disbanded in August 2021 and CUSU in October 2021. Six publicly funded universities ceased collecting membership fees for their student unions, severing the official link between the university administrations and student unions.

403. Chilling effects of the threats of the wide-catching and ambiguous NSL have seen over 50 Hong Kong civil society groups and unions disappeared within a short period of time with the white terror still lingers around.¹⁹³

¹⁸⁶ <https://hongkongfp.com/2020/02/02/no-choice-hong-kong-medical-workers-agree-strike-mainland-border-closures/>

¹⁸⁷ <https://www.thestandard.com.hk/section-news/section/11/228024/Tears,-fatigue-and-no-bathing-gripes-as-bail-marathon-halted>

¹⁸⁸ <https://hongkongfp.com/2021/09/17/hong-kong-hospital-authority-union-denies-govt-allegation-it-broke-law/>

¹⁸⁹ <https://hongkongfp.com/2021/07/22/hong-kong-national-security-police-explain-why-childrens-picture-books-about-sheep-are-seditious/>

¹⁹⁰ <https://hongkongfp.com/2021/07/23/hong-kong-women-who-published-seditious-childrens-books-about-sheep-remanded-in-custody/>

¹⁹¹ <https://www.thestandard.com.hk/breaking-news/section/4/179110/Govt-to-revoke-registration-of-speech-therapists'-union>

¹⁹² <https://newsrmd.com/news/2021-10-22-the-government-gazetted-the-registration-of-the-hong-kong-speech-therapists-general-union.SkyuDZxUK.html>

¹⁹³ <https://www.universityworldnews.com/post.php?story=20211007140203859>

Amendment to the Charity Guidelines

404. In September 2021, the Hong Kong Government amended its tax guide for charitable institutions and trusts that charity has a duty to safeguard national security.¹⁹⁴ Further, any group that “takes part, supports or promotes activities that are detrimental to national security”¹⁹⁵ will not be recognised as a charitable organisation, thus losing its tax exemption status.¹⁹⁶

405. The move has been described as targeting opposition-leaning social welfare and community groups. Church groups which are active in social justice issues and democracy movement could be severely impacted, such as the Hong Kong Catholic Diocese, their Justice & Peace Commission has been active in Hong Kong civil society.

406. This is in addition to the established rule that the advancement of human rights is not a charitable purpose (based on the common law definition), therefore it is restrictive for human rights groups to obtain a charitable status. The Law Reform Commission recommended to rectify it by introducing a statutory definition,¹⁹⁷ but the recommendation has been ignored by the government. Although some civil society organisations also managed to obtain a charitable purpose, they reportedly face increased scrutiny of their work with possible result of stripping them of the charitable status and seizing of the fund.

Access to Resources for Civil Society

407. The civil society has relied on crowdfunding to fund their operations. For example, the 612 Humanitarian Relief Fund (“**the 612 Fund**”), which has raised funds through online crowdfunding, has provided humanitarian grants of more than HK\$243 million (US\$31.2 million) to protesters facing criminal prosecution or financial hardship as a result of the 2019 unrest.¹⁹⁸

408. Since 2020, the authorities have cracked down on several crowdfunding initiatives in relation to the 2019 unrest. Radio host Edmond Wan Yiu-sing was arrested in February 2021 on charge of “seditious intent”, after calling for donations to support Hong Kong protesters who travelled to seek refuge and study in Taiwan.¹⁹⁹ In March 2020, the police also froze the assets of Spark Alliance, a non-profit group that raised money to provide financial aid to Hong Kong protesters, accusing the group of money laundering.²⁰⁰ In May 2022, the police arrested four trustees of the 612 Fund, accusing them of ‘collusion with foreign forces’ under the national security law.²⁰¹

409. The government has sought to further curtail the ability of civil society to access resources through online crowdfunding by proposing to regulate crowdfunding in general, citing the need to prevent funds raised to be used for

¹⁹⁴ https://www.ird.gov.hk/eng/pdf/tax_guide_for_charities.pdf, para 12-15

¹⁹⁵ <https://malaysia.news.yahoo.com/groups-endanger-national-security-lose-073027548.html>

¹⁹⁶ https://www.ird.gov.hk/eng/pdf/tax_guide_for_charities.pdf, para 64

¹⁹⁷ The Law Reform Commission of Hong Kong “Report on Charities” December 2013, available at www.hkreform.gov.hk/en/publications/rcharities.htm

¹⁹⁸ <https://www.scmp.com/news/hong-kong/politics/article/3145442/fund-paid-hong-kong-protesters-legal-fees-close-after>. Although it’s closure was forced by disbandment of another opposition group, which provided a bank account for donations.

