



Civic Party Submission

to the

U.N. Human Rights Committee

130th Session: List of Issues

for

China (Hong Kong)

We are making a submission on the recent political developments in Hong Kong especially with regards to the implementation of the International Covenant on Civil and Political Rights (the “Covenant”).

The Civic Party is a political party in Hong Kong advocating for democracy in our city. Our founding principle is to promote the rule of law, civil liberties, social justice and ultimately the implantation of universal suffrage in Hong Kong.

Executive summary

The Hong Kong Special Administrative Region Government (the HKSAR Government) submitted its fourth periodic report in September 2019. At the time of the submission, the anti-Extradition Bill protests reached its highest point (so far) and multiple counts of human rights abuses have been recorded. The fourth periodic report omits many problematic acts of the HKSAR Government which contravene the Covenant.

On 21 May 2020, the National People’s Congress in Beijing announced plans to enact a nationality security law bypassing the local legislature. This intervention raises grave concerns as to the authentic implementation of One Country, Two Systems under the Hong Kong Basic Law (the Basic Law), particularly how rights and freedoms enshrined with the Covenant will be duly protected under this national security law.

This submission is divided into four major parts with subsections:

- A. Democratisation and the state of One Country, Two Systems
 - A1. Delayed implementation of Universal Suffrage in Chief Executive and LegCo elections
 - A2. Ousting of elected parliamentarians
 - A3. Undermining parliamentary privilege
- B. Electoral integrity
 - B1. Disqualification of candidates in LegCo, District Council and Rural Village Representative elections
 - B2. Censorship of electoral campaign materials (e.g. flyers, posters)
 - B3. Physical attack and harassment of election candidates
- C. Freedom of expression
 - C1. Press freedom imperilled
 - C2. Unreasonable objection to planned protests
 - C3. Police brutality during anti-Extradition Bill protests
- D. Equality before the law
 - D1. Abuse of emergency powers
 - D2. Enactment of National Security Law
 - D3. Lack of independent investigation into police brutality

The following is a recapitulation of all recommendations raised in this submission:

1. The Committee should demand explanation where the HKSAR Government has failed to make progress in the implementation of universal suffrage in Hong Kong according to the Basic Law.
2. The Committee should demand the HKSAR Government to provide up to date information on the democratisation progress of Hong Kong, to question whether various interpretations of the Basic Law are in full compliance with the Covenant, and inquire what are the concrete steps taken to ensure citizens' equal rights to participate in public life without prejudice to each of their political opinions.
3. The Committee is invited to question the HKSAR Government about the institutionalization of electoral manipulations, and to put forward recommendations to end unreasonable vetting and disqualification of candidates with prejudice to their individual political opinions.
4. The Committee should inquire the use of unconstitutionality as a frequent excuse for censoring campaign materials distributed by candidates in elections of all levels in Hong Kong. Particularly, the Committee should evaluate whether such practice is compatible with art. 19 and 25 of the Covenant.
5. The Committee may consider asking the HKSAR Government what measures it will introduce to support the EAC's independence. Equally important, in response to growing concerns about electoral integrity in Hong Kong, the Committee should consider making recommendations to the EAC 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.
6. The Committee should inquire about measures HKSAR Government has taken to ensure safety of all election candidates in accordance with the Covenant, particularly the full and unfettered enjoyment of civil liberties and political rights of citizens holding whatever political view.
7. The Committee should demand the HKSAR Government to explain government assistance available to Hong Kong residents detained in China, and inquire government measures to ensure safety of Hong Kong residents from extrajudicial abduction to and torture by state agencies elsewhere.
8. The Committee should ask the HKSAR Government to explain its policy towards local and foreign journalists working in Hong Kong, particularly government measures to ensure their personal safety and to assist their discharge of duties.
9. The Committee is recommended to closely examine government explanations for objection of planned protest and inquire about HKSAR Government commitment to citizens' freedom of assembly.
10. The Committee should verify and interrogate evidence the HKSAR Government has submitted to support its claim that the Hong Kong public "continues to enjoy a high degree of freedom of assembly", and consider other accounts of protest crackdown operations conducted by the local police as well as treatment of detainees which are widely believed to be in contravention of international protocols on law enforcement methods and might amount to torture.

11. The Committee is recommended to ask for government justifications for the invocation of emergency powers, particularly, how does it comply with the Covenant.
12. The Committee is highly recommended to demand details about the national security law, especially its implementation and its compliance with the Covenant, and conduct rigorous interrogation of justifications and legal perspectives put forward by the Central People's Government and HKSAR Government. The Committee should also ask for explanations how the national security law conforms with the One Country, Two Systems framework stipulated in the Basic Law.
13. The Committee should urge the HKSAR Government to heed to citizens' demands for an independent commission of inquiry to investigate into police brutality, and follow up with the HKSAR Government on the implementation of universal and equal suffrage in all elections in Hong Kong in conformity with the Covenant.



A. Democratisation and the state of One Country, Two Systems

A1. Delayed implementation of Universal Suffrage in Chief Executive and LegCo elections

The Human Rights Committee (the “Committee”) stated its concerns in its Concluding Observations in the last cycle (29 April 2013, para. 6) and recommended that: “Hong Kong, China, should take all necessary measures to implement universal and equal suffrage in conformity with the Covenant 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 art. 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.”¹

In response to this comment, the HKSAR Government cited in its fourth periodic report its efforts to reform the electoral process of the Chief Executive and the Legislative Council (“LegCo”). As the HKSAR Government acknowledged in para. 172, Basic Law art. 45 provides that Hong Kong should ultimately aim to elect the Chief Executive and all members of the LegCo through universal suffrage. However, progress towards that ultimate goal so far was incomplete and has been subject to prolonged delay. Constitutional reforms were introduced in 2010 and 2014, but both attempts were received by most of the Hong Kong public as perfunctory and half-hearted.

As of 2016, the Chief Executive is elected by an electoral committee of 1,200 members returned by a selected electorate comprising of 246,440 voters. Meanwhile, the LegCo is a semi-democratically elected legislature of 70 legislators. 35 seats are returned by five geographical constituencies through direct election under the proportional representation system with largest remainder method and Hare quota. The other 35 seats are indirectly elected through trade-based and profession-based functional constituencies whereas a great majority of the population are not given voting rights in these functional constituencies, except the 5 seats added in 2010.²

On 31 August 2014, the Standing Committee of the National People’s Congress (the NPCSC) passed a decision on the selection method of Chief Executive of Hong Kong to be adopted in the 2017 election, known as the 31 August Decision. (as explained in para. 175-177 of the fourth periodic report by the HKSAR Government) It stipulates a pre-selection process of candidates by a nomination committee which excludes the vast majority of the city’s population before they officially stand in the election. It also requires that “the Chief Executive

¹ *Concluding observations on the third periodic report of HK, China, adopted by the Committee at its 107th session.* (CCPR/C/CHN-HKG/CO/3), U.N. Human Rights Committee: <https://www.refworld.org/docid/539031324.html>

² In 2010, 5 new seats were added to the functional constituencies which are allocated to citizens who are not eligible for registering in the selected electorates in the existing functional constituencies. The excluded voters, regardless of which part of Hong Kong they are domiciled in, were given votes to elect 5 legislators under the proportional representation system. However, the rest of the functional constituencies remain exclusive to most of the population. The reform was passed despite some protests. “Hong Kong Lawmakers Approve Tsang’s Election Plan”, Bloomberg News, 25 June 2010: <https://www.bloomberg.com/businessweek/news/2010-06-25/hong-kong-lawmakers-approve-tsang-s-election-plan-update1-.html>

has to be a person who loves the country and loves Hong Kong."³ Many perceived this requirement will serve to strictly preclude all candidates who are not pro-Beijing from running for office as the Chief Executive of Hong Kong. The proposal ignited mass protests across the city which was later known as the Umbrella Protests. The reform proposal was vetoed by LegCo in 2015⁴, and so in the Chief Executive election in 2016, the electoral process remained exclusive to most of the population.

No reform proposal was raised as to the election of the LegCo during the 2014 reform. To this day, the election of legislators returned by functional constituencies remains exclusive to only a portion of the population.

Since Carrie LAM-CHENG Yuet-ngor assumed office as the Chief Executive of Hong Kong, she has repeatedly denied she will launch another round of constitutional reform to implement universal suffrage.⁵ With only around one year left in her present tenure, the likelihood of a new round of reform is predictably low.

The Committee should demand explanation where the HKSAR Government has failed to make progress in the implementation of universal suffrage in Hong Kong according to the Basic Law.

A2. Ousting of elected parliamentarians

The Committee recommended in its previous Concluding Observations that Hong Kong, China should ensure the proper functioning of judicial structures in accordance with the Covenant and with principles governing the rule of law. As previously recommended, it should also ensure that all interpretations of the Basic Law, including on electoral and public affairs issues, are in full compliance with the Covenant.⁶ (CCPR/C/HKG/CO/2, para.18, CCPR/C/CHN-HKG/CO/3, para. 5) According to the information provided in paragraphs 96-104 of the fourth periodic report of Hong Kong, China, the NPCSC made two interpretations of the Basic Law since the previous report cycle.

³ Pg. 3, "Decision of the Standing Committee of the National People's Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Legislative Council of the Hong Kong Special Administrative Region in the Year 2016", translation by the HKSAR Government: <http://www.2017.gov.hk/filemanager/template/en/doc/20140831b.pdf>

⁴ "Hong Kong vetoes China-backed electoral reform proposal", Reuters, 18 June 2015: <https://www.reuters.com/article/us-hongkong-politics/hong-kong-vetoes-china-backed-electoral-reform-proposal-idUSKBN0OY06320150618>

⁵ "Restarting political reform process not priority for Hong Kong chief executive hopeful Carrie Lam", *South China Morning Post*, 10 February 2017: <https://www.scmp.com/news/hong-kong/politics/article/2069623/chief-executive-hopeful-carrie-lam-unlikely-restart-hong>

明報：《【施政報告】林鄭月娥：現時重啟政改如「搵頭埋牆」》(10 October 2018)(Chinese only): <https://news.mingpao.com/ins/%E6%B8%AF%E8%81%9E/article/20181010/s00001/1539173943293/%E3%80%90%E6%96%BD%E6%94%BF%E5%A0%B1%E5%91%8A%E3%80%91%E6%9E%97%E9%84%AD%E6%9C%88%E5%A8%A5-%E7%8F%BE%E6%99%82%E9%87%8D%E5%95%9F%E6%94%BF%E6%94%B9%E5%A6%82%E3%80%8C%E6%92%BC%E9%A0%AD%E5%9F%8B%E7%89%86%E3%80%8D>

⁶ See *supra* note 1.

