

**For discussion
on 16 November 2020**

Legislative Council Panel on Constitutional Affairs

**Hearing of the United Nations Human Rights Committee on the
Fourth Report of the Hong Kong Special Administrative Region
in the light of the
International Covenant on Civil and Political Rights**

Purpose

This paper sets out the Government's arrangements for the hearing of the fourth report of the Hong Kong Special Administrative Region (HKSAR) in the light of the International Covenant on Civil and Political Rights (ICCPR).

Background

2. The HKSAR's reports in the light of the ICCPR are submitted to the United Nations (UN) through the Central People's Government (CPG). The HKSAR's third report was submitted to the UN in 2011 and was considered by the UN Human Rights Committee (the Committee) in March 2013. The Committee issued its Concluding Observations in March of the same year. The fourth report was submitted to the UN in September 2019, in which the issues in the Committee's Concluding Observations on the previous report are addressed.

3. The fourth report is accessible to the public on the website of the Constitutional and Mainland Affairs Bureau¹ (CMAB), and hard copies of the report were distributed to all members of the Legislative Council, stakeholders and members of the public in October 2019.

¹ See <http://www.cmab.gov.hk/en/issues/report3A.htm>.

4. In August 2020, the UN Human Rights Committee issued a List of Issues to be taken up in connection with the consideration of the fourth report (copy at Annex). We will submit our written response to the Committee through the CPG.

The hearing

5. The UN Human Rights Committee has indicated its intention to consider HKSAR's fourth report at its 131st session scheduled for March 2021, with exact date to be confirmed. The HKSAR Government will send a delegation to attend the hearing.

**Constitutional and Mainland Affairs Bureau
November 2020**



International Covenant on Civil and Political Rights

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Human Rights Committee

List of issues in relation to the fourth periodic report of Hong Kong, China*

Constitutional and legal framework within which the Covenant is implemented (arts. 2 and 14)

1. With reference to the Committee's previous concluding observations (CCPR/C/CHN-HKG/CO/3, para. 5), please indicate the extent to which Hong Kong, China, has made an effort to ensure that the interpretations of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress do not undermine the obligations of Hong Kong, China, under the Covenant, particularly under articles 2 and 14 of the Covenant, or conflict with the principle of the rule of law, and that the Standing Committee's exercise of its power to interpret the Basic Law remains within the purview of article 158 of the Basic Law. Please clarify whether the decision made by the National People's Congress in relation to the joint checkpoint arrangement in Kowloon for the Guangzhou-Shenzhen-Hong Kong Express Rail Link is in compliance with the provisions of the Covenant. Please explain how Hong Kong, China, deals with situations in which interpretations of the Basic Law by the Standing Committee or decisions of the National People's Congress are not in conformity with the Covenant.

2. With reference to the Committee's previous concluding observations (CCPR/C/CHN-HKG/CO/3, para. 7) and the information supplied by Hong Kong, China (CCPR/C/CHN-HKG/4, para. 9), please provide information on the steps taken to establish an independent human rights institution with a mandate to deal with all the rights enshrined in the Covenant and with adequate power, as prescribed in the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), including by strengthening the independence and extending the mandates of the Equal Opportunities Commission and other existing institutions to promote and protect the rights enshrined in the Covenant.

State of emergency and laws on national security, anti-sedition and antiterrorism (arts. 2, 4, 7, 9, 10, 14, 15, 17, 18, 19, 21, 22 and 25)

3. Please clarify the relationship between the Covenant and the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (National Security Law), adopted on 30 June 2020, and indicate the measures put in place or envisaged to ensure that the application and enforcement of the Law are not contrary to the provisions of the Covenant, particularly articles 7, 9, 10, 14, 15, 17, 18, 19, 21, 22 and 25. In particular, please clarify the compatibility with the Covenant of those provisions of the Law that (a) contain definitions of "secession", "subversion", and "terrorist activities", and (b) give powers to the Chief Executive to appoint judges to handle

* Adopted by the Committee at its 129th session (29 June–24 July 2020).



cases concerning offences endangering national security and to the Secretary for Justice to direct the Court of First Instance in relation to jury trials. Please indicate any efforts made to ensure that the process of adoption of this legislation is transparent and that the views of citizens of Hong Kong, China, are taken into consideration.

