

Brief Report on Hong Kong District Councils Election held on 10 Dec 2023

*Prepared by Hong Kong Centre for Human Rights (“HKCHR”)
21 December 2023*

A. Summary

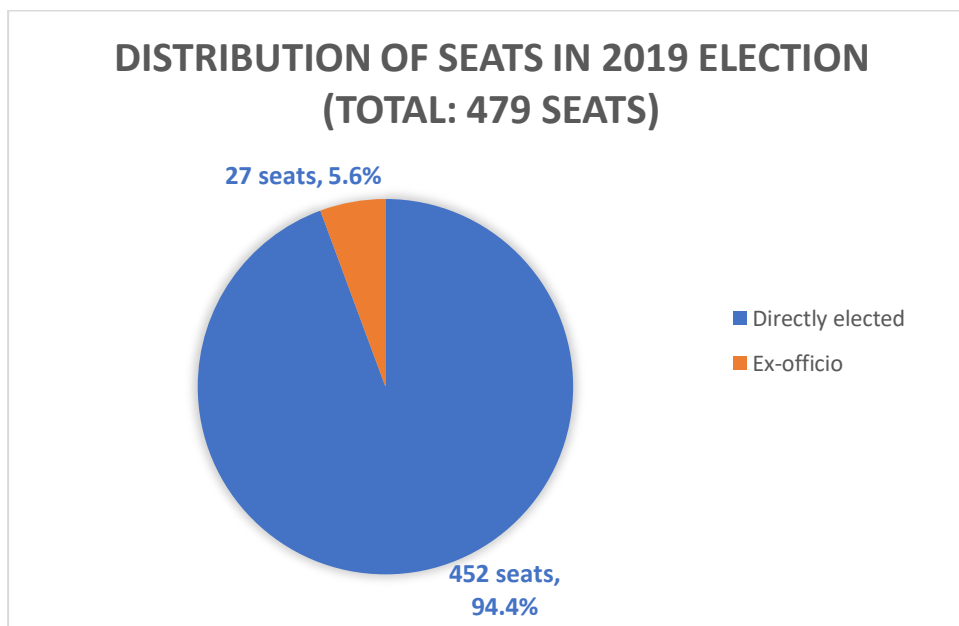
1. The Hong Kong District Councils Election (“**the Election**”) was held on 10 December 2023. It was the first “patriots-only” District Councils (“**DC**”) election held after the overhauls passed in June 2023, following the revamped Legislative Council election and Election Committee election held in 2021.
2. Key observations by HKCHR:
 - (1) The changes to the election method and its practices are contrary to the right to vote and to be elected at genuine elections which are to be by universal and equal suffrage, as guaranteed by Article 25 of the International Covenant on Civil and Political Rights (“**ICCPR**”);
 - (2) Such changes violate the principle of non-retrogression of rights;
 - (3) The new requirement to obtain nomination from government-appointed members of committees allows for indirect control by the government of who gets to run;
 - (4) On and before the polling date, undue influences of electorates and obstruction of their free expression were observed, including by arresting dissidents who exercise their rights to free speech and to peaceful assembly; and by an unprecedented practice of gifting voters a card which could potentially be used to identify anyone who has or has not voted.
3. This brief report seeks to elucidate the latest developments in Hong Kong’s electoral landscape by shedding light on the systemic alterations to the election framework and providing immediate observations of the electoral process.

B. Background of DC and changes of election system

Brief summary of DC and their elections

4. The DC in Hong Kong act as local advisory bodies, representing the interests of residents across the initially 18 districts of the region. Elections for the DCs are held every four years, ensuring direct public representation and participation in local governance.