The first interpretation since the last report cycle was made upon referral by the Hong Kong Court of Final Appeal (the CFA) pursuant to Basic Law art. 158 in 2011. The subject of the interpretation was Basic Law art. 13 and 19.⁷

After the 2016 LegCo Election, the HKSAR Administration lodged judicial proceedings with an aim to oust two pro-independence members-elect over the validity of their oaths for elected office for they allegedly promulgated their separatist agenda at the oath-taking ceremony on 12 October 2016. On 18 October 2016, the HKSAR Government initiated legal proceedings at the Court of First Instance (the CFI) to disqualify the two. While the CFI considered the case in which Basic Law art. 104 was the subject, the NPCSC acted on its own accord without an invitation from the CFA and passed an interpretation of Basic Law art. 104.⁸ The CFI then ruled for ousting of Sixtus “Baggio” LEUNG Chung-hang and YAU Wai-ching’s from their LegCo seats on 15 November 2016, despite it refrained from acknowledging the NPCSC interpretation.⁹ On 25 August 2017, the CFA Appeal Committee rejected the duo’s application to appeal against the CFI ruling.¹⁰ In July 2017, another four legislators were ousted in the same manner, but none of them had ever promoted any separatist agenda.¹¹

Earlier on, the Committee noted HKSAR Government’s view that NPCSC’s power of interpretation is “in general and unqualified terms” and made the following observations: “[...] the Committee remains concerned that a mechanism of binding constitutional interpretation by a non-judicial body may weaken and undermine the rule of law and the independence of judiciary (arts. 2 and 14)”. The Committee thus recommended that “Hong Kong, China, should ensure the proper functioning of judicial structures in accordance with the Covenant and with principles governing the rule of law. As previously recommended (CCPR/C/HKG/CO/2, para. 18), it should also ensure that all interpretations of the Basic Law, including on electoral and public affairs issues, are in full compliance with the Covenant.”¹² (CCPR/C/CHN-HKG/CO/3, para. 5)

The disqualification of election candidates and elected legislators, driven by an interpretation of a constitutional provision laid down by the legislature of China in which Hong Kong citizens enjoy little representation, contributes to the weakening the rights and equal opportunities of Hong Kong citizens to participate in the already constrained framework of local elections, including the freedom of expression, right to participate in public affairs, right to stand in elections, as enshrined in art. 19 and 25 of the Covenant. It also raises questions on the state of the rule of law and judicial independence in Hong Kong. ***The Committee should demand the HKSAR Government to provide up to date information on the democratisation progress of Hong Kong, to question whether various interpretations of the Basic Law are in***

⁷ “Interpretation by the Standing Committee of the National People’s Congress Regarding the First Paragraph of Article 13 and Article 19 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China” (Adopted at the 22nd Meeting of the Standing Committee of the Eleventh National People’s Congress on August 26, 2011), translation by the HKSAR Government:

<https://www.elegislation.gov.hk/hk/A114%21en.assist.pdf>

⁸ “China’s top body lays down law on Hong Kong oath-taking”, *South China Morning Post*, 8 November 2016: <https://www.scmp.com/news/hong-kong/politics/article/2043768/chinas-top-body-lays-down-law-hong-kong-oath-taking>

⁹ “Barred Hong Kong localists vow to keep fighting after High Court decision”, *South China Morning Post*, 15 November 2016: <https://www.scmp.com/news/hong-kong/politics/article/2046162/hong-kong-court-rules-localist-lawmakers-must-vacate-legco>

¹⁰ “Hong Kong appeal court rejects Youngspiration duo’s bid to be reinstated to Legco”, *South China Morning Post* <https://www.scmp.com/news/hong-kong/politics/article/2062447/hong-kong-appeal-court-rejects-youngspiration-duos-bid-be>

¹¹ “Four More Hong Kong Lawmakers Ousted In a Blow to Democratic Hopes”, *TIME*, 14 July 2017: <https://time.com/4856181/hong-kong-lawmakers-oath-china-disqualified/>

¹² See *supra* note 1.

full compliance with the Covenant, and inquire what are the concrete steps taken to ensure citizens' equal rights to participate in public life without prejudice to each of their political opinions.

A3. Undermining parliamentary privilege

In December 2017, pro-Beijing lawmakers launched a series of amendments to the parliamentary procedure of LegCo claiming that such amendments were introduced to “curb filibustering”, while many of their amendments were designed to encroach the capabilities of LegCo members in delivering public concerns, such as raising the threshold for filing of petitions to LegCo on behalf of minorities and victims of social injustice in the community.

Opposition legislators faced criminal charges or threats of criminal for expressing their views in LegCo. In September 2016, legislator CHENG Chung-tai had been charged and later found guilty of desecrating the national and regional flag by turning the flags on display inside the LegCo chamber upside-down in protest during a legislative session.¹³ In May 2017, legislator “Longhair” LEUNG Kwok-hung was charged contempt of LegCo for snatching a folder of documents from a government official during a committee meeting half a year prior.¹⁴ In June 2018, Sixtus “Baggio” LEUNG Chung-hang and YAU Wai-ching were charged unlawful assembly and then found guilty for their entry of the LegCo chamber to re-take their oaths after their initial oaths were invalidated by the LegCo Secretary-General.¹⁵

However, not all charges against opposition legislators were successful. In May 2018, the court ruled in favour of “Longhair” LEUNG Kwok-hung, citing that contempt of LegCo charges cannot be applied on legislators.¹⁶ The Department of Justice appealed. The appeal hearing was held in May 2020 and is pending decision. More recently, seven pro-democracy legislators were arrested and charged for the same offence in November 2019 for trying to obstruct a meeting for the deliberation of the Extradition Bill in May 2019, including Civic Party member Dr KWOK Ka-ki.¹⁷ Knowing that law enforcement agencies will act on their reports, pro-Beijing lawmakers have frequently threatened to report opposition legislators' behaviour during legislative sessions as criminal activities, such as certain attempts to block proceedings and legislations.

While the HKSAR Government claimed these charges were lawful and constitutional, these charges served to deter legislators from exercising their freedom of speech during debates or other proceedings within the physical setting of the LegCo building, otherwise known as

¹³ “Civic Passion lawmaker Cheng Chung-tai found guilty of ‘desecrating’ flags during legislative session”, Hong Kong Free Press, 29 September 2017: <https://hongkongfp.com/2017/09/29/breaking-civic-passion-lawmaker-cheng-chung-tai-found-guilty-desecrating-flags-legislative-session/>

¹⁴ “Police charge lawmaker ‘Long Hair’ after he took files from official at legislature 6 months ago”, Hong Kong Free Press, 19 May 2017: <https://hongkongfp.com/2017/05/19/police-charge-lawmaker-long-hair-took-files-official-legislature-6-months-ago/>

¹⁵ “Ousted lawmakers Baggio Leung and Yau Wai-ching jailed for four weeks for storming Hong Kong Legislative Council meeting”, *South China Morning Post*, 4 June 2018: <https://www.scmp.com/news/hong-kong/politics/article/2149103/ousted-lawmakers-baggio-leung-and-yau-wai-ching-jailed-four>

¹⁶ “Ex-lawmaker ‘Long Hair’ cannot be charged with contempt for taking files from official, magistrate rules”, Hong Kong Free Press, 5 March 2018: <https://hongkongfp.com/2018/03/05/ex-lawmaker-long-hair-cannot-charged-contempt-taking-files-official-magistrate-rules/>

¹⁷ “Hong Kong opposition camp slams arrest of seven lawmakers, accusing government of trying to stir up chaos so they can cancel district council elections”, *South China Morning Post*, 9 November 2019: <https://www.scmp.com/news/hong-kong/politics/article/3037022/hong-kong-opposition-camp-slams-arrest-seven-lawmakers>

parliamentary privilege in Commonwealth countries as set out in the Erskine May Parliamentary Practice.

In spring 2020, the Central People’s Government issued multiple public statements condemning democrats’ behaviour during LegCo House Committee meetings, where they delayed the election of the House Committee Chair.¹⁸ The statements posit that their actions constitute misconduct in public office, an offence punishable by prison sentence. No charges have been laid against the legislators named so far.



¹⁸ “Hong Kong and Macau Affairs Office and Liaison Office slam Hong Kong’s opposition lawmakers for not taking their oath seriously”, *South China Morning Post*, 13 April 2020: <https://www.scmp.com/news/hong-kong/politics/article/3079681/beijing-agencies-slam-opposition-lawmakers-filibustering>

B. Electoral integrity

B1. Disqualification of candidates in LegCo, District Council and Rural Village Representative elections

From the 2016 LegCo elections onwards, the Electoral Affairs Commission (EAC) requires candidates to complete a confirmation form when they file nominations for their candidacy. On the confirmation form, candidates have to acknowledge Basic Law provisions iterating Chinese sovereignty over Hong Kong.¹⁹ While such document was not supported any statutes, it serves as an indicator for electoral authorities to assess whether candidates “uphold the Basic Law and pledge allegiance to the Hong Kong Special Administrative Region” – more precisely, that they do not campaign on separatist platforms.

However, there is no guarantee that candidates who have signed the confirmation form will not be disqualified from running²⁰, whereas some candidates who ignored the confirmation form were still allowed to run.

In the past four years, the HKSAR Government has barred a number of opposition candidates from standing in local elections. In the 2016 LegCo election, five candidates were disqualified for allegedly campaigning on separatist platforms. The heightening of hurdles for opposition candidates to run for public office was manifested in Edward LEUNG Tin-kei’s disqualification in 2016, who campaigned on a similar separatist platform he debuted during the LegCo by-election earlier in the same year, while back then he was allowed to run.

