

Parallel Report
For the 4th periodic report of Hong Kong, China
United Nations Committee on Economic, Social and Cultural Rights
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Hong Kong Centre for Human Rights
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EXECUTIVE SUMMARY

This submission by the Hong Kong Centre for Human Rights provides further information to the issues raised in the LOI, debunks government rhetoric, and raises important issues related to rights protected under the ICESCR. The detailed table of content should help readers navigate through the number of issues.

Discussion and monitoring of human rights in HK have been extremely restricted and difficult after the imposition of the National Security Law (“NSL”). UN human rights mechanisms are therefore more important than ever for the upholding of international human rights standards in HK.

Since the imposition of the NSL, we observe that the freedom to exercise rights protected under the ICESCR has rapidly shrunk. The government utilised the NSL, other domestic laws and policies and practices to persecute or instil fear among civil society, systematically targeting rights that are conducive to organising dissents to check the Government. [para 20-34] Advocates of ESC rights are stigmatised as “anti-government”. [29-34] Their access to fundings is obstructed in order to stifle their advocacy. [26, 31-32] Civil society actors who took part in the HRCttee review of HK in July 2022 face the threat of reprisal. [29-30]

On trade union rights (LOI items 16-17), the most pressing issues are the dissolution of leading large-scale trade unions causing a domino effect [21-22, 71-72, 98], decreased trade union membership and participation rate [73-75], the use of various domestic laws to hamper the exercising of rights [80-94], and a significant setback of collective bargaining [95-101].

On right to education (LOI items 24-25), in addition to academic freedom in higher education, we also want to draw the Committee’s attention to primary and secondary education. The Government issued national security guidelines for schools, which dictate the way teachers approach issues related to national security. [147-154] Government promotes patriotic education in

schools and universities [143-146], and reformed liberal studies for secondary students, accompanied by a stricter censorship on textbooks and removal of discussions on controversial social issues [155-158]. We also provide information on the cases of dismissal of university professors [162], cases of pressure on scholars [163-167], and the deregistration of schoolteachers [168-175].

On cultural rights (LOI items 26), we urgently bring to the Committee’s attention the recent waves of censorship of the internet, films, library materials and literature creation. [180-190]

This submission also addresses how the COVID-19 policies adopted by the HK Government allegedly unnecessarily and/or disproportionately restrict the rights protected by this Covenant in terms of the right to work [54-55], to education [132-137], and to health [119-121]. This submission also records allegations that COVID-19 policies have been used to suppress the exercises of trade union rights [88-91].

Police excessive use of chemical substance in suppressing protests in 2019-2020, obstructing first-aid in protests and arresting medical volunteers, obstructing injured protesters and arrestees from receiving prompt medical treatments, and police brutality especially in handling protests in recent years, are all serious issues concerning the right to health. [122-131] The police have also violated special measures to protect children. [104-107]

Families and dependent children are adversely affected in alleged political prosecutions, violating the rights protected under ICESCR Article 10. [108-110]

As many issues under the ICESCR and ICCPR are interlinked, readers are encouraged to also refer to our submission to the HRCttee in May 2022 for the review of HK. (https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CCPR/CSS/HKG/48958)

ABOUT US

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

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DISCLAIMER

This submission is based on information available in the public domain. The writers endeavour to verify facts and make observations based on their expertise in human rights issues in Hong Kong. There is no seditious intent, nor any intent to violate any law of the Hong Kong SAR, including but not limited to the National Security Law, on the part of the writers and the Hong Kong Centre for Human Rights. The Hong Kong Centre for Human Rights does not take responsibility for any reader’s action upon receiving this submission.

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LIST OF ABBREVIATIONS

612 Fund	612 Humanitarian Relief Fund
AI	Amnesty International
CESCR	Committee on Economic, Social and Cultural Rights
CFA	Court of Final Appeal
CSNS	Committee for Safeguarding National Security
CSOs	Civil society organisations
DOJ	Department of Justice
EDB	Education Bureau
EduHK	Education University of Hong Kong
EOC	Equal Opportunities Commission
ESC rights	Economic, social and cultural rights
FCC	Foreign Correspondents' Club
GANHRI	Global Alliance of National Human Rights Institutions
HAEA	Hospital Authority Employees Alliance
HKADC	Hong Kong Arts Development Council
HKBU	Hong Kong Baptist University
HKCHR	Hong Kong Centre for Human Rights
HKCTU	Hong Kong Confederation of Trade Unions
HKFP	Hong Kong Free Press
HKJA	Hong Kong Journalists Association
HKPTU	Hong Kong Professional Teachers' Union
HKU	University of Hong Kong
HRCttee	Human Rights Committee
ICCPR	International Covenant of Political and Civil Rights
ICESCR	International Covenant on Economics, Social and Cultural Rights
LAB	Labour Advisory Board
LAD	Legal Aid Department
LD	Labour Department
LGBT+	Lesbian, gay, bisexual, transgender and intersex
LOI	List of Issues
LSD	League of Social Democrats
NHRIs	National human rights institutions
NSL	National Security Law
OFNAA	Office for Film, Newspaper and Article Administration
OSNS	Office for Safeguarding National Security
PCPD	Office of the Privacy Commissioner for Personal Data
PolyU	Hong Kong Polytechnic University
SJ	Secretary for Justice
SO	Societies Ordinance
TIP	Trafficking in persons
TUO	Trade Unions Ordinance
UGC	University Grant Committee

CONTENT

ITEM 2: LACK OF INSTITUTIONS TO PROMOTE AND PROTECT RIGHTS

(Gov reply [5]-[12])

1. In the Universal Periodic Review of China in 2018, China accepted recommendations from states to set up a national human rights institution (“NHRI”) in accordance with the Paris Principles. The recommendations are applicable to Hong Kong as well.¹ The Committee and other treaty bodies have also repeatedly urged Hong Kong to establish an independent NHRI with a broad mandate to promote and protect human rights.² The Hong Kong government has only taken fragmented steps but no substantial change in improving the existing institutions. As submitted before, the institutions listed in the government’s replies to the LOI, even considered in their totality, do not fulfil the role of an NHRI.

ITEM 2: LEGAL AID REFORM HINDERS REDRESS OF RIGHTS

(Gov reply [12])

2. The Legal Aid Department (“LAD”) provides legal aid to eligible applicants by assigning lawyers to them in civil or criminal proceedings, which is a publicly funded service vital for ensuring a fair trial and access to justice. Legal aid does not only implicate people’s political and civil rights, but also protects their economic, social and cultural rights, especially in judicial review cases which challenge certain government’s policy such as the dependant visa policy discriminating against same-sex couples.³

3. In October 2021, after being criticised by a number of pro-Beijing media and politicians for misusing public funds to support pro-democracy activists and lawyers, the Hong Kong government announced to reform the legal aid system by: (1) in criminal cases, removing the applicants’ right to nominate the lawyer they prefer unless there are “exceptional circumstances”⁴; (2) reducing the number of legal aid civil cases a lawyer can take each year (from 35 to 30 cases for a solicitor; from 20 to 15 cases for a barrister); and (3) unprecedentedly limiting the number of legal aid judicial reviews a lawyer can take per year (5 cases for a solicitor; 3 cases for a barrister).

4. No public consultation was conducted before the implementation of the new restrictions. The new restrictions have only been discussed at a panel meeting in the Legislative Council, where the then chairman of the Bar Association and the then chairman of the Law Society both said they did not have

¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review on China*, 26 December 2018, [28.66] – [28.71]

² Committee on Economic, Social and Cultural Rights, *Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China*, 12 June 2014, [40]

Human Rights Committee, *Concluding observations on the fourth periodic report of Hong Kong, China*, 11 Nov 2022, [6]-[7]

³ For example, in *QT v Director of Immigration* (2018) 21 HKCFAR 324, the applicant QT successfully challenged the government’s decision refusing to grant her a dependant visa on the ground that her marriage was not a monogamous marriage. QT’s lawyers were hired through legal aid assistance.

⁴ The only example of “exceptional circumstances” is that the nominated lawyer has represented the defendant in lower court(s). In the past, an applicant could reject a lawyer selected by the LAD and nominate his lawyer, the LAD would normally accede to and not reject an applicant’s choice of lawyer unless there were compelling reasons to do so (such as conflict of interest).

enough time to consult their members as the government's paper was made available four days before the meeting.⁵

5. There are at least three adverse consequences of such reform. Firstly, Article 35 of the Basic Law protects the right to freely choose one's lawyers in all cases⁶, while Article 14(3) of the ICCPR further guarantees such right in criminal cases. Moreover, Article 1 of the UN Basic Principles on the Role of Lawyers also includes the right of all persons to call upon the assistance of a lawyer of their choice to establish their rights and defend them. However, under the new arrangement, applicants of legal aid who lack financial resources are deprived of this right given that the LAD will select and assign lawyers to them directly without any duty of consultation, and civil litigants' right will also be violated when their preferred lawyers cannot represent them simply because those lawyers have already taken the maximum number of civil/judicial review cases.

6. The new practice could create a fear, especially for people charged with national security offences, that they will be assigned a lawyer who has strong ties to the Hong Kong or Chinese government and fails to act impartially.⁷ It was reported that some defendants have already decided not to seek legal aid despite the fact that they are financially unable to hire lawyers by themselves.⁸

7. Secondly, in civil cases, the reduced case quotas will lead to a likely result that experienced lawyers will hit the limits very quickly and thus litigants have to choose other less experienced and competent lawyers. This problem is particularly worrying in the field of judicial review. Due to the rarity and complexity of judicial review cases challenging the public authorities, the number of lawyers having the required skills and competence to handle such cases is already very limited. Hence, the effect of the new limits is that legally-aided citizens have to be represented by lawyers who rarely deal with judicial reviews, while the government can continue to spend a huge amount of public funds to hire the most seasoned senior counsel to defend the challenge. The playing field becomes extremely unfair, making it very difficult for citizens to defend their economic, social and cultural rights ("ESC rights") via legal actions.

8. Thirdly, the reduced quotas are also likely to adversely affect the livelihood of lawyers who rely on the income from taking legal aid cases, including human rights lawyers who specialise in judicial reviews and public interest criminal cases. When the lawyers cannot maintain a stable income by focusing on human rights cases, it can be foreseen that they will have no choice but to shift their career focus to other fields of law. Ultimately, the general expertise in administrative and constitutional laws will be depleted gradually.

9. For example, Michael Vidler, a renowned human rights solicitor who has practised for 30 years and dealt with a great number of judicial reviews, closed his law firm and left Hong Kong in April 2022,

⁵ the Legislative Council, "Minute of special meeting held on Tuesday, 26 October 2021, at 2:30 pm in Conference Room 3 of the Legislative Council Complex, Panel on Administration of Justice and Legal Services", (26 Oct 2021), <https://www.legco.gov.hk/yr20-21/english/panels/ajls/minutes/ajls20211026.pdf>

⁶ Article 35 of the Basic Law explicitly provides that Hong Kong residents shall have the right to "choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies". The right is not only limited to criminal cases.

⁷ "香港首宗國安法定罪案明年3月上訴開審 學者憂法援改制變官派律師", *Voice of America*, <https://www.voacantonese.com/a/cantonese-it-hong-kong-1st-nsl-cse-appeal-and-reactions-on-legal-aid-reform-20211126-ry/6328974.html>

⁸ "法援改制 撤官派律師疑慮", *Ubeat Magazine*, 28 Dec 2021, https://ubeat.com.cuhk.edu.hk/157_legal-aid/

explaining that the new legal aid policy has “announced the death of judicial reviews, which are supposed to be the last resort to hold the government accountable”.⁹ He believed he can no longer defend the rights and interests of the disadvantaged people, and therefore decided to leave the legal field in Hong Kong.¹⁰

Recommendations

10. For criminal cases, the LAD should abandon the new policy and ensure the right to free choice of lawyers. Defendants’ nomination should only be rejected in exceptional circumstances such as blatant conflict of interest.

11. For civil cases, the LAD should resume to allow litigants to nominate lawyers of their choice. The current quota system should be abandoned, or, if it must be kept, a significant increase of the annual quota for each lawyer should be introduced. The government shall especially cease to limit how many legally-aided juridical reviews a lawyer can take each year.

ITEM 3: BUSINESS AND HUMAN RIGHTS

(Gov reply [13]-[15])

12. The Hong Kong Exchanges and Clearing Limited’s reporting guide mentioned in the Government’s Reply is only applicable to listed companies in Hong Kong, having no effect on a great number of non-listed companies. Further, despite the power to investigate private companies, the Equal Opportunities Commission (“EOC”), Office of the Privacy Commissioner for Personal Data (“PCPD”) and Labour Department can only handle alleged violation of very few ESC rights which cannot provide comprehensive and adequate protection.¹¹

13. In the absence of relevant regulations, there are reports of blatant infringements on ESC rights committed by private companies in which the victims cannot obtain any redress. Not only did the government fail to prevent such violations, but it has encouraged and welcomed some of them.

14. In October 2022, two online payment platforms terminated the accounts of a pro-democracy party and a group of activists respectively. Both platforms refused to provide detailed explanations but only claimed that the users’ activities involved high risks.

(1) The first incident is that PayPal halted services for the League of Social Democrats (“LSD”) – one of the few remaining pro-democracy groups in Hong Kong – due to unspecified “excessive risks.” Chow Ka-fat, the LSD’s external vice-chairperson, said that the group could no longer receive on average several thousand Hong Kong dollars donation monthly through PayPal. “It seems like even when doing business, companies have to think about who they are dealing with in advance,” Chow said. “That sort of business freedom in the past has seemingly gone.”¹²

⁹ “韋智達：法援制改意興闌珊 憂成調查目標離港”, *Ming Pao*, 3 June 2022,

https://www.mingpaocanada.com/van/htm/News/20220603/HK-gcb1_r.htm

¹⁰ *ibid*

¹¹ The EOC is empowered to investigate alleged discriminations based on only four grounds, namely sex, disability, race and family status. The PCPD and Labour Department are only responsible for complaints related to their scopes and under their respective legislation.

¹² “PayPal HK halts payments to Hong Kong pro-democracy group, citing unspecified ‘excessive risks’”, *Hong Kong Free Press*, 12 October 2022, <https://hongkongfp.com/2022/10/12/paypal-hk-halts-payments-to-hong-kong-pro-democracy-group-citing-unspecified-excessive-risks/>

(2) The second incident is that the online payments firm Stripe cancelled the account of a group of three activists to crowdfund legal bills accrued from suing the police. The three activists, Leung Wing-lai, Jaco Chow and Napo Wong were assaulted by the police in a direct action in 2014, and filed civil claims against the police, which they lost and had to pay HK\$600,000 legal fees. They raised around HK\$140,000 on the crowdfunding platform GoGetFunding which uses Stripe as the payment gateway. However, the fund raising stopped because Stripe stopped receiving credit card payments on their behalf, and reversed all the donation transactions, claiming risks reason without elaboration.¹³

15. Private companies also sacked employees based on their political beliefs. Figures provided by Hong Kong Confederation of Trade Unions (“HKCTU”) showed that at least 36 aviation professionals, including those employed by Cathay Pacific and Cathay Dragon, have been sacked or forced to resign after they expressed their views related to the anti-extradition movement on social media platforms, because of their speech. Carol Ng, head of HKCTU, criticised the employers for spreading “white terror” among its employees to suppress freedom of speech.¹⁴ There are many other complaints of terminations for involvement in the protest movement, and not necessarily for violence or unlawful activities.¹⁵ The government did not publicly condemn such violations on free speech or take any actions to stop the companies from terminating the contracts.

16. We believe the above incidents have violated the victims’ ESC rights, including the freedom from discrimination based on political opinion, the right to work and to an adequate standard of living. But it is extremely difficult for the victims to seek relief under the current legal system.

ITEM 5: NO MEASURES TAKEN TO PROTECT HUMAN RIGHTS DEFENDERS

(Gov Reply [20]-[23])

17. Since the 2019 anti-extradition protests, human rights defenders, journalists, activists, and pro-democracy politicians are more vulnerable and subject to discriminatory and detrimental treatment because of their political opinions. Unfortunately, the government did not only fail to take rigorous measures to protect their rights and physical safety, but also, in some cases, positively took actions to prevent them from seeking justice.

18. It was reported that at least three pro-democracy politicians and three reporters were physically assaulted in public places but the police have either failed to arrest the perpetrators or refused to charge the arrested suspects.¹⁶ An outraging example is that Lam Cheuk-ting, a pro-democracy lawmaker, was attacked violently by a group of pro-Beijing protesters on a bridge near the government headquarters in

¹³ “索償警敗訴 3 人眾籌訟費 遭平台終止 收款方 Stripe 指高風險 發起人料自我設限或受壓”, *Ming Pao*, 15 October 2022,

<https://news.mingpao.com/pns/%E6%B8%AF%E8%81%9E/article/20221015/s00002/1665771454038>

¹⁴ “Clipping their wings: how White Terror gripped Hong Kong’s aviation industry”, *Hong Kong Free Press*, 4 January 2020, <https://hongkongfp.com/2020/01/04/clipping-wings-white-terror-gripped-hong-kongs-aviation-industry/>

¹⁵ “無線即日解僱 20 名員工 稱受市場不穩拖累”, *Singtao Daily*, 23 August 2019,

https://hk.finance.yahoo.com/news/無線即日解僱_20_名員工-稱受市場不穩拖累-130500215.html

“因政見遭無理解僱 民間自研「搵工平台」助求職配對”, *HK01*, 9 December 2019,

<https://www.hk01.com/article/407018>

¹⁶ “香港警察濫暴濫權資料庫”, *Apple Daily*, <https://infogram.com/--1hkv2ngqlgvn6x3>

June 2019. While around ten police officers were on the scene and did try to protect Lam, the police never arrested the attackers despite that the faces of the attackers can be clearly seen in the video.¹⁷ The police finally ceased the investigation without giving any satisfactory explanation.¹⁸

19. In addition, in a meeting of the Legislative Council held in May 2020, pro-democracy lawmaker Raymond Chan, while protesting in front of the chairman desk, was violently pulled down and dragged on the floor by the pro-Beijing lawmaker Kwok Wai-keung. Chan was injured and needed to be put on medication.¹⁹ Knowing that the police took no actions after receiving a filed report, Chan applied to the court for a private prosecution.²⁰ Despite the fact that the attack was clearly filmed and witnessed²¹, the Department of Justice (“DOJ”) invoked a rarely-used statute to mandatorily intervene and withdraw the private prosecution, claiming that there was no reasonable chance of conviction.²²

ITEMS 5 AND 16: NATIONAL SECURITY LAW

(Gov Reply [20]-[23])

CIVIC SPACE WAS SIGNIFICANTLY SHRUNK BY THE NSL

20. Since the NSL came into force in July 2020, at least 58 civil society organisations (“CSOs”) advocating human rights (including ESC rights) have disbanded completely due to intimidation and/or legal pressure.²³ They include teacher associations, unions, churches, media groups, student societies and political parties. Some significant examples are as follows –

Examples of disbanded civil societies organisations

21. Hong Kong Professional Teachers' Union (“HKPTU”) was a trade union with 48-year history. It was Hong Kong’s biggest single-industry union with and more than 95,000 members, had been an influential group which promoted teachers’ rights and advocated democracy.²⁴ Its candidate had been elected to represent the education sector in the Legislative Council since 1980s. On 31 July 2021, the Chinese state-run People’s Daily and Xinhua News Agency condemned HKPTU as a “poisonous tumour” that must be “eradicated”. Hong Kong government also accused HKPTU of “dragging school

¹⁷ Video available at <https://www.facebook.com/watch/?ref=external&v=2380053038720185>

¹⁸ “6.30 遭撐警人士襲擊 林卓廷：警通知終止調查 指未能認出涉案者”, *Stand News*, 28 February 2020, <https://web.archive.org/web/20210507234721/https://www.thestandnews.com/politics/6-30-%E9%81%AD%E6%92%90%E8%AD%A6%E4%BA%BA%E5%A3%AB%E8%A5%B2%E6%93%8A-%E6%9E%97%E5%8D%93%E5%BB%B7-%E8%AD%A6%E9%80%9A%E7%9F%A5%E7%B5%82%E6%AD%A2%E8%AA%BF%E6%9F%A5-%E6%8C%87%E6%9C%AA%E8%83%BD%E8%AA%8D%E5%87%BA%E6%B6%89%E6%A1%88%E8%80%85/>

¹⁹ “陳志全私人檢控郭偉強普通襲擊 獲法庭發出傳票”, *TVB News*, 6 June 2020, <https://news.tvb.com/tc/local/5edb4db934b0317b77ea889b>

²⁰ “陳志全私人檢控郭偉強 斥鐵證如山警卻毫無作為”, *Inmediahk.net*, 25 May 2020, <https://www.inmediahk.net/node/1073759>

²¹ Video available at <https://youtu.be/ID1gYfeQQ20>; <https://youtu.be/14zFYbKsaH4>

²² “法庭批准律政司介入陳志全私人檢控郭偉強案件”, *Now News*, 9 November 2020, <https://news.now.com/home/local/player?newsId=412216>

²³ “Timeline: 58 Hong Kong civil society groups disband following the onset of the security law”, *Hong Kong Free Press*, 30 June 2022, <https://hongkongfp.com/2022/06/30/explainer-over-50-groups-gone-in-11-months-how-hong-kongs-pro-democracy-forces-crumbled/>

²⁴ “教協解散 | 創立 48 年會員人數近 10 萬 年收 3 億名下資產逾 4 億”, *Headline Daily*, 10 August 2021, <https://hd.stheadline.com/news/realtime/hk/2161939/>

into politics” because of the Union supporting strikes in 2014 and 2019.²⁵ The Education bureau announced to end working relation with HKPTU. HKPTU disbanded after a week on 10th August. The president of HKPTU said that the disbandment is “response to the rapid change of social and political situation”. The police chief also warned of national security investigation over the union.²⁶

22. HKCTU soon followed. Founded in 1990, HKCTU until 2021 represented almost 100 affiliated organisations, mostly trade unions, with around 145,000 members. Most of the affiliated trade unions of smaller scale depended on it for support and resources, such as an address for registration purpose. HKCTU was stigmatised as a foreign agent by pro-Beijing media, as it was affiliated with International Trade Union Confederation, and was alleged to have received foreign funding. They were basically threatened that they were being investigated for endangering national security. Moreover, its general secretary, Hong Kong labour movement icon and former legislator Lee Cheuk Yan was convicted of unauthorized assembly. The chairman of the HKCTU Joe Wong Nai-yuen said at the press conference that they received threatening messages which made them worry about their personal security. A day before, the director of the HKCTU Mung Siu-tat confirmed he had resigned and left Hong Kong due to safety concerns.²⁷ It disbanded in October 2021.

