



Hong Kong Election Observation Project

**SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE
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INTRODUCTION

The Hong Kong Election Observation Project (EOP) is a joint platform initiated by the Comparative Governance and Policy Research Centre of the Department of Government & International Studies at Hong Kong Baptist University¹ and Civil Rights Observer in September 2019 to become an independent academic and civil society platform in the field of electoral integrity study and education.

EOP offers support to election monitoring networks in all the 18 districts in Hong Kong and conducts a comprehensive examination on the electoral process.

Goal: Promote and support democratic development in Hong Kong through long-term and short-term election observation.

Objectives:

1. Enhancing the integrity of electoral processes and minimize election irregularities and election-related human rights violations;
2. Providing accurate, impartial information and analysis on issues related to elections and prospects for democratic development;
3. Enhancing civic engagement on democratic norms and international standards on free and fair elections; and
4. Strengthen EOP operations to carry out effective election observations.

For the 2019 District Council Election, for example, EOP built an election monitoring network, supported 30 observers across all 18 districts in Hong Kong, and conducted a comprehensive examination on the electoral process.

Our Submission will focus on both institutional and behavioural aspects of electoral developments in Hong Kong. There are in total 8 areas of concerns:

1. Universal and Equal Suffrage Stalled
2. “Small Circle” Chief Executive Election
3. Discrimination against Party Affiliation in Chief Executive Election
4. Distortions in Legislative Council Election
5. Arbitrary Disqualification of Opposition Candidates
6. Censorship of Campaign Materials
7. Assaults and Intimidation during the 2019 District Council Election
8. Weaknesses of the Electoral Management Body

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List of Recommendations:

1. The Committee should continue to urge the Hong Kong Special Administrative Region Government to implement universal and equal suffrage in all elections in Hong Kong in conformity with the ICCPR.
2. The Committee is advised to express concern about the lack of a clear plan to institute universal suffrage and to ensure the right of all persons to vote and to stand for election without unreasonable limitations for both Chief Executive and Legislative Council elections.
3. We urge the Committee to put forward a recommendation to end the Returning Officers' power to vet and disqualify candidates which amounts to unreasonable restriction of citizens' right to participate in public affairs due to their political beliefs.
4. The Committee should inquire the pervasive and arbitrary nature of censorship and sanction against opposition candidates in elections of all levels in Hong Kong, particularly, the Committee should evaluate whether such practice violates Article 19 and 25 of ICCPR.
5. The Committee may inquire how the Government of Hong Kong has addressed the growing concerns of Hong Kong people about the powers of the police and government departments in restricting the form and content of campaign activities, and to put forward recommendations to safeguard free speech, freedom of assembly and other civil liberties which are part and partial of the electoral process for the elections to be considered free, fair and honest.
6. The Committee may consider asking the Government what measures it plans to introduce to support the Electoral Affairs Commission's independence.
7. Police should not be stationed within the polling stations or counting stations as this can be seen as a form of intimidation for candidates and voters. Instead, they can be on call or in Non-Canvassing Zone / No-Staying Zone.
8. The Committee may recommend measures that the Hong Kong Special Administrative Region Government is required to undertake in order to uphold electoral integrity in accordance with the ICCPR, especially the full and unfettered enjoyment of civil liberties and political rights of citizens who disagree with the government and the Central People's Government of the People's Republic of China.
9. In response to growing concerns about electoral integrity in Hong Kong, we would like to invite the Committee to consider to make a recommendation to the Electoral Affairs Commission, which is Hong Kong's statutory electoral management body, to recognize and register local and international election observation and monitoring missions and to encourage citizens' involvement in upholding international standards and norms for free and fair elections. The legal framework should provide observers with full access to the entire electoral process without undue barriers, such as an overly burdensome accreditation process, and should include the protection of the right to seek, receive, and impart information.