- The formal establishment of DC, initially known as District Boards, stemmed from the District Administration Scheme initiated by Governor Sir Murray MacLehose in 1982. The total number of district councillors has varied over the years, with its composition including directly elected members, ex-officio members and appointed members. Prior to the retrogressive overhaul introduced in 2023, the electoral system had indeed been continuously democratized, with all appointed seats completely abolished in 2015.¹ In the 2019 DC election, 452 out of 479 members (94.4%) were democratically elected by the public, while only 27 members were ex-officio seats held by Chairmen of Rural Committees in the New Territories.²



Election system overhaul

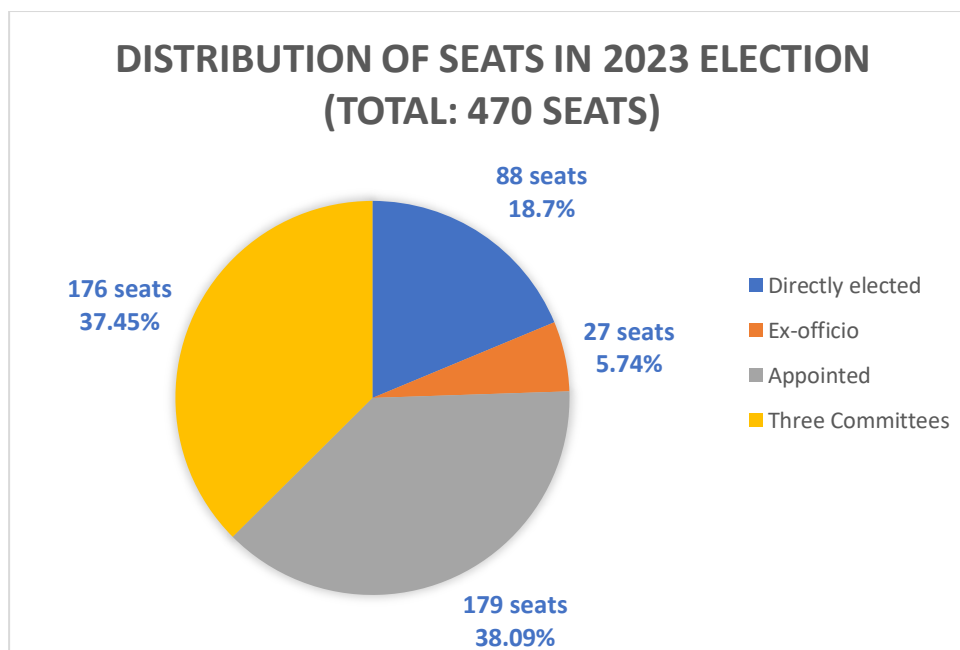
- In the 2019 elections, held amidst the anti-extradition bill protests, the pro-democracy bloc secured an overwhelming victory, winning 392 of the 452 available seats — amounting to 87% — and assuming control of 17 out of 18 District Councils.³ This electoral sweep by the opposition was perceived by the Chinese government as a challenge to its authority. In response to these developments, the government initiated a comprehensive restructuring of the DC in 2023.
- The electoral reforms have fundamentally altered the structure and electoral processes of the DC, with only 88 out of 470 seats to be directly elected by city’s four million registered voters. The electoral changes were proposed by the government on 2 May 2023 and approved by the “patriots-only” Legislative Council on 6 July 2023 without any votes against it. The changes are officially effective from 10 July 2023.

¹ https://orientaldaily.on.cc/cnt/news/20130523/00176_063.html

² <https://www.elections.gov.hk/dc2019/eng/dcbriefs.html>

³ <https://www.scmp.com/news/china/politics/article/3039832/hong-kong-election-success-pro-democracy-camp-gives-beijing>

8. Under the overhauled electoral system, the number of democratically-elected seats were slashed from 452 to 88, **meaning that the ratio of representatives chosen by the public would significantly drop from 94.4% to 18.7%**. Government-appointed seats, which were abandoned since 2016, would be reinstated and fill 179 seats of the new District Councils. Another 176 seats will be produced through elections within three existing undemocratic neighbourhood committees, commonly referred to as “**the Three Committees**” (三會), namely the District Fight Crime Committees (“**DFCCs**”), the District Fire Safety Committees (“**DFSCs**”) and the Area Committees (“**ACs**”), of which all members are chosen by the government. Finally, ex-officio members remain to be 27 seats.⁴