23. The 612 Humanitarian Relief Fund (“the 612 Fund”) was a fund providing humanitarian grants of more than HK\$243 million (US\$31.2 million) to persons who are injured, arrested, attacked or threatened with violence during anti-extradition protests.²⁸ In around September 2021, it was compelled with a court order under schedule 7 of article 43 of the NSL to provide details of its crowdfunding activities, bank account details, donor information, and recipients of the fund.²⁹ Failure to comply with the request attracts criminal liability. It immediately sent chills to the many Hong Kong citizens who donated to the Fund, and lawyers involved in providing legal assistance, as there’s worries that the Government could accuse them of supporting or being accomplices of whatever crime the Fund is being accused of.

24. In May 2022, the police arrested the trustees of the 612 Fund, accusing them of “collusion with foreign forces” under the NSL (which is a charge punishable by life imprisonment).³⁰ The national security police also lodged “professional misconduct” complaints to the Law Society and the Bar

²⁵ “Hong Kong’s largest teachers’ union to disband following pressure from gov’t and Chinese state media”, *Hong Kong Free Press*, 11 August 2021, <https://hongkongfp.com/2021/08/10/breaking-hong-kongs-largest-teachers-union-to-disband-following-pressure-from-govt-and-chinese-state-media/>

²⁶ “Hong Kong’s largest teachers’ union to disband following pressure from gov’t and Chinese state media”, *Hong Kong Free Press*, 10 August 2021, <https://hongkongfp.com/2021/08/10/breaking-hong-kongs-largest-teachers-union-to-disband-following-pressure-from-govt-and-chinese-state-media/>

²⁷ “Hong Kong’s largest pro-democracy union coalition to disband, cites threats to safety”, *Hong Kong Free Press*, 20 September 2021, <https://hongkongfp.com/2021/09/20/hong-kongs-largest-pro-democracy-union-coalition-to-disband-cites-threats-to-safety/>; “Hong Kong’s largest opposition trade union confirms disbandment, expects to fold by early October”, *South China Morning Post*, 19 Sept 2021, <https://www.scmp.com/news/hong-kong/politics/article/3149319/hong-kongs-largest-opposition-trade-union-confirms>

²⁸ Its official website available at <https://612fund.hk/en/home>

²⁹ Kelly Ho, “Hong Kong police serve court order to protester support fund for info in national security probe” 1 September 2021 *Hong Kong Free Press* <https://hongkongfp.com/2021/09/01/hong-kong-police-serve-court-order-to-protester-support-fund-for-info-in-national-security-probe-reports/>

³⁰ Amnesty International, *Hong Kong: Arrests of activists, including 90-year-old cardinal, a ‘shocking escalation’ of repression*, 11 May 2022, <https://www.amnesty.org/en/latest/news/2022/05/hong-kong-arrests-of-activists-including-90-year-old-cardinal-a-shocking-escalation-of-repression/>

Association against certain lawyers who provided legal services in connection with the 612 Fund for alleged impropriety.³¹

25. The police also pressed charge against the trustees of the 612 Fund for failing to register or apply for exemption from registration as a society in accordance with the Society Ordinance. The 612 Fund, although could be considered as an unincorporated charitable trust which is not subject to the regulation of Society Ordinance, the court ruled it as an organization with political purpose despite the purpose of the fund is to provide humanitarian aid. The trustees are fine HK\$4,000 (US\$512) each.³²

Use of money laundering allegations to suppress funding sources

26. One must note that it was not the first time for the government to criminalize and curtail the ability of civil society to access resources. Radio host Edmond Wan was arrested on the charge of sedition and money laundering after calling for donations to support Hong Kong protesters who travelled to seek refuge and study in Taiwan.³³ The police also, in the name of stopping money laundering, froze the assets of Spark Alliance which was a non-profit group that raised money to support legal fees of protesters.³⁴

Chilling effect on enduring civil society organisations

27. On the other hand, while some CSOs manage to endure the pressure and remain existing, they can no longer be as active and outspoken as before. A notable example is the Hong Kong Journalists Association (“HKJA”), the city’s biggest media union which has been heavily and continuously attacked and intimidated by Chinese state media and pro-Beijing politicians. Although it has not disbanded, it has to be extremely cautious and refrain from doing anything which can be accused by the government of endangering national security. In 2022, the association decided to stop its 29-year tradition of publishing an annual report of the free speech situation of Hong Kong, and removing all the previous reports from its website. Ronson Chan, the chairman of the HKJA, admitted that the decision was made in view of the political pressure.³⁵ In June 2020, the members of the HKJA also passed a motion to lower the threshold of dissolution from 83.3% members agreeing to 50% members agreeing.³⁶

28. Another proof of the shrinking of civil space is that CSOs are severely hindered from organising activities and exercising their freedom of assembly, procession and demonstration guaranteed by the Basic Law. No large-scale protests have ever been seen since 2021. In late-June 2022, a few days before

³¹ “Hong Kong police file complaints to lawyer groups over national security case”, *Reuters*, 12 May 2022, <https://www.reuters.com/world/asia-pacific/hong-kong-police-file-complaints-lawyer-groups-over-national-security-case-2022-05-12/>

³² “Hong Kong's Cardinal Zen among six fined over fund for protesters”, *Reuters*, 25 November 2022, <https://www.reuters.com/world/china/hong-kongs-cardinal-zen-among-five-fined-over-fund-protesters-2022-11-25/>

³³ “Second Hong Kong radio host arrested under colonial era sedition law”, *Hong Kong Free Press*, 7 Feb 2021, <https://hongkongfp.com/2021/02/07/second-hong-kong-radio-host-arrested-under-colonial-era-sedition-law/>

³⁴ “Hong Kong police arrest 4 for ‘money laundering’ and freeze HK\$70m used to support pro-democracy protesters”, *Hong Kong Free Press*, 19 December 2019, <https://hongkongfp.com/2019/12/19/hong-kong-police-arrest-4-for-money-laundering-and-freeze-hk70m-used-to-support-pro-democracy-protesters/>

³⁵ “香港「言論自由年報」改由海外發表 《國安法》下小型獨立媒體舉步維艱”, *Radio Free Asia*, 17 October 2022, <https://www.rfa.org/cantonese/news/hkm/hk-report-10172022071925.html>

³⁶ “香港記協通過降低解散門檻 醫管局員工陣線宣布解散”, *Radio Free Asia*, 25 June 2022, <https://www.rfa.org/cantonese/news/hkm/hk-dissolve-06252022065439.html>

the anniversary of Hong Kong's return to China, national security police searched the homes of six members of the LSD, one of the last pro-democracy political parties still active in the city, and warned them not to hold any protest activities on the anniversary day. Some LSD members also admitted that they were being followed and under constant surveillance.³⁷ The LSD finally decided to stop taking to the streets on 1 July.³⁸

Threats of reprisal against activists engaged in UN human rights mechanisms

29. At the HRCttee review of Hong Kong in July 2022, Hong Kong Government delegation repeatedly refused to address fears of reprisals against civil society actors taking part in the process. Later, the Secretary for Security of Hong Kong said despite Hong Kong being calmer after the NSL, he was concerned about the soft resistance, such as smearing Hong Kong and China by human rights reports, in order to divide Hong Kong people, or make Hong Kong people not trust the Central Government.³⁹

30. A pro-Beijing tabloid magazine also did a feature report on the organisations that made submission to the HRCttee, accusing them of being anti-China, and made unfounded human rights allegations to the HRCttee.⁴⁰

Advocates of ESC rights stigmatised and threatened

31. People and CSOs advocating ESC rights are attacked and threatened based on their political opinions. In August 2022, a newspaper owned by the Chinese government named and criticized 11 environmental groups for allegedly supporting protesters and spreading anti-government messages during the anti-extradition protests, and thus urged the government to stop funding these groups. The government responded that they would take actions if needed.⁴¹

32. Art groups and movie producers are also the targets of pro-Beijing media. Hong Kong Arts Development Council ("HKADC"), a statutory body funded by the government, has been under huge pressure because some of the art and movie groups receiving its funding had supported the anti-extradition movement.⁴² HKADC later announced that it would withdraw the future funding for Ying e

³⁷ "Hong Kong 25: National security police search homes of activist group members ahead of July 1 anniversary", *Hong Kong Free Press*, 30 June 2022, <https://hongkongfp.com/2022/06/30/hong-kong-25-activist-group-members-under-constant-surveillance-ahead-of-july-1-anniversary/>

³⁸ "League of Social Democrats says they will not be protesting on July 1", *The Standard*, 28 June 2022, <https://www.thestandard.com.hk/breaking-news/section/4/191689/League-of-Social-Democrats-says-they-will-not-be-protesting-on-July-1>

³⁹ 談反修例事件 鄧炳強：七成判囚者深感懊悔, *Mingpao Daily*, 12 September 2022, <https://news.mingpao.com/pns/%E6%B8%AF%E8%81%9E/article/20220912/s00002/1662918984021>

⁴⁰ "揭反華組織狂造假報告(Reveal: anti-China organisations fabricate reports)" *East Weekly*, 21 August 2022, Pp14-17, https://epaper.singtaousa.com/flippingbook/magazine_ny/2022/20220821-EW/14/

⁴¹ "踢爆 11 環團涉暴 狂攞數千萬公帑", *Wen Wei Po*, 31 August 2022, <https://www.wenweipo.com/a/202208/31/AP630ea25ae4b033218a600599.html>

⁴² "藝發局資助黑暴電影 三年撥款 1500 萬", *Wen Wei Po*, 17 March 2021, <https://www.wenweipo.com/a/202103/17/AP60514b6ae4b04e1918cbc256.html>

Chi, a small movie group which produced a famous documentary related to the protests called “Inside the Red Brick Wall”.⁴³

33. CSOs’ freedom of expression is also under threats. In October 2022, Chief Executive John Lee heavily rejected the criticism of “collusion between the government and businesses”, stressing that such saying was a bad idea used to spread negative ideas and incite conflicts among the society.⁴⁴ The criticism of “collusion between the government and businesses” has been frequently used by advocacy group in criticising the social inequality outcomes of government policies and land development strategy. Given that inciting conflicts can be deemed as a crime under the sedition offence, John Lee was effectively suggesting that similar criticisms may be punished legally.

34. US Trafficking in Person Report is alleged by the Chinese Ministry of Foreign Affairs as evidence of U.S. Interference in Hong Kong affairs and support for anti-China, destabilizing forces.⁴⁵ Such statement is intimidating for human rights defenders working on this issue for they would fear of being accused of endangering national security under the very broad NSL or other relevant laws if they continue to voice their concern, or collaborate with international entities for this issue.

NSL CASES ARE HANDLED IN A DE-FACTO SPECIAL COURT AND BY AN EXTRAORDINARY CRIMINAL PROCEDURE

35. Whenever a case falls within the purview of the NSL, it will be handled very differently from ordinary criminal cases in the following aspects:

(1) Article 44 of the NSL provides that national security cases can only be handled by “designated judges” who are directly appointed by the Chief Executive without the need to provide any justifications. No mandatory consultation is required since the provision only states that the Chief Executive “may” consult the Committee for Safeguarding National Security (“CSNS”, an institution made up of incumbent senior government officials) and the Chief Justice. The Chief Executive is also empowered to remove a judge from the designation list if the judge “makes any statement or behaves in any manner endangering national security”.

(2) Thus far, the Hong Kong government has refused to make the designation list public, claiming that doing so could create security risks to the designated judges.⁴⁶ Given that the Chief

⁴³ “藝發局停發「影意志」76萬元資助”, *Wen Wei Po*, 3 July 2021,

<https://www.wenweipo.com/a/202107/03/AP60dfaef2e4b08d3407cae935.html>

⁴⁴ “John Lee slashes at 'collusion' accusation, calls on HK'ers to unite”, *The Standard*, 20 Oct 2022,

<https://www.thestandard.com.hk/breaking-news/section/4/196126/John-Lee-slashes-at-'collusion'-accusation.-calls-on-HK'ers-to-unite>

⁴⁵ Ministry of Foreign Affairs of China, “Fact Sheet: U.S. Interference in Hong Kong Affairs and Support for Anti-China, Destabilizing Forces”, September 2021,

https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/202109/t20210924_9580296.html

⁴⁶ “司法機構公開民刑事法官名單 特首辦：毋須公開國安法官名單”, *Citizen News*, 23 Dec 2020,

<https://web.archive.org/web/20220111044615/https://www.hkcnews.com/article/36675/%E6%8C%87%E5%AE%9A%E6%B3%95%E5%AE%98-%E6%B8%AF%E7%89%88%E5%9C%8B%E5%AE%89%E6%B3%95-%E5%85%AC%E9%96%8B%E8%B3%87%E6%96%99%E5%AE%88%E5%89%87-36683/%E5%8F%B8%E6%B3%95%E6%A9%9F%E6%A7%8B%E5%85%AC%E9%96%8B%E6%B0%91%E5%88%91%E4%BA%8B%E6%B3%95%E5%AE%98%E5%90%8D%E5%96%AE-%E7%89%B9%E9%A6%96%E8%BE%A6%EF%BC%9A%E6%AF%8B%E9%A0%88%E5%85%AC%E9%96%8B%E5%9C%8B%E5%AE%89%E6%B3%95%E5%AE%98%E5%90%8D%E5%96%AE>

Executive effectively has the absolute power to exclude any judges whom he thinks is politically disloyal or insufficiently sympathetic to the government's views, the public may have doubts as to whether defendants are still able to obtain a fair hearing. Commentators also doubted whether sufficiently neutral and open-minded judges are being screened out by the designation process.⁴⁷ In fact, to date, no overseas judges from other common law jurisdictions serving in Hong Kong have been assigned to deal with national security cases, even for cases heard before the Court of Final Appeal in which one of the five judges is usually an overseas judge, leaving a question of whether the Chief Executive is intentionally excluding overseas judges from becoming designated judges.⁴⁸

(3) Although jury trial is originally mandatory in the High Court for criminal cases, Article 46 of the NSL allows national security cases to be tried in the High Court without a jury, as long as the Secretary for Justice ("SJ") so requires in the name of protecting state secrets, preventing external interference or to avoiding risks of the jurors. This provision does not specifically require the SJ to provide reasons of the grounds for removing a jury trial in those cases. Since the promulgation of NSL, the two cases in front of the High Court are certified by the SJ to be tried without a jury.⁴⁹

(4) Article 42(2) of the NSL stipulates a presumption against bail for all cases concerning national security, a question that is determined by the administration. It states that "[n]o bail shall be granted to a criminal suspect or defendant unless the judge has sufficient grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security."

(5) As provided in Article 47, when the courts have questions as to whether an act involves national security or whether specific evidence involves state secrets, judges should seek a certificate from the Chief Executive as a binding and conclusive document. In other words, the executive branch has the absolute power to decide what is and is not national security and state secrets, meaning that the traditional fact-finding power of judges are severely curtailed.

(6) Article 55 of the NSL also undercuts the independence of the judiciary: it allows the NSL-created Office for Safeguarding National Security of the Central People's Government of the People's Republic of China in the Hong Kong Special Administrative Region ("OSNS") to take over certain cases that normally are in Hong Kong's jurisdiction under One Country Two Systems. Once the OSNS

⁴⁷ Georgetown Center for Asian Law, Hong Kong's National Security Law And The Right To A Fair Trial, 28 June 2021, p.10, <https://www.law.georgetown.edu/law-asia/wp-content/uploads/sites/31/2021/06/HongKongNSLRightToFairTrial.pdf>

⁴⁸ <https://hongkongfp.com/2022/08/17/national-security-trial-for-hong-kong-media-mogul-jimmy-lai-to-proceed-without-jury-reports/>; <https://hongkongfp.com/2022/08/16/non-jury-trial-ordered-for-hong-kongs-47-democrats-national-security-case/>; "黎智英涉國安法保釋案 罕有地無海外非常任法官參與", *Citizen News*, 27 Jan 2021,

<https://web.archive.org/web/20220616030652/https://www.hkcnews.com/article/37583/%E9%BB%8E%E6%99%BA%E8%8B%B1-%E7%B5%82%E5%AF%A9%E6%B3%95%E9%99%A2-%E6%8C%87%E5%AE%9A%E6%B3%95%E5%AE%98-37583/%E9%BB%8E%E6%99%BA%E8%8B%B1%E6%B6%89%E5%9C%8B%E5%AE%89%E6%B3%95%E4%BF%9D%E9%87%8B%E6%A1%88-%E7%BD%95%E6%9C%89%E5%9C%B0%E7%84%A1%E6%B5%B7%E5%A4%96%E9%9D%9E%E5%B8%B8%E4%BB%BB%E6%B3%95%E5%AE%98%E5%8F%83%E8%88%87>

⁴⁹ "Hong Kong's first trial under new national security law begins without a jury", *CNN*, 23 June 2021, <https://edition.cnn.com/2021/06/23/asia/hong-kong-ns-l-first-case-explainer-intl-hnk/index.html> "Jimmy Lai and 47 democrats charged under NSL to face trial with no jury", *The Standard*, 17 Aug 2022, <https://www.thestandard.com.hk/breaking-news/section/4/193574/Jimmy-Lai-and-47-democrats-charged-under-NSL-to-face-trial-with-no-jury>

asserts control over a case, it works with the Supreme People’s Court in Beijing to transfer the case to mainland China. Given the Communist Party’s more or less complete control over the Chinese judicial system, the case would then be handled according to the Party’s instructions.