1. Universal and Equal Suffrage Stalled

The Human Rights Committee recommended in its Concluding Observations (April 29, 2013, para 6) that: “Hong Kong, China, should take all necessary measures to implement universal and equal suffrage in conformity with the [ICCPR] as a matter of priority for all future elections. It should outline clear and detailed plans on how universal and equal suffrage might be instituted and ensure enjoyment by all its citizens, under the new electoral system, of the right to vote and to stand for election in compliance with article 25 of the Covenant, taking due account of the Committee’s general comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service. It is recommended to consider steps leading to withdrawing the reservation to article 25(b) of the Covenant.”²

Seven years on, Hong Kong has made no progress towards what it has called “democratic development” (The Fourth Periodic Report submitted by Hong Kong, China, para. 168-184, pp. 33-35). The authorities have held on to the antiquated reservation to article 25(b) of the Covenant. The methods of election for the Chief Executive (CE) or the Legislative Council (LegCo) have continued to violate the principle of universal and equal suffrage. People in Hong Kong are increasingly concerned about political interference in the design of the methods of election and the improper involvement of the Liaison Office of Central People’s Government in elections in Hong Kong. Last but not least, electoral integrity is further undermined by new forms of electoral manipulations.

2. “Small Circle” Chief Executive Election

National People’s Congress Standing Committee (NPCSC) decided on 31 August 2014 that election of the CE “by universal suffrage” could be introduced in 2017 but made no such commitment for the Legislative Council for the 2016 or 2020 elections, thereby limiting the room for consensus-building with the people of Hong Kong.

The method proposed for the Chief Executive election was not without unreasonable limitations to the right of all persons to vote and to stand for elections (arts. 2, 25 and 26 of the Covenant). The NPCSC [Decision](#) envisaged (a) the establishment of the Nominating Committee (NC) “with reference to” the existing 1200-strong Election Committee (EC) for choosing the CE, (b) the NC could only select two to three candidates, (c) each of whom would have to receive the support of more than half of the members of the NC (601 or above), and (d) Beijing has the power to veto the choice of the people after the election. The intention to control the process and the results of the election was too obvious to miss.

There were reasonable demands to allow citizens and lawmakers to have a bigger role in the nomination procedures to make sure that there would be fair and genuine competition in the election. The Government showed no flexibility and willingness to reach an agreement with the opposition towards a more inclusive nomination process, however. Eventually, in June

² U.N. Human Rights Committee, *Concluding observations on the third periodic report of HK, China, adopted by the Committee at its 107th session.* (CCPR/C/CHN-HKG/CO/3, para 6) When the UK ratified the ICCPR in 1976, it entered a reservation to Article 25(b) as it might require the establishment of an elected Executive or Legislative Council in HK.

2015, the proposal failed to obtain the endorsement of the legislature with 28 votes against and only 8 votes in favour.

The Government failed to convince the citizens how the 1200-strong NC would behave differently from the existing EC, whose composition is known to have violated article 25 of the Covenant. The method of choosing the CE by the 1200-strong EC has been dubbed a “small circle” game controlled by Beijing through the vested interest groupings. In all likelihoods, the NC would serve to remove candidates who are deemed unacceptable to the political establishment in Hong Kong and Beijing, reducing the choice to 2 to 3 candidates who would have to be insiders of the “small circle” game in the first place.

3. Discrimination against Party Affiliations in CE Election

Another unreasonable restriction on citizens’ right to participate in the CE election concerns the locally enacted Chief Executive Elections Ordinance ([CAP. 569](#), S. 31), which requires the CE to declare that he/she has no political party membership and will have to remain so during his/her term in office. We are of the view that this restriction is discriminatory and unhelpful for this does not guarantee political neutrality or impartiality.

4. Distortions in Legislative Council (LegCo) Election

Turning to the LegCo, the 30 “traditional” Functional Constituencies seats (FCs) which were previously found in violation of arts. 2, 25 and 26 of the Covenant were not reformed. Demands for their abolition in order for increasing seats elected by universal suffrage have been ignored by the Government and the vested interests.

At the 2016 LegCo election, the total number of corporate and individual voters registered to elect 30 FCs’ lawmakers stood at 239,724—6.3% of 3,779,085 voters registered to vote for the other 30 lawmakers from 5 Geographical Constituencies, or 6.9% of 3,473,792 voters who registered to vote for 5 newly created, territory-wide “Super Seats”. Moreover, the disparity and irregularities of the FCs are prominent simply by comparing the number of registered voters across some of the FCs:

FCs	Number of Seats in LegCo	Number of Voters
Finance	1	125 corporate voters
Insurance	1	134 corporate voters
Labour	3	668 trade unions
Education	1	88, 185 individual voters
Health	1	37,423 individual voters

The Committee should continue to urge the HKSAR Government to implement universal and equal suffrage in all elections in Hong Kong in conformity with the ICCPR, and demand

explanation where the HKSAR Government has failed to make progress according to the Basic Law.