¹⁹⁹ <https://hongkongfp.com/2021/02/07/second-hong-kong-radio-host-arrested-under-colonial-era-sedition-law/>

²⁰⁰ <https://hongkongfp.com/2019/12/19/hong-kong-police-arrest-4-for-money-laundering-and-freeze-hk70m-used-to-support-pro-democracy-protesters/>

²⁰¹ <https://www.amnesty.org/en/latest/news/2022/05/hong-kong-arrests-of-activists-including-90-year-old-cardinal-a-shocking-escalation-of-repression/>

“unlawful acts such as planning activities that endanger national security”.²⁰² This will affect the ability of civil society to access resources and potentially impose a mechanism which discriminates against groups based on political opinion. The lack of independent oversight on the regulator is also a key issue identified.

410. Another effect of the National Security Law is to sanction and stigmatise foreign funding. Article 29 makes receiving foreign funding a component of the Collusion with a Foreign Country charge, which carries a maximum sentence of life imprisonment. The element of foreign funding is also key in Article 30, which elevates a secession or subversion charge to a more severe penalty. On 11 May 2022, five trustees of the defunct 612 Humanitarian Relief Fund were arrested for this NSL offence under Article 29.

Recommendations:

411. Revise the relevant provisions of the Trade Union Ordinance, the Societies Ordinance, and the National Security Law so that any decision to revoke the registration of a civil society group could be made through an open and fair procedure.

412. Ensure that the implementation of the Trade Union Ordinance, the Societies Ordinance, the National Security Law and other laws related to regulating civil society groups should be compatible with the ICCPR.

413. Reiterate past recommendations related to Societies Ordinance and extend them to all laws and regulations governing the registration of associations, such as the Companies Ordinance and Trade Unions Ordinance.

Item 27

Participation in public affairs

(arts. 2, 3, 25, 26 and 27; Gov Reply 158-163)

414. There are major regressions in relation to the right to participate in public affairs in the past two years. The Government’s reply to the List of Issues does not cover the latest developments, and has omitted .

415. After the Government postponed the Legislative Council (“**LegCo**”) Election by a year in July 2020, Standing Committee of the National People’s Congress introduced new criteria for the disqualification of Hong Kong’s legislators. Four pan-democratic legislators were disqualified immediately, and other pan-democratic legislators resigned en-masse. 41 of the remaining 43 of the LegCo’s 70 seats were occupied by pro-Establishment members.

Regressive Constitutional Changes Imposed by National People’s Congress (“NPC”)

416. In the interim, NPC passed a decision to amend the Basic Law Annexes I and II on the election methods of the Legislative Council and the Chief Executive of Hong Kong to make the elections so-called “patriots-only”, contrary to the constitutional promise to introduce universal suffrage, and to consult Hong Kong people for any constitutional reform. The amendments effectively bar candidates not approved by Beijing from participating in the elections.

417. A Candidate Eligibility Review Committee is established pursuant to the amendments to take over the role of Returning Officers in vetting candidates on political grounds. The members of the committee are appointed by the

²⁰² <https://www.fstb.gov.hk/en/blog/blog140422.htm>

Chief Executive; it evaluates the suitability of the candidates for the Election Committee, Chief Executive and Legislative Council. The committee's decisions cannot be challenged in the courts.

418. Hong Kong people did not participate in the decision making of the constitutional reform. It was imposed by the NPC by way of a decision. Hong Kong people was not consulted. Protests were not possible because of COVID-19 ban on group gatherings; expression of opinion was also deterred by the execution of the National Security Law.

Law-making by an undemocratic legislature

419. The Government plans to introduce further national security legislations, regulations on “fake news”, “digital security”, crowdfunding in the second half of 2022. These legislative proposals will have severe impact on rights protected by ICCPR. The LegCo returned by the new election methods is not representative; there is no faith that it will scrutinize the bills from the perspective of public interests and human rights protections.