36. The ordinary freedom of choice of lawyers is also infringed in national security cases. In October 2022, although the NSL never prohibited overseas lawyers from participating in a national security case, the government still objected the pro-democracy media tycoon Jimmy Lai’s application for hiring a UK barrister to be his representative.⁵⁰ In November 2022, although the Court of Final Appeal affirmed the court’s decision for allowing overseas counsel to take part in the trial, the Chief Executive John Lee refused to comply with the court decision but announced that he would invite Beijing to interpret the NSL on this regard.⁵¹ In addition, the Immigration Department withheld the extension of work visa of Jimmy Lai’s British lawyer, which made him impossible to work on the case⁵². On 30 December 2022, the Standing Committee of the National People’s Congress decided that the court require to obtain certification from the Chief Executive on the matter of whether an overseas lawyer may act as the defence counsel in a case concerning national security offence.⁵³

Recommendations

37. The Hong Kong government should:

- (1) Take concrete steps to repeal the current NSL and, in the meantime, refrain from applying it;
- (2) Ensure that the legislative process for enacting a new national security law is inclusive and transparent, facilitating the free, open and meaningful participation of civil society and the public, and that it addresses the concerns relating to the current NSL expressed by international human rights mechanisms with a view to ensuring that the new legislation fully conforms with the ICESCR.
- (3) Take rigorous measures to protect human rights defenders, including arresting and prosecuting people who physically assaulted them.
- (4) Create and maintain an enabling environment for civil society, especially stop preventing people from exercising their freedom of expression and protest.

⁵⁰ “黎智英案獲准用英御狀抗辯 高院：議題複雜 信會提供重要協助”, *Ming Pao*, 20 Oct 2022,

<https://news.mingpao.com/pns/%E6%B8%AF%E8%81%9E/article/20221020/s00002/1666199748848>

⁵¹ “Hong Kong asks Beijing to intervene after top court blocks bid to stop media tycoon Jimmy Lai from hiring UK lawyer”, *Hong Kong Free Press*, 28 Nov 2022, <https://hongkongfp.com/2022/11/28/breaking-hong-kong-asks-beijing-to-intervene-after-top-court-blocks-bid-to-stop-media-tycoon-jimmy-lai-from-hiring-uk-lawyer/>

⁵² “Hong Kong withholds British lawyer’s visa, delaying Jimmy Lai trial”, *The Guardian*, 1 Dec 2022, <https://www.theguardian.com/world/2022/dec/01/hong-kong-jimmy-lai-british-lawyers-visa-withheld-trial-delay-timothy-owen>

⁵³ “CE welcomes NSL interpretation”, *news.gov.hk*, 30 Dec 2022, https://www.news.gov.hk/eng/2022/12/20221230/20221230_201149_534.html

ITEM 8: DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PERSONS

(Gov reply [40]-[46])

DISCRIMINATION AGAINST SAME-SEX COUPLES AND NON-RECOGNITION OF SAME-SEX PARTNERSHIP

38. A same-sex couple registered aboard first brought the fight of equal partnership right to local courts in 2014, which is about the application of dependant visa. The applicant, named as QT, won their final victory in 2018.⁵⁴ However, the local LGBTI+ community still received complaints that same-sex couples faced discrimination during the application process of dependant visa, which is hindered by unnecessary interrogation, and intimidation to reject the visa. The applicants were threatened by the officials that a recorded rejection will lead to a lot of trouble for any future application.⁵⁵ The equal rights of same-sex couples cannot be ensured given that there is no legal recognition of same-sex partnership.

39. The local courts limited their power in handling same-sex partnership rights on specific subject matters only.⁵⁶ The piecemeal approach leads to a long and bitter journey for same-sex couples to fight against the systemic discrimination, by bringing the discriminatory matters to the court one at a time, and the list is long, housing, health care, inheritance, welfare and compensation, to name a few. This journey would last for decades and cannot guarantee that all the same-sex couples can have the equal enjoyment of Covenant rights while lacking a legal formalization of same-sex unions.

40. The housing rights of same-sex couple is a clear example. There are two cases namely *Infinger Nick v The Hong Kong Housing Authority*⁵⁷ and *Ng Hon Lam Edgar, Li Yik Ho v The Hong Kong Housing Authority*.⁵⁸ Although the Court of First Instance ruled in both cases that same-sex couple married abroad should enjoy same housing rights as heterosexual married couple, in 2020 and 2021 accordingly, same-sex couple in Hong Kong still cannot enjoy these rights due to the appeal of Hong Kong government. The hearing of the Court of Appeal is on February 2022 and surprisingly the judgement is not yet handed down by the Court after about a year. Hong Kong government is allegedly hiding behind the judicial proceedings and refuses to review the local legislations to ensuring that same-sex couples' enjoyment of the equal rights.

HATE SPEECH, HARASSMENT, DISCRIMINATION AND VIOLENCE AGAINST LGBT PERSONS

41. Currently, Hong Kong does not have a specific set of legislation to protect lesbian, gay, bisexual, transgender and intersex people (“LGBT+”) from hate speech, harassment and discrimination based on their sexual orientation, gender identity, gender expression and sex characteristics. Although certain form of gender identity discrimination can be, unfortunately, addressed by the EOC as a form of “disability discrimination”, the lack of a specific statute means that the LGBT+ community cannot be sufficiently and fully protected.

⁵⁴ The judgement of the Court of Final Appeal in 2018: [*QT v Director of Immigration*](#)

⁵⁵ Report of a case in a local media: <https://gdottv.com/main/archives/29895>

⁵⁶ The judgement of Court of Appeal in 2020: [*Sham Tsz Kit v Secretary for Justice*](#). The Judgement highlights that the Court cannot apply the proportionality test "in the absence specific subject matter" while handling same-sex partnership rights.

⁵⁷ The Court of First Instance’s judgment of [*Infinger Nick v. The Hong Kong Housing Authority*](#) (2020), which is about the Allocation of Public Rental Housing.

⁵⁸ The Court of First Instance’s judgment of [*Ng Hon Lam Edgar, Li Yik Ho v The Hong Kong Housing Authority*](#) (2021), which is about the Home Ownership Scheme.

42. In Hong Kong, homophobic and transphobic hate speech and harassment is prevalent both on the internet and in person. Some of the notable examples are:

(1) In June 2021, Junius Ho who is a legislator, gave speech in the Legislative Council calling LGBT+ people "disgraceful" and money earned from LGBT+ event Gay Games was "dirty money".⁵⁹

(2) In July 2021, Junius Ho commented a hit local TV drama series *Ossan's Love* for featuring same-sex romance as "sugar-coated marijuana", and claimed that promoting homosexuality is against the NSL.⁶⁰

(3) A local opinion leader with about 70 thousand followers published a video in Cantonese to call for hatred against masculine lesbians in January 2021. The video went viral and was viewed by 46,000 in a day.⁶¹

43. According to a survey in 2018, 69% of the public favoured the anti-discrimination legislation that protects people from being discriminated because of sexual orientation.⁶²

44. Ricky Chu, the chairperson of the EOC claimed to tackle discrimination against LGBT+ people by the end of 2019. But in 2021, he said that as there was no legislation in Hong Kong to prevent discrimination against sexual orientation, it is hard to prove whether Ho's speech cited above was discriminatory on a legal basis.⁶³ Chu said that the EOC had begun putting together a proposal for the legislation to protect LGBT+ people from discrimination and hopes to discuss the proposal with stakeholders by the end of 2021.⁶⁴ However, the promise failed, and no progress is made.

45. The HRCtee has already pointed out that the Hong Kong government did not make efforts to sensitize its population to the effects of discrimination based on sexual orientation and gender identity on the affected persons.⁶⁵

⁵⁹ He is quoted by the online news media outlet as saying "It is your business what you do in your own room, but if you go out and do it in public, it's *disgraceful*. ... The point is simple, the officials should not get involved in this, it's the civil society's business if they want to do it, it's wrong [for the government] to throw money into this, and I don't want to earn this type of *dirty money*, it doesn't matter if we earn the HK\$1 billion." (emphasis added), "Pro-Beijing lawmaker claims hit Hong Kong TV show featuring same-sex romance violates China's national security law", *a*, 10 June 2021, <https://hongkongfp.com/2021/06/10/its-disgraceful-i-dont-want-dirty-money-hong-kong-lawmakers-urge-govt-not-to-support-2022-gay-games/>

⁶⁰ *ibid*

⁶¹ A Hong Kong LBT group's response to the video:

https://www.facebook.com/story.php?story_fbid=pfbid0vb66YUo5SUqKkEyv1snmbRiWCPML3Gi3nCRBXfecsmYGTZ34VHyQ5eKamsuAcVSzl&id=231808333818620&mibextid=qC1gEa and <https://youtu.be/MQlqZbDvYnc>. The [original video](#) is removed by YouTube "for violating YouTube's policy on hate speech."

⁶² In 2018, the Centre for Comparative and Public Law, University of Hong Kong published a report named "Support in Hong Kong for Same-sex Couples' Rights Grew Over Four Years (2013-2017)". The result showed that 69% of the public favoured the anti-discrimination legislation that protects people from being discriminated because of sexual orientation.

⁶³ "Rights chief throws support behind staging of Gay Games", *The Standard*, 11 Jun 2021, <https://www.thestandard.com.hk/section-news/section/11/231135/Rights-chief-throws-support-behind-staging-of-Gay-Games>

⁶⁴ *ibid*

⁶⁵ Human Rights Committee, *Concluding observations on the fourth periodic report of Hong Kong, China*, 11 Nov 2022, [CCPR/C/CHN-HKG/CO/4](#), [10]

GENDER RECOGNITION OF TRANSGENDER PERSONS

46. Despite setting up an inter-departmental working group on gender recognition in 2014, no progress has been made by the Hong Kong government towards drafting a gender-recognition law and transgender persons continue to be required to undergo surgery in order to have their gender marker changed in their identity documents.

Recommendations

47. The Hong Kong government should develop a legal institution, such as registered partnership to recognize same-sex couples, and ensure same-sex couples, including those married abroad, are entitled to the same rights and protection as heterosexual couples.

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

49. The Hong Kong government should facilitate demonstration and ensure that the right to hold LGBT+ event is protected, and the pandemic regulation put on those events should be proportional.

ITEM 10 AND 19: DOMESTIC VIOLENCE AND SEXUAL VIOLENCE

(Gov reply [52])

50. According to the data provided by a number of social welfare service providers, during the COVID-19 pandemic, 25% increase in domestic violence cases and 30% rise of sexual violence cases called for help have been recorded. They publicly call for government's support in light of the unexpectedly high figures.⁶⁶ An increased stress levels, the fact of being forced to spend prolonged periods with their perpetrators, and limited access to support services all contribute to the increased vulnerabilities victims face during COVID pandemic. Studies have shown the loss of employment or financial stability would also contribute to greater likelihood of abusers murdering their partners or others.⁶⁷

51. In a study published in March 2022 conducted by the Hong Kong Women's Coalition on Equal Opportunities, which interviewed 1,044 random female respondents between May and December 2021 (i.e. during the COVID pandemic)⁶⁸, almost 40% of the respondents said they had experienced some form of sexual violence, including discussion of sexual topics that caused discomfort and non-penetrative sexual assault, as well as unwanted sexual attention.⁶⁹ The number of requests for help received involving intimate partner violence has also increased by around 10% under the COVID pandemic.⁷⁰

⁶⁶ https://twfhk.org/sites/default/files/joint_statement_apr_chi_final.pdf

⁶⁷ <https://www.twfhk.org/blog/domestic-violence-epidemic-amid-covid-19>

⁶⁸ "Two-fifths of Hong Kong women have experienced sexual violence, quarter report domestic abuse in worsening trend, survey finds", South China Morning Post, 7 Mar 2022, <https://www.scmp.com/news/hong-kong/society/article/3169569/two-fifths-hong-kong-women-have-experienced-sexual-violence>

⁶⁹ "Study finds almost 40% of Hong Kong women have experienced sexual abuse, as NGOs urge more gov't support", *Hong Kong Free Press*, 8 March 2022, <https://hongkongfp.com/2022/03/08/study-finds-almost-40-of-hong-kong-women-have-experienced-sexual-abuse-as-ngos-urge-more-govt-support/>

⁷⁰ *ibid*

Recommendations

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

ITEM 11: RIGHT TO WORK

(Gov reply [57]-[58])

53. The Hong Kong government has adopted measures that affect the right to work and shaken the conditions safeguarding fundamental political and economic freedoms to the individual.

MANDATORY COVID VACCINATION FOR ACCESSING WORKPLACE

54. During the pandemic, the government introduced the requirement that anyone entering any government premise must be fully-vaccinated, including government employees who work there.⁷¹ Non-vaccinated employees who could not enter could be deemed as absent from work, and could risk being dismissed.⁷² The practice of the Hong Kong government as the largest employer in Hong Kong may have a leading effect on other employers to unnecessarily and disproportionately restrict unvaccinated employees' right to work.

55. Individuals who are medically unfit for vaccination can obtain an exemption certificate from doctors. However, a patients welfare group said many doctors are reluctant to issue such certificate despite genuine conditions, especially after the government accused and arrested a number of doctors for handing out exemptions without conducting proper medical consultation, constituting the offence of producing false documents, and voided over 20,000 vaccination exemption certificates issued by them.⁷³ Around 370 unvaccinated government employees who relied on these allegedly fake certificates were therefore prohibited from working in government offices.⁷⁴ The court later ruled that the government's decision was unlawful since there was no legislation conferring such power on the government. But the government immediately amended the by-legislation and conferred a new voiding power on itself.⁷⁵

⁷¹ "Covid-19: Mandatory tests for Hong Kong's unvaccinated civil servants, union chief slams 'rushed decision'", *Hong Kong Free Press*, 2 Aug 2021, <https://hongkongfp.com/2021/08/02/covid-19-mandatory-tests-for-hong-kongs-unvaccinated-civil-servants-union-chief-slams-rushed-decision/>

⁷² "公務員 2.16 起未打針禁上班 或被視為「曠工」面臨紀律處分", *inmediahk.net*, 20 Jan 2022, <https://www.inmediahk.net/node/%E6%94%BF%E7%B6%93%E5%85%AC%E5%8B%99%E5%93%A1216%E8%B5%B7%E6%9C%AA%E6%89%93%E9%87%9D%E7%A6%81%E4%B8%8A%E7%8F%AD%E6%88%96%E8%A2%AB%E8%A6%96%E7%82%BA%E3%80%8C%E6%9B%A0%E5%B7%A5%E3%80%8D%E9%9D%A2%E8%87%A8%E7%B4%80%E5%BE%8B%E8%99%95%E5%88%86>

⁷³ "新冠疫苗 | 有醫生憂法律後果拒評估發「免針紙」 林志紉批「見死不救」", *Sky Post*, 9 Nov 2022, <https://skypost.ulifestyle.com.hk/article/3394896/>

"Hong Kong amends Covid-19 law to allow invalidation of job exemptions, days after losing court case", *Hong Kong Free Press*, 25 Oct 2022, <https://hongkongfp.com/2022/10/25/breaking-hong-kong-amends-covid-19-law-to-allow-invalidation-of-job-exemptions-days-after-losing-court-case/>

⁷⁴ "Coronavirus: 370 Hong Kong government workers suspected of using fake vaccination exemptions from arrested doctors, as city logs 3,907 infections", *South China Morning Post*, 1 Oct 2022, <https://www.scmp.com/news/hong-kong/politics/article/3194502/coronavirus-370-hong-kong-government-workers-suspected>

⁷⁵ "Hong Kong amends Covid-19 law to allow invalidation of job exemptions, days after losing court case", *Hong Kong Free Press*, 25 Oct 2022, <https://hongkongfp.com/2022/10/25/breaking-hong-kong-amends-covid-19-law-to-allow-invalidation-of-job-exemptions-days-after-losing-court-case/>

DISCRIMINATION AGAINST POLITICAL OPINION

Oath-taking requirement

56. The ICESCR prohibits any discrimination in access to and maintenance of employment on the grounds of political opinion or political status.⁷⁶ The government's mandatory requirement of civil servants and government employees to take oaths of allegiance after the imposition of the NSL may contravene the Covenant.⁷⁷

57. It is submitted that the oath taking requirement can potentially provide for a basis to dismiss civil servants arbitrarily or based on their political opinion. According to the government, civil servants who fail to return the signed declaration pledging allegiance could be dismissed.⁷⁸ It is reported that by June 2022 showed that a total of 129 civil servants and 535 other government workers resigned or were sacked after failing to take the oath.⁷⁹

58. A large number of elected representatives were removed from their seats after the authority deemed them not having taken the oath sincerely. The decisions were made based on the individuals' past conduct, speech, affiliations etc. Such practice is criticised of effectively imposing political screening of elected representatives. Since the same could be done for civil servants who take the oath, the oath-taking arrangement arguably provides for dismissal based on political opinion.

59. The government is considering to extend the oath requirement to employees of other independent organisations funded by public funds, including key post-holders in statutory bodies (such as the Hospital Authority which manages all public hospitals)⁸⁰, teachers of non-government schools⁸¹ and board members of the Social Workers Registration Board (which manages the registration criteria of social workers).⁸² One must also note that the current requirement is also applicable to government employees holding foreign nationalities.⁸³

⁷⁶ Committee on Economic, Social and Cultural Rights, *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, 6 February 2006, E/C.12/GC/18, [12(b)(i)] and [22]

⁷⁷ The oath can be found at <https://www.csb.gov.hk/english/admin/oath-serving/2769.html>; "Hong Kong civil servants given four weeks to sign declaration of allegiance or face possible dismissal", *Hong Kong Free Press*, 16 Jan 2021, <https://hongkongfp.com/2021/01/16/hong-kong-civil-servants-given-four-weeks-to-sign-declaration-of-allegiance-or-face-possible-dismissal/>

⁷⁸ "Civil service pledge set", *news.gov.hk*, 15 Jan 2021,

https://www.news.gov.hk/eng/2021/01/20210115/20210115_151151_703.html

⁷⁹ "Number of people resigning from Hong Kong government jobs doubles from previous year", *Hong Kong Free Press*, 29 July 2022, <https://hongkongfp.com/2022/07/29/number-of-people-resigning-from-hong-kong-government-jobs-doubles-from-previous-year/>

⁸⁰ "Public utility execs may have to take oaths: govt", *RTHK News*, 29 Oct 2022,

<https://news.rthk.hk/rthk/en/component/k2/1673234-20221029.htm>

"曾國衛：法定團體及公共事務要職人士或需宣誓", *Headline Daily*, 29 Oct 2022,

<https://hd.stheadline.com/news/realtime/hk/2382489>

⁸¹ "楊潤雄指仍在考慮是否要求非官校教師宣誓", *Now News*, 8 Feb 2022,

<https://news.now.com/home/local/player?newsId=465793>

⁸² "研修例要求社工註冊局成員需宣誓 羅致光：行使公權便屬公職人員", *HK01*, 21 Nov 2021,

<https://www.hk01.com/社會新聞/703221>

⁸³ Being a part of the civil service personnel, government schoolteachers have already been compelled to take oaths. A surprising development is that native English teachers working in government schools, who usually have hold foreign nationalities and are not Chinese citizens, must pledge allegiance to the Hong Kong

Denying visas

60. Refusal to renew or approve work visas of foreigners whose political opinions were not welcomed by the Chinese or Hong Kong government. Significant cases are listed as follows:

(1) In December 2022, the Hong Kong Immigration Department withheld the UK barrister Timothy Owen KC's application for a work visa extension to represent the pro-democracy media tycoon Jimmy Lai in his NSL trial, after the apex court of Hong Kong held that Owen KC was allowed to be Lai's counsel.⁸⁴ The government's decision does not only violate Owen KC's right to work, but also infringes the constitutional right to free choice of lawyers.