The Committee is advised to express concern about the lack of a clear plan to institute universal suffrage and to ensure the right of all persons to vote and to stand for election without unreasonable limitations for both CE and LegCo elections.

5. Arbitrary Disqualification of Opposition Candidates

Since the 2016 LegCo election, candidates who wish to participate in elections at any level will have their background, past and current activities as well as the manifesto vetted by the Returning Officers (ROs) before they could formally participate in the elections.

Up to this point, the ROs have disqualified a total of 6 prospective candidates on political grounds: 3 candidates at the 2018 LegCo By-elections (March), 1 candidate at the 2018 LegCo By-election (November), 1 candidate at 2019 Village Representative Election, and 1 candidate at the 2019 District Council Election. The ROs responsible for these cases had gone at length to question the candidates' background, past and current activities, opinions expressed as well as the manifesto to rationalize their decisions.

The RO's powers have invariably harmed the opposition's constitutional right to participate in elections which is safeguarded by the ICCPR (art. 19 and 25).

We urge the Committee to put forward a recommendation to end the ROs' power to vet and disqualify candidates which amounts to unreasonable restriction of citizens' right to participate in public affairs due to their political beliefs.

6. Censoring Campaign Materials

Under Article 19 of ICCPR, everyone shall have the right to hold opinions without interference. However, the right of candidates standing in elections to campaign freely to communicate with voters has been undermined because they have been increasingly subject to arbitrary censorship by government officials in recent years.

During the LegCo by-election in February 2016, the Registration and Electoral Office (REO) refused to handle the mailing of Edward Leung Tin-kei's election pamphlets to voters as it did free-of-charge for other candidates. The REO claimed that Leung's political platform was "unconstitutional" because his calls for "self-determination", "self-rule" and "militant resistance" were against article 1 of the Basic Law.³

³ Statement by Hong Kong Indigenous on Facebook (15 February 2016): <https://zh-hk.facebook.com/hkindigenous/posts/1688249598095612:0> Article 1 of the Basic Law states that "The Hong Kong Special Administrative Region is an inalienable part of the People's Republic of China."

During the LegCo election in 2016, the Electoral Affairs Commission (EAC) denied some pro-democracy candidates access to free-of-charge distribution of election pamphlets,⁴ and some candidates were forced to remove parts in their campaign material as a result.⁵ The list of censored notions was extended to include “civil referendum” and “democratically amend the Basic Law” this time around.

For their part, the Housing Authority and the Housing Department, which manage most of the public housing in Hong Kong, introduced new measures to ban candidates who were thought to be associated with such ideas as “self-determination” and “independence” from campaigning on the premises under their management.⁶

The impact of arbitrary censorship by the officials was clearly felt during the LegCo by-elections which took place in March and November 2018, respectively. In particular, candidates supported by the pro-democracy movement were under pressure to resort to extensive self-censorship by for fear of being disqualified and barred in manners mentioned above.

As a result, the shrinking electoral space in Hong Kong has adversely affected the electoral integrity in general and citizens’ rights in the electoral process.

The Committee should inquire the pervasive and arbitrary nature of censorship and sanction against opposition candidates in elections of all levels in Hong Kong, particularly, the Committee should evaluate whether such practice violates Article 19 and 25 of ICCPR.