4. Concerning the National Security Law, please elaborate on the following: (a) the procedural and legislative measures envisaged to enforce articles 56 and 57 of the Law; (b) the scope of the Law's application, including its extraterritorial application; (c) the meaning of the phrase "collusion with a foreign country or with external elements to endanger national security", provided for in articles 29 and 30 of the Law. Please also elaborate on the following: (a) the powers and immunities given to the enforcement mechanisms established by the Law, and the measures envisaged to ensure the compatibility of those powers and immunities with the Covenant; (b) the powers and immunities given under the Law to the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region and the Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region, and the accountability mechanisms overseeing these bodies. Please provide information on any amendments made or envisaged to the laws of Hong Kong, China, in accordance with the National Security Law.

5. Please provide information on the compatibility of the Emergency Regulations Ordinance (1922) with article 4 of the Covenant, and clarify whether derogations from the non-derogable provisions of the Covenant during states of emergency are explicitly prohibited; whether procedural safeguards related to derogation are provided; what constitutes "public danger" and "emergency"; and whether the Legislative Council has the power to approve, amend or repeal any emergency regulations adopted under the Ordinance. Please indicate whether a repeal of the Ordinance or a comprehensive revision of its provisions with a view to ensuring its compatibility with the Covenant are being considered.

6. With reference to the Committee's previous concluding observations (CCPR/C/CHN-HKG/CO/3, para. 14), please indicate the measures taken or envisaged to ensure that the scope of the offences of "treason" and "sedition" and of the phrase "foreign political organizations or bodies" are appropriately and narrowly defined in the foreseen legislation and in the Crimes Ordinance. Please clarify concerns about the use of imprecise and broad definitions of terms in the United Nations (Anti-Terrorism Measures) Ordinance, in particular the definition of "terrorist act", and the adverse implications of those definitions for the protection of rights enshrined in the Covenant, and indicate any measures taken to address those concerns. Please provide information on the legal safeguards in place for persons suspected of or charged with terrorism or related crimes, and on the cases in which persons, particularly those organizing and participating in protests, have been charged with terrorism or related crimes.

Non-discrimination and equality between men and women (arts. 2, 3, 25 and 26)

7. With reference to the information supplied by Hong Kong, China (CCPR/C/CHN-HKG/4, paras. 23 and 186–187 and annex 26C), please elaborate on any further steps taken to ensure that anti-discrimination legislation – namely the Sex Discrimination Ordinance, the Disability Discrimination Ordinance, the Family Status Discrimination Ordinance and the Race Discrimination Ordinance – prohibits all forms of discrimination, including direct, indirect and multiple discrimination, in all spheres, in both the public and the private sectors, on all the grounds prohibited under the Covenant. Please indicate whether Hong Kong, China, is considering developing comprehensive anti-discrimination legislation in this regard. With reference to the Committee's previous concluding observations (CCPR/C/CHN-HKG/CO/3, para. 19), please indicate any steps taken to extend the application of the Race Discrimination Ordinance to the Government, particularly the Hong Kong Police Force and the Hong Kong Correctional Services Department, and provide information on the number of racial discrimination cases brought to the Equal Opportunities Commission against police and correctional officers and the outcome of those cases.

8. With reference to the Committee's previous concluding observations (CCPR/C/CHN-HKG/CO/3, para. 23), please indicate any steps taken to recognize same-sex partnerships and to address discrimination faced by same-sex couples. Please provide an update on any legislative developments for the recognition of transgender persons and clarify the

compatibility with the Covenant of certain requirements for the legal recognition of gender reassignment, such as deprivation of reproductive ability and gender confirmation surgery. Please indicate the measures taken to protect lesbian, gay, bisexual, transgender and intersex persons, particularly from hate speech and hate crimes; to facilitate their right to hold events such as gay pride parades; and to respond to reports of inhumane and degrading treatment experienced by transgender persons in custody, including intrusive and humiliating full-body searches, solitary confinement and lack of access to hormone treatment.