420. There is also not an enabling environment for free public consultations.

Criminalising calls for boycotts or casting invalid ballots in elections

421. As the LegCo elections is against democratic values, there were voices calling for boycott of the elections. However, such opinion expression is criminalised by a new provision in the electoral law²⁰³ - inciting others not to vote or to cast blank ballots. Violators are subject to up to three years' imprisonment and a fine. So far 10 people were arrested for this offence, 3 were prosecuted and convicted. 7 more are wanted for arrest.

Disqualification of elected representatives and election candidates based on pre-National Security Law conducts

422. On 30 July 2020, one day before the nomination period of the Legislative Council general elections²⁰⁴ ended, 12 opposition candidates were disqualified from the election by returning officers who cited the NSL (implemented 1 month then), and previous pan-democrat calls for foreign governments to sanction Beijing and Hong Kong as key reasons. The returning officers applied the lens of the NSL to conducts and expressions prior to the enactment of the national security law.

423. Among the disqualified election candidates were four incumbent Legislative Council members: Alvin Yeung, Kwok Ka-ki, Dennis Kwok and Kenneth Leung.

424. In November 2020, the NPCSC made a decision resulting in the removal of the four incumbent LegCo members. The decision was framed as an interpretation of Article 104 of the Basic Law, but also relied on the NSL. The decision to remove the four LegCo members made no distinction of conducts before or after the imposition of the NSL, practically applying the NSL retrospectively.

Government demands paybacks from disqualified elected representatives, akin to punishment by bankrupting fine

425. Four incumbent LegCo members were removed from office in November 2020 following the NPCSC's decision²⁰⁵; a number of District Council members were also disqualified pursuant to oath-taking requirements. The four unseated LegCo members were required by the LegCo to repay remunerations and office expenses paid by LegCo

²⁰³ Section 27A of Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), enforced by the Independent Commission Against Corruption (ICAC), <https://www.elegislation.gov.hk/hk/cap554>

²⁰⁴ The Legislative Council elections 2020 was later postponed for one year.

²⁰⁵ NPCSC Clarifies “Allegiance” Requirements for Hong Kong Legislators, Disqualifies Pro-Democracy Legislators, <https://npcobserver.com/2020/11/11/npcsc-clarifies-allegiance-requirements-for-hong-kong-legislators-disqualifies-pro-democracy-legislators/>

for the 3 months of the extended period of the term, totalling HKD4.7 million (approximately USD600 thousands). Following that, District Councillors who are disqualified are also rumoured to have to pay back over HKD1 million in salaries and expenses; though such funds would not be recouped from those who had already resigned. This led to a further wave of resignations.

426. It also deters Hong Kong people from running for elected offices, because of the possibility of being disqualified arbitrarily and de facto pecuniary penalty.

Representation deprived

427. In total, by September 2021, at least 49 District Councillors were disqualified for invalid oaths, and 260 resigned. These are elected District Councillors of the pro-democracy camp. The Hong Kong SAR Government said it would not hold by-elections before June 2022, meaning that more than half of the seats in District Council remain vacant.

Recommendations:

- 428. Declare the constitutional reform to be incompatible with State's obligation under the ICCPR.
- 429. Reiterate previous concluding observations and follow-up letters sent to the State party.
- 430. Reiterate that a State is obligated to improve rights protection under the ICCPR and must not regress.
- 431. Express serious concern about the offence of inciting others not to vote or to cast blank ballots, regarding its compatibility with ICCPR, especially its effect to freedom of expression
- 432. Ask the State to repeal the provision in the new election law, including criminalization of advocating for invalid vote, the establishment of the Candidate Eligibility Review Committee, the nomination methods for LegCo, Election Committee, and Chief Executive elections; etc.
- 433. Ask the State to ensure meaningful public consultation on legislations and policies that have significant impact on the enjoyment of rights, such as the national security legislation pursuant to Basic Law Article 23, regulations on "fake news", and further constitutional reforms.
- 434. Express grave concern on the practice of demanding paybacks from disqualified elected representatives for its chilling effect on free expression and participation in public office.
- 435. Restitute disqualified elected representatives and those who resigned pre-emptively to avoid the de facto pecuniary penalty.

Part III: Issues of Importance

Item 8

Discrimination against same-sex couples and non-recognition of same-sex partnership or marriage

(ICCPR Art.2(1), 23 and 26) (Gov Reply para 54)

436. Same-sex couples are not recognized under the Marriage Ordinance in Hong Kong. Same-sex couple bounded by legal union overseas will not be granted partnership rights in Hong Kong. According to a legal research report²⁰⁶, there are 21 areas of differential treatment between opposite-sex marriages and same-sex couples.