7. Assaults and Intimidation during the 2019 District Council Election

Hong Kong witnessed an unprecedented level of election-related conflict during the 2019 District Council Election. On the one hand, the offices of the incumbent, pro-government District Councillors and lawmakers were the prime targets of vandalism; on the other hand, there were close to 20 incidents of personal assaults *and* intimidation directed mostly at the opposition, pro-democracy camp.⁷

⁴ South China Morning Post, “Electoral Commission accused of ‘political screening’ and double standards in approval process for leaflets by Legco candidates” (3 August 2016): <https://www.scmp.com/news/hong-kong/politics/article/1998333/electoral-commission-accused-political-screening-and-double>

⁵ South China Morning Post, “Hongkong Post’s Deadline forcing candidates to censor campaign material” (10 August 2016): <https://www.scmp.com/news/hong-kong/politics/article/2002005/hongkong-posts-deadline-forcing-candidates-censor-campaign>

⁶ Statement by League of Social Democrats (24 August 2016):

<https://www.lsd.org.hk/2016/08/24/%E6%88%BF%E7%BD%B2%E6%94%BF%E6%B2%BB%E5%AF%A9%E6%9F%A5%EF%BC%8C%E7%A6%81%E6%8F%90%E6%B8%AF%E7%8D%A8%E4%B8%BB%E5%BC%B5/>

⁷ In late September, Stanley Ho Wai-hong, who was a member of the opposition Labour Party, was attacked by four men carrying metal rods. He suffered severe head injuries and several fractures to both of his hands. On October 16, Jimmy Sham, the Convenor of the Civil Human Rights Front (CHRF) and the candidate for the Lek Yuen constituency, was being attacked by at least four men wielding hammers and spanners. Pro-democracy candidates Jocelyn Chau Hui-yan and Jannelle Rosalynne Leung were intimidated and physically assaulted. On November 3, during a protest at Cityplaza, Andrew Chiu, District Councillor and a member of Democratic Party, was stabbed with a knife. His left ear was partially bitten off by the attacker who was trying to run away.

The unprecedented level of election-related violence in Hong Kong was triggered by none other than the Government’s ill-planned extradition bill in the same year.

What is important to note here is the fact that the city’s increasingly polarized and antagonistic politics is attributable to an increasingly inhospitable political environment for the exercise of civil liberties and political rights.

During the 2019 District Council Election, the deployment of riot police by the Government to maintain law and order led to the intimidation and arrest of anti-government candidates and their supporters during peaceful assemblies and electoral rallies.

Despite the setbacks in the process of democratic development and the electoral manipulations by design, people in Hong Kong have continued to demonstrate their commitment to democratic elections. Both the 2016 Legislative Council elections and the 2019 District Council elections witnessed a record high level of participation, reaching 58% and 71%, respectively.

For the 2019 District Council Election, the EOP supported first-hand, community level observation at 113 polling stations across 107 District Council Constituencies (or 23.7% of all the 452 constituencies) on the polling day. These stations were randomly selected, with a view to enhancing the sample representativeness.

In contrast to the prolonged social confrontations which started in June that year, the atmosphere on the polling day was calm and peaceful. Based on our observation, out of the 113 polling stations observed, only 5 in our sample reported tension or conflict (or 4.42% of all monitored stations).

Overall Atmosphere	No. of polling stations	Percentage
Calm and peaceful	108	95.58
Conflict between campaign team and citizens	1	0.88
Tension felt but still orderly	4	3.54
Total	113	100

The Committee may inquire how the Government of Hong Kong has addressed the growing concerns of Hong Kong people about the powers of the police and government departments in restricting the form and content of campaign activities, and to put forward recommendations to safeguard free speech, freedom of assembly and other civil liberties which are part and partial of the electoral process for the elections to be considered free, fair and honest.

8. Weaknesses of Electoral Management Body

An independent, professional, transparent and resourceful electoral management body are necessary for building and keeping the trust of the people in every aspect of the electoral process.

However, the EAC, which is Hong Kong’s statutory electoral management body, are ultimately dependent on the government for the appointment of its members and resources. Its

reluctance to take a stance towards a growing number of “disqualification” cases, namely the rejection of nominated candidates to enter the elections by the ROs, is heavily criticised. Last but not least, the powers to suspend, postpone or abolish part of or the entire election are exercised solely by the CE. All this will gradually undermine the electoral integrity if remains unchecked.

The EAC’s own reports show that there has been a considerable increase of complaints lodged regarding every aspect of the electoral process: voter registration, rejection of nominated candidates to enter the elections by the officials, campaign finances, social media and advertisements, impartiality of government departments, administrative delays, loss of voters’ data, conduct of candidates and their campaigns, polling stations management, as well as disputes over vote counting (see, for example, [Appendix 6-8 of the 2019 District Council Election Report by the Electoral Affair Commission](#)).

