

SUBMISSION FROM THE CIVIC PARTY ON
THE UN HUMAN RIGHTS COMMITTEE ON THE THIRD REPORT OF THE HKSAR
IN THE LIGHT OF THE ICCPR

Overview

1. Ever since the International Covenant on Civil and Political Rights (“ICCPR”) was first extended to Hong Kong in 1976, it has played a crucial role in the protection of civil and political rights and even in the constitutional development in Hong Kong. The Civic Party therefore expresses regret in the fact that the HKSAR Government has not been giving the ICCPR and the UN Human Rights Committee (“the Committee”), the body tasked to monitor its implementation, the due weight they deserve in recent years. The Civic Party urges the Administration to recognize the views of the Committee as binding upon the Government and to implement all the recommendations made by the Committee in its concluding observations on Hong Kong’s third periodic report.
2. The Civic Party also greatly appreciates the time and effort various NGOs—especially Hong Kong Human Rights Monitor, which acted as the coordinator—have put into producing their Joint Submission to the Committee on the implementation of the ICCPR in Hong Kong (“the Joint Submission”). The Civic Party generally agrees with the recommendations in the Joint Submission and urges the Administration to take heed of them as well. This submission is to provide an account of several supplementary observations made by the Civic Party in relation to the recommendations made by the Committee and those in the Joint Submission.

I. Universal Suffrage

3. The Civic Party agrees with the Committee’s recommendation that the HKSAR Government should “take all necessary measures to implement *universal and equal* suffrage in conformity with the Covenant” (emphasis added). The Civic Party regrets that the Administration refuses to accept as authoritative the Committee’s interpretation that the reservation in relation to Article 25 of ICCPR no longer applies and that elections in Hong Kong have to conform to the requirements in Article 25 of ICCPR, including that suffrage must be “universal and equal”. In particular, the Civic Party strongly condemns any proposal to introduce high nomination thresholds or any other mechanisms to screen out candidates from standing in elections (including but not limited to the Chief Executive election in 2017) which hinder the rights to candidacy and free and full expression of the electorate’s will.

II. The Rule of Law

4. The Civic Party echoes the sentiment of the Joint Submission in regretting how the rule of law in Hong Kong has been under increasing pressure over the past few years, recently from individuals with immense political influence. The Civic Party is especially disappointed that the HKSAR Government as a whole has failed to discharge its duties to defend the rule of law and the judiciary against such attacks. The Civic Party joins the Joint Submission in urging the Administration to fulfill its duty to protect and respect the jurisdiction and integrity of the judiciary and to ensure the independence of the judiciary from improper political influences.
5. On the point of the power of the Standing Committee of the National People's Congress (NPCSC) to make authoritative interpretations on the Basic Law, the Civic Party shares the concern of the Committee that such a mechanism of allowing a non-judicial body to make binding constitutional interpretations undermines the rule of law in Hong Kong. The Civic Party urges the Administration not to refer or threaten to refer Basic Law provisions for NPCSC's interpretation and takes this opportunity to reiterate its stance that the Department of Justice's decision in the case of *Vallejos and Domingo v Commissioner of Registration* (FACV 19 and 20/2012) to ask the Court of Final Appeal to refer Basic Law provisions to the NPCSC for interpretation is highly inappropriate.

III. Police Powers

6. Although the freedom of assembly is guaranteed in Hong Kong under the Basic Law, there are numerous unsatisfactory aspects in the way in which the Hong Kong police is handling public demonstrations, as have been laid out in detail in the Joint Submission. This includes, for example, the frequent use of pepper spray against demonstrators, sometimes without proper warnings and/or at a very short range. The number of protestors who have been arrested has also significantly increased in recent years, often for such broad and general offences as disorder in public places and participating in an unauthorized assembly. In addition to the recommendations in the Joint Submission, the Civic Party also agrees with the Committee's recommendations that clear guidelines should be established to ensure that the implementation of the Public Order Ordinance is in conformity with the requirements of the ICCPR and that additional training should be provided to the police regarding "the principle of proportionality when using force".
7. More recently, there have been cases of procedural anomaly in respect of the arrest and prosecution of those involved in public demonstrations. In one particular case, a protestor was arrested almost two years after her participation in a demonstration. The Civic Party urges the Administration to ensure that prosecutorial decisions are made free from any interference and



that the freedom of assembly can be enjoyed freely and equally by all, without fear of unjustified arrests or prosecutions.

IV. Torture Claimants

8. The Civic Party welcomes the judgment of the Court of Final Appeal in the case of *Ubamaka v Secretary for Security & Anor* (FACB 15/2011) for recognizing the absolute nature of the prohibition on exposing a person to the risk of torture or cruel, inhuman or degrading treatment, including by returning an individual to a location where he would face a real risk of such treatment. The Civic Party joins the Committee in urging the HKSAR Government not to set an inappropriately high threshold for recognizing a real risk of ill-treatment on return.

The Civic Party

20 May 2013