437. From mid-2020 to mid-2022, in addition to the two landmark cases 2018²⁰⁷ and 2019²⁰⁸, there are 3 more judicial review cases ruled in favour of the partnership rights of same-sex couples:

438. In March 2020, the High Court ruled that a Housing Authority policy that prevents same-sex couples who married abroad from applying for public housing is unconstitutional and unlawful.

439. In September 2020, the High Court ruled in favour of Mr. Edgar Ng's judicial review application, that the exclusion of same-sex spouses from inheritance rights was "unlawful discrimination". Mr. Ng passed away in December 2020. The HK government filed for appeal and Mr. Ng's spouse is now left in the situation that he had fought to eliminate.

440. In June 2021, Henry Li and his deceased partner Edgar Ng won another case. The High court ruled that subsidised housing policies, which do not acknowledge same-sex partners as a tenant's family member, "constitute unlawful discrimination on the ground of sexual orientation." That means married same-sex partners will be allowed to own subsidised housing together.

441. **Hong Kong government has used all their effort to delay granting equal right to same-sex couples and filed for appeal in all the above 3 cases and made use of appeal procedure to deliberately exclude housing benefit in their recent memo to civil servants²⁰⁹ about same-sex couple benefits.**

442. However, the government is capable to address discrimination faced by same-sex couples in a more positive way as in the following case:

443. Gay widower Henry Li filed for a judicial review against the government after officials barred him from identifying the remains of his late husband Edgar Ng. In October 2021, Mr. Li has dropped the case after the HK

²⁰⁶ Research report: [The Recognition and Treatment of Relationships under Hong Kong law.](#)

Areas of differential treatment between opposite-sex marriages and same-sex couples are to be found in all aspects of daily life, including: anti-discrimination, immigration, crime, bankruptcy, inheritance, employment, housing, medical, public welfare, public health, public service and compensation.

²⁰⁷ [QT v Director of Immigration](#)

In July 2018, the Court of Final Appeal ruled that same-sex civil partner registered overseas of an eligible sponsor should be entitled for a dependant visa.

²⁰⁸ [Leung Chun Kwong v Civil Service & Inland Revenue](#)

In June 2019, the Court of Final Appeal determined that same-sex spouse of a civil servant registered overseas should be entitled to medical and dental benefits, and all same-sex couple registered overseas should be entitled to joint assessment for taxation.

²⁰⁹ Points to Note for Civil Servants/Pensioners on Reporting Homosexual Marriage Solemnised outside Hong Kong, by Civil Service Bureau, HKSAR Government in September 2020

government confirmed that people in this situation will be treated equally when making after-death arrangements for their deceased partners, regardless of sexual orientation.

444. Filing judicial review cases can be a tool for same-sex couple in Hong Kong to reclaim their partnership rights. However, as demonstrated by the sad story of Mr. Henry Li and his late husband Mr. Edgar Ng, the journey is long and bitter.

Recommendation

445. HKSAR government should take active measure to end the discrimination against same-sex couples and affirm same-sex partnership rights in areas that is either challenged or not yet challenged by judicial review cases.

Gender Recognition of Transgender Persons Art. 2(1), 7, 17 and 26

(Gov Reply para 55)

446. The government delayed the progress to the legislation of gender recognition of transgender persons for more than 7 years. In 2014 Hong Kong established an Inter-departmental Working Group on Gender Recognition to conduct consultation and provide suggestion to government for the gender recognition law. After 7 years, still there is no consultation report announced. In addition, no more progress and no more news has been released after 2017.

447. For transgender persons who seek for change of gender markers on official documents, they have to rely on the fragmentary administrative regulations²¹⁰ that has been used for more than twenty years ago. Their situation remains very unacceptable as there was no progress with regard to both the legislation and the sex reassignment surgery requirement for gender recognition.

448. There is no clear legal definition and recognition of transgender persons, thus undermined the legal rights for transgender persons²¹¹.

Recommendation

449. HKSAR government should resume the work of Working Group on Gender Recognition and to finish the gender recognition legislation in two years time.