Similarly, Agnes CHOW Ting’s candidacy in the 2018 LegCo by-election was disqualified. The returning officer responsible for her disqualification reasoned that Demosistō, the political party CHOW was affiliated with, promoted self-determination by Hong Kong people in their charter, and the returning officer decided that such political platform was unconstitutional, despite Demosistō had never overtly promoted any separatist agenda and only stated the Hong Kong people should have the right to decide their future democratically.²¹

In response to CHOW’s disqualification, the Hong Kong Bar Association issued a statement asserting that “[t]his regrettably is *equivalent to the introduction of a political screening process for any prospective candidate*, and there is no fair, open, certain and clear procedure to regulate this process; nor any timely remedy against an adverse decision of the Returning Officer, resulting in an indefinite duration of disqualification of the persons concerned.” Contrary to promises of constitutionalism in the early days of Chinese sovereignty over Hong Kong, the HKSAR Government now abuses the Basic Law to put unreasonable restrictions on citizens’ exercise of constitutional liberties also promised in the Covenant, namely in art. 25.

As of date, a total of 11 candidates running in different local elections were disqualified:

¹⁹ A sample of the confirmation form from the LegCo By-election in 2018: <https://www.eac.hk/pdf/legco/2018lcbe/reo-n-confirmation-2018lcbe.pdf>

²⁰ Pro-independence candidate Edward LEUNG Tin-kei signed the confirmation form during the LegCo election in 2016, he was barred from running nonetheless. “Edward Leung of Hong Kong Indigenous barred from LegCo election”, Hong Kong Free Press, 2 August 2016: <https://hongkongfp.com/2016/08/02/breaking-edward-leung-hong-kong-indigenous-barred-legco-election/>

²¹ “Political storm in Hong Kong as activist Agnes Chow banned from by-election over party’s call for city’s ‘self-determination’”, *South China Morning Post*, 27 January 2018: <https://www.scmp.com/news/hong-kong/politics/article/2130714/hong-kong-activist-agnes-chow-banned-legco-election>

Candidates disqualified in local elections

Election	Number of candidates disqualified
2016 LegCo Election ²²	5
2018 LegCo By-elections (March)	3
2018 LegCo By-election (November)	1
2019 Rural Representative Election ²³	1
2019 District Council Election	1

In December 2018, the HKSAR Government barred Eddie CHU Hoi-dick from running in the 2019 Rural Representative Election citing accusations that he had advocated for Hong Kong independence. The disqualification was contradictory to CHU's eligibility to run the 2016 LegCo Election, in which he won and still holds elected office as a LegCo Member today. In November 2019, the HKSAR Government disqualified Joshua WONG Chi-fung's candidacy in the District Council election, despite his political party Demosistō had openly revamped their charter pledging adherence to the One Country, Two Systems principle.²⁴

The HKSAR Government's intervention is akin to election rigging tactics deployed by authoritarian regimes which harms electoral integrity and violates citizens' right to participate in free elections as promised in art. 19 and 25 of the Covenant. ***The Committee is invited to question the HKSAR Government about the institutionalization of electoral manipulations, and to put forward recommendations to end unreasonable vetting and disqualification of candidates with prejudice to their individual political opinions.***

B2. Censorship of electoral campaign materials (e.g. flyers, posters)

Since the Umbrella Protests in 2014, campaign materials distributed by election candidates are also unprecedentedly censored.

The first ban on distribution of campaign materials was recorded during the 2016 LegCo by-election. The Registration and Electoral Office ("REO") refused to dispatch pro-independence candidate Edward LEUNG Tin-kei's pamphlets to voters as it would for other candidates. The REO called LEUNG's platform "constitutional", accusing his calls for "autonomy", "self-determination", "self-rule" and "militant resistance" for contravening Basic Law art. 1.²⁵

Since then, the REO frequently cites unconstitutionality as a convenient excuse for censoring candidates' campaign materials. During the 2016 LegCo election, pro-independence candidates were forced to censor parts in their campaign materials advocating for Hong Kong

²² "Hong Kong Restricts Election Candidates, Renewing Fears of Lost Rights", *The New York Times*, 3 August 2016: <https://www.nytimes.com/2016/08/04/world/asia/hong-kong-independence-elections.html>

²³ An election for village representation in the New Territories. The tenure of each Rural Representative is four years. Rural Representation Election, 21 January 2020: <https://www.had.gov.hk/rre/eng/intro/background.html>

²⁴ "Joshua Wong disqualified from District Council race", Radio Television Hong Kong, 29 October 2019: <https://news.rthk.hk/rthk/en/component/k2/1488779-20191029.htm>

²⁵ Hong Kong Indigenous statement on Facebook, 15 February 2016: <https://zh-hk.facebook.com/hkindigenous/posts/1688249598095612>

separatism.²⁶ The Electoral Affairs Commission (“EAC”) also denied some pro-democracy candidates from freely distributing election pamphlets (which all candidates are entitled to do so under local electoral laws), citing similar accusations of unconstitutionality.²⁷ Censored words include “self-determination”, “civil referendum” and “democratically amend the Basic Law”.²⁸

Another hurdle to candidates is the Housing Authority and the Housing Department, which manage public housing in Hong Kong. Candidates reported their applications to distribute election pamphlets in public housing estates being rejected by the Housing Department, as the pamphlets promoted “self-determination” and “independence”.²⁹

Recently, censorship has expanded to elected officials. In May 2019, an elected District Councilor reported his application to hang posters in public housing estates demanding the current Chief Executive to step down had been rejected by the Housing Department. He was told posters promoting such view on the HKSAR Government were not allowed in the premises concerned.³⁰

Such censorship carried onto the LegCo by-elections in March and November 2018. In effect, censorship has caused some candidates to refrain from professing their true political views in order to secure candidacy. The decrease in the number of reports of campaign materials censorship in recent days should not be interpreted as relaxing or abolition of such practice, but rather as the reflection of the extensive self-censorship by candidates themselves.

Evidently, censorship of campaign materials is practiced with an aim to ostracise and silence candidates campaigning on platforms that the HKSAR Government wishes to suppress. This contravenes stipulations on free expression and open elections in art. 19 and 25 of the Covenant. Currently, political platforms promoting Hong Kong independence or self-determination are systemically subject to more robust scrutiny and ultimately rejected by electoral authorities. The scope of inadmissible political platforms of the HKSAR Government can be expanded in the future to more moderate views that is not in line with the official line of the Central People’s Government. Such murkiness exacerbates self-censorship among candidates.

The Committee should inquire the use of unconstitutionality as a frequent excuse for censoring campaign materials distributed by candidates in elections of all levels in Hong

²⁶ “Hongkong Post’s Deadline forcing candidates to censor campaign material”, *South China Morning Post*, 10 August 2016: <https://www.scmp.com/news/hong-kong/politics/article/2002005/hongkong-posts-deadline-forcing-candidates-censor-campaign>

²⁷ “Electoral Commission accused of ‘political screening’ and double standards in approval process for leaflets by Legco candidates”, *South China Morning Post*, 3 August 2016: <https://www.scmp.com/news/hong-kong/politics/article/1998333/electoral-commission-accused-political-screening-and-double>

²⁸ Ibid.

²⁹ League of Social Democrats statement, 24 August 2016 (Chinese only): <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/>

³⁰ 立場新聞：《房屋署涉政治審查 禁貼反送中海報 指「特首下台」字眼不能出現》(29 May 2019)(Chinese only): <https://www.thestandnews.com/politics/%E6%88%BF%E5%B1%8B%E7%BD%B2%E6%B6%89%E6%94%BF%E6%B2%BB%E5%AF%A9%E6%9F%A5-%E7%A6%81%E8%B2%BC%E5%8F%8D%E9%80%81%E4%B8%AD%E6%B5%B7%E5%A0%B1-%E6%8C%87-%E7%89%B9%E9%A6%96%E4%B8%8B%E5%8F%B0-%E5%AD%97%E7%9C%BC%E4%B8%8D%E8%83%BD%E5%87%BA%E7%8F%BE/>

Kong. Particularly, the Committee should evaluate whether such practice is compatible with art. 19 and 25 of the Covenant.

The Committee may consider asking the HKSAR Government what measures it will introduce to support the EAC's independence. Equally important, in response to growing concerns about electoral integrity in Hong Kong, the Committee should consider making recommendations to the EAC 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.

B3. Physical attack and harassment of election candidates

Under art. 19 of the Covenant, everyone shall have the right to hold opinions without interference. The HKSAR Government's mishandling of the anti-Extradition Bill protests has resulted not only in endless confrontations between the police and the protesters, but also chronic division between candidates and their supporters during the 2019 District Council elections. The offices of the incumbent pro-Beijing District Councillors and lawmakers were major targets of vandalism. Meanwhile, there were close to 20 incidents of assault and intimidation directed mostly at pro-democracy candidates.

To name but a few of those incidents, in late September 2019, pro-democracy Labour Party candidate Stanley HO Wai-hong was attacked by four men carrying metal rods.³¹ He suffered severe head injuries and fractures in both of his hands. On 16 October 2019, Jimmy SHAM Tsz-kit, Civil Human Rights Front (the "CHRF") Convenor and District Council election candidate for the Lek Yuen constituency, was attacked by at least four men wielding hammers and spanners.³² Two other pro-democracy candidates Jocelyn CHAU Hui-yan and Janelle Rosalynne LEUNG were also intimidated and physically assaulted during the campaigning period.³³ On 3 November 2019, during a protest at Cityplaza, Democratic Party District Councillor Andrew CHIU Ka-yin was stabbed with a knife and lost his left ear as the attacker bit a large part of it off during the assault.³⁴

The reasons for heightened threat to the personal safety of candidates and their supporters may be attributed to the exceptional contentiousness of the 2019 District Council elections; but more importantly, the hard-line attitudes demonstrated by the Central People's Government and the HKSAR Government effectively fostered extreme hatred among pro-Beijing supporters towards their pro-democracy counterparts, and indirectly encouraged these violent acts.

