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Submission by Emily Lau to the Legislative Council Panel on Constitutional Affairs at the meeting to be held on 4 January 2018 regarding topics that should be included in the 4th report of the Hong Kong Special Administrative Region (HKSAR) in the light of the International Covenant on Civil and Political Rights (ICCPR).

On the occasion of the HKSAR submitting its 4th report on the implementation of the ICCPR to the UN Human Rights Committee, Hong Kong will again be doing so on its own with the approval of the Central Government. Although Beijing signed the ICCPR in October 1998, it has yet to ratify it, hence China does not have to submit periodic reports to the UN Human Rights Committee on its implementation of the ICCPR. The UN has repeatedly urged China to ratify the Covenant and to show its determination to respect its people's civil and political rights. I urge the Central Government to ratify the ICCPR without further delay and to demonstrate that China is fully committed to joining the international community as a responsible member.

In March 2013 the UN Human Rights Committee held hearings on the HKSAR's 3rd periodic report on the implementation of the ICCPR and published its Concluding Observations and Recommendations on 29 April 2013. Since then many momentous events have taken place in Hong Kong and China which put at risk the foundation of Beijing's policy of "One country, two systems" for the HKSAR. These developments undermined Hong Kong's high degree of autonomy, the rule of law and the people's enjoyment of their civil and political rights and should be stated accurately and honestly in the 4th report.

In its Concluding Observations and Recommendations made in April 2013, the UN Human Rights Committee expressed concern that a mechanism of binding constitutional interpretation by a non-judicial body (i.e. the Standing Committee of the National People's Congress "NPCSC") may weaken and undermine the rule of law and the independence of judiciary. The Committee urged the HKSAR to ensure the proper functioning of judicial structures in accordance with the ICCPR and with principles governing the rule of law. The HKSAR should also ensure all interpretations of the Basic Law, including electoral and public affairs issues, are in full compliance with the ICCPR.

One of the most significant and disturbing events in the past few years was the disqualification of six Legislative Council members who were elected by the people of Hong Kong in September 2016. The HKSAR administration's decision to seek a judicial review to disqualify two Legco members who did not take their oath properly triggered a re-interpretation of the Basic Law by the NPCSC, which took place before the high court judge delivered his judgement. To no one's surprise, the two members were disqualified by the court. Another judicial review was launched to disqualify four more Legco members.

The re-interpretation of the Basic Law by the NPCSC on the disqualification of Legco members has dealt a severe blow to the HKSAR's political and judicial system. People elected by the voters to serve in the Legco were stripped of their status. The act was widely seen as a breach of the ICCPR.

The high-handed way in which the NPCSC made its re-interpretation showed scant regard for the HKSAR judicial system, and confirmed the UN Human Rights Committee's concern that such re-interpretations weaken and undermine the rule of law and the independence of the judiciary.

In late December 2017, the NPCSC dealt another blow to the HKSAR judicial system when it made a decision to approve the Co-operation Agreement between the HKSAR and the Mainland on the establishment of the port at the West Kowloon station of the Express Rail Line for implementing the co-location of Mainland customs and immigration facilities there.

The decision caused alarm and consternation because it was seen as a breach of article 18 of the Basic Law, which stipulates that Mainland laws shall not be applied in the HKSAR except for those listed in Annex III of the Basic Law. The next step is for Legco to enact legislation to give effect to this NPCSC decision. The case will most certainly end up in the courts, and there is speculation that it would trigger another re-interpretation of the Basic Law by the NPCSC, further undermining the judicial system.

Under Beijing's policy of "One country, two systems," the most significant element which sets the HKSAR apart from Mainland China is the rule of law, underpinned by an independent legal and judicial system. If the independence of the judiciary is weakened and undermined, "One country, two systems" will vanish.