Nominations by the Three Committees

9. Apart from holding a combined total of 176 seats out of 470 total seats (37%), members of the Three Committees are also bestowed with a new authority to nominate prospective candidates under the new system. Every would-be candidate must secure at least three nominations from each of the Three Committees (while people seeking to stand for direct elections have to additionally acquire nominations from 50 local voters). It is crucial to highlight that the formation of the Three Committees is a top-down process, with all members appointed by the Director of Home Affairs. The criteria used for selecting members of these committees have remained unclear over the years. For instance, in 2020, when queried about changes in the composition of the ACs, the Home Affairs Department indicated that appointments were made based on individual talents, yet specifics were not disclosed.⁵

⁴ <https://www.scmp.com/news/hong-kong/politics/article/3219182/how-will-hong-kongs-district-council-overhaul-change-neighbourhood-political-life-direct-voting>

⁵

https://www.districtcouncils.gov.hk/east/doc/2020_2023/en/dc_meetings_doc/17929/e_edc_6th_20200929_056_reply_tc.pdf

District Council Eligibility Review Committee

10. The District Council Eligibility Review Committee (“**DCERC**”), established as part of the electoral reforms, comprises a chairman, 2 to 4 official members, and 1 to 3 non-official members, all appointed by the Chief Executive. Its main role is to review and confirm the eligibility of individuals for appointment as District Council members and nomination as election candidates.⁶ Effectively, it serves the purpose of assessing prospective candidates’ allegiance to the government and ensuring eligible candidates must be “patriots”. People not approved by the DCERC would be barred from running for election.

A new monitoring mechanism

11. Apart from overhauling the election method, the government also introduced a performance monitoring mechanism which authorises the government to punish DC members for insulting others at meetings, blocking access to meeting venues, and other disorderly conduct.⁷

C. Overview

(For the full election results, please refer to:

https://www.elections.gov.hk/dc2023/eng/rs_dcg.html)

Direct election

12. As the first DC election since establishment which effectively excluded all pro-democracy candidates, the Election has seen a record-low poor turnout rate. Despite the enormous resources the government spent on promoting the election, including fireworks and a large-scale concert,⁸ the turnout of the direct election (i.e. geographical constituency election) is 27.54%, the lowest since the DC was established in 1982, and significantly lower than the previous DC election held in 2019 which saw a turnout rate of 71.23%.⁹

13. Voter turnout rate in DC direct elections (i.e. geographical constituency elections) after handover of Hong Kong¹⁰

Year	Turnout rate
1998	35.8%
2003	44.1%
2007	38.8%
2011	41.5%

⁶ https://www.news.gov.hk/eng/2023/10/20231011/20231011_160433_278.html

⁷ <https://www.hk01.com/article/966677>

⁸ <https://www.info.gov.hk/gia/general/202312/08/P2023120800670.htm?fontSize=1>

⁹ https://www.elections.gov.hk/dc2023/eng/vtr_dcg_all.html

<https://www.thestandard.com.hk/breaking-news/section/4/211285/Hong-Kong-sees-record-low-turnout-for-District-Council-polls>

¹⁰ <https://hongkongfp.com/2023/12/11/breaking-poorest-ever-turnout-for-hong-kongs-district-council-election-6-arrests-during-opposition-free-polls/>

2015	47.0%
2019	71.2%
2023	27.5%

14. It shall be noted that the Electoral Affairs Commission (“EAC”) claimed on the polling day that the Electronic Poll Register system malfunctioned since 7:42pm which prevented ballot papers from being issued, and therefore Polling stations started using the printed copy of the electoral roll to issue ballots since 8:12pm under a contingency plan. The EAC subsequently announced that the voting hours would be extended – all polling stations would continue to operate until midnight, 1.5 hours later than the original closing time of 10:30pm.¹¹
15. The EAC chairman David Lok, who was appointed by the Chief Executive, explained that extending voting time is a fair way to ensure all voters who intended to vote would be able to do so. Asked whether he was trying to use computer failure as an excuse to boost the turnout rate, Luk denied and emphasized that the turnout rate was not a factor to be considered.¹²

Three Committees election

16. 176 members were elected internally within the Three Committees. The turnout rate of this new and undemocratic election is 96.92%.¹³

D. Observation #1: Unfair and opaque nomination procedures

17. The new nomination procedures unfairly restricted the participation of pro-democracy politicians, rendered the Election biased and unequal, and therefore are inconsistent with Article 25 of the ICCPR which is a binding treaty incorporated into domestic law via the Bill of Rights Ordinance. In the end, no pro-democracy candidate was able to secure sufficient nominations and be eligible to participate in the Election.