²¹⁰ Currently, the process for transgender people in Hong Kong to change their legal gender is governed by [administrative regulations](#) of the Immigration Department of the Security Bureau.

²¹¹ For example, if a post-surgery trans woman is raped by a man, it is unclear if the perpetrator would be charged by rape offence as the local Crimes Ordinance defines the crime as “A man who rapes a woman shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.”

Hate Speech, Harassment, Discrimination and Violence against LGBT persons

(Art. 2, 3, 19, 26, Gov Reply para 56)

450. There is no law in Hong Kong that protects lesbian, gay, bisexual, transgender and intersex people from hate speech, harassment and discrimination based on sexual orientation, gender identity, gender expression and sex characteristics.

451. Homophobic and transphobic hate speech and harassment is prevalent both on the Internet and in person.

452. In June 2021, Junius Ho who is a legislator, gave speech in the Legislative Council calling LGBT+ people "disgraceful" and money earned by LGBT+ event Gay Games is "dirty money."²¹²

453. In July 2021, Junius Ho commented a hit local TV series *Ossan's Love* for featuring same-sex romance as "sugar-coated marijuana," and claimed that promoting homosexuality is against national security law.²¹³

454. A local opinion leader with about 70 thousand followers published a video in Cantonese to call for hatred against masculine lesbians in January 2021. The video went viral and was viewed by 46 thousand in a day.

455. Homophobic and transphobic web-based violence attacking LGBT+ people became very common on social media, especially on comments related to LGBT+ people speaking on public spheres and fighting for their rights.

456. Despite the fact that the situation is worsening, the HKSAR Government did nothing to stop it. Ricky Chu, the chairperson of the Equal Opportunities Commission ("EOC") claimed to tackle discrimination against LGBT+ people by the end of 2019. In 2021, he explicitly said that as there was no legislation in Hong Kong to prevent discrimination against sexual orientation, it is hard to prove whether Legislator Junius Ho's speech was discriminatory on a legal basis.²¹⁴ Chu said that the EOC had begun putting together a proposal for the legislation to protect LGBT+ people from discrimination and hopes to discuss the proposal with stakeholders by the end of 2021²¹⁵. However, the promise failed, and no progress is made until now despite that the law is widely supported by local people according to research²¹⁶.

Recommendation

457. HKSAR government should introduce anti-discrimination law immediately that prohibits discrimination, hate speech and harassment on the basis of sexual orientation, gender identity, gender expression and sex characteristics.

²¹² Hong Kong Free Press, Pro-Beijing lawmaker claims hit Hong Kong TV show featuring same-sex romance violates China's national security law, <https://hongkongfp.com/2021/07/19/pro-beijing-lawmaker-claims-hit-hong-kong-tv-show-featuring-same-sex-romance-violates-chinas-national-security-law/>

²¹³ Ibid

²¹⁴ The Standard, Rights chief throws support behind staging of Gay Games, <https://www.thestandard.com.hk/section-news/section/11/231135/Rights-chief-throws-support-behind-staging-of-Gay-Games>

²¹⁵ Equal Opportunities Commission, News from the EOC, Issue 259, 18 June 2021, <https://www.eoc.org.hk/EOC/Upload/UserFiles/File/enews/news259e.htm>

²¹⁶ In 2018, the Centre for Comparative and Public Law, University of Hong Kong published a report named "[Support in Hong Kong for Same-sex Couples' Rights Grew Over Four Years \(2013-2017\)](#)". The result showed that 69% of the public favoured the anti-discrimination legislation that protects people from being discriminated because of sexual orientation.

458. HKSAR government should facilitate demonstration and ensure that the right to hold LGBT event is protected, and the pandemic regulation put on those events should be proportional.

Transgender persons rights in custody

(Gov Reply para 57-61)

459. Research show that transgender people in custody faced degrading and humiliating treatment.²¹⁷ In November 2020, Former legislator Leung Kwok-hung, has won a judicial review case against the Correctional Services Department (“CSD”), with the Court of Final Appeal ruling that compulsory haircuts only for male prisoners amount to sexual discrimination²¹⁸. There were cases²¹⁹ in Hong Kong that transgender women who hold identification card gives the gender as male, might also face compulsory haircut as male inmates if they were in correction institutions. Leung's case would have been a protection for transgender women inmates if CSD had followed the court's decision. However, the CSD enforced a new policy in February 2021 that required both male and female inmates to cut their hair: male inmate should maintain ordinary short hair while female inmates should cut their hair to armpit length²²⁰. CSD is imposing unnecessary measure which is humiliating and more like a reprisal action in response to the decision of judicial review.