Another point that should be made in the 4th report is the introduction of democratic elections. In its Concluding Observations and Recommendations made in 2013, the UN Human Rights Committee said the HKSAR should take all necessary steps to implement universal and equal suffrage in conformity with the Covenant as a matter of priority for all future elections. The HKSAR should outline clear and detailed plans on how universal and equal suffrage might be instituted and ensure enjoyment by all its citizens, under the new electoral system, of the right to vote and to stand for election in compliance with article 25 of the Covenant.

The 4th report should include the decision made by the NPCSC on 31 August 2014 laying down stipulations on how the election of the Chief Executive by universal suffrage in 2017 would be conducted, with strict limit on the number of candidates: 2 to 3, and a high nominating threshold: candidates must be nominated by more than 50% of the 1,200 member Nominating Committee. The stipulations are in violation of article 25 of the ICCPR because it deprives Hong Kong people of the right to stand for election. After the electoral package was voted down by Legco in June 2015, the HKSAR administration refused to restart the constitutional reform process, insisting the only option available was the NPCSC decision made in August 2014.

Another point that should be included in the 4th report is the White Paper on The Practice of the “One Country, Two Systems” Policy in the HKSAR published by China’s State Council in June 2014. In it, Beijing asserted that the central government has “comprehensive jurisdiction” over the HKSAR. This point was repeated by President Xi Jinping when he delivered the Communist Party Central Committee’s report to the 19th Communist Party Congress on 18 October 2017.

Apart from the small number of people who wanted independence, most Hong Kong people do not question China’s sovereignty, but they want Beijing to keep its promise of “One country, two systems” and to give the HKSAR “a high degree of autonomy” to handle its internal affairs. To many Hong Kong people, the assertion of “comprehensive jurisdiction” signaled Beijing’s desire to decrease Hong Kong’s autonomy and limit the people’s freedom.

Such fear is strengthened by the Mainland authorities' increasing attempts to interfere in many aspects of Hong Kong life, including co-ordinating and manipulating the election strategy of pro-Beijing candidates, interfering in the operations of the Legislative Council, promoting self-censorship in the news media by withdrawing advertisements and commercials from errant news organisations.

As a result, freedom of expression and freedom of the press became a casualty. According to the World Press Freedom Index published by Reporters without Borders, Hong Kong was ranked 18th in 2002, and has dropped to 73rd in 2017.

Another point that should be included in the 4th report is the threat to personal safety, which is something Hong Kong people highly value. In December 2015, Mr Lee Bo of the Causeway Bookshop disappeared from Hong Kong. His wife reported the case to the police. The Causeway Bay Bookshop was said to have published books which upset the leaders in Beijing. In March 2016 Mr Lee returned to Hong Kong and insisted he left Hong Kong "in his own way."

However most Hong Kong people and the international community were convinced Mr Lee was abducted from Hong Kong and taken to the Mainland to teach him and his colleagues a lesson. Because of the very different legal and judicial systems in Hong Kong and the Mainland, it is not possible for the two sides to conclude agreement on transfer of fugitives. The abduction was seen as the Mainland authorities using their way to seize people whom the HKSAR would not legally hand over to them. However the Lee Bo case caused a huge outcry and even the timid British Government called it a breach of the 1984 Sino-British Joint Declaration on the future of Hong Kong. It was also a violation of the Basic Law and of the "One country, two systems" policy.

The 4th report should explain why the HKSAR consistently refused to establish a fully independent mechanism mandated to conduct independent, proper and effective investigation into complaints about the inappropriate use of force and other abuse of power by the police and empowered to make binding decisions in respect of investigations conducted and findings regarding such complaints.

The 4th report should explain why the ethnic minorities are so underrepresented in higher education and why the education authorities refused to effectively improve the quality of Chinese language education for ethnic minorities, thus making it difficult for them to compete with ethnic Chinese students in public examinations.

The 4th report should explain the lack of progress in enacting legislation to prohibit discrimination on the ground of sexual orientation and gender identity. The HKSAR has also failed to take steps to end prejudice and social stigmatization of homosexuality and to show no tolerance of any form of harassment, discrimination or violence against persons based on their sexual orientation or gender identity.