Difficult to contact Three Committees members

18. Under the revamped system, in addition to securing nominations from at least 50 voters, people seeking to stand for direct elections in geographical constituencies must also acquire nine nominations from the Three Committees. However, in the name of protecting privacy,¹⁴ the government was only willing to provide names and correspondence addresses of Three Committees members to “specified persons” (i.e. parties or organisations which stood for or planned to stand for election), but remained reluctant to disclose more direct contact methods, such as their telephone numbers or

¹¹ <https://www.scmp.com/news/hong-kong/politics/article/3244514/hong-kong-district-council-election-city-leader-john-lee-casts-ballot-patriots-only-poll-urges>

¹² <https://news.mingpao.com/pns/%e8%a6%81%e8%81%9e/article/20231211/s00001/1702235250350>

¹³ https://www.elections.gov.hk/dc2023/eng/vtr_dcc_all.html

¹⁴ <https://news.mingpao.com/pns/%e6%b8%af%e8%81%9e/article/20230925/s00002/1695579759463>

email addresses.¹⁵ Additionally, every prospective candidate may reach out to the government to make a request to contact the Three Committees members. The government will then relay such requests and contact information to the relevant members, but the members are not legally required to respond or even consider such requests.¹⁶

19. At the end, members of the Democratic Party, the largest pro-democracy party in Hong Kong, failed to obtain sufficient nominations from the Three Committees and hence were not eligible to run.¹⁷ Kwok Wai-shing and Kenny Chow, two prospective candidates of a moderate pro-democracy party – the Hong Kong Association for Democracy and People's Livelihood (“ADPL”) – are also not qualified to stand for the Election. Kwok told the press that he had forwarded his contact information to members of the Three Committees at the beginning of the nomination period, but he had never received any response. He also contacted some members through online searches and his own contacts, but “some were not in Hong Kong, some said they were busy, some said they would consider it, and some said they had already nominated someone else.” Kwok was therefore unable to become an eligible candidate, despite successfully obtaining more than 100 nominations from the public – which is two times of public endorsement required by the law.¹⁸
20. Apart from pro-democracy candidates, some pro-government politicians who may not be sufficiently patriot also faced similar difficulty. Third Side, an effectively pro-government party which proclaims itself as a centrist party, could not secure sufficient endorsement from the Three Committees, and are excluded from the Election.¹⁹ Roundtable, a pro-Beijing group that is often regarded as not sufficiently loyal to the government, was initially planning to endorse five members to run for election. But only one of them was able to obtain enough nominations from the Three Committees. Its convenor Michael Tien criticized that more than 200 members of the Three Committees had not responded or refused to listen to its manifesto, abandoning their responsibilities as nominators.²⁰
21. It shall be noted that members of both Third Side and Roundtable were allowed to participate in the 2021 “patriot-only” Legislative Council election, meaning that their loyalty were approved by the government, yet they were still barred from running for the Election under the new nomination procedures.