Domestic violence and gender-based violence (arts. 2, 3, 6, 7 and 26)

9. With reference to the Committee's previous concluding observations (CCPR/C/CHN-HKG/CO/3, para. 18), please indicate the extent to which measures have been taken to enhance the enforcement of the Domestic and Cohabitation Relationships Violence Ordinance, and to protect and support victims of domestic violence. Please indicate the measures taken to respond to the cases of suicide committed by parents together with their children or leaving them unattended.

Right to life, prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and liberty and security of person (arts. 6, 7, 9, 10 and 14)

10. Please provide information on the laws regulating the use of force by the police, and the extent to which they comply with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement (2020). With reference to the information supplied by Hong Kong, China (CCPR/C/CHN-HKG/4, paras. 31–32), please provide detailed information on cases of torture or ill-treatment in which the defence of "lawful authority, justification or excuse" has been recognized, and examples of court rulings in which the non-derogable character of the prohibition of torture has been recognized. Please comment on reports that the commander-in-chief of the riot police instructed his subordinates to aim for and shoot at protesters' heads during a siege at City University of Hong Kong on 12 November 2019. Please also clarify whether this instruction constitutes lawful authority, justification or excuse for the subordinate officers, as stipulated in section 3 (4) of the Crimes (Torture) Ordinance.

11. With reference to the Committee's previous concluding observations (CCPR/C/CHN-HKG/CO/3, para. 12), please indicate any steps taken to establish an independent mechanism with adequate investigative powers, including by strengthening the existing mechanisms, to effectively handle complaints about human rights violations committed by the police, including the excessive use of force. Please provide updated information on the complaints filed with the Complaints Against Police Office, including the number of complaints, investigations and prosecutions and the sanctions imposed. Please indicate any steps taken to improve the regulations governing the use of force by law enforcement officials in accordance with relevant international norms and standards and to strengthen training for law enforcement officials. Please comment on reports that police officers often do not produce their warrant cards when exercising their police power, do not wear any form of identification on their uniform and do not inform the suspected person, at the time of arrest, of the reasons for their arrest.

12. Please provide updated information on deaths, including suicides, in custody, including the number of deaths, the investigations carried out and the outcome thereof and the measures taken to prevent recurrence. Please provide information on cases of torture and ill-treatment during detention and in places of detention, including the number of cases, investigations and prosecutions of such cases, the sanctions imposed on perpetrators and the measures taken to prevent recurrence. Please specify any measures taken to strengthen the independence and effectiveness of the monitoring and complaints mechanisms for persons in places of detention, and the steps taken to prevent reprisals against complainants. Please indicate any measures taken to mitigate the impact of the coronavirus disease (COVID-19) pandemic on persons in detention, including those in immigration detention facilities.

Treatment of aliens, including migrants, refugees and asylum seekers (arts. 7, 9, 12, 13 and 24)

13. Please explain the procedural safeguards for claimants against arbitrary detention of aliens provided for in the Immigration Ordinance, including judicial oversight and protection of individuals in vulnerable situations. Please indicate any steps taken to allow persons whose claims have been substantiated by the Torture Claims Appeal Board or who have been recognized as refugees to work, and to recognize their right of abode, particularly that of their children born in Hong Kong, China. Please provide information on the ongoing review of the Immigration Ordinance. Please also provide information on the implementation of the Committee's previous concluding observations on this issue (CCPR/C/CHN-HKG/CO/3, para. 15).

14. Please explain the reasons for the low number of persons whose claims have been substantiated by the Torture Claims Appeal Board, and comment on reports that the threshold for granting protection is not adequate and that the screening mechanism is not effective. Please indicate any steps taken to improve the unified screening mechanism for claimants, including with respect to the dissemination of information on application and appeal procedures, the provision of free legal aid and the timely publication of the Board's decisions. Please provide information on the guidelines and training made available to the relevant officials on the protection of asylum seekers in vulnerable situations, such as survivors of torture, sexual and gender-based violence or trafficking.

