



HONG KONG BAR ASSOCIATION

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19 September 2018

Dr. Hon Priscilla LEUNG Mei-fun, SBS, JP
 Chairman
 Panel on Administration of Justice and Legal Services
 Legislative Council Complex
 1 Legislative Council Road, Central
 Hong Kong

Dear *Priscilla*,

Re: Concerns in relation to the Length of Remands

Please find a copy of the Note from the Hong Kong Bar Association dated 19 September 2018 to the Panel on Administration of Justice and Legal Services in relation to the Length of Remands.

The Hong Kong Bar Association urges that the AJLS Panel should inquire into whether a system can be devised under which such records can be maintained.

Thank you.

Yours sincerely,

Philip Dykes SC
 Chairman

Cc: Mr. Harry Tsang
 (Judiciary Administration, Room G121, High Court Building, 38 Queensway, Hong Kong).

香港大律師公會

香港金鐘道三十八號高等法院低層二樓

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HONG KONG BAR ASSOCIATION

Note to the Panel on Administration of Justice and Legal Service

in relation to the Length of Remands

1. A member of the Bar expressed concern about the length of time it takes to get criminal cases on for trial and the consequences for defendants who are remanded in custody.
2. In relation to this matter, on 18 April 2018, the Bar Council by way of letter to the Judiciary Administration raised its concerns over the length of remands. The Bar Council requested, *inter alia*, the following information from the Judiciary Administration:-
 - (1) Facts and figures that show the length of remands for the High Court, the District Court and the Magistrates' Courts respectively in the past five years.
3. In a letter dated 21 August 2018 ("**21 August Letter**"), the Judiciary Administration replied. In the letter, the author claimed that the Judiciary do not maintain statistics on the remand period of defendants in custody and the information as requested is thus not readily available. They had studied if the required information can be made available from their case management system, but as the current design of the system is to keep data only on case basis, it is not feasible to compile the information as requested due to system constraints. A copy of the Letter from the Judiciary Administration dated 21 August 2018 is enclosed herewith as **Enclosure A**.

4. The Correctional Services Department ('CSD') maintains figures on the prison population but does not appear to include information on remand cases. See: <https://www.csd.gov.hk/english/statistics/statistics.shtml>
5. The Hong Kong Bar Association ('HKBA') considers that it is important to know these figures. The absence of this data raises concern on the length of remands because it is not possible to say whether some remands are of such a length that a defendant's rights under Articles 5(3) [trial within reasonable time for persons detained] and 11(2)(b) [trial without delay] of the Hong Kong Bill of Rights Ordinance, Cap. 383 are being compromised. A copy of Article 5(3) and 11(2)(b) of the Hong Kong Bill of Rights Ordinance are enclosed herewith as **Enclosure B**.
6. It should be possible to devise a system under which such information is made available. When such information is to hand, it would be possible to see whether remands in custody are for an overlong period and whether trials are being concluded within a reasonable time.
7. We note that in England & Wales such information can be made available because of the requirement that remands in custody should not normally exceed fixed periods, depending on the age of a defendant and the court of trial. See the regime of custody time limits established under the Prosecution of Offences Act 1985 and the Criminal Procedure Rules. See also the requirement in Scotland that remands must not exceed 140 days in the Criminal Justice (Scotland) Act 2016.
8. Other countries produce comprehensive information on prison populations including remand prisoners. See: Australian Bureau of Statistics, "4517.0 - Prisoners in Australia, 2017" - <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0>

9. The Hong Kong Bar Association urges that the Panel on Administration of Justice and Legal Service (“AJLS”) should inquire into whether a system can be devised under which such records can be maintained.

Dated: 19 September 2018

HONG KONG BAR ASSOCIATION



司法機構政務處

Judiciary Administration

電話 Tel: 2825 4438

傳真 Fax: 2530 2648

本函檔號 Our Ref.:

來函檔號 Your Ref.: GC/al /049

21 August 2018

Mr Philip Dykes SC
Chairman
Hong Kong Bar Association
LG2 Floor
High Court
38 Queensway
Hong Kong



Dear Mr Dykes SC,

Concerns over Length of Remands

Thank you for your letter dated 18 April 2018 addressed to the Judiciary Administration. It has been referred to me for handling.

The Judiciary Administration is well aware of your concerns about defendants who are remanded in custody. It has all along been our principle and practice that where there is a request for statistics concerning the administration of justice and they are readily available, the Judiciary will provide the Government, the media and other requesters with the relevant statistics.

The Judiciary however do not maintain statistics on remand period of defendants in custody and the information as requested is thus not readily

available. We have further studied if the required information can be made available from our case management system. However, as the current design of the system is to keep data on case basis, it is not feasible to compile the information as requested due to system constraints.

