

**Submission to the UN Human Rights Committee on
the Implementation of the International Covenant on
Civil and Political Rights in the HKSAR (May 2020)**

**Submitted by: Hong Kong Confederation of Trade Unions
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Introduction

This report is submitted to the UN Human Rights Committee to examine the implementation of the International Covenant on Civil and Political Rights (ICCPR) in the HKSAR. The report covers Article 19, 12 and 22 in ICCPR, which are respectively right to freedom of peaceful assembly, expression, and association and mainly focused on workers related issue. It is observed that the workers' rights have been eroded by government's political suppression. The enactment of National Security Law in Hong Kong may jeopardize union rights in the future.

Right to Freedom of Expression

a. Dismissal of the union chairperson Rebecca Sy

On 21 August, Cathay Dragon dismissed the chairperson of the Hong Kong Dragon Airlines Flight Attendants Association (HKCTU Affiliate), Ms. Rebecca Sy, without providing a reason. It was alleged that was due to her support of the anti-extradition bill social movement in Hong Kong. As the Chairperson of the trade union, Rebecca has also been an opinion leader among her colleagues, her dismissal is a blatant act of suppression from the employer to silence dissent.

At a meeting with Sy, a company representative showed her a social media screenshot and asked whether the account belonged to her. When Sy's answer was affirmative, the company representative immediately announced her dismissal and refused to provide further explanation and reason. While Cathay Dragon has had its own disciplinary procedures, the company had not pointed out whether there had been any violation of regulations. The company's immediate dismissal of Sy was obviously not in line with the existing procedures. Sy believed that her immediate dismissal appeared to be related to her social media messages, in spite of the fact that the company failed to identify any disciplinary violation.

At the airport assembly on 26 July 2019 and the general strike on 5 August 2019, a large number of civil aviation industry employees participated in the action. In order to silence dissent, the Civil Aviation Administration of China (CAAC) issued new safety regulations on 10 August 2019 stipulating that any crew member operating within Chinese airspace must be subjected to political censorship in advance and ban staff who had taken part in "illegal protests", "violent actions" and "overly radical activities" from entering China. In addition, Cathay Pacific Airways also issued new guidelines to all employees to comply with the CAAC directives, stating that employees cannot "take part in and/or support illegal protests, violent actions and/or overly radical behavior". The new guidelines go as far as extending its restrictions on employees' "non-work-related social media usage". It is a blatant suppression of freedom of expression, and also deprives employees of their right to participate in political activities.

As enshrined in Article 19 of ICCPR, everyone shall have the right to hold opinions without interference and freedom of expression. As such, all employees are entitled to the right to participate in activities and express their opinions during their personal time under the premise that work duties are not to be affected.

Right to Freedom of Assembly

a. Police intervention in peaceful strike assemblies

On August 5, an estimated 350,000 workers put down their work in a workers strike to support the “Anti-Extradition Bill Political Movement”. On the day, over 250 flights, mostly Hong Kong carriers, were canceled and subway services partially suspended as a consequence. The strike was the largest political strike in decades in Hong Kong. However, workers were met with police brutality.

On the day, the organizer of the strike called for assemblies at seven locations in Hong Kong, whereas six of such assemblies (Admiralty, Mongkok, Wong Tai Sin, Shatin, Tai Po, and Tuen Mun) were able to acquire Letter of No Objection (LONO) from the Police Department. Despite being approved by government officials, riot police deployed excessive force to disperse the striking workers and citizens in various strike assemblies.

At around 4pm, tear gas canisters were reportedly fired at the crowd in close proximity to the approved assembly locations in Wong Tai Sin, Admiralty, and Tai Po. Similar police operations were carried out in Tuen Mun and other districts of Hong Kong. In a subsequent press briefing, the police admitted that over 800 tear gas, 140 rubber bullets, and 20 sponge grenades were deployed, while 148 people were arrested on the day. On the day of the strike, not only did the police fail to facilitate officially approved peaceful assemblies in progress, but they also deployed excessive violence to deprive workers’ rights to strike and assemble, which resulted in many Hong Kong citizens, including workers, injured and arrested due to their participation in strikes.

b. The arrest of Lee Cheuk Yan, the General Secretary of HKCTU

On the other hand, the General Secretary of the Hong Kong Confederation of Trade Unions (HKCTU), Lee Cheuk Yan, was arrested on two occasions (28 February 2020 and 18 April 2020) charged with unlawful assembly for allegedly organizing and participating in peaceful assemblies on 18 August 2019, 31 August 2019 and 1 October 2019. Lee is one of thousands of peaceful protesters who are being arrested during the anti-extradition bill movement. With the majority of cases remaining under investigation, this is a form of intimidation and judicial harassment of protesters which violates their rights to freedom of association and assembly.