The Committee should inquire about measures HKSAR Government has taken to ensure safety of all election candidates in accordance with the Covenant, particularly the

³¹ "Labour Party member's hands broken in attack", Radio Television Hong Kong, 29 September 2019: <https://news.rthk.hk/rthk/en/component/k2/1483246-20190929.htm>

³² "Jimmy Sham, leader of Hong Kong democracy group Civil Human Rights Front, attacked on Mong Kok street", *South China Morning Post*, 16 October 2019: <https://www.scmp.com/news/hong-kong/law-and-crime/article/3033256/jimmy-sham-leader-hong-kong-democracy-group-civil>

³³ "Two young candidates running for Hong Kong District Council assaulted while campaigning on the streets", *Hong Kong Free Press*, 14 October 2019: <https://hongkongfp.com/2019/10/14/two-young-candidates-running-hong-kong-district-council-assaulted-campaigning-streets/>

³⁴ "Brawl outside Hong Kong mall as man bites off ear of pro-democracy district councillor", *Hong Kong Free Press*, 3 November 2019: <https://hongkongfp.com/2019/11/03/man-bites-off-ear-pro-democracy-district-councillor-brawl-outside-hong-kong-mall/>

full and unfettered enjoyment of civil liberties and political rights of citizens holding whatever political view.



C. Freedom of expression

C1. Press freedom imperilled

Missing Causeway Bay Booksellers

From October to December 2015, five operators of the Causeway Bay Books, GUI Minhai, LUI Bo, LAM Wing-kee, CHEUNG Jiping and LEE Bo, went missing mysteriously. Half a month to three months since their disappearance, it was confirmed that all of them were in China and placed under government surveillance there.³⁵

Basic Law art. 27 ensures that Hong Kong citizens enjoy freedoms of speech, of the press and of publication. Art. 19 of the Covenant also states that everyone shall have the right to hold opinions without interference and the freedom of expression. Books and articles published by the Causeway Bay Books were banned in China for their coverage of party politics and the private life of elite party cadres. GUI was arrested and abducted to China after he had drafted plans to publish books relating to the lovers of President Xi Jinping. However, in Hong Kong they should remain protected by the Basic Law.

LEE Bo's disappearance was particularly unnerving to the Hong Kong public as he was abducted from Hong Kong to China without traces on the immigration records of Hong Kong. Art. 9 of the Covenant stipulates that everyone has the right to liberty and security of person and shall not be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. According to Basic Law art. 11, the system and policies practised in Hong Kong shall be based on provisions in the Basic Law, and thus Chinese laws cannot be enforced in Hong Kong. The abduction and deprivation of liberty LEE and other booksellers suffered had no legal grounds in Hong Kong and did not follow the established procedure, violating the Covenant and the Basic Law.

The Committee should demand the HKSAR Government to explain government assistance available to Hong Kong residents detained in China, and inquire government measures to ensure safety of Hong Kong residents from extrajudicial abduction to and torture by state agencies elsewhere.

Obstruction of journalists discharging their duties during protests

Since June, there have been multiple occasions where the safety of journalists covering the anti-Extradition Bill protests were threatened by the police's indiscriminate use of force and sometimes deliberate obstruction and harassment. In order to protect themselves from the police, most journalists working at the frontlines of protests wear protective gear such as helmets, filtering respirators and reflective vests.

An overview of major instances of police obstruction, sometimes violent, of journalists on duty during the anti-Extradition Bill protests:

- On 12 June 2019, riot police officers were seen pointing their guns at journalists. An English-speaking photojournalist on the scene warned the riot police amid tear

³⁵ "Disappearance of 5 Tied to Publisher Prompts Broader Worries in Hong Kong", *The New York Times*, 4 January 2016: <https://www.nytimes.com/2016/01/05/world/asia/mighty-current-media-hong-kong-lee-bo.html>

gas to stop shooting the press, whereas the riot police put down their guns after one full minute.³⁶

- Also on 12 June 2019, video footage shows riot police waving batons at journalists on the scene, forcing them to retreat, and insulting them with Cantonese profanity.³⁷
- At least two journalists were injured in the pro-government triad gangs' attack in Yuen Long train station on 21 July 2019, while the police refused to dispatch any officers to help.³⁸
- On 5 August 2019, a journalist in Sham Shui Po was hit in the head with a tear gas canister and fell onto the ground.³⁹ Another journalist trying to help was briefly detained by the police.⁴⁰
- The Hong Kong Journalists Association have issued multiple statements⁴¹ since June 2019 condemning the HKSAR Government and the police for the following acts directed at journalists on duty:
 - Shooting tear gas at close range
 - Deploying pepper spray
 - Hitting with batons thus causing injuries
 - Pushing with riot shields thus causing injuries
 - Body searches without reasonable justifications
 - Interrupting video and photo shooting with bright torches
 - Arresting journalists

The Hong Kong Journalists Association organised a silent march on 14 July for press freedom and in protest of unjustified police violence against journalists.⁴²

- On 3 October 2019, Indonesian journalist Veby Mega INDAH lost her right eye as a police officer pointed his gun at her and fired, despite she distinguished herself from protesters by wearing a reflective vest with her press card, and filmed on a pedestrian footbridge which clashes took place at a distance.⁴³

³⁶ Video footage on Youtube: <https://www.youtube.com/watch?v=iTIqDFPjypU>

³⁷ Video footage on Youtube: https://www.youtube.com/watch?v=1c1ni4K_GRU

³⁸ "Silence speaks volumes on press attacks", *The Standard*, 24 July 2019:

<http://www.thestandard.com.hk/section-news.php?id=209922&sid=21>

³⁹ 香港電台: 《深水埗有記者採訪期間疑遭催淚彈擊中頭部受傷》(5 July 2019)(Chinese only):

<https://news.rthk.hk/rthk/ch/component/k2/1472899-20190805.htm>

⁴⁰ "Reporter briefly detained by police during tear gas protest clearances across Hong Kong", Hong Kong Free Press, 6 August 2019: <https://www.hongkongfp.com/2019/08/06/reporter-briefly-detained-police-tear-gas-protest-clearances-across-hong-kong/>

⁴¹ Hong Kong Journalists Association statements archive: <https://www.hkja.org.hk/en/category/statements/>

⁴² "Declaration by seven media groups on 'Stop police violence, defend press freedom' silent march on July 14", Hong Kong Journalists Association, 14 July 2019: <https://www.hkja.org.hk/en/statements/declaration-by-seven-media-groups-on-stop-police-violence-defend-press-freedom-silent-march-on-july-14/>

⁴³ 明報: 《律師:中彈印尼女記者 右眼永久失明》(3 October 2019)(Chinese only):

<https://news.mingpao.com/pns/%E8%A6%81%E8%81%9E/article/20191003/s00001/1570043061946/%E5%B%E%8B%E5%B8%AB-%E4%B8%AD%E5%BD%88%E5%8D%B0%E5%B0%BC%E5%A5%B3%E8%A8%98%E8%80%85-%E5%8F%B3%E7%9C%BC%E6%B0%B8%E4%B9%85%E5%A4%B1%E6%98%8E>

Expelling foreign journalists

The Central People's Government and the HKSAR Government have banned some foreign journalists from visiting Hong Kong. The first instance was the HKSAR Government's refusal to renew Victor MALLET's work visa in November 2018 and ultimately denied his re-entry into Hong Kong.⁴⁴ He was then the Vice-Chairman of the Foreign Correspondents' Club in Hong Kong (the FCC) and Asia News Editor for the Financial Times.⁴⁵ The HKSAR Government never explained the decision to expel MALLET, but it was believed to be revenge against MALLET for his hosting of an FCC luncheon in which pro-independence activist Andy CHAN Ho-tin was invited as a speaker.

Recently, China expelled several foreign journalists, all of them worked at American news outlets as China respondents.⁴⁶ These foreign journalists were not allowed to work in the territory of China, which both the Central People's Government and the HKSAR Government understood it as including Hong Kong and Macau. The freedom of the press is protected under Basic Law art. 27 and under One Country, Two Systems. China's immigration policy should not be transplanted to Hong Kong directly, but neither the Central People's Government nor the HKSAR Government seem to respect such constitutional provisions.

Art. 19 of the Covenant includes express provisions protecting the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". Expulsion of foreign journalists and obstruction of journalists on duty (which sometimes lead to life-threatening situations) seriously undermines the local and international public's access to truthful information about Hong Kong. ***The Committee should ask the HKSAR Government to explain its policy towards local and foreign journalists working in Hong Kong, particularly government measures to ensure their personal safety and to assist their discharge of duties.***

C2. Unreasonable objection to planned protests

Since mid-July 2019, the police had refused multiple applications for public marches and assemblies. The following is by no means an exhaustive list but simply a highlight of the most problematic instances:

⁴⁴ "A Financial Times Journalist Was Barred From Entering Hong Kong", *TIME*, 9 November 2018: <https://time.com/5450061/hong-kong-financial-times-journalist-barred/>

⁴⁵ "Financial Times journalist Victor Mallet allowed back into Hong Kong for seven days only – even though British tourists can stay for six months", *South China Morning Post*, 8 October 2018: <https://www.scmp.com/news/hong-kong/politics/article/2167429/financial-times-journalist-victor-mallet-re-enters-hong-kong>

⁴⁶ BBC 中文：《中國驅逐美國媒體記者：香港不能去，「一國兩制」還在否》(19 March 2020)(Chinese only): <https://www.bbc.com/zhongwen/trad/world-51942647>

- On 25 July, the police objected application for a public march in Yuen Long.⁴⁷
- On 2 August, the police banned another march in Mong Kok, only permitting a smaller rally.⁴⁸
- On 30 September 2019, Police forbade an annual protest march that is invariably held on 1 October, the National Day of the People's Republic of China.⁴⁹
- The CHRF had planned to hold a protest march on 20 October 2019. The march was to start from Salisbury Garden in Tsim Sha Tsui to the Hong Kong West Kowloon Station near Austin. The police objected to it on 18 October.⁵⁰
- On 1 November 2019, the police objected to two assemblies that were to be held in Victoria Park and Tamar Park on the following day and a protest march from Harcourt Garden to Victoria Park scheduled on 3 November.⁵¹

Many of these objected protests saw high turnout nonetheless. The public sentiment was obvious, but the police chose to ban rallies, probably not out of considerations for public safety as they claimed, but rather as deliberate attempts to deter civic engagement. For example, the turnout of any political event that was to be held on 18 August 2019 had been expected to be massive, but the police ignored this prediction and objected to the protest march, which had they done the opposite, it would enable better planning to accommodate the expected high turnout. Instead, only a smaller public assembly was allowed to take place in Victoria Park.⁵² On that day, the Victoria Park clearly could not accommodate the 1.7 million marchers who came to protest, crowds overflowed onto the streets and paralysed all overland traffic in the northern part of Hong Kong Island.⁵³ In April 2020, the police executed a high-profile roundup of 15 democrats, many of whom veteran legislators, and laid unlawful assembly charges for their participation in the unapproved marches on 18 August, 1 October and 20 October 2019.⁵⁴