Thank you for your kind attention.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Harry Tsang', enclosed in a large, loopy circular flourish.

(Harry Tsang)
for Judiciary Administrator

第五條

人身自由和安全

- (一) 人人有權享有身體自由及人身安全。任何人不得無理予以逮捕或拘禁。非依法定理由及程序，不得剝奪任何人之自由。
- (二) 執行逮捕時，應當場向被捕人宣告逮捕原因，並應隨即告知被控案由。
- (三) 因刑事罪名而被逮捕或拘禁之人，應迅即解送法官或依法執行司法權力之其他官員，並應於合理期間內審訊或釋放。候訊人通常不得加以羈押，但釋放得令具報，於審訊時、於司法程序之任何其他階段、並於一旦執行判決時，候傳到場。
- (四) 任何人因逮捕或拘禁而被奪自由時，有權聲請法院提審，以迅速決定其拘禁是否合法，如屬非法，應即令釋放。
- (五) 任何人受非法逮捕或拘禁者，有權要求執行損害賠償。

[比照《公民權利和政治權利國際公約》第九條]

Article 5

Liberty and security of person

- (1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
- (2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
- (3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
- (4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
- (5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

[cf. ICCPR Art. 9]

[*cf. ICCPR Art. 13*]

第十條

在法院前平等及接受公正公開審問的權利

人人在法院或法庭之前，悉屬平等。任何人受刑事控告或因其權利義務涉訟須予判定時，應有權受獨立無私之法定管轄法庭公正公開審問。法院得因民主社會之風化、公共秩序或國家安全關係，或於保護當事人私生活有此必要時，或因情形特殊公開審判勢必影響司法而在其認為絕對必要之限度內，禁止新聞界及公眾旁聽審判程序之全部或一部；但除保護少年有此必要，或事關婚姻爭執或子女監護問題外，刑事民事之判決應一律公開宣示。

[*比照《公民權利和政治權利國際公約》第十四・一條*]

第十一條

被控告或判定犯有刑事罪的人的權利

- (一) 受刑事控告之人，未經依法確定有罪以前，應假定其無罪。
- (二) 審判被控刑事罪時，被告一律有權平等享受下列最低限度之保障——

Article 10

Equality before courts and right to fair and public hearing

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

[*cf. ICCPR Art. 14.1*]

Article 11

Rights of persons charged with or convicted of criminal offence

- (1) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

- (甲) 迅即以其通曉之語言，詳細告知被控罪名及案由；
 - (乙) 給予充分之時間及便利，準備答辯並與其選任之辯護人聯絡；
 - (丙) 立即受審，不得無故稽延；
 - (丁) 到庭受審，及親自答辯或由其選任辯護人答辯；未經選任辯護人者，應告以有此權利；法院認為審判有此必要時，應為其指定公設辯護人，如被告無資力酬償，得免付之；
 - (戊) 得親自或間接詰問他造證人，並得聲請法院傳喚其證人在與他造證人同等條件下出庭作證；
 - (己) 如不通曉或不能使用法院所用之語言，應免費為備通譯協助之；
 - (庚) 不得強迫被告自供或認罪。
- (三) 少年之審判，應顧念被告年齡及宜使其重適社會生活，而酌定程序。
 - (四) 經判定犯罪者，有權聲請上級法院依法覆判其有罪判決及所科刑罰。
 - (五) 經終局判決判定犯罪，如後因提出新證據或因發見新證據，確實證明原判錯誤而經撤銷原判或免刑者，除經證明有關證據之未能及時披露，應由其本人全部或局部負責者外，因此判決而服刑之人應依法受損害賠償。
 - (六) 任何人依香港法律及刑事程序經終局判決判定有罪或無罪開釋者，不得就同一罪名再予審判或科刑。

[比照《公民權利和政治權利國際公約》第十四，二至七條]

- (2) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality—
 - (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) to be tried without undue delay;
 - (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) not to be compelled to testify against himself or to confess guilt.
- (3) In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
- (4) Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

第十二條

刑事罪及刑罰沒有追溯力

- (一) 任何人之行為或不行為，於發生當時依香港法律及國際法均不成罪者，不為罪。刑罰不得重於犯罪時法律所規定。犯罪後之法律規定減科刑罰者，從有利於行為人之法律。
- (二) 任何人之行為或不行為，於發生當時依各國公認之一般法律原則為有罪者，其審判與刑罰不受本條規定之影響。

[比照《公民權利和政治權利國際公約》第十五條]

Article 12

No retrospective criminal offences or penalties

- (1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under Hong Kong or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
- (2) Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time

[cf. ICCPR Art. 14.2 to 7]