The UN Human Rights Committee has repeatedly urged the Hong Kong government to revoke the prior notification to public assemblies and excessive restrictions under the Hong Kong Public Order Ordinance for contravening Article 21 of the ICCPR. In its most recent report, the Committee of Experts of the International Labour Organization has taken note of the trend of anti-union dismissals faced by employees when they took part in public protests. By arresting union leaders and depriving workers’ right to freedom of assembly, the Hong Kong government deliberately ignores the obligations to observe Article 21 of ICCPR and continues to act in ways contrary to the fundamental human rights standards recognized internationally.

The arrest of Lee Cheuk Yan showed how the right to freedom of assembly was infringed by the public order ordinance, which required authorisation from the Hong Kong Police Force (HKPF). In the recent rallies, the HKPF refused to issue the Letter of No Objection for most of the rallies, to alleged all those peaceful rallies as unlawful assembly, and therefore to arrest the organisers with the charges of "organizing and taking part in unauthorized assembly" "unlawful assembly".

a. Ban on the Labor's Day rally and harassment of trade union street booths

The Hong Kong Police banned the Labor Day rally based on the Group Gathering Prohibition. HKCTU tried to make appeal on the police decision. But the Public Assembly and Procession Appeals Committee rejected the appeal and upheld the police ban. In response to the police ban on rally, HKCTU set up more than 50 street booths in different locations, with fewer than 4 people in each booth to prevent the violation of the group gathering restriction. However, riot police came to the booth in Mongkok and cordoned off an entrance to Langham Palace, with pepper spray warnings.

The Group Gathering Prohibition (Cap. 599G) was enacted in March, aiming at social distancing and thus delaying the spread of COVID-19. Nonetheless, it became a political tool for the authority to suppress people rights in assembly. HKCTU is not the only victim facing the police suppression on demonstration rights. Since the outbreak of the coronavirus pandemic, the Hong Kong Police Force has been frequently using the Prohibition on Group Gathering as an excuse to intimidate dissidents. Even under the pandemic, people rights in expressing their views through demonstration should be respected. The government should never override this basic right using the reason of public health considerations.

Right to strike and suppression on Labor Union

b. Hospital Authority Employee Alliance (HAEA)

Hong Kong citizens' right to freedom of association has been curtailed in recent years. On the 4th of February, Hospital Authority Employee Alliance (HAEA) was on strike, aiming to pressure the government to shut down the borders of Hong Kong in response to the coronavirus pandemic. The Hospital Authority, which is under the Hong Kong government for managing all the government hospitals, issued a warning letter to HAEA, claiming that the employers can only strike as long as this is "in compliance with the laws of Hong Kong". The Hong Kong and Macau Office of the State Council also described the strike as a "violent criminal activity organized by the extremist". This is a clear example of the suppression of HAEA in Hong Kong, as it implied that the strike was not in compliance with the laws and the members participating may receive punishment for participating in labor strikes.

c. Construction Site Workers General Union (CSWGU)

Another union, the Construction Site Workers General Union (CSWGU), has also faced blatant suppression recently. On Labor Day, the CSWGU set up a booth for distributing Anti-epidemic items. The booth was cordoned off immediately by the police, claiming that they had violated the "Prohibition on group gathering of more

than 8 persons in any public place", but according to the laws, group gathering that are conducive to the prevention and control of the specified disease is exempted and the police didn't not cordon off the similar booth nearby set up by the pro-government campaigns. On the 6th of May, CSWGU held another booth to distribute Anti-epidemic items. The booth was surrounded by tens of riot police and they were being cordoned off once again. Soon after the booth was dismantled, the members of CSWGU were charged for violating the "Prohibition on group gathering".

d. Prosecution of HKCTU officer

On 11th May, two activists, including one officer Lam Siu Mei from HKCTU, were arrested in a protest at Fulum Palace. The origin of the protest was the company's refusal to give the severance payment to the laid-off workers, despite being the beneficiary of the government wage subsidy scheme. Lam is currently facing the charge of "disorderly conduct in a public place". This example illustrates how the Hong Kong Police Force abuses its power and indiscriminately arrests dissidents and even union members.

Right to Freedom of Association

The right to freedom of association in Hong Kong has been deteriorating in the last five years, which can be reflected in a series of government suppression to different political societies. Means of suppression include directly banning the operation of certain societies, arresting some key members as well as interrupting their financial operation and daily administration.

a. Intentional delay in union registration

The Hong Kong government has been intentionally slowing down the trade union registration process. By April, there were more than 1,600 pending applications, while the Registry of Trade Unions of the Labour Department (LD) could only complete around 60 applications in a month. The Secretary for Labour and Welfare, Dr. Law Chi-kwong even pointed out that LD may need 50 years to finish the remaining applications. Facing the lack of manpower to handle the skyrocketing amount of outstanding applications, Law refused to deploy additional manpower to speed up the registration process. The postponement of registration also violated the promise of completing the registration within four weeks. Many of the new trade unions are still stuck in the lengthy administration process. HKCTU believes that it is possible that the government slows down the process on purpose to limit the influence of unions in the upcoming Legislative Council Election.