The HKSAR Government contended in its fourth periodic report that “it is evident that since the establishment of the HKSAR, the public continues to enjoy a high degree of freedom

⁴⁷ “Police object to Yuen Long protest”, HKSAR Information Services Department, 25 July 2019: https://www.news.gov.hk/eng/2019/07/20190725/20190725_191321_164.html

⁴⁸ “Mong Kok march banned”, *The Standard*, 2 August 2019: <https://www.thestandard.com.hk/section-news/section/11/210278/Mong-Kok-march-banned>

⁴⁹ “Police explain rally objection”, HKSAR Information Services Department, 30 September 2019: https://www.news.gov.hk/eng/2019/09/20190930/20190930_174554_455.html

⁵⁰ “Hong Kong police ban major protest against anti-mask law, citing risk of bombs, arson and unrest”, Hong Kong Free Press, 18 October 2019: <https://hongkongfp.com/2019/10/18/hong-kong-police-ban-major-protest-anti-mask-law-citing-risk-bombs-arson-unrest/>

⁵¹ “Police object to 3 rallies”, HKSAR Information Services Department, 1 November 2019: https://www.news.gov.hk/eng/2019/11/20191101/20191101_171831_600.html

⁵² HK01 : 《【818 集會】流水式集會變無定向「飄流」 各路試行 上山又落山》(18 August 2019)(Chinese only):

<https://www.hk01.com/%E7%AA%81%E7%99%BC/365175/818%E9%9B%86%E6%9C%83-%E6%B5%81%E6%B0%B4%E5%BC%8F%E9%9B%86%E6%9C%83%E8%AE%8A%E7%84%A1%E5%A%E9%A%E5%90%91-%E9%A3%84%E6%B5%81-%E5%90%84%E8%B7%AF%E8%A9%A6%E8%A1%8C-%E4%B8%8A%E5%B1%B1%E5%8F%88%E8%90%BD%E5%B1%B1>

⁵³ “Organisers say 1.7 million joined Hong Kong pro-democracy rally against police use of force, as protesters reiterate 5 demands”, Hong Kong Free Press, 18 August 2019: <https://hongkongfp.com/2019/08/18/breaking-organisers-say-1-7-million-joined-hong-kong-pro-democracy-rally-police-use-force-protesters-reiterate-5-demands/>

⁵⁴ “15 Hong Kong pro-democracy figures arrested in latest police round up”, Hong Kong Free Press, 18 April 2020: <https://hongkongfp.com/2020/04/18/8-hong-kong-pro-democracy-figures-arrested-in-latest-police-round-up-party-says/>

of assembly”.⁵⁵ (CCPR/C/CHN-HKG/4, para. 132) Anyone who accords due care and attention to the facts listed above would agree that this statement lies very far from truth. *The Committee is recommended to closely examine government explanations for objection of planned protest and inquire HKSAR Government commitment on citizens’ freedom of assembly.*

C3. Police brutality during anti-Extradition Bill protests

Since June 2019, the police have adopted brutal methods during protest crackdowns and systematically engage in behaviours that constitute human rights violations, such as arbitrary detention, inhumane treatment of arrestees, and excessive use of firearms and projectiles, including tear gas, rubber bullets, bean bag rounds, and even live rounds. Government statistics show that police use of firearms and projectiles during the anti-Extradition Bill protests was of unprecedented scale.

Firearms and projectiles deployed by the Hong Kong police since 9 June 2019⁵⁶

Type of firearms/projectile	Number of rounds fired
Tear gas canisters	16,191 (As of February 2020)
Rubber bullets	10,100 (As of February 2020)
Bean bag rounds	2,033 (As of February 2020)
Sponge grenades	1,880 (As of February 2020)
Live rounds	19 (As of February 2020)

Use of tear gas

As of 2 February 2020, the police fired at least 16,191 tear gas canisters mainly to disperse protests. Such proliferate use of tear gas exceeded that of any point of Hong Kong’s history both in amount and time span.

The effect of tear gas is pervasive and indiscriminate. Protesters are clearly targets, but other people in the vicinity also suffer from the same respiratory difficulty, visual impairment, sometimes also temporary blindness, burning sensation and other irritations on the body. People with pre-existing respiratory problems and other long-term illnesses are especially susceptible and might develop more rapid and acute symptoms of discomfort. These people could include first-aiders, social workers, lawyers, observers and other humanitarian workers.

⁵⁵ Fourth periodic report submitted by Hong Kong, China under article 40 of the Covenant, due in 2018 (CCPR/C/CHN-HKG/4), The HKSAR Government, September 2019: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fCHN-HKG%2f4&Lang=en

⁵⁶ Pg. 33, Chapter 6, *A Thematic Study by the IPCC on the Public Order Events arising from the Fugitive Offenders Bill since June 2019 and the Police Actions in Response*, HKSAR Independent Police Complaints Council, 15 May 2020: [https://www.ipcc.gov.hk/en/public communications/ipcc thematic study report.html](https://www.ipcc.gov.hk/en/public%20communications/ipcc%20thematic%20study%20report.html)

Use of rubber bullets and other projectiles

As of February 2020, the police fired at least 10,100 rubber bullets, 2,033 bean bag rounds and 1,880 sponge grenades.

Rubber bullets caused some of the most serious injuries throughout the protests, whereas victims included not only protesters but also non-participants in the protest. On 12 June 2019, a protester was shot in the eye with a rubber bullet and his sight was seriously impaired.⁵⁷ On 1 October 2019, a protester was shot in the chest point blank and almost died from the injury.⁵⁸

On 11 August 2019, a volunteer paramedic was shot in the eye with a bean bag round.⁵⁹ Journalist Richard SCOTFORD, who was on duty during the incident, attested that she was standing aside from the protesting crowds along with journalists and paramedics when she was shot. As most journalists and paramedics wore reflective vests and other gears with clear indication of their roles, he posited the police might have knowingly fired at journalists and humanitarian workers.⁶⁰

On 3 October 2019, foreign journalist Veby Mega INDAH lost her right eye as a police officer pointed his gun at her and fired, despite she distinguished herself from black-clad protesters by wearing a reflective vest with her press card, and filmed at a distance from a pedestrian footbridge under which clashes took place.⁶¹

Use of batons

Numerous instances of abuse of batons throughout the protests were recorded and reported, but no internal disciplinary action has been taken so far to reprimand misbehaving police officers. On 9 June 2019, a video footage shows that an unarmed protester plainly standing on Harcourt Road was beaten by riot police officers with batons without prior warning and did not cease beating even when the protester had collapsed onto the ground.⁶² On 31 August 2019, during the notorious crackdown operation inside Prince Edward Station, fully geared riot police officers assaulted innocent commuters inside the train compartments and on the platform with

⁵⁷ HK01: 《【逃犯條例】79人受傷送院 兩男重傷 女拔教師眼部中槍》(12 June 2019)(Chinese only):

<https://www.hk01.com/%E7%AA%81%E7%99%BC/340110/%E9%80%83%E7%8A%AF%E6%A2%9D%E4%BE%8B-79%E4%BA%BA%E5%8F%97%E5%82%B7%E9%80%81%E9%99%A2-%E5%85%A9%E7%94%B7%E9%87%8D%E5%82%B7-%E5%A5%B3%E6%8B%94%E6%95%99%E5%B8%AB%E7%9C%BC%E9%83%A8%E4%B8%AD%E6%A7%8D>

⁵⁸ 明報: 《【十一·荃灣·開槍短片】中五生中彈危殆 警另沙嘴道開兩槍》(1 October 2019)(Chinese only):

<https://news.mingpao.com/ins/%E6%B8%AF%E8%81%9E/article/20191001/s00001/1569911800088/%E3%80%90%E5%8D%81%E4%B8%80-%E8%8D%83%E7%81%A3-%E9%96%8B%E6%A7%8D%E7%9F%AD%E7%89%87%E3%80%91%E4%B8%AD%E4%BA%94%E7%94%9F%E4%B8%AD%E5%BD%88%E5%8D%B1%E6%AE%86-%E8%AD%A6%E5%8F%A6%E6%B2%99%E5%98%B4%E9%81%93%E9%96%8B%E5%85%A9%E6%A7%8D>

⁵⁹ 眾新聞: 《現場急救員:受傷女子眼罩可見布袋彈》(13 August 2019)(Chinese only):

<https://www.hkcnnews.com/article/22808/811%E5%B0%96%E6%B2%99%E5%92%80-%E5%B8%83%E8%A2%8B%E5%BD%88-%E7%9C%BC%E7%9D%9B%E4%B8%AD%E5%BD%88-22808/%E7%8F%BE%E5%A0%B4%E6%80%A5%E6%95%91%E5%93%A1%EF%BC%9A%E5%8F%97%E5%82%B7%E5%A5%B3%E5%AD%90%E7%9C%BC%E7%BD%A9%E5%8F%AF%E8%A6%8B%E5%B8%83%E8%A2%8B%E5%BD%88>

⁶⁰ Richard Scotford, post on Facebook, 11 August 2019:

<https://www.facebook.com/RichScotford5/posts/1952934661474507>

⁶¹ See *supra* note 42.

⁶² Video footage on Streamable: <https://streamable.com/hke9t>

batons.⁶³ Video footage from both instances show that the responsible police officers seemed to have lost control of themselves and failed to register the gravity of victims' injuries.

Water cannons

Water cannons deployed by the Hong Kong police contain indelible blue dye and unknown chemicals which cause burning sensation on exposed skin upon contact.⁶⁴ Many members of the Hong Kong civil society (notably Greenpeace) queried the ingredients of the coloured liquid.⁶⁵ However, the police sternly refused to disclose the ingredients.⁶⁶

On 20 October 2019, community leaders peacefully gathered outside the Kowloon Masjid to demonstrate solidarity with ethnic and religious minorities in Hong Kong, while an anti-Extradition Bill procession took place a block away. That afternoon, a water cannon vehicle drove by and without prior warning sprayed coloured liquid at community leaders who were not participating in the protest.⁶⁷ Among the targets were the former Chairman of the India Association Hong Kong Mohan CHUGANI, Executive Director of Hong Kong Unison Phyllis CHEUNG and Civic Party legislator Jeremy TAM Man-ho.