(2) Overseas scholars concerning Hong Kong's development were also banned from working in Hong Kong. In February 2022, Professor Ryan Thoreson, a researcher in Human Rights Watch that is sanctioned by China, and then hired by the law school of the University of Hong Kong, told the press that he was denied visa to teach in Hong Kong.⁸⁵

(3) Journalists are also the victims of the refusal of work visas. In October 2018, the Hong Kong government denied the visa renewal application of Victor Mallet, the Financial Times' Asia News Editor and vice-president of the Foreign Correspondents' Club in Hong Kong ("FCC"). Although no reasons were given, it was believed that the refusal served as a punishment because Mallet chaired a talk by pro-independence activist Andy Chan at the FCC in August 2018 despite repeated warnings by the Chinese and Hong Kong governments.⁸⁶

(4) In July 2020, after the enactment of the NSL, the New York Times announced that it would shift a third of its workforce in Hong Kong to South Korea after their veteran correspondent Chris Buckley was denied a visa. This incident came during a tit-for-tat dispute between the US and China over visa issuance.⁸⁷

(5) In August 2020, Hong Kong Free Press ("HKFP"), an independent and liberal English media outlet, was denied a work visa for an established journalist Aaron Mc Nicholas following an almost six-month wait. Neither the applicant himself nor HKFP has been denied a visa before. The

government and Basic Law as well. See "官校外籍英師須書面宣誓", *Headline Daily*, 13 June 2022,

<https://std.stheadline.com/daily/article/2468807>

⁸⁴ "Media tycoon Jimmy Lai's trial adjourned to Dec 13, Hong Kong Immigration withholds visa extension for his lawyer", *Hong Kong Free Press*, 1 Dec 2022, <https://hongkongfp.com/2022/12/01/media-tycoon-jimmy-lais-trial-adjourned-to-dec-13-hong-kong-immigration-withholds-visa-extension-for-his-lawyer/>

"黎案辯方：入境處擱置英御狀簽證申請 律政司：釋法不僅限制來港 亦涉任何形式參與國安案件", *Ming Pao*, 2 Dec 2022,

<https://news.mingpao.com/pns/%E6%B8%AF%E8%81%9E/article/20221202/s00002/1669919536112>

⁸⁵ "US human rights law scholar says Hong Kong gov't denied him visa to teach at HKU", *Hong Kong Free Press*, 2 February 2022, <https://hongkongfp.com/2022/02/02/us-human-rights-law-scholar-says-hong-kong-govt-denied-him-visa-to-teach-at-hku%E7%BB%9C%E7%BB%9C/>

⁸⁶ "Hong Kong rejects visa renewal for foreign press club vice-pres. who chaired independence talk", *Hong Kong Free Press*, 5 Oct 2018, <https://hongkongfp.com/2018/10/05/hong-kong-refuses-visa-renewal-foreign-press-club-vice-pres-chaired-independence-talk/>

⁸⁷ "New York Times to move a third of Hong Kong staff to Seoul, citing security law and visa trouble", *Hong Kong Free Press*, 15 Jul 2020, <https://hongkongfp.com/2020/07/15/new-york-times-to-move-a-third-of-hong-kong-staff-to-seoul-citing-security-law-and-visa-trouble/>

Immigration Department refused to provide any reason, raising further concerns for the business community and the city's press freedom in light of the new security law.⁸⁸

(6) In November 2021, the Economist said that their correspondent, Sue-Lin Wong, was denied a visa renewal by the Hong Kong government without explanation.⁸⁹ The then Chief Executive Carrie Lam refused to explain the denial but only claimed that any government has discretion on the issuing of visas.⁹⁰

ITEM 12: TRAFFICKING IN PERSONS AND MODERN SLAVERY

(Gov reply [59]-[60])

61. There are two major development since the issuance of the LOI which reflect the insufficiency of the legislative and policy framework of the Hong Kong Government in combatting human trafficking:

A NEW JUDICIAL DECISION CALLING FOR LEGISLATION - *CB v COMMISSIONER OF POLICE*

62. Contrary to the Government's reply paragraph 59-60, the Hong Kong Court of First Instance held in 2022 in *CB v Commissioner of Police* that:

- (1) law enforcement officers lack sufficient understanding of human trafficking; and
- (2) there should be bespoke legislation criminalising forced labour.⁹¹

63. The case is a judicial review brought by a female migrant domestic worker who suffered sexual exploitation by her then employer. She reported the case to the police in December 2019, also identifying other possible victims, including other migrant domestic workers employed by the perpetrator. While the police investigation led to the conviction of the employer on two charges of indecent assault,⁹² the police prematurely curtailed the investigations into trafficking in person and forced labour offences. The judge ordered the Commissioner of Police to re-consider whether CB was a victim of TIP and/or forced labour, and made a declaration that "the failures as regards the investigation as to whether CB was a victim of TIP and/or forced labour in this case were causally connected to the absence of specific legislation criminalising forced labour."⁹³

⁸⁸ "Visas 'weaponised': Gov't denies Hong Kong Free Press editor a work visa, without explanation, after 6-month wait", *Hong Kong Free Press*, 27 Aug 2020, <https://hongkongfp.com/2020/08/27/visas-weaponised-govt-denies-hong-kong-free-press-editor-a-work-visa-without-explanation-after-6-month-wait/>

⁸⁹ "Hong Kong's Carrie Lam refuses to explain Economist journalist's visa denial, says HK is an 'int'l city'", *Hong Kong Free Press*, 16 Nov 2021, <https://hongkongfp.com/2021/11/16/hong-kongs-carrie-lam-refuses-to-explain-economist-journalists-visa-denial-says-hk-is-an-intl-city/>

⁹⁰ *ibid*

⁹¹ *CB v Commissioner of Police* [2022] HKCFI 1046, available at https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=143688

⁹² Z is identified in the criminal case as Brian Dew Apthorp. He was convicted of two counts of indecent assault at the Eastern Magistrate's Court and was sentenced to 30 months of imprisonment. (Case number: ESCC 2267/2020). Brian Drew Apthorp later successfully applied for appeal against conviction because he did not have a lawyer during the first two days of the trial, and cross-examined the victim himself; when he obtained a lawyer, the magistrate did not let the lawyer re-call the victim for cross examination again. The judge hearing the appeal application thus found the conviction unsafe. The case is to be re-tried at the magistrate's court. (*HKSAR v Arthorp Brian Drew* [2022] HKCFI 1102, available at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=143835&QS=%2B&TP=JU

⁹³ *CB v Commissioner of Police* [2022] HKCFI 1046, [270]

64. It must be noted that CB reported the sexual abuses to Police in December 2019, and gave three witness statements from December 2019 to March 2020, i.e. well after the HKSARG's Steering Committee chaired by the Chief Secretary for Administration was established in March 2018, and all initiatives in the Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong were allegedly firmly in place, as the HKSARG stated in paragraph 59 of their Reply to the LOI.

HONG KONG RESIDENTS TRAFFICKED TO SOUTHEAST ASIA

65. Hundreds of people, including Hongkongers, Taiwanese and Malaysians, have been duped into working for Cambodia-based fraud rings through false promises of high-paying jobs or romance in 2022. They are held against their will in countries such as Cambodia, Thailand, Myanmar and Laos, and put into forced labour. Some were reportedly tortured, sexually assaulted and threatened with organ harvesting. It is reported that at least 38 victims are from Hong Kong.⁹⁴

66. The Hong Kong Police has arrested at least seven people alleged to be a syndicate luring Hong Kong residents to Southeast Asia for forced labour on the charge of conspiracy to defraud. Only three of them have been prosecuted so far. According to report, they are provisionally charged with conspiracy to defraud, and are accused of duping a victim by falsely claiming the victim would receive 1,000,000 baht (US\$27,878) in Thailand, and later imprisoning him in Myanmar; and also swindling the victim's sister out of HK\$35,530 (US4,555).⁹⁵

67. The offence of conspiracy to defraud, which carries a maximum sentence of 14 years, only covers some aspects of the actual crime of human trafficking. It is also questionable as to why only three of the seven people arrested in relation to the syndicate have been prosecuted after almost 6 months of the arrests.

68. The only specific offence on human trafficking in Hong Kong is section 129 of the Crimes Ordinance. It applies only to trafficking a person for the purpose of prostitution. It does not apply to this case.

69. Development in 2022 shows that with the economic downturn, Hong Kong people have become more susceptible to falling victim of human trafficking with the false promises of high-paying jobs. The Hong Kong government's claim in public statements that "trafficking in persons is never a prevalent problem in Hong Kong and there has never been any sign that the city is being actively used by syndicates as a destination or transit point for TIP" is failing its obligations under the Covenant.

⁹⁴ "At least 38 Hong Kong victims in growing human-trafficking trend, with seventh suspect arrested over job scams luring people to Southeast Asia", *South China Morning Post*, 23 Aug 2022, <https://www.scmp.com/news/hong-kong/law-and-crime/article/3189841/least-38-hong-kong-victims-growing-human-trafficking>

⁹⁵ "「賣豬仔」案再起訴兩人 累計三人被控串謀欺詐 還押 10.17 訊", *The Witness*, 23 Aug 2022, <https://thewitnesshk.com/%E8%B3%A3%E8%B1%AC%E4%BB%94%E6%A1%88%E5%86%8D%E8%B5%B7%E8%A8%B4%E5%85%A9%E4%BA%BA-%E7%B4%AF%E8%A8%88%E4%B8%89%E4%BA%BA%E8%A2%AB%E6%8E%A7%E4%B8%B2%E8%AC%80%E6%AC%BA%E8%A9%90-%E9%82%84%E6%8A%BC%E5%86%8D/>; "8 Hongkongers missing in Myanmar as city sets up taskforce to investigate alleged Southeast Asia job scam", *Hong Kong Free Press*, 18 Aug 2022, <https://hongkongfp.com/2022/08/18/8-hongkongers-missing-in-myanmar-as-city-sets-up-taskforce-to-investigate-southeast-asia-job-scam-trafficking/>

70. Please also refer to para 34 on Chinese Government accusing a US trafficking in persons report as interference in Hong Kong affairs, potentially constituting NSL offence. It has implications on any Hong Kong human rights defenders who contribute to international efforts in monitoring and combatting trafficking in persons in Hong Kong.

ITEM 16: TRADE UNIONS

(Gov reply [80]-[87])

DISSOLUTION OF LEADING TRADE UNIONS DUE TO POLITICAL PRESSURE

71. The most impactful in the reporting period is the deregistration of at least 1 trade union and the dissolution of at least 62 trade unions, including two major and leading trade unions **the Hong Kong Professional Teachers' Union** and the **Hong Kong Confederation of Trade Unions**, due to political pressure.⁹⁶ Please refer to para 21-22 for their background and incidents leading to their dissolutions.

72. In addition to the chilling effect the dissolutions of the leading trade unions have on smaller organisations, many trade unions that relied on them for support could no longer function fully. (see example in para 98)

DEBUNKING GOVERNMENT CLAIM THAT THERE ARE MORE TRADE UNIONS NOW

73. A government official claimed that the number of registered trade unions increased from 917 in 2019 to 1455 in November 2022, proving that Hong Kong people's right to freedom of association is duly protected.⁹⁷ However, according to the Registry of Trade Unions of the Labour Department's Annual Statistical Report of Trade Unions in Hong Kong 2021, the number of declared membership and trade union participation rate did fall for two consecutive years (2020-2021) with a decrease of 34,539 memberships, suggesting a significant setback in the right to freely join a trade union of one's choice.⁹⁸

74. While there is no further information on why the statistics on participation has dropped, perhaps it can be read together with the case of the Hospital Authority Employees Alliance ("HAEA"). A member of the board of directors of the HAEA revealed in an interview that its membership shrunk from the peak of 20,000 to 700, and only 2 members on the board, before its dissolution. She attributed the drastic decrease in members to the promulgation of the National Security Law, and the arrest of its founder and chairwoman, Ms. Winnie Yu Wai-ming, for her participation in the primary election in 2020, which the Government accused of being a conspiracy of subversion.⁹⁹

⁹⁶ “報告：國安法下香港 62 工會被迫解散 勞資抗爭以新方法持續”, *Voice of America*, 30 June 2022, <https://www.voacantonese.com/a/kc-62-hong-kong-labor-unions-forced-to-fold-under-national-security-law-as-new-ways-of-rights-protests-emerge-report-20220630-ry/6638498.html>

⁹⁷ Speech by the Under Secretary for Labour and Welfare of Hong Kong Mr. Ho Kai-ming, 10 December 2022, available at <https://www.info.gov.hk/gia/general/202212/10/P2022121000432.htm>

⁹⁸ The Report for 2021 recorded 1472 registered trade unions, comparable to the data shared by the government official of 1455 in November 2022. Labour Department, Registry of Trade Union, *Annual Statistical Report of Trade Unions in Hong Kong 2021*, September 2022, available at <https://www.labour.gov.hk/tc/public/pdf/rtu/ASR2021.pdf>

⁹⁹ Wong Hong-leung, “The final chapter of the Hospital Authority Employees Alliance”, *The Initium*, 28 July 2022, available at <https://theinitium.com/article/20220728-hongkong-haea-the-last-officer/>

75. Furthermore, Labour Department’s report shows that 63 trade unions were removed from the Register in 2021 (including dissolution, cancellation of registration at their request and for reason of contravention of the Trade Unions Ordinance). The breakdown of such number is not transparent. Another report based on data from the Labour Department shows that from 2021 to June 2022, 120 trade unions applied to cancel their registration, comparing to only 6 applications received in 2019-2020. The report found that of those 120 trade unions, 101 were formed after June 2019.¹⁰⁰

GOVERNMENT ACQUIESCES EMPLOYER’S SUSPECTED REPRISAL AGAINST UNION MEMBERS

76. During the protests in 2019, the Civil Aviation Authority of China issued a directive that called for the suspension of staff who supported or participated in the demonstrations. The regulator rejected some entire crew lists without explanation.¹⁰¹ Following this, Airlines Cathay Pacific and Cathay Dragon sacked or forced dozens of staff to resign, including chair of Cathay Dragon’s flight attendant union Rebecca Sy after she allegedly posted messages of support for Hong Kong protesters in the 2019 movement on Facebook. Despite widespread report of these cases, the Government, including the Labour Department, has failed to take any action or denounce such dismissals.

FORMER CHIEF EXECUTIVE AND STATE LEADER OPENLY CRITICISED A UNION’S ACTION

77. Despite the stiffening atmosphere, the 3000-strong Cathay Pacific Airways Flight Attendants Union continues to function. In December 2022, the union sent a letter to Cathay Pacific CEO saying that the airline had introduced “inhumane flight patterns, perpetual manpower cut, additional workload and allowance cut” in return for the cabin crew’s “solidarity” with the company during its struggle under the Covid-19 pandemic. They demanded sufficient layovers between flights and revise existing salary contracts. Later, a union leader said it had received unanimous backing from its members to take action in protest of what it saw as the company’s disregard of employees’ wellbeing.

78. Former Chief Executive of Hong Kong and current vice-chairman of the National Committee of the Chinese People’s Political Consultative Conference (understood to be a state leader) CY Leung publicly criticised the Union’s action, and named the Union’s vice chair-woman, which is a significant act of intimidation under the current political atmosphere in Hong Kong. Leung wrote that the Union’s threat of a strike is inconsiderate of the “big picture”, and would harm Hong Kong’s competitiveness.¹⁰²

PRO-GOVERNMENT NEWSPAPER CALLED CATHAY PACIFIC UNION’S ACTION A COLLUSION WITH FOREIGN ELEMENTS

79. On top of criticism from CY Leung, the Cathay Pacific Airways Flight Attendants Union also received attacks from pro-government newspaper. One prominent pro-government newspaper, Singtao Daily, even wrote that the Union is colluding with foreign anti-China elements to tank Hong Kong’s

¹⁰⁰ “兩年 377 新工會 勞聯最少涉 57 有前工盟屬會加入 勞聯求突破稱「打開門做生意」” Mingpao Daily, 1 August 2022, http://www.mingpaocanada.com/tor/htm/News/20220801/HK-gaa1_r.htm

¹⁰¹ “As protests rack Hong Kong, China watchdog has Cathay staff 'walking on eggshells'”, *Reuters*, 03 October 2019, <https://www.reuters.com/article/us-hongkong-protests-cathay-pacific-insi-idUSKBN1WI0MA>

¹⁰² “國泰工會不排除發起罷工 梁振英批評要罷工是不顧全大局”, *Ming Pao*, 07 December 2022, <https://finance.mingpao.com/fin/instantf/20221207/1670403756806>

tourism which is beginning to revive.¹⁰³ Collusion with foreign elements to the detriment of Hong Kong can be accused of violation of the NSL article 29, a very serious offence.

RECENT DEVELOPMENT OF DOMESTIC LAWS HAMPERING THE EXERCISING OF THE RIGHTS GUARANTEED IN ARTICLE 8 OF THE COVENANT

New measure under the Trade Unions Ordinance introduced in Sep 2022 requiring all new unions to sign a declaration not to violate the NSL

80. On 16 September 2022, the Registrar of Trade Unions gazetted a notice prescribing a new form for the formation of a trade union. The new form contains a declaration that the union –

“will not perform or engage in any acts or activities that may endanger national security or otherwise be contrary to the interests of national security and/or are in contravention of the Trade Unions Ordinance (“TUO”), its subsidiary legislation and other relevant laws of Hong Kong”.¹⁰⁴

81. Violation of such undertaking can cause the registration to be void or cancelled. The signatory would also be guilty of an offence and shall be punished by a fine and imprisonment up to 3 months.¹⁰⁵

82. The Labour Department also reiterated that the Registrar of Trade Unions has duties pursuant to articles 9 and 10 of the NSL, and shall strengthen supervision and regulation over matters concerning national security. It also stated that the Registrar will carry out in-depth follow-up action of trade unions suspected of having activities inconsistent with TUO and their constitutions.¹⁰⁶ The Labour Department has created a new post of Chief Labour Officer dedicated to these national security duties.¹⁰⁷

Requests of Information based on the Trade Unions Ordinance and Societies Ordinance used to intimidate or punish groups

83. Most of the trade unions in Hong Kong are registered under the TUO; some are registered under the Societies Ordinance (“SO”). Both ordinances provide powers to the authorities to scrutinise organisations. Section 34 of the TUO provides:

“Except as permitted under sections 33A and 33B, the funds of a registered trade union shall not, whether in Hong Kong or elsewhere—
be applied either directly or indirectly for any *political purpose*; or
be paid or transferred to any person or body of persons in furtherance of any *political purpose*.” (emphasis added)

¹⁰³ “外部勢力搞歲晚政治騷 國泰工會蠢蠢欲動”, *Singtao Daily*, 04 January 2023,

<https://www.singtao.ca/6135521/>

¹⁰⁴ G.N. 5158, 16 September 2022, available at

<https://www.gld.gov.hk/egazette/pdf/20222637/egn202226375158.pdf>

¹⁰⁵ Trade Unions Ordinance (Cap 332), section 58. Available at <https://www.elegislation.gov.hk/hk/cap332>

¹⁰⁶ Manpower Panel, LegCo. 19/04/2022. “Administration’s paper on creation of one additional supernumerary post of Chief Labour Officer (D1) in the Labour Department to head the Registry of Trade Unions”.

CB(2)215/2022(4). Retrieved from

<https://www.legco.gov.hk/yr2022/english/panels/mp/papers/mp20220419cb2-215-4-e.pdf>

¹⁰⁷ Ibid.

84. If a trade union is found by the Union Registrar to have used for a political purpose, or for purposes inconsistent with its objects or rules in breach of the ordinance, its registration could be cancelled in accordance with s.10(1)(b). But the meaning of ‘political’ is not statutorily defined. The ambiguity of this crucial criteria becomes the tool to control dissident unions and undermine the right protected under article 8 of the Covenant.

85. Section 15(1) of the SO provides:

“The Societies Officer may, at any time, by notice in writing served on any society require the society to furnish him in writing with such information as he may reasonably require for the performance of his functions under this Ordinance.”

86. These powers were rarely used in the past. Since 2021, the authorities have been actively using these powers to request organisations to provide information of their funding source, partners, and activities. Some of the leadership were arrested and charged for refusing to provide the information. Many of the organisations who received requests of information from the authorities felt intimidated, as they legitimately feared the authorities is building a case against them, especially groups with international ties. Some disbanded soon after.