According to the International Labor Organization, the union registration process should not be delayed without any appropriate justification by the authorities. The normal duration of the whole process should be within three months. The delay may lead to the infringement of Article 2 of Convention No. 87. In addition, Article 22 of ICCPR enshrines the rights to freedom of association without government restriction. The lengthy registration process in itself can be deemed as a hindrance to this right.

In all, the postponement of registration without a given reason intentionally infringes

Hong Kong's Freedom of Association. It also deprives the eligibility of the unions, to register with the labour sub sector for the next CE election, which requires the union to operate 12 months before 2 May 2021, the deadline of the registration of chief executive election committee.

b. The enactment of National Security Law that post a threat on union activities

The enactment of the National Security Law in Hong Kong will further diminish the freedom of association of Hong Kong people. As mentioned before, associations in Hong Kong are generally governed by the Societies Ordinance (Cap. 151), while trade unions have to comply with the Trade Unions Ordinance (Cap. 332). As stated in the section Affiliation with organizations in foreign countries (45(3)(a)) in Trade Unions Ordinance, trade unions must obtain consent from the Chief Executive before affiliating with foreign organizations. The consent can be withdrawn at the discretion of the Chief Executive. In short, the approval rights of the foreign affiliation of an union is vested in the Chief Executive.

It can be foreseen that the level of suppression of political parties will escalate after the enactment of National Security Law. Although the details of the law are not yet announced, the new law covers four key areas: secession, subversion, terrorism, and foreign intervened activities. The vagueness of the terms leaves much room for interpretation. The law will directly affect the connection between the local trade union and the international union. Authority may criminalize union activities for "colluding with the foreign association". International Trade Union Confederation (ITUC) also fears the new law will destroy the trade union rights to associate and liaise with international organizations in the name of protecting national security. National Security Law will endanger the fundamental rights of Hong Kong people.

The threat of the National Security Law to Hong Kong are listed as follows:

1. The rights of trade union organizations are menaced: As we all know, the Chinese government has always prohibited workers in China from organizing independent trade unions. In the past, those who attempted to organize unions, express their political views, initiate strikes and human rights activism will be accused of "incitement to subvert state power". In Hong Kong, independent trade union organizations are facing increasing political pressure and the situation will only be aggravated by the introduction of the Hong Kong National Security Law. Chief Executive Carrie Lam once submitted a report to the central government. The report describes the strike of the medical staff that demanded a full border closure to fight the virus as 'black sheep' and called the medical frontline on strike "opportunistic anti-extradition radicals". It is worrying that once the National Security Law is implemented in Hong Kong, it will be used to interrupt industrial actions and trade union organizations that attempt to raise political demands.

2. Barrier between civil society and international relations: The draft adopted at the NPC conference mentioned that the state will "stop overseas forces, in any fashion, use of Hong Kong for separatist, subversive or destructive activities". The

phrase “in any fashion” is broad and vague, and can be interpreted by those in power. In the past, the Chinese government has always coined the Hong Kong democracy movement as a "colour revolution" and "conspiracy to subvert the Chinese government" controlled by foreign governments. Once the Hong Kong National Security Law is implemented, international community's support for Hong Kong will most likely be blocked and cut off. As far as the impact is concerned, the contact, exchange and cooperation between Hong Kong's independent trade union organizations and international trade unions will also be considered foreign forces' interference, hence suppressed by the National Security Law.

3. Not bound to International human rights law: The Basic Law has promised that Hong Kong citizens can enjoy freedom of speech, of assembly, of procession and demonstration. Even after the handover, the International Covenant on Civil and Political Rights will continue to apply to Hong Kong. Any SAR government action must be subject to the human rights law and international covenant to protect basic human rights. However, the Standing Committee of the National People's Congress has a transcendent status that enables itself to override the Hong Kong Legco and judicial courts, and the formulated national laws are not necessarily bound by human rights laws. Judging from the past cases of “incitement to subvert state power” in Chinese courts, many of the cases could have involved arbitrary convictions and political persecution. It is worrying that the National Security Law, once implemented, will become an authoritarian crackdown tool against the dissidents in Hong Kong.

4. Violation of the Basic Law: Article 23 of the Basic Law of Hong Kong stipulates that HKSAR shall enact its own national security laws as part of Hong Kong's autonomous affairs. The national laws applicable to Hong Kong in Annex III of the Basic Law do not include Hong Kong's autonomous affairs. The Chinese government now imposes the National Security Law on Hong Kong people through an annex, completely violating provisions of the Basic Law.