Indiscriminate attack

At 11pm on 31 August 2019, a group of protesters had a heated argument with a civilian professing disagreeing views on the train platform inside the Prince Edward station.⁶⁸ A group of riot police soon arrived and claimed they were to resolve the conflict between civilians. They conducted mass arrests on the platform. It then became clear the quarrel among passengers only served as a pretext for the riot police to indiscriminately attack unarmed civilians with pepper spray and batons. Among the injured were commuters, elderly, children and other passengers whom the police claimed were fleeing protesters who had earlier engaged in violent clashes outside the station.

During and after the raid, the police locked down the train station and refused journalists and volunteer paramedics who wish to provide humanitarian assistance to injured passengers from entering the station. In fact, the police arrested some of the volunteer paramedics

⁶³ 蘋果日報：《【逆權運動】721=831 速龍太子站闖月台車廂亂棍毆乘客 無辜市民被襲後相擁痛哭》(1 September 2019)(Chinese only)(contains video footage):

<https://hk.news.appledaily.com/local/20190831/VJIEDARGT6JVSULTZLPSRXONKI/>

⁶⁴ “Indelible blue dye fired from water cannons by Hong Kong police – protesters adjust with new clothes and removal tips”, *South China Morning Post*, 1 September 2019: <https://www.scmp.com/news/hong-kong/politics/article/3025234/indelible-blue-dye-fired-water-cannons-hong-kong-police>

⁶⁵ “Greenpeace questions Hong Kong police claim that blue dye from water cannon is ‘harmless’”, *Hong Kong Free Press*, 25 October 2019: <https://hongkongfp.com/2019/10/25/greenpeace-questions-hong-kong-police-claim-blue-dye-water-cannon-harmless/>

⁶⁶ 蘋果日報：《毒性強 中者火燙 警拒公佈藍水成份》(26 October 2019)(Chinese only):

<https://hk.news.appledaily.com/local/20191025/NVLKG3ITJHJ3HNJZPMA3NERO4/>

⁶⁷ “Video: Hong Kong police accused of targeting mosque with water cannon blue dye as communities conduct clean-up”, *Hong Kong Free Press*, 20 October 2019: <https://hongkongfp.com/2019/10/20/hong-kong-police-accused-targeting-mosque-water-cannon-blue-dye-communities-conduct-clean/>

⁶⁸ See *supra* note 62.

disregarding their humanitarian objectives.⁶⁹ According to news reports, even official ambulance personnel dispatched from the Hong Kong Fire Service Department were refused entry as the police officers initially claimed there were “no casualties”.⁷⁰ Due to police disruption, it took 2.5 hours for ambulance personnel to reach and hospitalise the injured.⁷¹

According to the official figures, a total of 65 people were arrested in this operation.⁷² Ten injuries inside the station were recorded initially, but the Hong Kong Fire Services Department later changed the figure to seven. Civic Party legislator Alvin YEUNG acquired a copy of the fire service log from that night from whistle-blowers. It was found the log had been edited multiple times throughout ten days after the crackdown operation.⁷³

Collusion with criminal gangs

The Yuen Long Attack on 21 July 2019 was an indiscriminate attack on civilians by a mob of white-clad gangsters armed with steel rods and rattan canes in Yuen Long. The police failed, perhaps intentionally, to react to the impugned attack in time, probing allegations that

⁶⁹ 新聞雲港澳版：《救護員哭求港警開地鐵閘門：打我、射我都可以，請讓我去救人》(1 September 2019)(Chinese only): <https://www.ettoday.net/news/20190901/1526162.htm>

⁷⁰ HK01：《【831 太子站】消防接報多人傷 警稱無傷者 在場救護：聽到呆咗》(13 September 2019)(Chinese only):

<https://www.hk01.com/01%E5%81%B5%E6%9F%A5/374556/831%E5%A4%AA%E5%AD%90%E7%AB%99-%E6%B6%88%E9%98%B2%E6%8E%A5%E5%A0%B1%E5%A4%9A%E4%BA%BA%E5%82%B7-%E8%AD%A6%E7%A8%B1%E7%84%A1%E5%82%B7%E8%80%85-%E5%9C%A8%E5%A0%B4%E6%95%91%E8%AD%B7-%E8%81%BD%E5%88%B0%E5%91%86%E5%92%97>

⁷¹ 經濟日報：《【反修例】831 示威太子站傷者要等港鐵「特別列車」 救護員花 2.5 小時才能將傷者送院》(1 September)(Chinese only):

<https://topick.hket.com/article/2441869/%E3%80%90%E5%8F%8D%E4%BF%AE%E4%BE%8B%E3%80%91831%E7%A4%BA%E5%A8%81%E5%A4%AA%E5%AD%90%E7%AB%99%E5%82%B7%E8%80%85%E8%A6%81%E7%AD%89%E6%B8%AF%E9%90%B5%E3%80%8C%E7%89%B9%E5%88%A5%E5%88%97%E8%BB%8A%E3%80%8D%E3%80%80%E6%95%91%E8%AD%B7%E5%93%A1%E8%8A%B12.5%E5%B0%8F%E6%99%82%E6%89%8D%E8%83%BD%E5%B0%87%E5%82%B7%E8%80%85%E9%80%81%E9%99%A2>

⁷² 眾新聞：《8.31 太子站濫捕？數十人涉「非法集結」被捕 兩月無一人被起訴此罪》(31 October 2019)(Chinese only):

<https://www.hknews.com/article/24539/831%E8%AD%A6%E5%AF%9F%E5%A4%AA%E5%AD%90%E7%AB%99%E6%89%93%E4%BA%BA-%E9%9D%9E%E6%B3%95%E9%9B%86%E7%B5%90-%E5%90%B3%E5%82%B2%E9%9B%AAsonia-24542/831%E5%A4%AA%E5%AD%90%E7%AB%99%E6%BF%AB%E6%8D%95%EF%BC%9F%E6%95%B8%E5%8D%81%E4%BA%BA%E6%B6%89%E3%80%8C%E9%9D%9E%E6%B3%95%E9%9B%86%E7%B5%90%E3%80%8D%E8%A2%AB%E6%8D%95-%E5%85%A9%E6%9C%88%E7%84%A1%E4%B8%80%E4%BA%BA%E8%A2%AB%E8%B5%B7%E8%A8%B4%E6%AD%A4%E7%BD%AA>

⁷³ HK01：《【831 太子站】楊岳橋：消防處記錄多處修改 疑將傷者由 10 改至 7 名》(17 September 2019)(Chinese only):

<https://www.hk01.com/%E6%94%BF%E6%83%85/376149/831%E5%A4%AA%E5%AD%90%E7%AB%99-%E6%A5%8A%E5%B2%B3%E6%A9%8B-%E6%B6%88%E9%98%B2%E8%99%95%E8%A8%98%E9%8C%84%E5%A4%9A%E8%99%95%E4%BF%AE%E6%94%B9-%E7%96%91%E5%B0%87%E5%82%B7%E8%80%85%E7%94%B110%E6%94%B9%E8%87%B37%E5%90%8D>

the police deliberately acquiesced to the indiscriminate mob assault on innocent civilians.⁷⁴ In this incident, at least 45 civilians were reported injured.⁷⁵

The first team of riot police officers arrived at the Yuen Long Railway Station 39 minutes after the attack, which largely deviated from their professional pledge to respond to all reported emergencies in the New Territories within 15 minutes. By the time they arrived at the station, the gangs had already left. Furthermore, when the white-clad gangs gathered outside the railway station in the afternoon long before the attack, the police arguably had plenty of time to investigate and intervene so as to prevent the attack. Journalistic analysis of CCTV footage found several police cars passed by the white-clad gangsters at least three times prior to the attack without taking any action.⁷⁶ In fact, a police commander was seen talking to the gangs in a friendly manner, telling them “much appreciated your help” (心領幫忙) and “you need not worry about the consequences” (唔使擔心).⁷⁷

Collusion between the police and criminal gangs may be explained by their shared hatred towards pro-democracy civilians. Since the anti-Extradition Bill protests spanning through June and the time of the attack, many members of the police harboured hostile attitudes towards protesters. In this light, police acquiescence of the attack was perhaps politically motivated as many of them saw it as a revenge against pro-democracy protesters. By allowing the attack to happen, the police breached its legal and professional duty. They also might have violated international humanitarian laws on policing methods. More precisely, the collusion was differential law enforcement involving discrimination against citizens holding specific political opinions.

Degrading and Inhumane treatment

According to Amnesty International Hong Kong’s report *Hong Kong: Arbitrary arrests, brutal beatings and torture in police detention revealed*, the police conducted arbitrary arrests and retaliatory violence against arrested persons in custody. In some cases, the police abuse constituted torture.⁷⁸ The most serious abuses allegedly took place inside the San Uk Ling Holding Centre. 31 people detained there were sent to North District Hospital amidst or after their detention. Among them, six were seriously injured with bone fractures.⁷⁹

There are also allegations of sexual abuse of arrestees by police officers inside the Centre. During a public assembly to demonstrate solidarity with San Uk Ling victims, a male detainee

⁷⁴ 蘋果日報：《【無警時分】元朗居民踢爆 999 全晚打唔通！報案中心諷求救者「驚就唔好出街」》(22 July 2019)(Chinese only)(contains video footage):

<https://hk.news.appledaily.com/local/realtime/article/20190722/59848425>

⁷⁵ “Hong Kong gradually returns to normal after another night of violent extradition bill protests”, *South China Morning Post*, 22 July 2019: <https://www.scmp.com/news/hong-kong/politics/article/3019534/hong-kong-gradually-returns-normal-after-another-night>

⁷⁶ 香港電台：《閉路電視揭 7.21 大批白衣人集結 警車巡邏無行動》(30 July 2019)(Chinese only):

<https://news.rthk.hk/rthk/ch/component/k2/1471244-20190730.htm>

⁷⁷ 蘋果日報：《【警黑勾結】罪證曝光！八鄉指揮官拍膊頭叫白衫佬唔使擔心：心領幫忙》(23 July 2019)(Chinese only): <https://hk.news.appledaily.com/local/realtime/article/20190722/59852207>

⁷⁸ *Hong Kong: Arbitrary arrests, brutal beatings and torture in police detention revealed*, Amnesty International Hong Kong, 19 September 2019: <https://www.amnesty.org/en/latest/news/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed/>

⁷⁹ 蘋果日報：《【逆權運動】解構新屋嶺前世今生 前懲教主任：如現代「白屋」警折磨年輕人》(3 September 2019)(Chinese only)(contains video footage):

<https://hk.lifestyle.appledaily.com/lifestyle/20190902/XCEJMTLYQEDBXRVRSDDPXOTS2U/>

spoke through a proxy his experience of being sexually assaulted inside the centre.⁸⁰ According to him, he was brought into a cell in the Centre after being arrested. He was then stripped naked, with his limbs tied to the legs of a table, and his head wrapped in a cloth. He recalled the police officers interrogating him had told him the “torture” shall cease immediately should he utter the password of his smartphone. He said that there were at least two police officers involved in physically humiliating him in ways that he described as “beyond one’s imagination”. However, he declined to give details due to apprehension for extrajudicial reprehension by the police and their allies, as he is still in contact with the police to follow up his arrest. He noted he is probably not the only victim of sexual abuse inside the Centre.