Violation of election right

¹⁵ <https://www.hk01.com/article/949849>

¹⁶ https://www.news.gov.hk/chi/2023/09/20230924/20230924_195022_489.html
<https://www.info.gov.hk/gia/general/202310/05/P2023100500698.htm?fontSize=1>

¹⁷

<https://news.mingpao.com/ins/%E5%8D%80%E8%AD%B0%E6%9C%83%E9%81%B8%E8%88%89/article/20231030/special/1698657085158>

¹⁸ <https://www.hk01.com/article/956445>

¹⁹ <https://www.hk01.com/article/955807>

²⁰ <https://news.mingpao.com/ins/%E6%B8%AF%E8%81%9E/article/20231030/s00001/1698653664411>

22. HKCHR is of the view that the Election is unfair and not genuine, considering that it gives the pro-government candidates advantages while discriminating against pro-democracy candidates in the following ways:

- (1) By handpicking members to the Three Committees, the government is able to manipulate the nomination process and control the eligible candidacy.
- (2) Given that government-appointed Three Committees members are usually from the pro-China camp, the revised system undermines impartiality and fairness because it is unrealistic to expect them to fairly and objectively consider nomination requests made by pro-democracy parties and candidates.
- (3) The government's refusal to furnish all candidates with direct or convenient contact methods of all Three Committee members constitutes an unjustifiable nomination barrier, particularly given the brief two-week nomination period. Prospective candidates from the pro-government camp stand to gain an undue advantage since they are likely to have better knowledge of, and greater access to, the Three Committees members who are also mainly from the same camp.
- (4) Only parties or organisations which stood for or declared an intention to stand for election could access to full names and correspondence addresses of Three Committees members. In other words, independent individuals who have no party affiliations were entirely precluded from checking even this basic information, placing them in an inequitable position and making it more difficult for them to secure sufficient nominations than others.

23. Article 25 of the ICCPR states that every citizen has the right to participate in elections free from discrimination. The United Nations Human Rights Committee has underscored that a government should not unreasonably restrict an individual's right to stand for election by requiring a candidate to be a member of a political party; and that if a candidate is required to have a minimum number of supporters for nomination, this requirement should be reasonable and not act as a barrier to.²¹ It is of our view that current nomination method constitutes discrimination against all candidates who do not belong to the pro-government camp, and unreasonably restricts Hong Kong people's right to stand for election, which is obviously a violation of the ICCPR.

E. Observation #2: Pressuring civil servants to boost turnout rate

24. In order to justify the overhauled system and solidify its legitimacy, the government has used a series of tactics to pressure civil servants and to cast their votes, and used unprecedentedly disproportionate resources to promote the election for the purpose of boosting the turnout rate.

Thank you cards

²¹ <https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2025.pdf>

25. People voted in the Election would be given a “thank you card” issued by the government. However, the civil services union is concerned that the cards might be used to pressure civil servants into proving they have cast their votes.
26. Leung Chau-ting, the founder and chairman of the Federation of Civil Service Union, told the press that the cards were a form of “intangible pressure”.²² He stated that civil servants had obviously felt the pressure to vote due to the government’s overwhelming appeals, as there had never been any repeated calls to vote in previous elections. Despite the government’s denial, Leung said that some are worried they have to show photos of the “thank you cards” as a proof of casting ballots.²³
27. An anonymous civil servant also told the reporter that, despite without explicitly saying so, her supervisor had emailed, texted her in WhatsApp, and verbally “hinted” and “strongly suggested” her to take a picture of the thank you card after voting.
28. Apart from civil servants, an employee of a listed group also said that his boss verbally advised them to take photos. In case the group has to prove that their staff have voted, these photos can serve as evidence.²⁴

Verbal pressure

29. On 7 December, three days before the voting day, Chief Secretary Eric Chan said that civil servants must support the government, “because you are working for the government, your wages are paid by the government, and this is a very important election, so should we all go and vote for it?” He added that if government employees do not vote, “that is ridiculous, it is impossible”.²⁵
30. Earlier, Chief Executive John Lee also urged the city’s 170,000 civil servants to “lead by example” and vote, saying they had a duty to exercise their civic duty.²⁶

Free but unmonitored transport for elderly voters

31. The Social Welfare Department has provided 215 elderly community centres with a one-off allowance of HK\$20,000 to bus their senior residents to the polling stations. Secretary for Home and Youth Affairs Alice Mak claimed that such measure would not affect the

²² <https://hongkongfp.com/2023/12/09/get-out-the-vote-official-efforts-to-encourage-hongkongers-to-cast-their-ballots-in-patriots-district-council-race/>