87. Examples:

(1) HAEA, a pro-democracy hospital workers union founded in late 2019, had once organised strike to urge the government for a full border closure with mainland China following the first outbreak of the COVID-19 in February 2020.¹⁰⁸ A year later, its chairwoman Winnie Yu was arrested for having participated in the 2020 HK pro-democracy primary election for the Legislative Council election and was later charged for the offence of subversion under the NSL.¹⁰⁹ In early September 2021, pursuant to s.34 of the TUO, the Registry of Trade Unions demanded HAEA to submit information on 8 events it held, suspecting that the union has used its funds for political purposes and thus violated the law. Those events under investigation include the strike held in January 2020, Winnie Yu’s participation in the primaries, the union’s social media posts on Covid-19 vaccines, a film screening etc.¹¹⁰

(2) In July 2021, leaders of the General Union of Hong Kong Speech Therapist were charged and remanded in custody for committing the offence of “conspiring to publish seditious publications” under section 10 of the Crimes Ordinance.¹¹¹ The publications in question were three children’s

¹⁰⁸ “‘We have no choice’: Hong Kong medical workers agree strike over mainland border closures”, *Hong Kong Free Press*, 2 February 2020, <https://hongkongfp.com/2020/02/02/no-choice-hong-kong-medical-workers-agree-strike-mainland-border-closures/>

¹⁰⁹ “Tears, fatigue and no-bathing gripes as bail marathon halted”, *The Standard*, 3 March 2021, <https://www.thestandard.com.hk/section-news/section/11/228024/Tears,-fatigue-and-no-bathing-gripes-as-bail-marathon-halted>

¹¹⁰ “Hong Kong Hospital Authority union denies gov’t allegation it broke law”, *Hong Kong Free Press*, 17 September 2021, <https://hongkongfp.com/2021/09/17/hong-kong-hospital-authority-union-denies-govt-allegation-it-broke-law/>

¹¹¹ “Hong Kong national security police explain why children’s picture books about sheep are seditious”, *Hong Kong Free Press*, 22 July 2021, <https://hongkongfp.com/2021/07/22/hong-kong-national-security-police-explain-why-childrens-picture-books-about-sheep-are-seditious/>

picture books based on the 2019 protests and the hospital workers' strike.¹¹² A month later, the authority decided to cancel the union's registration on the ground that the union is being used for purposes inconsistent with its objects or rules in breach of the ordinance.¹¹³ In October 2021, the union's registration was formally revoked.¹¹⁴

(3) Hong Kong White Collar (Administration and Clerical) Connect Union ("HKWCCU") received letters from the Registry of Trade Union in August 2022, required them to explain the trade union actions. For example, supported anti-extradition bill protest and strike in 2019, issued joint statement in March 2020 to request US State Secretary sanctioning HK official, the support of HAEA strike in favour of border closures in the early days of the pandemic in 2020, called on member to be volunteer of democratic primary election campaign, comment about COVID-19 and NSL, issued joint statement for urging international support to repeal NSL, set up street counters to against the Immigration (Amendment) Bill 2020 that empower the Secretary for Security to make regulations relating to persons on board carriers,¹¹⁵ and the street counters for June 4th vigil in 2019 and 2020. Both the activities were alleged offending s34. HKWCCU responded that their actions aimed at preserving a healthy social system, that are necessary to safeguard workers' rights.¹¹⁶

(4) HKJA, which is active to voice out for protecting journalists' rights and freedom of press, was required to provide their activities and membership documents. In mid-January 2022, the Registry of Trade Union issued a letter to HKJA, said that the Registry received a complaint about HKJA recruiting unqualified members. The Registry requested HKJA to respond, moreover, provide activities details such as the Taiwan Tour about Taiwan president election in 2020,¹¹⁷ and explain their Facebook post against the extradition bill.¹¹⁸ Both were alleged breach of the TUO.

(5) HKCTU is registered under the Societies Ordinance as a society. It disbanded in October 2021 due to sustained political pressure, and personal safety concern of its leadership should they continued to operate. In February 2022, months after the HKCTU announced the decision, the Police requested it to provide information regarding its operation and funding sources, citing section 15 of the Societies Ordinance, and that the HKCTU's registration on the societies registry was not

¹¹² "Hong Kong women who 'published seditious children's books about sheep' remanded in custody", *Hong Kong Free Press*, 23 July 2021, <https://hongkongfp.com/2021/07/23/hong-kong-women-who-published-seditious-childrens-books-about-sheep-remanded-in-custody/>

¹¹³ "Govt to revoke registration of speech therapists' union", *The Standard*, 20 August 2021, <https://www.thestandard.com.hk/breaking-news/section/4/179110/Govt-to-revoke-registration-of-speech-therapists'-union>

¹¹⁴ "The government gazetted the registration of the Hong Kong Speech Therapists General Union", *The Limited Time*, 22 October 2021, <https://newsrnd.com/news/2021-10-22-the-government-gazetted-the-registration-of-the-hong-kong-speech-therapists-general-union.SkyuDZxUK.html>

¹¹⁵ LegCo, *Immigration (Amendment) Bill 2020*, <https://www.legco.gov.hk/yr20-21/english/bills/b202012041.pdf>

¹¹⁶ "Hong Kong authorities grill union which held street stalls on Covid-19 and national security law", *Hong Kong Free Press*, 11 January 2022, <https://hongkongfp.com/2022/01/11/hong-kong-authorities-grill-union-which-held-street-stalls-on-covid-19-and-national-security-law/>

"職工會局問近兩年言行「白領工會」面臨取消登記", *MingPao Daily*, 17 September 2022, http://www.mingpaocanada.com/tor/htm/News/20220917/HK-gca2_r.htm

¹¹⁷ "記協收職工會登記局信件 要求解釋台灣大選觀戰", *HK01*, 26 June 2022, <https://www.hk01.com/article/785808>

¹¹⁸ "職工會局查記協 問活動詳情財政 被指收不合資格會員 陳朗昇：事無不可對人言", *Ming Pao*, 22 January 2022, <https://news.mingpao.com/pns/%E6%B8%AF%E8%81%9E/article/20220122/s00002/1642790382027>

cancelled yet. HKCTU's former leadership did not turn over the information requested. In March, its office was searched because of the failure to comply with section 15 of the Societies Ordinance, and the suspicion that the HKCTU received financial support from overseas. Its ex-leaders were taken by the national security police for investigation and were ordered to surrender their passports upon bail. 3 arrested ex-leaders were convicted by sections 15(1) "Information to be furnished by societies" and 16(2) "Persons responsible for supplying information", fined HKD 8,000 each.¹¹⁹

Use of the Prevention and Control of Disease Ordinance to suppress union activities

88. Since the pandemic in early 2020, the Government promulgated the Prevention and Control of Disease (Prohibition on Gathering) Regulation (Cap. 599G) to prohibit any group gathering of size more than 2 to 50 people (change intermittently).

89. HKJA applied to the police for holding a protest in November 2020 over the arrest of a reporter. Police rejected the application, but the Appeal Board on Public Meetings and Processions reached a conditional decision in favour of the HKJA, the public meeting could be held provided the Chief Secretary gave his approval, citing the chief secretary can make conditional exceptions in accordance with the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation, for an event serves the public interest. However, the Chief Secretary rejected the application.¹²⁰

90. On 1 May 2020, 8 activists from the Labour Party and the LSD were issued fixed penalty notices after protesting in two groups outside the government headquarters for unemployment aid. They were prosecuted after refusing to pay the fixed fine, arguing that they did not violate the ban as they divided into two groups and kept 1.5 meters distance from one another during the protest. However, the judge said even though they kept social distance during the protest, they still had a "common purpose" for the gathering, so they had violated the group gathering ban. As a result, the 8 activists were given suspended jail sentence for two weeks.¹²¹

¹¹⁹ "消息：警方按社團條例要求職工盟提交組織運作、收支等資料", *HK01*, 31 March 2022,

<https://www.hk01.com/article/736865>

"Hong Kong national security police quiz ex-leaders of disbanded pro-democracy union – reports", *Hong Kong Free Press*, 31 March 2022, <https://hongkongfp.com/2022/03/31/hong-kong-national-security-police-quiz-ex-leaders-of-disbanded-pro-democracy-union-reports/>

"已解散職工盟被指無按例交資料 三人認罪各罰款 8 千元 鄧建華：良心驅使、人不能夠捲曲如蛆蟲", *Inmediahk.net*, 01 November 2022,

<https://www.inmediahk.net/node/%E7%A4%BE%E9%81%8B/%E5%B7%B2%E8%A7%A3%E6%95%A3%E8%81%B7%E5%B7%A5%E7%9B%9F%E8%A2%AB%E6%8C%87%E7%84%A1%E6%8C%89%E4%BE%8B%E4%BA%A4%E8%B3%87%E6%96%99-%E4%B8%89%E4%BA%BA%E8%AA%8D%E7%BD%AA%E5%90%84%E7%BD%B0%E6%AC%BE%E5%8D%83%E5%85%83-%E9%84%A7%E5%BB%BA%E8%8F%AF%EF%BC%9A%E8%89%AF%E5%BF%83%E9%A9%85%E4%BD%BF%E3%80%81%E4%BA%BA%E4%B8%8D%E8%83%BD%E5%A4%A0%E6%8D%B2%E6%9B%B2%E5%A6%82%E8%9B%86%E8%9F%B2>

¹²⁰ "Hong Kong's No 2 official rejects application by journalists' groups to hold rally, saying coronavirus situation remains severe", *South China Morning Post*, 13 November 2020, <https://www.scmp.com/news/hong-kong/politics/article/3109814/fate-protest-hong-kong-journalists-groups-hangs-approval>

¹²¹ "Coronavirus: eight Hong Kong opposition activists get suspended jail sentences over breach of ban on public gathering", *South China Morning Post*, 10 March 2021, <https://www.scmp.com/news/hong-kong/law-and-crime/article/3124913/coronavirus-eight-hong-kong-opposition-activists-get>

91. Also, HKCTU affiliated, Construction Site Worker General Union, had been convicted by Cap. 599G while they were distributing epidemic prevention materials, recruit members, and press interview at street counter.¹²² Two activists pleaded guilty were fined HKD4,000, others are pending for hearing after mid-February 2023.

Use of the Public Order Ordinance to suppress union activities

92. Public Order Ordinance (“POO”) imposes a de facto authorisation system for having a peaceful assembly in the name of a notification regime. Paragraph 85 of the Government Reply to LOI claims that “the CFA has held that the statutory requirement for notification under [the POO] is constitutional”. The CFA decision was made in 2005 with very different context as of now. In the past, the Police would issue a notice of no objection for most assemblies; and organising or participating in assemblies without the notice of no objection, i.e. unauthorised assemblies, would not result in custodial sentences. However, in recent years, the Police denied multiple permissions to hold demonstrations, and arrested and prosecuted organisers and participants of such demonstrations, even without proving that they have violent conduct. The prosecution also pursues heavier prison sentence.

93. The HRCttee has consistently held the POO’s restrictions on the right to freedom of assembly inconsistent with the ICCPR.

94. In October 2021, workers for food delivery platform Foodpanda went on strike in Hong Kong over cuts to their income. On 16 November 2021, a negotiation was held between the employer and representatives of the workers. Some workers (30-50 people) gathered peacefully downstairs of the meeting place to support their representatives. It is reported that more than 50 police officers were on site. The police raised a flag warning that “this meeting is in breach of the law. Disperse or we may use force”, accused it an unlawful assembly, and took down information of some of the workers. The police also broadcasted announcement that the gathering violated the Prevention and Control of Disease Ordinance, which can be punished by a fine or imprisonment.¹²³ Granted, no arrestment was made on site, and there is no public information on whether there was any follow-up action by the Police afterward. Nevertheless, such handling of an attempt of collective bargaining is intimidating, especially given the worsened political situation after the promulgation of the NSL.

ITEM 17: COLLECTIVE BARGAINING

(Gov reply [88]-[89])

HONG KONG GOVERNMENT REPEALED A LAW PROTECTING COLLECTIVE BARGAINING IN 1997

95. The “Employee's Rights to Representation, Consultation and Collective Bargaining Ordinance” was passed on 30 June 1997 in Hong Kong, right before the transfer of sovereignty of Hong Kong from

¹²² “工會涉違限聚令擺街站派防疫物資 2 人認罪罰款 4 人押明年 2 月再訊”, *Singtao Daily*, 15 November 2022, <https://hd.stheadline.com/news/realtime/hk/2386202>

¹²³ “Foodpanda 與員工代表談判 警驅散聲援者兼抄身份證、警告違「限聚令」”, *Inmediahk.net*, 16 November 2021, <https://www.inmediahk.net/node/%E7%A4%BE%E9%81%8B/foodpanda-%E8%88%87%E5%93%A1%E5%B7%A5%E4%BB%A3%E8%A1%A8%E8%AB%87%E5%88%A4-%E8%AD%A6%E9%A9%85%E6%95%A3%E8%81%B2%E6%8F%B4%E8%80%85%E5%85%BC%E6%8A%84%E8%BA%AB%E4%BB%BD%E8%AD%89%E3%80%81%E8%AD%A6%E5%91%8A%E9%81%95%E3%80%8C%E9%99%90%E8%81%9A%E4%BB%A4%E3%80%8D>

the UK to China, but was repealed soon afterward. Since then, the Government has not made any legislation for collective bargaining.

96. As seen from the Government's Reply to LOI at paragraphs 88-90, it does not support collective bargaining, and only believes in so-called "voluntary and direct negotiations between employers and employees or their respective organisations". As the right to collective bargaining is not legally protected, employers are not required to discuss important matters such as retrenchments with their workers or unions before going ahead to implement them.

EXAMPLES OF TRADE UNIONS EXCLUDED FROM NEGOTIATION

97. For example, Cathay Pacific, an airline and one of the largest companies in Hong Kong, used to be willing to meet its cabin crew and pilot unions to discuss everything from pay packages to rostering, with some negotiations becoming drawn out and contentious. However, in October 2020, Cathay Pacific announced to axe 5900 employees, and to shut down a sister airline Cathay Dragon amidst the pandemic, it did not consult the unions. In November 2020, the management further called union-led labour negotiations an "outdated practice" no longer relevant to the modern world.¹²⁴

98. The Bar Bending Industry Workers Solidarity Union, which was affiliated with the now-disbanded HKCTU, used to be invited to annual negotiation with the Hong Kong Bar-bending Contractors Association (representing the employers), alongside the pro-establishment union. After HKCTU was disbanded, they were not invited to the annual negotiation in 2022.¹²⁵ (Refer to para 22 for the dissolution of the HKCTU)

INSUFFICIENT REPRESENTATION IN THE LABOUR ADVISORY BOARD

99. Although the committee had asked in the previous review, all 5 seats of labour representation in the Labour Advisory Board ("LAB") are elected by block vote. It is lacking in representativeness.

100. In accordance with the Art.3 of ILO C144 Tripartite Consultation (International Labour Standard) Convention, "the representatives of employers and workers for the purposes of the procedures provided for in this Convention shall be freely chosen by their representative organisations".¹²⁶ However, in the LAB election, voting as a block means that the seats could not be chosen by their representative organizations.

101. Since there are more unions in pro-Beijing camp (which may not be functioning), trade unions not pro-Beijing would never be elected. It is alleged that representatives in the LAB would always

¹²⁴ "Unions in the dark: suddenness of Cathay's staff cuts sparks calls for collective bargaining law to protect Hong Kong workers" *South China Morning Post*, 4 December 2020, <https://www.scmp.com/news/hong-kong/hong-kong-economy/article/3112409/unions-dark-suddenness-cathays-staff-cuts-sparks>
"Cathay Pacific snubs union over pay talks and says it will contact staff directly, in move flight attendants' group calls 'greatest setback' in a decade" *South China Morning Post*, 27 November 2020, <https://www.scmp.com/news/hong-kong/transport/article/3111621/cathay-pacific-snubs-union-over-pay-talks-and-says-it-will>

¹²⁵ "工潮護工人權益 當年領袖今憂倒退 原職工盟屬會無獲邀談判 紮鐵商會：好似散咗?", *Ming Pao*, 22 August 2022,

<https://news.mingpao.com/pns/%E6%B8%AF%E8%81%9E/article/20220822/s00002/1661105770931>

¹²⁶ C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), International Labour Organization

compromise to the government rather than standing with workers' right. The electoral system encourages a camp to establish more unions for votes.

Recommendation

102. The government shall promulgate legislation to promote and protect the collective bargaining. Before the promulgation of new ordinance, LD should take active role to improve communication between corporates and trade unions.

103. Reform LAB electoral system to ensure broad representativeness of the labour representatives and compliance with ILO convention.

ITEM 19: PROTECTION OF THE FAMILY AND CHILDREN

IRREGULARITY AND DEGRADING TREATMENT AGAINST CHILDREN

104. Despite Article 10 of the ICESCR states special measures of protection and assistance should be taken on children and young persons, they are particularly vulnerable in facing law enforcement agency, especially during the time of political conflicts. It was reported that Police had apprehended a total of 10,279 people during the protests between 2019 and 2020. Among the arrestees, 1,754 were aged under 18. Of the 2,893 who have been prosecuted, 517 were aged under 18.¹²⁷

105. There were criticisms that the police commonly delayed request of arrestees to meet with their lawyers, and questioning arrestees without the presence of lawyers. In a court proceeding, it was revealed that police were alleged for questioning and taking statement with a 13 years old teenager in the absence of lawyer and his parents.¹²⁸ The teenager was charged for criminal damages and his lawyer made the complaint with the judge in court proceeding. According to the Police General Order, the Police should, when arresting a child or young person, take all reasonable procedures to inform his parents or guardian. The Police is also required to arrange an "appropriate adult", such as parents, to accompany the arrested child or young person at the police station when questioning him.¹²⁹ The police violated these special measures to protect children with impunity.

106. Furthermore, Hong Kong Social Workers' General Union made public a case of 17 years old girl about her traumatic experience during police's custody. The young lady spoke at the press conference that she was arrested in September 2019. She alleged that a female police officer rubbed her breast for a few times when she was escorting by police on the way to a police vehicle. She complained that police delayed her request to meet with lawyer. She was strip searched by police and being verbally

¹²⁷ "Almost 3,000 people, including 517 minors, prosecuted so far over 2019 Hong Kong protests", *Hong Kong Free Press*, 27 Oct 2022, <https://hongkongfp.com/2022/10/27/almost-3000-people-including-517-minors-prosecuted-so-far-over-2019-hong-kong-protests/>

¹²⁸ "13 歲少年錄口供 無警誠無家長陪 大狀：或違指引 法庭可剔除", *Ming Pao*, 30 Oct 2019, <https://news.mingpao.com/pns/%e8%a6%81%e8%81%9e/article/20191030/s00001/1572372151007>

¹²⁹ LCQ2: Procedural issues of Police's handling of arrestees, Legislative Council, 13 November, 2019, <https://www.info.gov.hk/gia/general/201911/13/P2019111300539.htm?fontSize=1>

insulted during the body search. She claimed she had tried to commit suicide for three times and was sent to a psychiatric hospital and diagnosed with post-traumatic stress disorder.¹³⁰

107. There were significant number of allegations against police officer for their irregularities and abusive practices in handling the protests in 2019 and 2020. However, victims were generally reluctant to lodge complaint against police due to fear of retaliation, unwilling to recall traumatic experience, and lack of confidence in the police complaint mechanism which has been broadly criticized by human rights group, lawyers, domestic court, UN human rights bodies for its lack of independence and investigation power¹³¹. In addition, complainant and witness are not protected by law for giving evidence. The evidence given by the complainant and witness could be used against themselves in criminal and civil proceedings.¹³²

LONG-TERM PRETRIAL DETENTION AFFECTS RIGHTS TO FAMILY LIFE AND CHILD RIGHTS

108. According to an online database from the Center for Asian Law at Georgetown University Law Center, as of 28 March 2022, 84 of 113 defendants charged with NSL or sedition were denied bail under the NSL bail principle (74.3%); among those being denied bail, more than half of them have been detained for more than a year without trial.¹³³

109. The long-term pretrial detention for defendants in NSL and sedition cases is ostensibly inconsistent with the HRCttee's decisions in previous communications and its General Comment on arbitrary detention (No.35, para.12). Such detention, not only violate the fundamental freedom of an individual, but also violate the defendants' and their family members' right to the enjoyment of family life. Particularly, such impact could be adversely extended to the child's right to parenting. For examples, Cheung Ho-sum and former legislator Jeremy Tam are accused and charged with conspiracy to subversion in February 2021 in the primary election case. They are both denied bail and have been detained for almost 2 years as of January 2023. Cheung has been separated from his wife during her pregnancy, as well as his daughter born in September 2021. Jeremy Tam has been separated from his son and daughter, who are eight year old now.