Although the police categorically denied all allegations of physical and sexual abuse inside the Centre, there has not been substantial evidence confirming or disproving the allegations. No security camera is installed, neither in the meeting rooms nor in detention cells, so the police’s misbehaviour are mostly unchecked.⁸¹

There were also complaints that the police conducted unnecessary strip searches with the aim to humiliate arrestees.⁸² Apart from the San Uk Ling abuses, a victim filed a criminal complaint citing herself being gang raped by unknown police officers inside Tsuen Wan Police Station, and resulted in an unwanted pregnancy.⁸³ While the case was undergoing investigation and legal procedures, the Commissioner of Police publicly denounced and discredited the victims.⁸⁴ His statement might hamper the course of Justice. (See Tsuen Wan victim’s statement through her legal representatives.⁸⁵)

Violation of Fundamental Human Rights

United Nations *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*⁸⁶ (the *Basic Principles*) lays down important principles on the use of force by law

⁸⁰ 眾新聞：《【關注新屋嶺】男被捕者：四肢綁枱腳裸搜 遭性侵酷刑》(28 September 2019)(Chinese only): <https://www.hkcnews.com/article/23805/%E6%80%A7%E4%BE%B5-%E5%85%A8%E8%A3%B8%E6%90%9C%E8%BA%AB-%E9%97%9C%E6%B3%A8%E6%96%B0%E5%B1%8B%E5%B6%BA%E8%A2%AB%E6%8D%95%E8%80%85%E9%9B%86%E6%9C%83-23814/%E3%80%90%E9%97%9C%E6%B3%A8%E6%96%B0%E5%B1%8B%E5%B6%BA%E3%80%91%E7%94%B7%E8%A2%AB%E6%8D%95%E8%80%85%EF%BC%9A%E5%9B%9B%E8%82%A2%E7%B6%81%E6%9E%B1%E8%85%B3%E8%A3%B8%E6%90%9C-%E9%81%AD%E6%80%A7%E4%BE%B5%E9%85%B7%E5%88%91>

⁸¹ 蘋果日報：《【抗暴之戰】新屋嶺被揭無裝 CCTV 李家超認衰稱 10 月才補裝》(6 November 2019)(Chinese only): <https://hk.appledaily.com/local/20191106/UJ2APBBOQUFYXFADXDDBUUA2FM/>

⁸² “Woman arrested at anti-government protest accuses Hong Kong police of humiliating and unnecessary strip-search”, *South China Morning Post*, 23 August 2019: <https://www.scmp.com/news/hong-kong/politics/article/3024164/woman-arrested-anti-government-protest-accuses-hong-kong>

⁸³ Vidler & Co. Solicitors, “Criminal Investigation into Allegation of Rape inside Tsuen Wan Police Station”, 11 November 2019: <https://www.facebook.com/112018101490/posts/criminal-investigation-into-allegation-of-rape-inside-tsuen-wan-police-station-w/10157000716531491/>

⁸⁴ 香港電台：《鄧炳強：正處理一宗警署內強姦指控 向誤導警員方向查》(16 January 2020)(Chinese only): <https://news.rthk.hk/rthk/ch/component/k2/1503140-20200116.htm>

⁸⁵ “Criminal Investigation into Allegation of Rape inside Tsuen Wan Police Station”, Vidler & Co. Solicitors, 17 January 2020:

https://www.facebook.com/permalink.php?story_fbid=10157193774211491&id=112018101490

⁸⁶ *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990), U.N. Office of the High Commissioner on Human Rights: <https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>

enforcement agents. Notably in para. 5, it emphasizes on exercise of restraint and preservation of human life—

Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

- (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- (b) Minimize damage and injury, and respect and preserve human life.

Multiple accounts of police operations during anti-Extradition Bill protests attest that riot police officers exerted excessive and unnecessary force on unarmed protesters and innocent civilians, in some cases they inflicted serious injuries.

The police have a tendency to abuse rubber bullets, which contravenes the *Geneva Guidelines on Less-Lethal Weapons and Related Equipment in Law Enforcement* (the *Geneva Guidelines*). Para. 8.5.6 of the *Geneva Guidelines* states that “kinetic impact projectiles shall not be targeted against the head.”⁸⁷ However, Hong Kong riot police officers often shot rubber bullets horizontally with the full knowledge that the consequences might be lethal. Indeed, multiple protesters, humanitarian workers and journalists suffered serious injuries under police fire.

Another manifestation of excessive use of force by the Hong Kong police is the use of batons. Para. 8.1.4 of the *Geneva Guidelines* recommends against use of batons targeting the human face or head, noting it may cause skull fracture and/or permanent damage to the eyes, namely blindness. The way the Hong Kong police utilised batons could amount to a violation of the *Basic Principles*.

With reference to the *Protocol I*⁸⁸ introduced by the International Committee of Red Cross in 1977 on the basis of the *Geneva Conventions of 12 August 1949*, it states that indiscriminate attack by law enforcement officials would violate principles of necessity and proportionality.⁸⁹

In addition, the police often deliberately delayed protesters’ access to medical treatment, which contravenes s.5(c) of the *Basic Principles*, as it requires law enforcement officials to ensure humanitarian assistance and medical aid are rendered to any injuries or affected persons at the earliest possible moment.⁹⁰

Physical and sexual abuse by the police could amount to serious crimes under international human rights law, including the Covenant, the *Universal Declaration of Human Rights* (the UDHR) and the *Convention against Torture and Other Cruel, Inhuman or*

⁸⁷ *Geneva Guidelines on Less-Lethal Weapons and Related Equipment in Law Enforcement*, U.N. Office of the High Commissioner on Human Rights:
https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf

⁸⁸ *Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I)*, International Committee of the Red Cross:
https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf

⁸⁹ *To Serve And To Protect Human Rights And Humanitarian Law for Police And Security Forces*, C. de Rover (Au.), A. Bienert (Ed.), International Committee of the Red Cross (2014):

<https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0698.pdf>

⁹⁰ Para. 5, *supra* note 85.

Degrading Treatment or Punishment, particularly with regards to the following provision in UDHR art. 7 and art. 5 of the Covenant:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

In effect, the HKSAR Government's tacit assent exacerbated police brutality. In this sense, they are evading their responsibility to rectify police misconduct under art. 4 of the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*:

In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him.⁹¹

Accountability for the human rights violations illustrated above does not rest only on the specific police officers directly participating in the abuse, higher ranked officials who acquiesced to such misbehaviours should be held jointly and equally liable. ***The Committee should verify and interrogate evidence the HKSAR Government has submitted to support its claim that the Hong Kong public "continues to enjoy a high degree of freedom of assembly", and consider other accounts of protest crackdown operations conducted by the local police as well as treatment of detainees which are widely believed to be in contravention of international protocols on law enforcement methods and might amount to torture.***

⁹¹ Para. 4, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005), U.N. Office of the High Commissioner on Human Rights:
<https://www.ohchr.org/en/professionalinterest/pages/remedyandreparation.aspx>

D. Equality before the law

D1. Abuse of emergency powers

On 4 October 2019, the HKSAR Government enacted the Prohibition on Face Covering Regulation⁹² (the “emergency mask ban”) by invoking emergency powers under the Emergency Regulations Ordinance.⁹³ The emergency mask ban, among other things, legislated the following:

1. Wearing face covering at public assemblies and processions, such as filtering respirators, surgical masks and so on, could amount to a crime, regardless of whether the assembly or procession is lawful or unlawful. The offender might be subject to a level 4 fine or one-year jail sentence if convicted.
2. Police officers are empowered to stop anyone wearing face covering at a public place and demand them to remove such face coverings. Refusal to comply with police orders to do so could amount to a crime and the offender might be subject to a level 3 fine or six-month jail sentence if convicted.

The invocation of emergency powers was unprecedented since the Handover in 1997. During the 1967 riots in Hong Kong, the British colonial government made multiple emergency laws which many members of the public at that time and even to this day regarded as draconian and unreasonable. The emergency mask ban echoed with those archaic colonial measures.

The HKSAR Government reasoned that the emergency mask ban “will create a deterrent effect against masked violent protesters and rioters and will assist Police in their law enforcement”.⁹⁴ By the time the emergency mask ban was enacted, police brutality in Hong Kong had been already rampant. From June to September 2019, 1,812 people were arrested for what the police deemed were illegal acts in relation to the anti-Extradition Bill protests.⁹⁵ As of 16 September 2019, the police fired 3,100 tear gas canisters, 590 rubber bullets, 290 sponge grenades and 90 bean bag rounds at protesters.⁹⁶

This raises the question with regards to the necessity of the emergency mask ban given that prior to its enactment, the HKSAR police had consistently exercised overwhelming force to suppress protests to the extent that their use of force was excessive as exemplified by the

⁹² Prohibition of Face Covering Regulation (Cap. 241K): <https://www.elegislation.gov.hk/hk/cap241K>

⁹³ “Gov’t introduces anti-mask law”, HKSAR Information Services Department, 4 October 2019: https://www.news.gov.hk/eng/2019/10/20191004/20191004_165505_551.html

⁹⁴ Ibid.