²³ <https://www.thestandard.com.hk/breaking-news/section/4/211136/Eyebrows-raised-over-thank-you-card-for-voting-have-politicians-busy-in-clearing-doubts>

²⁴ <https://news.mingpao.com/pns/%e8%a6%81%e8%81%9e/article/20231211/s00001/1702235251622>

²⁵

<https://www.inmediahk.net/node/%E6%94%BF%E7%B6%93/%E9%99%B3%E5%9C%8B%E5%9F%BA%EF%BC%9A%E5%85%AC%E5%8B%99%E5%93%A1%E3%80%8C%E5%87%BA%E7%B7%8A%E6%94%BF%E5%BA%9C%E7%B3%A7%E3%80%8D-%E4%B8%8D%E6%8A%95%E7%A5%A8%E6%98%AF%E8%8D%92%E8%AC%AC%E3%80%81%E7%84%A1%E5%8F%AF%E8%83%BD>

²⁶ <https://hongkongfp.com/2023/12/09/get-out-the-vote-official-efforts-to-encourage-hongkongers-to-cast-their-ballots-in-patriots-district-council-race/>

fairness of the Election, despite numerous media reports in previous elections showing that seniors subject to similar arrangements (not publicly funded) were instructed who to vote for.²⁷ The government refused to comment whether it had or how it could monitor the buses to combat unfair influence on the elderly voters.²⁸

F. Observation #3: Arresting people to deter dissents

32. To date, eight people were arrested in relation to the Election for peacefully exercising their rights to free speech and peaceful assembly.

Polling day – Three were arrested by the ICAC

33. One man and two women were arrested by the Independent Commission Against Corruption (“**ICAC**”) for allegedly inciting others to cast invalid votes at the Election. Two of them were alleged to have left comments on a social media platform to “incite others to put three or more ticks on their ballot papers”.²⁹

34. The other arrestee has allegedly reposted an article on an online social media platform that encouraged others to boycott the Election by not voting. She also allegedly encouraged people to write their names and identity card numbers on the ballot papers so as to render them invalid. The ICAC claimed that the article was initially published by disqualified and former District Councillor (i.e. member of the DC) Leos Lee Man-ho on his social media page during the election period. As Lee had already left Hong Kong, the ICAC would apply to the court for a warrant for his arrest.³⁰

Polling day – Three were arrested by the police

35. Three members of pro-democracy group League of Social Democrats (“**LSD**”) were arrested by the police when they were heading to one of the polling stations for a planned protest to the Chief Executive John Lee, who was there to cast his vote and deliver a speech to the press. The arrestees are LSD’s chairwoman Chan Po-ying and vice-chairs Dickson Chow and Yu Wai-pan. The LSD said the three were followed and monitored since they left home that day.

36. The police alleged the three activists of “inciting others to *intervene* in the District Council election”³¹, despite the fact that there is no such offence with the same or similar wordings under Hong Kong law. The ICAC later confirmed that it has taken over the case and arrested the trio for allegedly inciting others to *boycott* the Election, which may constitute a breach of section 27A of the Elections (Corrupt and Illegal Conduct) Ordinance (“**ECICO**”), namely the offence of “inciting another person not to vote or to cast invalid

²⁷ <https://hongkongfp.com/2023/12/09/get-out-the-vote-official-efforts-to-encourage-hongkongers-to-cast-their-ballots-in-patriots-district-council-race/>

²⁸ <https://news.mingpao.com/pns/%e8%a6%81%e8%81%9e/article/20231211/s00001/1702235254764>

²⁹ <https://www.thestandard.com.hk/breaking-news/section/4/211266/Three-arrested-on-suspicion-of-inciting-others-to-cast-invalid-vote-at-district-election>

³⁰ *ibid*

³¹ <https://news.rthk.hk/rthk/en/component/k2/1731569-20231210.htm>

vote, by activity in public during election period”.³² The LSD denied such accusation, criticising the ICAC for failing to provide any evidence that they had called on the public not to vote.³³

