

**Hong Kong Centre for Human Rights**  
**Statement regarding the consultation on**  
**Basic Law article 23 legislation**

28 February 2024

1. Hong Kong Centre for Human Rights is an independent human rights organisation established in 2022 by a group of human rights defenders from Hong Kong. The Centre has consistently engaged with the United Nations' human rights mechanisms for human rights issues in Hong Kong.
2. The Centre notes that the Hong Kong Government has made a number of references to the International Covenant on Civil and Political Rights ("ICCPR"), International Covenant on Economic, Social and Cultural Rights ("ICESCR") and human rights in the public consultation document and in various occasions. For instance, paragraph 2.19(b) of the consultation paper asserts that respect for and protection of human rights is one of the legislative principles in this legislative exercise.
3. Under article 2 of the ICCPR, the HKSAR is under a duty to ensure that individuals under its jurisdiction enjoy the rights in the Covenant and adopt laws as necessary to ensure that the domestic legal system is compatible with the Covenant. Moreover, the Covenant compels states to take active and specific administrative, judicial, and legislative measures to ensure that all the rights enshrined in the Covenant are protected and that effective remedies are provided if they are breached by states.
4. As a human rights organisation that monitors human rights issues in Hong Kong, the Centre is obliged to scrutinise the impacts on human rights with reference to international human rights standards. The UN human rights mechanisms, including treaty bodies formed under relevant international treaties such as the ICCPR, ICESCR, Convention on the Rights of Persons with Disabilities and special procedures of the Human Rights Council, as well as the Office of the High Commissioner for Human Rights ("OHCHR"), provide authoritative interpretations and recommendations regarding human rights concepts.
5. With reference to observations and recommendations made by the UN human rights mechanisms in respect to Hong Kong, **the Centre finds the legislative process and the proposed Basic Law Art 23 legislation contradictory to the authoritative interpretations of human rights obligations applicable to the Hong Kong Government by the UN human rights mechanisms.**
6. The key contradictions found in the public consultation document are as follows:-
7. Regarding the legislative process, including the public consultation process, the United Nations Human Rights Committee made clear and irrevocable recommendations in 2022 about the development of future legislation under article 23 of the Basic. It emphasized the necessity for inclusivity, transparency, and meaningful participation of civil society and the public, which the Centre finds lacking in the current process. The public consultation period and legislative timeframe are disproportionately short. The essential prerequisites for

meaningful participation of civil society and the public, such as the freedoms of peaceful assembly, association, and expression, as well as the right to participate in public affairs, are conspicuously absent.

8. Secondly, the Legislative Council, elected through a system found non-compliant with Article 25 of the ICCPR, wields the power to pass such legislation, contradicting the principle of respecting rights.
9. The UN human rights mechanisms have consistently raised concern that the Hong Kong national security law (“NSL”) and the sedition law are inconsistent with human rights standards; the Human Rights Committee (“CCPR”), the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Rights of Persons with Disabilities (“CRPD”) urged for the urgent repeal or review of the NSL; the CCPR has in fact called for the review of the sedition offence since the first review of HKSAR in 1999.
10. In 2022, the CCPR commented that before the introduction of a new legislation under article 23 of the Basic Law, Hong Kong should repeal the current NSL and to fully address all concerns raised by international human rights mechanisms relating to it to ensure that the new legislation fully conforms with the ICCPR. Not only have the NSL and sedition law not been repealed, but the proposed legislation also complements and reinforces the problematic laws. The human rights concerns raised by international human rights mechanisms that are urgent and legitimate have not been addressed at all, including but not limited to the use of the NSL and sedition law to persecute people exercising their freedom of expression and freedom of association.
11. CESCR and special rapporteurs have made critical comments on the independence of the judiciary in Hong Kong after the imposition of the NSL. Without independence, the judiciary is not expected to be able to safeguard human rights in the implementation of the proposed law.
12. The Centre condemns the Hong Kong Government’s demonisation of human rights organisations and warns against reprisals against civil society organisations and activists that are critical of the Hong Kong and Chinese governments. In the consultation paper, it alleges human rights organisations that monitor human rights were external forces in disguise (paragraph 2.6(h)), contrary to the CRPD’s strong observation and recommendation made in view of the NSL that the Hong Kong Government should adopt measures to ensure that human rights organisations operate in safe environments and can seek, receive, and use funding from foreign or international sources without undue impediments. Furthermore, in response to the Government’s assurance that legitimate international exchanges will continue to take place smoothly in the HKSAR after the new law is made, the UN Human Rights Committee had in fact found it unpersuasive - the Human Rights Committee ‘notes with concern the delegation’s vague response that the National Security Law does not apply to “normal” activities of civil society organizations, without clarifying what constitutes such normal activities, which does not explicitly assure the protection of civil society organizations and their representatives who have engaged with the Committee for the present review from being charged under the National Security Law.’

13. There are many more aspects in the proposed legislation that have already been discussed and criticised by the UN human rights mechanisms, such as the Societies Ordinance which provides excessive powers to the police on society registration (CCPR Concluding Observations 2022); the overly broad definitions of what constitute threats to national security (Joint letter by 7 special procedure mandate holders, JOL CHN 17/2020; and a special rapporteur’s thematic report in 2019, A/74/335), prompt access to legal representation of one’s choosing and the issue with presumption against bail (Special Rapporteur on the independence of judges and lawyers, OL CHN 2/2023), etc. However, with reference to the public consultation document, not only are these concerns not addressed, but the problems are also exacerbated.
14. In conclusion, the Centre submits that the Hong Kong Government’s claims to respect and uphold international human rights in this legislative process are untrue and constitute bad-faith distortion of the concepts for its own interests, violating the rights of the Hong Kong people and others potentially affected by the proposed law.
15. The Centre reiterates the UN Human Rights Committee’s recommendation to Hong Kong in 2022 that regarding the development of future legislation under article 23 of the Basic Law, the Hong Kong Government should:

**“(a) Take concrete steps to repeal the current National Security Law and, in the meantime, refrain from applying it ;**

**(b) Ensure that the legislative process for enacting a new national security law is inclusive and transparent and facilitates the free, open and meaningful participation of civil society and the public, and that the concerns relating to the current National Security Law expressed by international human rights mechanisms, including this Committee, are addressed with a view to ensuring that the new legislation fully conforms with the Covenant.”**

Unless and until these recommendations are addressed to ensure that the new legislation fully conforms with the ICCPR and all applicable international human rights standards, the Hong Kong Government should immediately suspend the current legislative process to prevent further violations of human rights obligations and contempt towards international human rights mechanisms.

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## 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.

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