Recommendation

460. The Correctional Services Department and Police should review and change their policies and remove the measures which is discriminate and humiliate inmate and people in custody of all genders.

Item 9

Domestic Violence

(Gov Reply paras 62-64)

461. Research continues to show that Hong Kong has high rates of sexual and domestic violence. During that COVID pandemic, domestic violence social welfare service providers publicly call for government's support due to the rising number of cases²²¹. They recorded a 25% increase in domestic violence cases called for help.

Recommendation

462. Hong Kong government to include support measures for domestic violence as an irreducible part of its COVID response and increase resources for domestic violence victims.

²¹⁷ [Harmfully isolated: Criminalizing sex work in Hong Kong](https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA1740322016ENGLISH.pdf), Amnesty International, p.9 url=<https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA1740322016ENGLISH.pdf>

²¹⁸ [Close shave: Hong Kong activist ‘Long Hair’ Leung Kwok-hung wins final appeal against prisoner haircut rules](#)

²¹⁹ [Local news report on "Don't cut my hair" campaign](#)

²²⁰ Haircuts for female inmates 'may be contempt of court', <https://www.thestandard.com.hk/section-news/section/4/227569/Haircuts-for-female-inmates-'may-be-contempt-of-court'>

²²¹ https://twfhk.org/sites/default/files/joint_statement_apr_chi_final.pdf

Item 15

Modern Slavery in Hong Kong – update on the latest judicial review case

(Gov reply 89-98)

463. The Hong Kong SAR Government continues to dismiss constructive criticisms that it is lacking in combatting trafficking in persons. When the US released its Trafficking in Person Report 2021, which rated Hong Kong at Tier-2 Watch List, Hong Kong Government “vehemently objected” to it by a press release, which says “[t]he HKSAR Government has repeatedly advised that the current comprehensive legislative framework has served Hong Kong well, and TIP has never been a problem in Hong Kong.”²²²

464. Paragraph 15 of the List of Issues raises the issue of law enforcement and judicial officials lacking understanding of trafficking, and weak inter-agency coordination. In April 2022, the High Court of Hong Kong held in *CB v Commissioner of Police, Secretary for Justice, and Secretary for Security*²²³ that there should be bespoke legislation criminalising forced labour. The case is a judicial review brought by a female migrant domestic worker who suffered sexual exploitation by her then employer. She reported the case to the Police, also identifying other possible victims, including other migrant domestic workers employed by the perpetrator. While the Police investigation led to the conviction of Z on two charges of indecent assault,²²⁴ the police prematurely curtailed the investigations into trafficking in person and forced labour offences. The judge ordered the Commissioner of Police to re-consider whether CB was a victim of TIP and/or forced labour, and made a declaration that “the failures as regards the investigation as to whether CB was a victim of TIP and/or forced labour in this case were causally connected to the absence of specific legislation criminalising forced labour.”²²⁵

²²² Press Release “Government vehemently objects to United States Trafficking in Persons Report 2021” The Government of the Hong Kong Special Administrative Region, 2 July 2021, available at <https://www.info.gov.hk/gia/general/202107/02/P2021070200007.htm>

²²³ *CB v Commissioner of Police, Secretary for Justice, and Secretary for Security* [2022] HKCFI 1046, available at https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=143688

²²⁴ Z is identified in the criminal case as Brian Dew Apthorp. He was convicted of two counts of indecent assault at the Eastern Magistrate’s Court and was sentenced to 30 months of imprisonment. (Case number: ESCC 2267/2020). Brian Drew Apthorp later successfully applied for appeal against conviction because he did not have a lawyer during the first two days of the trial, and cross-examined the victim himself; when he obtained a lawyer, the magistrate did not let the lawyer re-call the victim for cross examination again. The judge hearing the appeal application thus found the conviction unsafe. The case is to be re-tried at the magistrate’s court. (*HKSAR v. Arthorp Brian Drew* [2022] HKCFI 1102, available at https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=143835&QS=%2B&TP=JU)

²²⁵ *CB v Commissioner of Police, Secretary for Justice, and Secretary for Security* [2022] HKCFI 1046, 270.