

立法會 CB(2)1127/18-19(26)號文件
LC Paper No. CB(2)1127/18-19(26)

22 March 2019

Legislative Council Complex

Chairman of the Bills Committee on National Anthem Bill

Hon Martin Liao Cheung-kong, SBS, JP

Dear Hon Martin Liao,

Request for supplementary information on the National Anthem Bill

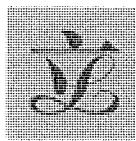
Below is a list of question for the government with respect to the impact of the Bill on freedom of speech and freedom of expression. We should be grateful if the government could submit its response in both English and Chinese as soon as possible.

Questions with respect to the UN Human Rights Committee General Comment 34

On 21 July 2011, the UN Human Rights Committee adopted General Comment 34 on States parties' obligations under Article 19 of the International Covenant on Civil and Political Rights (ICCPR) (corresponding to Article 16 of the Hong Kong Bill of Rights Ordinance (Cap. 383)). The General Comment provides guidance to States on what the freedoms of opinion and expression mean in practice.

1. According to para 25: “For the purposes of (article 19,) paragraph 3, a norm, to be characterized as a “law”, must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.” With respect to the above, and given the lack of a definition on “intent to insult” within Clause 7, how the proposed Bill satisfies the guidance that it does not “confer unfettered discretion for the restriction of freedom of expression.”

2. According to para 29, the second legitimate ground for a restriction of the right to freedom of expression is that of protection of national security or of public order (*ordre public*). Please elaborate on how the proposed Bill relates to the protection of national security or of public order (*ordre public*). Please provide real-life examples on how the proposed Bill would realistically and substantially promote the protection of national security or of public order (*ordre public*).



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陳淑莊議員 Hon CHAN Tanya



3. According to para 35: "When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat." With respect to the above, please elaborate in detail how the Bill would satisfy the four-step proportionality test (laid down by CFA in *Hysan Development Co Ltd v Town Planning Board* (2016) 19 HKCFAR 372).

Yours Sincerely,

Hon. Tanya Chan
Member of the Bills Committee on National Anthem Bill