Elimination of slavery, servitude and trafficking in persons (arts. 2, 7, 8 and 26)

15. With reference to the Committee's previous concluding observations (CCPR/C/CHN-HKG/CO/3, para. 20), please indicate any steps taken to ensure that all forms of trafficking in persons are criminalized and to extend the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, to Hong Kong, China. Please comment on reports that a lack of understanding of trafficking among law enforcement and judicial officials and weak inter-agency coordination have led to a low number of investigations, prosecutions and convictions. Please provide annual statistical data in this regard, including information available on cases involving public officials as perpetrators or accomplices. Please provide information on the measures taken to prevent victims of trafficking from being penalized for unlawful acts that their traffickers compelled them to commit, and to improve the identification and referral of and provision of protection and assistance to victims of trafficking.

16. In view of the intention expressed in the information supplied by Hong Kong, China (CCPR/C/CHN-HKG/4, paras. 62 and 65), to maintain the two-week rule and the live-in requirement for migrant domestic workers, please specify any legislative and institutional measures taken to strengthen the protection of migrant domestic workers from labour exploitation and abuse by their employers and employment agencies and to facilitate their reporting thereof. Please indicate the measures taken to strengthen the sanctions imposed on employment agencies that routinely engage in the trafficking of migrant domestic workers, charge migrant domestic workers excessively high fees and lure them into debt bondage, and explain how Hong Kong, China, deals with employment agencies that continue to operate after losing their licences, sometimes reopening under a different name. Please clarify the differences between migrant domestic workers and other migrant workers in calculating the number of years of residence in Hong Kong, China, for the application of permanent residence status.

Access to justice, independence of the judiciary and the right to a fair trial (arts. 2 and 14)

17. Please provide information on the measures taken to strengthen the independence of the judiciary and to protect judges from external interference, and from retaliation and intimidation regarding their decisions. Please also provide updated information on the accessibility and adequacy of legal aid and the eligibility criteria of legal aid applicants. Please indicate any steps taken to establish an independent legal aid authority since the review by the Legal Aid Services Council in 2013.

Right to privacy (art. 17)

18. Please provide information on any guidance given to law enforcement officials on interpreting the conditions for the authorization of interception or covert surveillance, prescribed in section 3 (1) (a) of the Interception of Communications and Surveillance (Amendment) Ordinance. Please also provide information on the executive authorization for Type 2 surveillance, including the interception and surveillance devices used, any oversight procedures put in place and the number of executive authorizations issued or renewed. Furthermore, please provide information on authorizations of interception and/or covert surveillance issued in the context of the COVID-19 response and clarify the efforts made to ensure that these measures are in conformity with the requirements of article 17 of the Covenant.

19. Please specify the measures taken to strengthen the protection of personal data by public authorities, including the Registration and Electoral Office, following the incident during the 2017 Chief Executive election. Please provide an update on the complaints brought to the Office of the Privacy Commissioner for Personal Data, including annual statistical data on the number of complaints filed and the outcomes thereof, and indicating separately the complaints brought against law enforcement officials. Please comment on reports that police officers have accessed private data on the smartphones of persons arrested without warrants during the protests against the extradition bill.

Freedom of expression (arts. 19, 20 and 21)

20. Please comment on reports that journalists, academics, students, politicians and human rights defenders are increasingly facing threats, physical attacks, cyberattacks, harassment and intimidation. Please also comment on reports of increased self-censorship by and intensified external pressure on journalists; refusals to extend working visas or to grant entry into Hong Kong, China, for foreign journalists and human rights activists; incidents of disappearance, arbitrary detention, and torture and ill-treatment of publishers and booksellers; and censorship of social media. Please provide information on the measures taken to address the above-mentioned issues and to create an environment conducive to the free expression of opinions, including dissenting opinions.