On the polling day, EOP observers noted several issues that may affect electoral fairness or the perception of it.

- (1) Long queues outside the polling stations: As an unprecedented number of voters casted their votes at the beginning of the polling day, about 22 % of our monitored stations witnessed long line of voters. For stations that were monitored on or before 11 am, 64.71% of stations had the same problem. Moreover, our observers reported that at 3 of the polling stations under observation, the polling station staff departed from the principle of first-come-first-served and allowed the elderly voters to cast their ballot before others, giving rise to discontents and tensions outside the polling stations.

All polling hours	No. of polling stations	Percentage
No long line	88	77.88
Long line	25	22.12
Total	113	100

Before 11am	No. of polling stations	Percentage
No long queue	6	35.29
Long queue	11	64.71
Total	17	100

- (2) Presence of riot police at the polling stations: Riot police were visibly seen at 30.1% of all monitored stations and were found inside the voting area of 13 monitored stations (11.5%). Some of them were masked. While it is understandable to have police officers patrolling around polling stations to maintain order, the presence of masked riot police at the polling stations was both intimidating and unnecessary.

No. of riot police	No. of polling stations	Percentage
0	79	69.91
1 to 2	22	19.47
3 to 5	11	9.73
6 to 10	1	0.88
Total	113	100

- (3) Illegal canvassing in the “No Canvassing Zone” (NCZ): Although canvassing activities outside of polling stations are legally prohibited, our observers witnessed such activities at 8 polling stations (7.08%). This indicates that the relevant election laws and guidelines were not properly adhered to and enforced.

Campaigning inside NCZ	No. of polling stations	Percentage
No	105	92.92
Yes	8	7.08
Total	113	100

- (4) Missing electoral information at some polling stations: At the entrance of a polling station, voters should be able to find information such as hourly voter turnout and the map of “No Canvassing Zone.” However, we found that the presiding officers of 7 monitored polling stations (6.19%) failed to display the hourly voter turnout, and 15 polling stations (13.27%) did not display the map of “No Canvassing Zone.” The missing information reduced the transparency of the election and may create the perception of electoral malpractices on the part of the government.

Hourly voter turnout was displayed	No. of polling stations	Percentage
No	7	6.19
Yes	106	93.81
Total	113	100

Map of “No Canvassing Zone” displayed	No. of polling stations	Percentage
No	15	13.27
Yes	98	86.73
Total	113	100

- (5) Throughout the polling day, we established at least 8 areas of concern with inputs from voters and our trained observers:

	Areas of Concern	No. of Cases
A	Suspected malpractice of Presiding Officers in Polling and Counting Stations	16
B	Illegal canvassing in the “No Canvassing Zone”	11
C	Video-recording outside polling stations by unidentified people	9
D	Police intimidation by ‘stop-and-search’	1
E	Voters not queueing in line outside or at polling stations	1
F	Police inaction to suspected disruption of candidates’ lawful canvassing	1
G	Tallying voters by unidentified people or candidate’s canvassing team	3
H	Suspected Vote-buying	2
	Total	44

The Committee may consider asking the Government what measures it plans to introduce to support the EAC's independence.

Police should not be stationed within the polling stations or counting stations as this can be seen as a form of intimidation for candidates and voters. Instead, they can be on call or in Non-Canvassing Zone / No-Staying Zone.

The Committee may recommend measures that the Hong Kong Government is required to undertake to uphold electoral integrity in accordance with the ICCPR, especially the full and unfettered enjoyment of civil liberties and political rights of citizens who disagree with the government and the Central People's Government.

In response to growing concerns about electoral integrity in Hong Kong, we would like to invite the Committee to consider to make a recommendation to the Electoral Affairs Commission, which is Hong Kong's statutory electoral management body, to recognize and register local and international election observation and monitoring missions and to encourage citizens' involvement in upholding international standards and norms for free and fair elections. The legal framework should provide observers with full access to the entire electoral process without undue barriers, such as an overly burdensome accreditation process, and should include the protection of the right to seek, receive, and impart information.

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