110. Although Cheung and Tam have pleaded guilty for their charge, the sentencing for their charges will be decided only until the completion of the trial of all defendants. It was reported that the trial will be started in February 2023.¹³⁴

¹³⁰ “未成年少女被捕後遭遇性暴力 患創傷後壓力症三度自殺不遂”, *RFA*, 21 June 2020,

<https://youtu.be/LZrUJXUH9s4>

<https://www.rfa.org/cantonese/news/htm/hk-trauma-06222020074230.html>

¹³¹ HCAL 2915/2019, [124], https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=131964&currpage=T

¹³² “梁定邦義務舉報論惹質疑 監警會澄清資料絕不交警方”, *HK01*, 10 Jul 2019,

<https://www.hk01.com/sns/article/350377>

“【逃犯條例】民權觀察：市民投訴警察隨時「原告變被告」”, *Ming Pao*, 6 Jul 2019,

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

¹³³ China File, *Arrest Data Show National Security Law Has Dealt a Hard Blow to Free Expression in Hong Kong*, 5 Apr 2022, <https://www.chinafile.com/reporting-opinion/features/arrest-data-show-national-security-law-has-dealt-hard-blow-free>

¹³⁴ “Democrats who pleaded guilty under Hong Kong's security law must wait until after co-defendants' trial for sentencing”, *Hong Kong Free Press*, 11 Jan 2023, <https://hongkongfp.com/2023/01/11/democrats-who-pleaded-guilty-under-hong-kongs-security-law-must-wait-until-after-co-defendants-trial-for-sentencing/>

Recommendation

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

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

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

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

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

116. Express grave concern on the impact of long-term pretrial detention to rights to family life and child rights.

ITEM 22: RIGHT TO HEALTH

(Gov reply [113]-[117])

SHORTAGE OF MEDICAL PERSONNEL

117. The shortage in public hospitals is serious. According to the figures provided by the Hospital Authority, the attrition rate of full-time doctors working in public hospitals has doubled in the year ended 30 September 2022, reaching 8.2%. More than 10% of emergency physicians, anaesthesiologists and radiologists left the public medical sector in the period.¹³⁵ To resolve the problem, the Government must address the reason of losing doctors and other medical personnel. Some interviewed doctors believed that the high attrition rate was due to the lack of satisfaction, unreasonable working hours and recent wave of emigration.¹³⁶

118. As for nurses, an internal survey about reasons of resignation conducted by one of the public hospitals showed that emigration became the most common reason of leaving the hospitals – 39% of the interviewed ex-nurses said that they resign because of their decisions of leaving Hong Kong, which is a high proportion compared to 7% only in 2020. Many resigned staff were experienced nurses. It has been observed that the wave of emigration was a political problem which can only be solved politically.

¹³⁵ “公醫 8 專科流失翻倍 急症最多 不覺很多人考獲專科即走 醫局前高層盼當局交代數據”, *Ming Pao*, 28 November 2022,

<https://news.mingpao.com/pns/%E8%A6%81%E8%81%9E/article/20221128/s00001/1669573258763>

¹³⁶ *ibid*

An NGO concerning patients' rights said that the situation was absolutely worrying and could bring risks to patients.¹³⁷

COVID-19 MEASURES

119. Since February 2022, the Hong Kong government implemented the very harsh “Vaccine Pass” policy which prohibited unvaccinated people from entering numerous venues, including restaurants, gymnasiums, swimming pools and shopping malls, unless they were recently recovered from COVID or obtained an exemption certificate from a doctor.¹³⁸ Starting from June 2022, unvaccinated people (who were not recently recovered or had an exemption certificate) were further barred from entering certain public healthcare premises to receive non-emergent treatments unless they can present a negative result proof of a COVID test conducted with specimen collected within 48 hours before the visit.¹³⁹

120. Although the entire “Vaccine Pass” policy was abandoned on 29 December 2022¹⁴⁰ following the sudden abolishment of the zero-COVID policy of mainland China, the damages to the unvaccinated people has already been done. The policy had seriously hindered people who were hesitant about the newly-invented vaccines from buying groceries, working out, participating in various sport activities and receiving medical treatments, which infringed their right to the enjoyment of the highest attainable standard of physical and mental health. For example, Mr. Man, a 74-year-old unvaccinated chronic patient who worried about the side effect of the vaccine but was not financially able to afford a private doctor, could only stay at home entirely until the public clinic was available to provide consultation service as to the suitability of vaccination to him six months later.¹⁴¹ Given the fact that the Hong Kong government never admitted the disproportionate harshness of the policy, one may doubt that similar policy can be reinstated in the future because of COVID or other novel viruses.

121. All public beaches, public barbecue sites and public campsites were also closed since 15 July 2020.¹⁴² After prohibiting people from entering for more than two years, they were gradually re-opened in November 2022.¹⁴³

¹³⁷ “伊院近一年離職護士 四成因移民 5 聯網流失率最少一成 護士協會憂未見頂”, *Ming Pao*, 21 November 2022, <https://news.mingpao.com/pns/%E8%A6%81%E8%81%9E/article/20221121/s00001/1668970180286>

¹³⁸ HK Government, *PREVENTION AND CONTROL OF DISEASE (VACCINE PASS) REGULATION, Vaccine Pass Direction in Relation to Catering Business Premises and Scheduled Premises*, <https://www.gld.gov.hk/egazette/pdf/20222665e/egn20222665268.pdf>

¹³⁹ HK Government, *Government to implement Vaccine Pass arrangement in designated healthcare premises*, 21 May 2022, <https://www.info.gov.hk/gia/general/202205/21/P2022052100421.htm>

¹⁴⁰ “政府宣布明日起取消檢疫令疫苗通行證及入境後核酸檢測”, *RTHK*, 28 December 2022, <https://news.rthk.hk/rthk/ch/component/k2/1681617-20221228.htm>

¹⁴¹ “【疫苗護照】港多個處所需「疫苗通行證」 傷健人士無打針出行難上加難”, *Radio Radio Free Asia*, 24 February 2022, <https://www.rfa.org/cantonese/news/htm/hk-vaccine-02242022082310.html>

¹⁴² <https://www.info.gov.hk/gia/general/202007/21/P2020072100611.htm>;
<https://www.info.gov.hk/gia/general/202007/14/P2020071400666.htm>

¹⁴³ “一文看清下周二起重開公眾泳灘 附設燒烤場續關閉”, *HK01*, 27 October 2020, <https://www.hk01.com/article/541118>

“下周四起 157 個燒烤場重開 解除食肆酒吧等場所營業時間限制”, *Oriental Daily*, 27 October 2022, https://hk.on.cc/hk/bkn/cnt/news/20221027/bkn-20221027160008455-1027_00822_001.html

“露營地點 11.17 重開 戶外體育場所觀眾席可飲食 健身中心再放寬”, *HK01*, 10 November 2022, <https://www.hk01.com/article/834963>

POLICE OBSTRUCTING PROTESTORS FROM RECEIVING PROMPT MEDICAL TREATMENTS

122. During the anti-extradition protests in 2019 to 2021, multiple reliable reports and media footages showed that the police obstructed injured protesters from receiving medical treatments.

123. According to an investigative report published by Amnesty International (“AI”) in 2019, the police often denied injured arrestees’ prompt access to medical care by way of delaying to call or secure an ambulance until five to 10 hours after the injury and after the person first requested to go to a hospital.¹⁴⁴ The report also observed that the police appeared to use people’s need for medical care to pressure them into giving a statement without a lawyer present. For example, an interviewed arrestee recalled bleeding from his nose and mouth, as a result of being beaten during his arrest, as police held him in a detention facility. He told AI that the police said “if you help me take the statement quickly, you can go [to the hospital].”. He was finally hospitalized four or five hours later after assisting the officers’ work. Another egregious case is that a protester who suffered multiple fractures to his arm during his arrest had immediately asked to be taken to the hospital, but it was more than five hours later before the police did so – only after they had transported him for more than an hour to a detention facility and processed him.

124. In a detailed report prepared by the Progressive Scholars Group, a pro-democracy group consisted of scholars, it was observed that police officers repeatedly disrupted rescue and medical services by not allowing ambulances to go through cordon lines, stopping/blocking ambulances, preventing rescue and medical personnel from reaching the wounded, and in some cases verbally harassing the rescue and medical personnel, including those from the Fire Services Department and medical services.¹⁴⁵ Volunteer first aiders were even more vulnerable of being targeted by police, and they were sometimes arrested, beaten and being called “cockroaches”.¹⁴⁶

125. At least one voluntary first aider was charged and convicted for rioting. The court was of the view that the defendant was supporting a riot by providing first-aid to injured protesters.¹⁴⁷

126. According to the information provided by a group of medical and legal professionals, at least five protesters were arrested at public hospitals whilst seeking treatment in June 2019. They accused the police of spreading “white terror”.¹⁴⁸

127. In November 2019, during the siege of the Hong Kong Polytechnic University (“PolyU”), a widely circulated photo shows more than 10 medical volunteers were under arrest and sitting on the

¹⁴⁴ Amnesty International, *Hong Kong: Arbitrary arrests, brutal beatings and torture in police detention revealed*, 19 September 2019, <https://www.amnesty.org/en/latest/press-release/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed/>

¹⁴⁵ Progressive Scholars Group, *Silencing Millions: Unchecked Violations of Internationally Recognized Human Rights by the Hong Kong Police Force*, [219], available at <https://www.docdroid.net/OEA2Bhy/silencingmillions-text-final.pdf>

¹⁴⁶ Civil Rights Observer, Report on Violations of Human Rights and Humanitarian Principles by the Hong Kong Police Force, November 2020, <https://web.archive.org/web/20210511060900/https://hkcro.org/wp-content/uploads/2021/01/20201130-Report-on-Violations-of-Human-Rights-and-Humanitarian-Principles.pdf>

¹⁴⁷ DCCC 770/2020, [129]-[133] https://legalref.judiciary.hk/rs/common/search/search_result_detail_frame.jsp?DIS=143579&QS=%2B&TP=R

¹⁴⁸ “Five Hong Kong anti-extradition bill protesters were arrested at public hospitals whilst seeking treatment”, *Hong Kong Free Press*, 24 June 2019, <https://hongkongfp.com/2019/06/24/five-hong-kong-anti-extradition-bill-protesters-arrested-public-hospitals-whilst-seeking-treatment/>

ground with their hands zip-tied.¹⁴⁹ Later the police claimed that 51 people who “claimed to be medics or journalists” were arrested outside the PolyU campus, alleging that 12 of purported medics had no first aid qualifications.¹⁵⁰ However, Arisina Ma, the then president of the Hong Kong Public Doctors' Association, rebutted the police's claims by confirming that more than a dozen of arrested medical volunteers did not only “claim” to be a medical worker but did show their proofs of professional qualifications to the police before being arrested.¹⁵¹

128. Darren Mann, one of the doctors inside the PolyU providing emergency care to injured protesters, said in the leading medical journal *Lancet* that the police's action had violated international humanitarian standards and fallen “far below accepted international norms for the handling of volunteer emergency medical providers”.¹⁵² He emphasized that the chilling effect caused by the arrests can only serve to deter would-be volunteers from offering their services in the much-needed medical care of injured people in the ongoing protests. Further, Mann rejected a police claim saying that the Red Cross team had entered the university at the behest of law enforcement. Instead, the Red Cross self-initiated the intervention because they believed the situation had amounted to a humanitarian crisis, but they did not receive police approval to enter until more than two hours after their arrival. The police had also set a time limit of three hours for their mission.¹⁵³

129. Patients' privacy was also intruded by the police. A young female was hurt in the right eye while reportedly being a medical volunteer in the protest in August 2019.¹⁵⁴ Although eyewitnesses attributed her injury to a beanbag round, a weapon used by the Police, and no evidence showed that she participated in any violent acts, the police insisted that the facts were unclear. Later, the police acquired her medical records after successfully obtaining a court warrant without her knowledge and consent.¹⁵⁵ A Hong Kong court later ruled that the female, who was purely an injured person never arrested as a riot suspect, had no right to ask the police to show her their search warrant for the medical records.¹⁵⁶

¹⁴⁹ “‘Unheard of in civilised countries’: Top medical journal blasts Hong Kong police for treatment of medics at Polytechnic University“, *Hong Kong Free Press*, 23 November 2019,

<https://hongkongfp.com/2019/11/23/unheard-civilised-countries-top-medical-journal-blasts-hong-kong-police-treatment-medics-polytechnic-university/>

¹⁵⁰ *ibid*

¹⁵¹ “【理大衝突】義務急救出示證件仍被捕 醫生權威期刊撰文斥不人道”, *HK01*, 22 November 2019, <https://www.hk01.com/article/401389>

¹⁵² Darren Mann, “International humanitarian norms are violated in Hong Kong”, *The Lancet*, 21 November 2019, [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(19\)32909-5/fulltext#sec1](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(19)32909-5/fulltext#sec1)

¹⁵³ *ibid*

¹⁵⁴ “Hong Kong police obtain warrant to read medical records of woman who suffered eye injury at protest“, *Hong Kong Free Press*, 11 September 2019, <https://hongkongfp.com/2019/09/11/hong-kong-police-obtain-warrant-read-medical-records-woman-suffered-eye-injury-protest/>

“Woman who suffered eye injury during Hong Kong protest can take police to court in warrant fight, judge rules”, *South China Morning Post*, 13 September 2019, <https://www.scmp.com/news/hong-kong/law-and-crime/article/3027095/woman-who-suffered-eye-injury-during-hong-kong-protest>

¹⁵⁵ *ibid*

¹⁵⁶ “Hong Kong police not obligated to show search warrant to eye injury victim while obtaining medical records, court rules“, *Hong Kong Free Press*, 17 December 2019, <https://hongkongfp.com/2019/12/17/hong-kong-police-not-obligated-show-search-warrant-eye-injury-victim-obtaining-medical-records-court-rules/>

POLICE BRUTALITY

130. Reports published by credible media outlets and human rights organisations have revealed unlawful and excessive use of force and less-lethal weapon by police in the anti-extradition protests between 2019 and 2021.¹⁵⁷ Some documented cases are highlighted as follows:

(1) There was an excessive and arbitrary use of tear gas. The police were witnessed to fire tear gas in the following manners¹⁵⁸ –

- (a) firing from opposing directions towards a large crowd without giving a clear route for the crowd to disperse
- (b) firing in commercial areas during business hours
- (c) firing in crowded residential areas and near elderly homes
- (d) firing towards the journalists with no protesters nearby
- (e) firing in enclosed environments
- (f) firing large numbers in a short period of time in a small area
- (g) firing into largely empty streets where no protesters were present
- (h) firing at vehicles without protesters around and without warning
- (i) firing towards rescue personnel and vehicles
- (j) firing at a closing lift with people inside

(2) In a judgment issued in October 2020, the court criticized the police officers of using excessive force when arresting the defendant in a protest, causing him injuries. The judge was of the view that the police can control the defendant with bare hands, given he did not carry any weapon and was surrounded by five to six police officers. The injury was avoidable.¹⁵⁹

(3) Detained protestors reported that they would be beaten in custody if they refused to answer police's intake questions.¹⁶⁰ According to AI, some of them were hospitalized as a result of beating.

¹⁵⁷ Amnesty International, *Verified: Hong Kong police violence against peaceful protesters*,

<https://www.amnesty.org/en/latest/news/2019/06/hong-kong-police-violence-verified/>

“Did Hong Kong Police Abuse Protesters? What Videos Show”, *New York Times*, 30 June 2019,

<https://web.archive.org/web/20220426011107/https://www.nytimes.com/2019/06/30/world/asia/did-hong-kong-police-abuse-protesters-what-videos-show.html>

Physicians for Human Rights, *The Reckless use of Tear Gas by Hong Kong Police in Confined Spaces is Dangerous and Patently Unlawful*, <https://phr.org/our-work/resources/the-reckless-use-of-tear-gas-by-hong-kong-police-in-confined-spaces-is-dangerous-and-patently-unlawful/>

“The truth about tear gas: how Hong Kong police violated all guidelines for the ‘nonlethal weapon’”, *South China Morning Post*, 16 August 2019, <https://www.scmp.com/magazines/post-magazine/long-reads/article/3022942/truth-about-tear-gas-how-hong-kong-police>

¹⁵⁸ Amnesty International, *Hong Kong: Arbitrary arrests, brutal beatings and torture in police detention revealed*, 19 September 2019, <https://www.amnesty.org/en/latest/press-release/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed/>

Amnesty International UK, *Hong Kong: ‘Excessive’ police force against peaceful protesters condemned*, 12 June 2019, <https://www.amnesty.org.uk/press-releases/hong-kong-excessive-police-force-against-peaceful-protesters-condemned>

Progressive Scholars Group, *Silencing Millions: Unchecked Violations of Internationally Recognized Human Rights by the Hong Kong Police Force*, [140], available at <https://www.docdroid.net/OEA2Bhy/silencingmillions-text-final.pdf>

¹⁵⁹ 香港特別行政區 訴 余德穎及另七人 (31/10/2020, DCCC12/2020) [2020] HKDC 992, [117]-[120], https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=131565&currpage=&loc=p117

¹⁶⁰ Amnesty International, *Hong Kong: Arbitrary arrests, brutal beatings and torture in police detention revealed*, 19 September 2019, <https://www.amnesty.org/en/latest/press-release/2019/09/hong-kong-arbitrary-arrests-brutal-beatings-and-torture-in-police-detention-revealed/>

131. As to mental health, evidence that there are mental tortures by police while they were investigating protester since 2019. Detained protestors were beaten, not taken to hospital, and delay access to counsel. The ill-treatment threats led to anxiety and trauma of protestors.

ITEM 24: RIGHT TO EDUCATION

THE IMPACT OF COVID-19 MEASURES ON THE RIGHT TO EDUCATION

132. In April 2022, having suspended face-to-face classes for a few months, primary and secondary schools were finally allowed to resume in-person teaching. However, unless more than 90% of students had received two doses of a COVID-19 vaccine, schools were only allowed to resume half-day face-to-face classes instead of full-day. Also, unvaccinated students were not allowed to participate in extra-curricular activities¹⁶¹.

133. This policy, which made getting vaccines a condition of taking part in extra-curricular activities or resuming full-day teaching, would inevitably create a labelling effect on students who hadn't got vaccines because of different reasons. For example, some children and their parents may be worried about the side effect of vaccines or they have reservations about the reliability of vaccines. However, the then Under Secretary for Education, Christine Choi dismissed the labelling concern, saying that "if they (students) are really that keen to join [the activities,] and their own health allows it, why not get vaccinated?"¹⁶²

134. Getting vaccine had also become a condition of entering other learning venues under the "Vaccine Pass" policy. At first the policy was only applicable to people aged 12 and over, but it was extended to children aged five to 11 since the end of September 2022.¹⁶³ As some children were not vaccinated, some schools had to make adjustments to extracurricular activities, including postponing large-scale events such as athletics meets and swimming gala, as some students were not vaccinated.¹⁶⁴ It influenced students' all-round development as well as social skills.

135. Unvaccinated children and students were also barred from entering public libraries since April 2022 unless they were recently recovered from COVID-19 or can present an exemption certificate.¹⁶⁵

136. According to official statistics, as of the end of September 2022, around 50,000 children aged from five to 11 who were unvaccinated were hugely affected by the policy¹⁶⁶.