⁹⁵ Question serial no.: 1116 by the Hon Tanya CHAN (Reply serial no.: SB050), pg. 153, “Replies to initial written questions raised by Finance Committee Members in examining the Estimates of Expenditure 2020-21”, HKSAR Legislative Council, 9 April 2020: https://www.legco.gov.hk/yr19-20/english/fc/fc/w_q/sb-e.pdf

⁹⁶ 明報：《風波百日 警射 3100 催淚彈 590 橡膠彈 拘 1453 人 三成學生 70 人控暴動》(18 September 2019)(Chinese only):

<https://news.mingpao.com/pns/%E6%B8%AF%E8%81%9E/article/20190918/s00002/1568745293847/%E9%A2%A8%E6%B3%A2%E7%99%BE%E6%97%A5-%E8%AD%A6%E5%B0%843100%E5%82%AC%E6%B7%9A%E5%BD%88590%E6%A9%A1%E8%86%A0%E5%BD%88-%E6%8B%981453%E4%BA%BA%E4%B8%89%E6%88%90%E5%AD%B8%E7%94%9F-70%E4%BA%BA%E6%8E%A7%E6%9A%B4%E5%8B%95>

serious injuries they have inflicted on many protesters. The emergency mask ban also placed significant constraints on citizens' exercise of civil and political liberties, namely the freedom of expression and the freedom of assembly. (art. 19 & 21 of the Covenant) Under the emergency mask ban, citizens are not allowed to participate in public assemblies anonymously, regardless of whether such assemblies are lawful or unlawful. As China puts extra pressure not only on the HKSAR Government but also on the Hong Kong private sector to reprimand employees who profess political views opposing the current administration, many Hong Kong citizens no longer feel safe to exercise their constitutional freedoms in a public setting unless they are allowed to remain anonymous.⁹⁷

In a judicial review case against the emergency mask ban, the CFI held the emergency mask ban to be unconstitutional:

The [Emergency Regulations Ordinance], insofar as it empowers the [Chief Executive in Council] to make regulations on any occasion of public danger, is incompatible with the Basic Law, having regard in particular to Arts 2, 8, 17(2), 18, 48, 56, 62(5), 66 and 73(1) thereof. We leave open the question of the constitutionality of the ERO insofar as it relates to any occasion of emergency.⁹⁸

The judges adjudicating the case, Godfrey Lam and Anderson Chow, notes that the emergency mask ban places “practically no limit on the circumstances in which the power under that section can be exercised by a police officer, save the requirement that (i) the person is in a public place, and (ii) the facial covering used by that person is reasonably believed by the police officer to be likely to prevent identification”, and empowers the police for “random stoppage of anyone found wearing a facial covering in any public place”.⁹⁹ For this reason, they decided the emergency mask ban “*exceeds what is reasonably necessary to achieve the aim of law enforcement, investigation and prosecution of violent protesters even in the prevailing turbulent circumstances in Hong Kong, and that it fails to strike a reasonable balance between the societal benefits promoted and the inroads made into the protected rights.*”¹⁰⁰ Put more plainly, the court considered that the emergency mask ban was excessively harsh and posed disproportionate constraint on the exercise of constitutional rights in Hong Kong (including civil and political rights addressed in the Covenant).

On 9 April 2020, the HKSAR Court of Appeal allowed partial appeal by the HKSAR Government against the aforementioned judgment. The case is currently pending appeal.

⁹⁷ A notable example of Beijing's vengeful acts against anti-Extradition Bill protests sympathizers was its ban of Cathay Pacific Airways crew who joined or supported the anti-Extradition Bill protests from operating flights to mainland China or crossing Chinese airspace. Effectively, the ban induced a chilling effect across all airlines operating flights to mainland China, as employees of these airlines increasingly refrained from speaking their political opinion fearing that it might hinder their job security. The ban also encouraged a culture of self-censorship and mutual surveillance among Hong Kong citizens. “China bans Cathay Pacific staff involved in Hong Kong ‘unlawful’ protests from mainland routes”, *South China Morning Post*, 9 August 2019: <https://www.scmp.com/news/china/politics/article/3022200/china-bans-cathay-pacific-staff-involved-hong-kong-protests>

⁹⁸ Para. 193(1), KWOK WING HANG AND OTHERS v. CHIEF EXECUTIVE IN COUNCIL AND ANOTHER 2019 HKCFI 2820 (HCAL 2945/2019)(18 November 2019) https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=125453

⁹⁹ Para. 189, *ibid.*

¹⁰⁰ *Ibid.*

The Committee is recommended to ask for government justifications for the invocation of emergency powers, particularly, how does it comply with the Covenant.

D2. Enactment of National Security Law

On 22 May 2020, the National People's Congress (the NPC) published a draft of its decision to establish "legal system and enforcement mechanisms to safeguard national security" in Hong Kong, which will be included in Annex III of the Basic Law.¹⁰¹ The entire enactment procedure will be conducted by the NPC and the NPCSC, bypassing the local legislature in Hong Kong and without consulting the Hong Kong public.

While the Central People's Government and the HKSAR Government correctly recited the provision in Basic Law art. 18 that "laws listed in Annex III to [the Basic Law] shall be confined to those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the Region as specified by [the Basic Law]", they failed to acknowledge that art. 23 expressly stipulates that the duty and power to enact the national security law rests on the HKSAR Government "on its own".¹⁰² The proposed procedure is in breach of the Basic Law.

The proposal mentions plans to set up "new agencies"¹⁰³, possibly consisting of Chinese officials instead of Hong Kong ones, and directed by the Central People's Government instead of the HKSAR Government. There are no details yet as to the scope of these new agencies' powers and duties, but it is expected to be extensive and largely unchecked.¹⁰⁴ It is also unclear whether the Hong Kong judiciary will be empowered to rule impartially, as the proposal orders "judicial organs [to] effectively prevent, stop and punish acts endangering national security".¹⁰⁵

The enactment of a national security law raises serious concerns about democracy and civil liberties in Hong Kong. ***The Committee is highly recommended to demand details about the national security law, especially its implementation and its compliance with the Covenant, and conduct rigorous interrogation of justifications and legal perspectives put forward by the Central People's Government and HKSAR Government. The Committee should also ask for explanations how the national security law conforms with the One Country, Two Systems framework stipulated in the Basic Law.***

D3. Lack of independent investigation into police brutality

A poll conducted by the Hong Kong Public Opinion Research Institute in November 2019 shows that over 83% of its interviewees agree the HKSAR Government should establish

¹⁰¹ "Beijing to set up 'enforcement mechanisms' in Hong Kong to protect national security, as head of legislature voices support", Hong Kong Free Press, 22 May 2020: <https://hongkongfp.com/2020/05/22/beijing-to-set-up-legal-and-enforcement-mechanisms-in-hong-kong-to-safeguard-national-security-says-no-2-official/>

¹⁰² Basic Law full text: https://www.basiclaw.gov.hk/en/basiclawtext/images/basiclaw_full_text_en.pdf

¹⁰³ See article 4. 明報: 《港區國安法草案全文》(22 May 2020)(Chinese only):

<https://news.mingpao.com/ins/%e6%b8%af%e8%81%9e/article/20200522/s00001/1590123945692/%e6%b8%af%e5%8d%80%e5%9c%8b%e5%ae%89%e6%b3%95%e8%8d%89%e6%a1%88%e5%85%a8%e6%96%87>

¹⁰⁴ 全国人民代表大会: 《王晨作关于《全国人民代表大会关于建立健全香港特别行政区维护国家安全的法律制度和执行机制的决定(草案)》的说明》(22 May 2020)(Chinese only):

<http://www.npc.gov.cn/npc/c30834/202005/e235c7a3ebea43ca98aa80032590e924.shtml>

¹⁰⁵ Art. 3, Ibid.

an independent commission of inquiry to investigate into police misconduct and use of force during protests.¹⁰⁶ Against overwhelming support for this proposal, the HKSAR Government denied there is a necessity for an independent inquiry, and relied only on the Independent Police Complaints Council (the IPCC) to handle complaints, whereas the IPCC is not vested with investigative, summoning and penalizing powers, which seriously impaired its ability to bring misbehaving police officers to justice.

On 15 May 2020, the IPCC released a report on police use of force during anti-Extradition Bill protests.¹⁰⁷ Its recommendations to the police for more reasonable use of force and curbing misconduct were widely perceived as overly lenient and desultory.

The HKSAR Government's inaction in effect allowed misbehaving police officers to evade accountability for their excessive use of force and other human rights violations. Following this logic, we submit that by acquiescing their subordinates' gross human rights violations, the HKSAR Government has violated the *United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. Tracing to the root cause of police brutality, the police were instructed to suppress protests at all costs, any cost and even if their conduct might constitute human rights violations, precisely because the responsible government officials at the top of Hong Kong's political apparatus completely repudiated all of protesters' demands except full withdrawal of the Extradition Bill. Their unyielding stance left little choice to they themselves and their subordinates other than to resort to violence in order to quell public dissent. Indeed, the HKSAR Government's stubborn objection to any compromise or any proposal to resolve the situation through political or other peaceful means was an important factor contributing to the crisis.

Further, the lack of government accountability can be attributed to unnecessary and prolonged delay of democratisation progress in Hong Kong. As illustrated in Part A, the Central People's Government and the HKSAR Government demonstrated a general unwillingness if not outright rejection to honour their promises to implement universal suffrage and democratic governance in Hong Kong. For this reason, ***the Committee should urge the HKSAR Government to heed to citizens' demands for an independent commission of inquiry to investigate into police brutality, and follow up with the HKSAR Government on the implementation of universal and equal suffrage in all elections in Hong Kong in conformity with the Covenant.***

The Civic Party

29 May 2020

Hong Kong

¹⁰⁶ 台灣蘋果日報：《逾 8 成港人挺成立獨立調查委員會 破 6 成想重組警隊》(29 November 2019)(Chinese only): <https://tw.appledaily.com/column/article/860/rnews/20191129/1670730/>

¹⁰⁷ *A Thematic Study by the IPCC on the Public Order Events arising from the Fugitive Offenders Bill since June 2019 and the Police Actions in Response*, HKSAR Independent Police Complaints Council, 15 May 2020: https://www.ipcc.gov.hk/en/public_communications/ipcc_thematic_study_report.html