Arrests prior to polling day

37. Koo Sze-yiu, a 77-year-old activist, was charged with “attempting to do or making any preparation to do an act or acts with seditious intention” and was brought to court on 11 December 2023. He was arrested two days before the Election (8 December 2023) when he was about to stage a protest at the Registration and Electoral Office in Cheung Sha Wan.³⁴

38. On 5 December 2023, Man Wing-fung, a male programmer, was charged by the ICAC for allegedly reposting on his personal social media page an online post which incited others to boycott the Election. The post was originally authored by Wong Sai-chak (aka Martin Oei) who is a Hong Kong political commentator now living in Germany. The ICAC has obtained an arrest warrant from the Magistrate against Wong.³⁵

Violation of human rights

39. Both the right to free peaceful assembly and the right to free speech are guaranteed by the ICCPR, the Basic Law, the Hong Kong Bill of Rights and the National Security Law (“NSL”). It is therefore the government’s responsibility to protect such rights.

40. The UN Human Rights Committee has explicitly stated that authorities may not require pledges or undertakings from individuals not to organize or participate in future assemblies.³⁶ The Committee also observed that the ICCPR protects peaceful assemblies wherever they take place and whatever the forms.³⁷ A government is also obliged to allow peaceful assemblies to take place without unwarranted interference and to facilitate the exercise of the right and to protect the participants.³⁸

41. The Committee further opined that “preventive detention” that keeps targeted individuals from participating in assemblies may constitute arbitrary deprivation of liberty, which is incompatible with the right of peaceful assembly. Such detention may be used only in the most exceptional cases, for no longer than absolutely necessary and only where the authorities have proof of the intention of the individuals involved to engage in

³² https://www.icac.org.hk/en/press/index_id_1781.html

³³

<https://www.facebook.com/hklsd/posts/pfbid027Qb4xfgUSR3A5oabTjk7kZ42kn3gwThbXoXyqT1THZqjEY1kqgDXgCQBRndhvgB9l>

³⁴ <https://news.mingpao.com/pns/%e8%a6%81%e8%81%9e/article/20231211/s00001/1702235251988>

³⁵ https://www.icac.org.hk/en/press/index_id_1774.html

³⁶ General Comment No. 37 on Article 21 (Right of peaceful assembly), para. 66,

<https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful>

³⁷ Ibid, para. 6

³⁸ Ibid, para. 8

or incite acts of violence during a particular assembly, and where other measures to prevent violence from occurring will clearly be inadequate.³⁹

42. The Hong Kong Court of Final Appeal (“CFA”) has pointed out that “[t]he freedom of peaceful assembly is a fundamental right. It is closely associated with the fundamental right of the freedom of speech. The freedom of speech and the freedom of peaceful assembly are precious and lie at the foundation of a democratic society.”⁴⁰ Approving the Committee’s opinion, the Court stated that the government has a positive duty to take reasonable and appropriate measures to enable lawful assemblies to take place peacefully.⁴¹
43. HKCHR is of the view that members of the public are entitled to express their opinions as to the Election, by way of online speech or organize an assembly, as long as they do not engage in or incite others to engage in acts of violence. The arrests of the eight people constitute a violation of the rights to free speech and peaceful assembly.

--END--

About Us

Hong Kong Centre for Human Rights is established in 2022 by a group of human rights defenders from Hong Kong with background in policy and legal research. We aim to provide credible information on Hong Kong’s legal, political, and human rights development with the goal of supporting the resilient civil society of Hong Kong and upholding international human rights standards.

Follow Us

Website: <https://hkchr.org/>

Email: info@hkchr.org

Facebook: <https://www.facebook.com/hkchr.org>

Twitter: <https://twitter.com/HKCHROfficial>

Instagram: https://www.instagram.com/hkchr_org/

³⁹ Ibid, para. 82

⁴⁰ *Leung Kwok Hung v HKSAR* [2005] HKCFA 41, <https://www.hklii.hk/eng/hk/cases/hkcfa/2005/41.html>

⁴¹ Ibid