¹⁶¹ "Covid-19: Students and teachers will be required to take daily rapid tests as in-person classes to resume from mid-April", *Hong Kong Free Press*, 11 Apr 2022, <https://hongkongfp.com/2022/04/11/covid-19-students-and-teachers-will-be-required-to-take-daily-rapid-tests-as-in-person-classes-to-resume-from-mid-april/>

¹⁶² "Covid-19: Education official defends gov't policy barring unvaccinated students from extracurricular activities", *Hong Kong Free Press*, 13 Apr 2022, <https://hongkongfp.com/2022/04/13/covid-19-education-official-defends-govt-policy-barring-unvaccinated-students-from-extracurricular-activities/>

¹⁶³ "Hong Kong to expand Covid-19 Vaccine Pass to children as young as 5", *Hong Kong Free Press*, 8 Sep 2022, <https://hongkongfp.com/2022/09/08/hong-kong-to-expand-covid-19-vaccine-pass-to-children-as-young-as-5/>

¹⁶⁴ "Covid-19: School activities may be affected as Hong Kong's Vaccine Pass extended to 5 year olds", *Hong Kong Free Press*, 30 SEPTEMBER 2022, <https://hongkongfp.com/2022/09/30/covid-19-school-activities-may-be-affected-as-hong-kongs-vaccine-pass-extended-to-5-year-olds/>

¹⁶⁵ Hong Kong Public Libraries, *Latest arrangements on services of Hong Kong Public Libraries*, 14 Apr 2022, https://www.hkpl.gov.hk/en/library-notice/resumption_20220421_6akkllvnlkorpot7j36paq3g1.html

¹⁶⁶ "Coronavirus: up to 50,000 unvaccinated children in Hong Kong could be banned from restaurants and other premises as vaccine pass scheme extended", *South China Morning Post*, 27 Sep 2022,

137. The "Vaccine Pass" policy lasted until the end of December and schools will resume full-day teaching from February 2023. However, children's education had already been compromised, in particular for those who were unable to be vaccinated.

THE RIGHT TO EDUCATION OF YOUNG PRISONERS

138. There is a growing concern over the learning environment of prisoners as the number of young prisoners has been significantly increasing because of the mass arrest and prosecution for the 2019 protest, in which more than 10,000 people were arrested and, as of December 2022, 1,315 people were imprisoned or detained due to their participation in the movement. Among them, 345 people are under 21-year-old¹⁶⁷. The total number of young prisoners (below 21) has increased by 1.3 times in two years.

139. In Hong Kong, prisoners can choose to take distance learning degree programmes and external courses, which are provided by Hong Kong Metropolitan University. However, inmate students face a number of obstacles to studying in custody. For example, instead of being taught by an instructor, they have to rely on self-study materials provided by the institution. Also, they cannot search for information on the internet and have to complete their assignments with papers and pens as they are not allowed to use computers in prison¹⁶⁸. More importantly, they may not be able to afford the cost of taking the programmes and courses. Although some subsidy schemes are available, they are far from enough to meet the increasing demand.

UNIVERSITY STUDENTS EXPELLED FOR PARTICIPATING IN PROTESTS

140. In recent years, there is a worrying trend that the universities in Hong Kong have been taking a stricter approach to handling students who participated in protest activities. Some students faced disproportional punishments, including being expelled, which affect students' right to education.

141. In March 2019, the Polytechnic University decided to expel a student who participated in clashes with school officials in a protest against the university's decision of covering the "democracy wall", a student bulletin board that was managed by the student union. Another student involved was also suspended for one year. The decision was criticised as disproportional and excessive¹⁶⁹.

142. In April 2022, the University of Hong Kong proposed a new rule which would allow the university to expel students who are found bringing "disrepute" to the university¹⁷⁰. It is unclear whether the new rule has been implemented or not. However, the proposal has already led to a chilling effect on students.

<https://www.scmp.com/news/hong-kong/health-environment/article/3193948/coronavirus-parents-can-add-childrens-records>

¹⁶⁷ HK Government, *LCQ6: Helping young persons in custody reintegrate into society*, 7 Dec 2022,

<https://www.info.gov.hk/gia/general/202212/07/P2022120700411.htm?fontSize=1>

¹⁶⁸ “劉穎匡讀翻譯有書無師 涉小組匯報科目無法報”, Ming Pao, 15 Aug 2022,

<https://news.mingpao.com/pns/%e6%b8%af%e8%81%9e/article/20220815/s00002/1660500130350>

¹⁶⁹ “PolyU fallout: Nursing student expelled, others punished for role in ‘Democracy Wall’ protests”, *South China Morning Post*, 2 Mar 2019, <https://www.scmp.com/news/hong-kong/politics/article/2188320/polyu-fallout-nursing-student-expelled-others-punished-role>

¹⁷⁰ “Hong Kong’s top university plans new rule to punish students for ‘bringing disrepute’ to the school – sources”, *Hong Kong Free Press*, 29 Apr 2022, <https://hongkongfp.com/2022/04/29/hong-kongs-top-university-plans-new-rule-to-punish-students-for-bringing-disrepute-to-the-school-sources/>

ITEM 25: ACADEMIC FREEDOM

(Gov Reply [123]-[125])

PATRIOTIC EDUCATION AND NATIONAL SECURITY EDUCATION IN PRIMARY AND SECONDARY SCHOOLS

143. After the 2019 protests and the imposition of the National Security Law in 2020, to intensify its control of education and impose patriotism on students, the Hong Kong Government prioritised the promotion of patriotic education and national education in schools, implementing several politically-motivated measures and policies, which have been hugely interfering with school curriculum and activities. It resulted in the education system failing to serve the purposes stated in Article 13 of the Covenant that "education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms."

PUBLICLY FUNDED UNIVERSITIES REQUIRED TO INTRODUCE MANDATORY NATIONAL SECURITY EDUCATION

144. 8 universities in Hong Kong are publicly funded through the University Grant Committee ("UGC"), which is the non-statutory body advising the HKSAR government on the funding and strategic development of higher education in Hong Kong. In May 2025, the UGC requests each publicly funded university to introduce national security education as a mandatory module for all students. Each university can decide the module on its own.¹⁷¹

145. It raised scholars' concern as university funding mechanism is now inserted national security element, making the establishment of a satisfactorily national security curriculum an essential element for bidding government resources, but such requirement is irrelevant to enhancing teaching and research quality of universities.

146. In a recent policy report published by the US's Congressional-Executive Commission on China, an anonymous interviewee, who is a social science professor in exile, commented that,

*'All the universities have surrendered. The government has intervened in university administration through appointments and funding. The president is beholden to the Chief Executive. The president can then dominate the university council, faculty heads, and department heads...[r]esearch freedom on Hong Kong politics will likely be restricted unless you can work on safe topics such as public policy or public administration'*¹⁷²

NATIONAL SECURITY GUIDELINES FOR PRIMARY AND SECONDARY SCHOOLS

147. In February 2021, the Education Bureau issued guidelines on national security to schools, requiring schools to promote national security education to all levels of students and ban all students' behaviours that may constitute an offence to the national security law. Under the guidelines, junior primary students should learn about the four main offences of the national security law (secession,

¹⁷¹ 教資會倡大學必修國安教育", *Apple Daily*, May 25 2021,

<https://collection.news/appledaily/articles/4I7CYHSLOBCFZDLOF6D7U5FQJY>

¹⁷² CECC, Hong Kong's civil society: from an open city to a city of fear, 3 Oct 2022,

<https://www.cecc.gov/publications/commission-analysis/hong-kong's-civil-society-from-an-open-city-to-a-city-of-fear>

subversion, terrorism and collusion with foreign organisations). Also, national security should be taught in different subjects, such as Chinese history, civic education, geography, and music. Additionally, the guidelines even required scientific subjects, such as Biology, Chemistry and Physics, to include national security learning elements¹⁷³.

148. According to the guidelines, national security should not be treated as a "controversial issue" in discussion and "there is no room for debate or compromise." Schools are also required to submit annual reports on measures relating to safeguarding national security and national security education, meaning that the implementation of the guidelines in each school will be closely monitored by the authorities¹⁷⁴.

149. The introduction of the guidelines is regarded as a significant move to take total control of schools and impose patriotic education on students, which is a detriment to the education system. It is of grave concern that, under the new guidelines, indoctrinating students with patriotism has become the top priority in the government's education policy, rather than nurturing students' knowledge and independent thinking.

150. The prohibition of treating national security as a "controversial issue" in discussions obviously violated the principle of academic freedom, which, according to the general comment No.13 of the Committee, is vital for the enjoyment of the right to education and applies to all staff and students in the education sector, who should be free to pursue knowledge and ideas through discussion.

151. To ensure compliance with the laws and requirements, many schools take a strict approach to dealing with national security issues, especially those involving their students.

152. In October 2020, a secondary school student was suspended for a week after displaying the slogan "Free Hong Kong, Revolution of Our Times", a slogan which was regarded by the government as carrying subversive and seditious meaning. The school also warned that the student would be expelled if he was found to have participated in social movements again¹⁷⁵.

153. In October 2022, a secondary school suspended 14 students from school for three days because they were having breakfast on the playground when the national flag-raising ceremony began¹⁷⁶. It was reported that the students were warned by the vice principal that they might have already breached the National Security Law¹⁷⁷. The incident came against a background that the government enacted a new National Anthem Law in 2020, criminalising insult and derogatory behaviour towards the national

¹⁷³ Education Bureau, *Curriculum Framework of National Security Education in Hong Kong*, May 2021, https://www.edb.gov.hk/attachment/en/curriculum-development/kla/pshe/national-security-education/nse_framework_en.pdf

¹⁷⁴ Education Bureau, *National Security: Specific Measures for Schools*, <https://www.edb.gov.hk/attachment/en/sch-admin/national-security/specific-measures.pdf>

¹⁷⁵ "Hong Kong school suspends teenager for online protest-related slogan", *Financial Times*, 9 Sept 2020, <https://www.ft.com/content/0dbd3048-e1a8-4523-9496-4952a2c05c59>

¹⁷⁶ "3-day suspension for Hong Kong students who 'disrespected' flag-raising was 'excessive', political party says", *Hong Kong Free Press*, 11 Oct 2022, <https://hongkongfp.com/2022/10/11/3-day-suspension-for-hong-kong-students-who-disrespected-flag-raising-was-excessive-political-party-says/>

¹⁷⁷ "荃灣聖芳濟 14 學生升旗禮違規被停課 副校長承認曾說或違反國安法", *HK01*, 11 Oct 2022, <https://www.hk01.com/article/824318>

anthem, and thereafter issued school guidelines requiring schools to hold weekly flag-raising ceremonies in the following year¹⁷⁸.

154. The punishment of the students was obviously unreasonable and disproportional, raising questions about the way schools have been using is too harsh and contrary to educational purposes.

LIBERAL STUDIES REFORM FOR SECONDARY EDUCATION

155. Liberal Studies, a compulsory subject nurturing senior secondary students' social awareness and critical thinking, has long been scapegoated by the Government and pro-Beijing politicians for providing biased views and information and inciting students to participate in the anti-government protests. In November 2020, the Government announced to rename the subject and revamp the curriculum, including axing discussions on controversial social issues, a move that in effect abolished the subject.

156. The reform of liberal studies also involved a stricter censorship on textbooks. In June 2022, it was reported that some new textbooks contain biased content. For example, some books describe that the 2019 protests were motivated by "external forces", a Beijing's narrative of the social unrest. Besides, all books claim that Hong Kong was never a British colony, a distorted historical discourse that the government has been promoting in recent years¹⁷⁹.

157. In junior secondary education, the Education Bureau also set to replace the Life and Society curriculum with a new subject of Citizenship, Economics and Society, which aims to "strengthen students' understanding of China and cultivate national identity." and will focus on national security and promote patriotism. The new subject is expected to be implemented from September 2024¹⁸⁰.

158. It clearly shows that, by removing the elements of civic education and critical learning, the government aim to use the reformed subjects as a tool to indoctrinate students with patriotism, which violates the education principle of developing students' independent thinking.

TEACHERS' EXODUS

159. Amid the mounting political pressure in the education sector, which is caused by the attack from pro-Beijing politicians and their supporters (It will be discussed in another part of this report) and the new requirements of national security education and patriotic education, many teachers decide to leave their posts in recent years. According to the government's statistics, in 2021/22 school year, more than 3,580 public sector teachers left their posts, a 70% increase over the previous school year (2020/21)¹⁸¹.

¹⁷⁸ "Explainer: How a new law may see Hongkongers jailed for 3 years for parodying the national anthem", *Hong Kong Free Press*, 27 MAY 2020, <https://hongkongfp.com/2020/05/27/explainer-how-a-new-law-may-see-hongkongers-jailed-for-3-years-for-parodying-the-national-anthem/>

¹⁷⁹ "Hong Kong was not British colony as China did not recognise unequal treaties ceding city to Britain, new textbooks reveal", *South China Morning Post*, 13 Jun 2022, <https://www.scmp.com/news/hong-kong/education/article/3181560/hong-kong-was-not-british-colony-china-did-not-recognise>

¹⁸⁰ "Hong Kong to revise subject for junior secondary students over next 2 years to focus on national security, fostering patriotism", *South China Morning Post*, 12 Oct 2022, <https://www.scmp.com/news/hong-kong/education/article/3195747/hong-kong-revise-subject-junior-secondary-students-over>

¹⁸¹ HK Government, *LCQ19: Manpower of teachers*, 11 May 2022, <https://www.info.gov.hk/gia/general/202205/11/P2022051100228.htm?fontSize=1>

160. It is of grave concern that the exodus of teachers will continue in the next few years as the teaching environment has been worsening and many teachers want to get rid of the suffocating workplace, in which they need to bear the risks that they may be reported to national security police by students or parents if their comments or teaching materials were viewed as violating the national security law. As a result, they can only take an extremely cautious approach and have to avoid mentioning any politically sensitive phrases or incidents in classroom. For example, they have to stop discussing the 1989 Tiananmen Crackdown with students at schools, which was very usual in the past.

161. The departure of teachers, many of whom are senior teachers with extensive experience, will undoubtedly impair the quality of education and affect students' learning.

SCHOLARS ENGAGING IN PUBLIC AFFAIRS TERMINATED BY UNIVERSITIES

162. There were at least 3 Hong Kong-based scholars, who are well-known as outspoken critique in Hong Kong, were sacked by a public-funded university, Lingnan University, without giving proper reasons.

(1) In 2021, Dr. IP Iam Chong, who founded an independent media outlet “inmediahk” in Hong Kong, and who had taught in Lingnan University for nearly 20 years, was refused of renewing his teaching contract by the university without a concrete reason.¹⁸²

(2) Dr. LAW Wing Sang and Dr. HUI Po Keung were also terminated of their contracts with the same university in 2021 as well. HUI was a trustee of the 612 Fund. Law told local reporters that he received the decision from the university few days after he published an opinion essay on Hong Kong’s national security law and the election overhaul in Ming Pao. Law was also heavily criticised by government-owned newspapers in light of his opinion essays.¹⁸³

ATTACK ON SCHOLARS BY GOVERNMENT-OWNED AND PRO-GOVERNMENT MEDIA

163. Between 2020 and 2022, at least 14 prominent Hongkong-based scholars were named and attacked by government-owned newspapers (Wen Wei Po and Tai Kung Pao) and pro-government media outlets for spreading “pro-independence” and “anti- China” beliefs or inciting students to involve in unlawful activities through their teaching, research outputs or public commentaries. Many of them decided to resign from their serving universities and then left Hong Kong for safety reasons.

(1) Dr. Brian FONG, an ex-associate professor in the Education University of Hong Kong (“EduHK”), was attacked by Tai Kung Pao, which alleged Fong of colluding with foreign forces and of conducting government-funded research projects on “territorial autonomies” as inciting Hong Kong independence.¹⁸⁴ Four days after the news report above, Fong resigned from EduHK.¹⁸⁵

¹⁸² “丟職葉蔭聰:不解「特殊對待」 嶺大傷害緊自己”, 1 October 2021,

<https://news.mingpao.com/pns/%E8%A6%81%E8%81%9E/article/20211001/s00001/1633025271848>

¹⁸³ “嶺大終止羅永生許寶強合約 羅活躍撰時評 許任 612 基金信託人 校方沒講原因”, 1 October 2021,

<https://news.mingpao.com/pns/%E8%A6%81%E8%81%9E/article/20211001/s00001/1633025269898>

¹⁸⁴ “教资会黑幕 1 | 被境外势力渗透 教资会公款资助港独”, 7 February 2022,

<http://www.takungpao.com/news/232109/2022/0207/683713.html>

¹⁸⁵ “「港獨」學者方志恒離任教大”, 11 February 2022,

<http://www.takungpao.com.hk/news/232109/2022/0211/685235.html>

(2) Dr. CHUNG Kim Wah, a deputy director of the Hong Kong Public Opinion Research Institute (“PORI”), an independent polling research centre in the city, decided to leave Hong Kong for safety, after Chung himself was asked to meet national security police several times.¹⁸⁶ The PORI was accused by government-owned media as “using ‘so-called ‘public opinion’ to hijack society” during the new “patriots-only” legislative council elections in 2021.¹⁸⁷

(3) Professor Ryan Thoreson, who is a researcher in Human Rights Watch that is sanctioned by PRC, and then hired by the HKU Law School, was denied visa to teach in Hong Kong by local authorities which did not provide reasons of such decision.¹⁸⁸

(4) Dr. AU Ka Lun, a professional consultant in the School of Journalism of the Chinese University of Hong Kong, was arrested by national security police for allegedly conspire to publish seditious publications. News reports said his arrest was related to his public opinion essays in the Stand News, in which its former editors are undergoing trials of sedition as well.¹⁸⁹

INTIMIDATIONS AGAINST SCHOLARS AND STUDENTS BY UNIVERSITY AUTHORITIES

164. Between 2019 and 2021, university administrators forced student unions to disband, and removed from campus memorials that commemorate the Tiananmen Square Massacre, including the “Pillar of Shame” in the University of Hong Kong and the “New Goddess of Democracy”, along with the democracy wall posters in the Chinese University of Hong Kong.¹⁹⁰

165. Particularly, in February 2021, Management at the Hong Kong Baptist University ‘abruptly cancelled a photo exhibition that included pictures from 2019’s protests, after being called out by state media. The university cited security and pandemic concerns as reasons for the cancellation’.¹⁹¹

166. Such intimidations of school management bodies strengthened the chilling-effect introduced by the NSL, threatening the campus environment in light of free speech, free exchange of ideas and opinions, and eventually academic freedom. In his recent academic journal article, Peter Baehr, a retired academic who worked at Lingnan University in Hong Kong for 21 years, argues that university senior

¹⁸⁶ “Senior member of Hong Kong pollster leaves city for the UK, citing ‘red lines’” *Hong Kong Free Press*, 25 April 2022, <https://hongkongfp.com/2022/04/25/senior-member-of-hong-kong-pollster-leaves-city-for-the-uk-citing-red-lines/>

¹⁸⁷ “Hong Kong pollster vows to press on with surveys after China’s party mouthpiece accuses it of influencing election turnout”, *Hong Kong Free Press*, 10 December 2021, <https://hongkongfp.com/2021/12/10/hong-kong-pollster-vows-to-press-on-with-surveys-after-chinas-party-mouthpiece-accuses-it-of-influencing-election-turnout/>

¹⁸⁸ “US human rights law scholar says Hong Kong gov’t denied him visa to teach at HKU”, *Hong Kong Free Press*, 2 February 2022, <https://hongkongfp.com/2022/02/02/us-human-rights-law-scholar-says-hong-kong-govt-denied-him-visa-to-teach-at-hku%ef%bf%bc/>

¹⁸⁹ “Former RTHK show host Allan Au arrested, ‘linked to Stand News’” *Global Times*, 11 April 2022, <https://www.globaltimes.cn/page/202204/1258987.shtml>

¹⁹⁰ “香港大學移除學生會在民主牆上的文宣標語”, *Voice of America*, 13 July 2021, <https://perma.cc/9SHV-R8EU>

Peter Baehr, “Hong Kong Universities in the Shadow of the National Security Law,” *Society* 59, no. 3 (June 2022): 230–231, <https://perma.cc/Z442-EU72>

¹⁹¹ Timothy McLaughlin, “China is killing academic freedom in Hong Kong”, *the Atlantic*, 6 June 2021, <https://www.theatlantic.com/international/archive/2021/06/china-hong-kong-freedom/619088/>

management have readily become “opportunists and weathervanes” and “the chief drivers of repression.”¹⁹²

167. Last but not the least, journalists and scholars in Hong Kong concerned that some members of university, including students, used the reporting hotline of the national security police in Hong Kong to report on lectures and discussions, creating a strong censorship and self-censorship environment in campuses.¹⁹³

DEREGISTRATION AND OTHER PUNISHMENTS OF TEACHERS

168. Since the anti-ELAB protest in 2019, school teachers have been under enormous political pressure as the government and pro-government politicians scapegoated them for inciting students to participate in the protests and mobilised their supporters to lodge complaints against teachers who expressed their political views on their social media account or allegedly used so-called “inappropriate” teaching materials.

169. Between 2019 and 2021, the EDB received 344 complaints against teachers in relation to the social movement. As of June 2022, at least 7 teachers were deregistered, 56 teachers were issued reprimand letters, 67 teachers were issued warning letters, 39 and 38 teachers were issued written advice and verbal reminders respectively.¹⁹⁴

170. Although teachers who received reprimand letters or other kinds of warnings can still teach in school, the EDB updated a circular in May 2020, requesting that all schools, when appointing teachers, should require the applicants to disclose whether they are under investigation by schools or the EDB over professional misconduct allegations. This new requirement makes teachers subjected to malicious and politically motivated complaints almost impossible to work at other schools since most schools, facing political pressure, are not willing to take any risk to employ teachers who were warned by the EDB or are currently under investigation.

171. Among the deregistered teachers, at least 3 were found professional misconduct because of using “inappropriate” teaching materials. One of the cases involved a teacher providing erroneous information to students. In April 2020, a primary school teacher gave a distorted history of the opium war to students in a pre-recorded online learning video, of which the soundtrack was uploaded and spread on the internet. Afterwards, the teacher and the school came under widespread criticism from pro-Beijing politicians, their supporters, and the state media.

172. Despite making apology for the mistake, the Education Bureau cancelled the teacher’s registration permanently, claiming that the teacher had “completely neglected his basic duty” and was “incompetent and unfit to be a teacher.”¹⁹⁵

¹⁹² Peter Baehr, “Hong Kong Universities in the Shadow of the National Security Law,” *Society* 59, no. 3 (June 2022): 227, <https://perma.cc/Z442-EU72>

¹⁹³ “Hong Kong’s Contested Academic Freedom”, *The Diplomat*, 27 January 2022, <https://thediplomat.com/2022/01/hong-kongs-contested-academic-freedom/>

¹⁹⁴ LegCo, 01/06/2022, Progress Report on the Motion on “Enhancing teachers’ qualifications to effectively implement education on patriotism”, CB(3) 637/2022(01), <https://www.legco.gov.hk/yr2022/english/counmtg/motion/cm20220601m-tf-prpt-e.pdf>

¹⁹⁵ “Second Hong Kong teacher sacked, this time for Opium War blunder as lawmaker says punishment too harsh”, *Hong Kong Free Press*, 13 November 2020, <https://hongkongfp.com/2020/11/13/second-hong-kong-teacher-sacked-this-time-for-opium-war-blunder-as-lawmaker-says-punishment-too-harsh/>

173. Another case involved a primary school teacher accused of "advocating Hong Kong independence" in school. The teacher - who was responsible for preparing teaching material for General Studies, a subject nurturing students' social awareness - put a TV documentary featuring an interview of a pro-independence activist and a worksheet with four questions about freedom of speech and proposals for Hong Kong's independence. However, it should be noted that the incident happened before the enactment of the NSL and the Education Bureau failed to provide evidence proving that the teacher had any intention to indoctrinate students to support Hong Kong independence.¹⁹⁶

174. For those who are deregistered, they are no longer allowed to teach in any school or even enter or remain in any school. A three-tier appeal mechanism is available for deregistered teachers to seek redress. They can first appeal to the Appeal Boards Panel. Should the appeal be dismissed by the Panel, they can appeal to the Chief Executive in Council. After the appeals, they can still challenge the decision by filing a judicial review. However, it should be noted that the independence and fairness of the mechanism are in doubt as the members of the Appeal Boards Panel are all appointed by the Chief Executive.

175. The disproportional punishment of the teacher raised huge concerns and fears among teachers that making any mistake, even though it is unintentional, could put themselves into a political controversy and lead them to serious consequences, including deregistration. They are also deeply worried that they would be secretly reported by students, parents or colleagues for anything they do in lessons.

Recommendation

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

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

178. The HKSAR Authorities, including the Immigration Department and the University Grant Committee, Research Grant Council, the government-owned media outlets, must refrain from exerting pressure and undue influence, and making any decisions, including formal and informal intimidation as well as denial of working VISAs and entries, against universities, academics, students and their speech, acts, and activities for political reasons.

179. The Hong Kong Government should:

- (1) when imposing any epidemic measure or social distancing measures, prioritise the education needs of children, no matter their vaccination status, so as to minimise the impact on their usual classes and learning activities.

¹⁹⁶ "Teacher disqualified for 'promoting Hong Kong independence'", *BBC*, 06 October 2020, <https://www.bbc.co.uk/news/world-asia-54431729>

- (2) conduct reviews and enhance support for prisoners who want to pursue their studies in custody. It includes but is not limited to financial subsidies, selection of courses, reference books and access to learning materials on the internet.
- (3) repeal the national security guidelines for schools and ensure that the school curriculum adhere to the aims of education stated in the Covenant that education should "strengthen the respect for human rights and fundamental freedom."
- (4) ensure that, for nurturing students' social awareness and critical thinking, controversial social issues should be able to be discussed in classes.

ITEM 26: CULTURAL RIGHTS

ACCESS TO THE INTERNET AND INFORMATION

180. According to Schedule 4 of the Implementation Rules for Art 43 of the National Security Law, the Hong Kong Police can require service providers to take a disabling action on electronic messages on an electronic platform which they believe is likely to constitute an offence endangering national security.

181. After the imposition of the National Security Law, it was reported that several websites are inaccessible in Hong Kong. They include the websites of:

- (1) June 4th Memory Human Rights Museum (8964museum.com), an online museum memorializing the victims of 1989 Tiananmen massacre; which was blocked since September 2021;¹⁹⁷
- (2) Hong Kong Watch, a UK-based rights group, which was blocked since February 2022;¹⁹⁸
- (3) Hong Kong Democracy Council, a US-based rights group, which was blocked since October 2022.¹⁹⁹

182. When replying to media enquiries, the Hong Kong Police refused to comment on the cases above. Instead, they only highlighted the statutory power provided by art 43 of the NSL. Notably, on 10 March 2022, the Hong Kong Watch, following its website being blocked in Hong Kong, received a letter from the Hong Kong Police Force claiming that the content of its website was "likely to constitute an offence endangering national security" and demanding them to take down the website.²⁰⁰ It reflects that the Hong Kong Government has been taking steps to suppress the freedom of expression and the

¹⁹⁷ "1989 Tiananmen Massacre online museum blocked in Hong Kong, three weeks after police raid physical site", *Hong Kong Free Press*, 29 September 2021, <https://hongkongfp.com/2021/09/29/1989-tiananmen-massacre-online-museum-blocked-in-hong-kong-three-weeks-after-police-raid-physical-site/>

¹⁹⁸ "Fears of online censorship in Hong Kong as rights group website goes down", *The Guardian*, 15 February 2022, <https://www.theguardian.com/world/2022/feb/15/fears-of-online-censorship-in-hong-kong-as-rights-group-website-goes-down>

¹⁹⁹ "Website of NGO Hong Kong Democracy Council partially blocked in city amid fears over erosion of open internet", *Hong Kong Free Press*, 26 October 2022, <https://hongkongfp.com/2022/10/26/website-of-ngo-hong-kong-democracy-council-partially-blocked-in-city-amid-fears-over-erosion-of-open-internet/>

²⁰⁰ "U.K.-based rights group says Hong Kong police accused it of violating security law", *Reuters*, 14 March 2022, <https://www.reuters.com/world/asia-pacific/uk-based-rights-group-says-hong-kong-police-accused-it-violating-security-law-2022-03-14/>

freedom of information on the internet, sparking worries that it will further impose bans on other websites containing dissident views or any information it disallows.

CENSORSHIP AND INTERFERENCE IN ARTWORK AND LITERATURE CREATION

Censorship on films

183. After the imposition of the National Security Law in 2020, in October 2021, the Hong Kong Government further tightened its grip on censoring movies by amending the Film Censorship Ordinance, which empowers the Office for Film, Newspaper and Article Administration (“OFNAA”) to censor any movie that could endanger national security and the Chief Secretary for Administration to revoke the certificate of a film if he believes the exhibition of the movie would be contrary to the interests of national security. Under the new legislation, anyone who exhibits a banned movie could be subjected to a fine of HK\$1 million and imprisonment for 3 years.²⁰¹

184. Under the new restrictions and regulations, some films were prohibited from public screening:

(1) On 25 June 2021, the screening of "Taiwan Equals Love", a documentary about the controversy of same-sex marriage legislation in Taiwan, was banned by the OFNAA.²⁰²

(2) In June 2022, regarding one of the banned films, "The Dancing Voice of Youth", the OFNAA said the subtitle in the film, "We covered all over with cuts and bruises, but we can only keep holding on, strain every nerve to resist unjust rules", carried "ungrounded statements" which could mislead audiences into thinking that the Hong Kong Government "abuses its power to curb the protests", inciting hatred against the government.²⁰³

(3) In August 2022, the screening of "Losing Side of a Longed Place" was cancelled following the OFNAA's order to remove a less than a second scene depicting a protest site of the 2014 Umbrella Movement.²⁰⁴

(4) In October 2022, the screening of a Taiwanese documentary "The Lucky Women", a program of the "All About Us Film Festival 2022", was cancelled after the OFNAA required the removal of the scenes of migrant workers protesting in front of Taiwan's Presidential Office Building.²⁰⁵

²⁰¹ “Hong Kong passes bill to ban films deemed threats to national security, increase penalty for unauthorised screenings”, *South China Morning Post*, 28 October 2021, <https://www.scmp.com/news/hong-kong/politics/article/3153857/hong-kong-passes-bill-ban-films-deemed-threats-national>

²⁰² “LGBT documentary pulled from film festival after Hong Kong’s Film Censorship Authority bans full screening”, *Hong Kong Free Press*, 26 June 2021, <https://hongkongfp.com/2021/06/26/lgbt-film-pulled-from-film-festival-after-hong-kongs-film-censorship-authority-bans-screening/>

²⁰³ “Hong Kong director pulls film from screening after authorities say it could incite hatred of government”, *Hong Kong Free Press*, 22 June 2022, <https://hongkongfp.com/2022/06/22/hong-kong-director-pulls-film-from-screening-after-authorities-say-it-could-incite-hatred-of-government/>

²⁰⁴ “Hong Kong film dropped from festival after censors object to Umbrella Movement scene lasting under a second”, *Hong Kong Free Press*, 12 August 2022, <https://hongkongfp.com/2022/08/12/hong-kong-film-dropped-from-festival-after-censors-object-to-umbrella-movement-scene-lasting-under-a-second/>

²⁰⁵ “Screening of Taiwanese documentary axed at Hong Kong film festival after censors request removal of protest scenes”, *Hong Kong Free Press*, 25 October 2022, <https://hongkongfp.com/2022/10/25/screening-of-taiwanese-documentary-axed-at-hong-kong-film-festival-after-censors-request-removal-of-protest-scenes/>

(5) In October 2022, the organiser of an outdoor screening of "Batman: The Dark Knight" was advised to cancel the screening by the OFNAA, citing the reason of "too violent" and "not suitable to screen outdoor". As a result, the organiser replaced it with another film.²⁰⁶

185. The aforementioned cases show that all films are now subjected to strict political censorship, which is seriously detrimental to the freedom of creation and the freedom of expression. More importantly, it is of grave concern that film producers could face sedition charges if the authorities believe that their films contain any content that could incite hatred to the government.

Censorship of library materials and literature creation

186. Public libraries play a vital role in protecting the right to access to information. Yet, after the enactment of the NSL, various books have been removed, including the publications of national security defendants Joshua Wong, Benny Tai, Jimmy Lai, former lawmaker Tanya Chan. The authorities refused to provide the list of banned books, claiming that it "may lead to wide circulation of such library materials with malicious intent."²⁰⁷

187. Apart from banning books, it was reported that public library users no longer have access to the electronic archive of the Apple daily, the pro-democracy newspaper which ceased operation in June 2021, from the full-text news database.²⁰⁸

188. The Hong Kong Public Library was also found censoring publications in its literature competition. In October 2022, it was reported that three books were disqualified from the 16th Hong Kong Biennial Awards for Chinese Literature because they involved content about the Umbrella Movement in 2014 and the Nobel Peace Prize laureate Liu Xiaobo.²⁰⁹ Report also said all of them had been removed from public libraries.²¹⁰

189. Meanwhile, the government also required public schools to check their libraries to ensure that all books and leaflets must comply with the NSL but no official list of banned books was given. To

²⁰⁶ "Screening of Batman film scrapped after Hong Kong censors say it is 'not appropriate' for outdoor showing", *Hong Kong Free Press*, 21 October 2022, <https://hongkongfp.com/2022/10/21/screening-of-batman-film-scrapped-after-hong-kong-censors-say-it-is-not-appropriate-for-outdoor-showing/>

²⁰⁷ "Hong Kong gov't refuses to say which library books are banned under national security law", *Hong Kong Free Press*, 07 April 2022, <https://hongkongfp.com/2022/04/07/hong-kong-govt-refuses-to-say-which-library-books-are-banned-under-national-security-law/>

²⁰⁸ "《蘋果日報》在公共領域消失 公共圖書館電子剪報刪所有《蘋果》紀錄 電子書庫下架至少 28 本「敏感」書籍", *The Feature*, 27 June 2022,

<https://hkfeature.com/local/%E8%98%8B%E6%9E%9C%E6%97%A5%E5%A0%B1%E5%9C%A8%E5%85%AC%E5%85%B1%E9%A0%98%E5%9F%9F%E6%B6%88%E5%A4%B1-%E5%85%AC%E5%85%B1%E5%9C%96%E6%9B%B8%E9%A4%A8%E9%9B%BB%E5%AD%90%E5%89%AA%E5%A0%B1%E5%88%AA%E6%89%80/#%E5%9C%96%E6%9B%B8%E9%A4%A8%E9%9B%BB%E5%AD%90%E5%89%AA%E5%A0%B1%E5%B0%87%E3%80%8A%E8%98%8B%E6%9E%9C%E6%97%A5%E5%A0%B1%E3%80%8B%E5%85%A8%E6%95%B8%E4%B8%8B%E6%9E%B6>

²⁰⁹ "Hong Kong library writing contests forbid entries deemed contrary to national security", *Hong Kong Free Press*, 28 October 2022, <https://hongkongfp.com/2022/10/28/hong-kong-library-writing-contests-forbid-entries-deemed-contrary-to-national-security/>

²¹⁰ "下架 3 書獲選 文學獎新詩組「從缺」 康文署：作品未達標 活動須守法", *Ming Pao*, 26 October 2022, <https://news.mingpao.com/pns/%E8%A6%81%E8%81%9E/article/20221026/s00001/1666721696677>

avoid violating the NSL, it was reported that teachers now took a cautious approach when discarding books.²¹¹

VISUAL ARTISTS UNDER POLITICAL PRESSURE

190. Since the imposition of the national security law, visual artists have been facing immense political pressure with the fear of touching the red line because of their artworks. Some cases are as follows:

(1) Wong Kei-kwan, better known as Zunzi, a prominent political cartoonist in Hong Kong, came under criticism by the government's officials for his newspaper cartoons, most of which are satires on Hong Kong politics. On 11 October 2022, the Hong Kong Police sent a letter to Mingpao Daily to complain about his cartoon which - in response to an incident that 14 students were suspended for three days because they had failed to turn up for a national flag-raising ceremony - depicted riot police arriving at a school, with a teacher telling the police that some students said foul language, a student lost his eraser and another student had a conflict with a teacher. The police believed the cartoon would mislead readers into thinking that the police were called on to handle the incident. The cartoon, however, according to Zunzi, aimed to remind teachers to be patient when dealing with students' improper behavior.²¹²

(2) On 21 October 2022, Zunzi was criticised by the Secretary for Labour and Welfare for his newspaper cartoon containing the word "strict governance".²¹³ On 6 January 2023, the Chief Secretary for Administration Eric Chan, the city's No. 2 official, criticised him over his another work, a cartoon depicting two men discussing the recent interpretation of the Standing Committee of the National People's Congress of the national security law, which empowered the Chief Executive to make decisions on several important matters as to national security. In the cartoon, one man said the Chief Executive "can do what he wants to do for the sake of the national security". While it is obvious that the cartoon is merely a satire, the Chief Secretary for Administration said the cartoon was "completely misleading".²¹⁴

(3) In December 2021, another political cartoonist, Justin Wong Chiu Tat, also an assistant professor at Hong Kong Baptist University ("HKBU"), resigned from his teaching post and left Hong Kong. In an interview in December 2022, he disclosed the reason for leaving, saying that he learnt from his supervisor that an academic article he wrote about the anti-government protests in 2019 "may have some problems" and the HKBU had reported to the national security police. The HKBU denied his accusation when enquired by the press. Yet, Wong said he was told by a former colleague that the police had enquired the university about the article. He also mentioned that he

²¹¹ "National security law: Hong Kong schools remove books at risk of breaking Beijing-decreed legislation", *South China Morning Post*, 07 August 2021, <https://www.scmp.com/news/hong-kong/education/article/3144202/national-security-law-hong-kong-schools-remove-books-risk>

²¹² "Hong Kong police complain to newspaper over cartoon showing riot squad called to school to deal with unruly pupils", *South China Morning Post*, 13 October 2022, <https://www.scmp.com/news/hong-kong/society/article/3195753/hong-kong-police-complain-newspaper-over-cartoon-showing>

²¹³ "Hong Kong's John Lee defends labour sec.'s criticism of political cartoonist mocking talent attraction scheme", *Hong Kong Free Press*, 24 October 2022, <https://hongkongfp.com/2022/10/24/hong-kongs-john-lee-defends-labour-sec-s-criticism-of-political-cartoonist-mocking-talent-attraction-scheme/>

²¹⁴ "Hong Kong newspaper Ming Pao criticised by No. 2 official over comic strip about Beijing ruling on security law", *Hong Kong Free Press*, 06 January 2023, <https://hongkongfp.com/2023/01/06/hong-kong-newspaper-ming-pao-criticised-by-no-2-official-over-comic-strip-about-beijing-ruling-on-security-law/>

faced enormous pressure after receiving a complaint letter from the Hong Kong Police regarding one of his newspaper cartoons in June 2021.²¹⁵

Recommendation

191. Before repealing the National Security Law, refrain from using the law to ban access to websites.

192. The government should publicise their actions of taking down websites, and censored publications with reason.

193. Review the Film Censorship Ordinance and related guidelines so as to ensuring that filmmakers can fully enjoy the freedom of expression and their works will not subjected to political censorship.

194. Stop censoring books and materials in public libraries and school libraries and reinstate books and materials which were removed because of the national security considerations after the enactment of the National Security Law.

195. Respect and protect the freedom of expression of artists, ensuring that artists will not be charged with national security offences or sedition offence because of their artworks.

-END-

²¹⁵ “黃照達稱反修例研究遭報警 浸大否認 黃：觸發辭教席移英 校方：一直護學術自由”, *Ming Pao*, 3 January 2023, <https://news.mingpao.com/pns/%E6%B8%AF%E8%81%9E/article/20230103/s00002/1672682878338>