21. Please provide information on the legislative and institutional framework concerning the ownership and management of media corporations. Please also provide information on any progress made in developing new legislation on access to information, and in limiting the broad exceptions provided for under the Code on Access to Information.

22. Please provide information on the measures taken to ensure that the policies of Hong Kong, China, relating to the allocation of funding for, appointments to and management of academic institutions do not undermine the freedom of these institutions as provided for in article 19 of the Covenant. Please comment on concerns that the National Anthem Ordinance may unduly restrict the rights enshrined in the Covenant, particularly under articles 19 and 21, and provide information on the enforcement of the Ordinance.

Right of peaceful assembly (arts. 7, 9, 10, 19 and 21)

23. With reference to the Committee's previous concluding observations (CCPR/C/79/Add.117, para. 19), please provide information on any steps taken to review the Public Order Ordinance. Please elaborate on restrictions or conditions imposed on public meetings, including those for which notification has been given under the "national security" provisions of the Ordinance. Please also comment on reports that the Ordinance has been abused to dissuade people from taking part in peaceful protests for fear of being prosecuted, in the light of the significant increase in the number of persons arrested and prosecuted under the Ordinance. Please explain the reasons for the long-delayed legal proceedings brought against leaders of the Umbrella Movement protests and provide information on the current status of the proceedings.

24. Please comment on reports that Hong Kong, China, has excessively restricted the exercise of freedom of peaceful assembly in recent years, as illustrated by the increased number of public assembly applications that have been rejected on unjustifiable grounds, the revocation of notices of no objection, the application of the Emergency Regulations

Ordinance to ban the use of face masks at protests and crack down on demonstrations, and the application of public nuisance laws. Please provide information on the number of protesters arrested between 1 June 2019 and 31 May 2020 and on prosecutions, convictions and the charges against those convicted, and respond to allegations that the extensive use of arrest power is part of a “catch, detain and release” policy of intimidation. In particular, please provide information on the arrest of 15 prominent pro-democracy figures on 18 April 2020, including prosecutions, convictions and the charges against them.

25. Please comment on reports that (a) water cannons were used with water that contained chemical irritants, constituting a health risk, (b) live ammunition was used to fire warning shots in a number of recent instances, (c) law enforcement officials physically and sexually assaulted protesters and bystanders during protests in July to November 2019, and (d) pepper spray was used at short range against a member of the Legislative Council, Hui Chi-fung, on 31 December 2019. In this regard, please provide information on the cases filed with the Complaints Against Police Office, including the number of complaints, investigations and prosecutions, and the sanctions imposed. Please also provide information on any independent inquiries conducted in this regard. Please comment on reports of the arbitrary arrest and detention of non-violent protesters, human rights defenders, journalists, rescue and medical personnel and bystanders during protests in 2019 and since then, and of ill-treatment and assaults in police custody, and provide statistical data on the numbers of persons arrested and convicted in connection with public protests.

Freedom of association (art. 22)

26. Please provide information on the registration process for associations and political parties, provided for in the Societies Ordinance, and clarify reports that the approval of a court or an independent tribunal is not required for the police to refuse or cancel the registration of or prohibit a society, and that the judicial review of such a decision is limited to the procedure, not covering the merits of the decision. Please indicate any guidance provided to police officers dealing with the registration of a society on the application of the Societies Ordinance, including interpretation of terms and phrases such as “national security” and “protection of the rights and freedoms of others”. Please also indicate any steps taken or envisaged to expedite the processing of the large backlog of applications for union registration.

Participation in public affairs (arts. 2, 3, 25, 26 and 27)

27. With reference to the Committee’s previous concluding observations (CCPR/C/CHN-HKG/CO/3, para. 6) and the information supplied by Hong Kong, China (CCPR/C/CHN-HKG/4, paras. 172–181), please indicate the additional specific measures that are being taken or are planned to introduce universal and equal suffrage, in order to fully implement the right to vote and to be elected in genuine elections as provided in article 25 of the Covenant, and the anticipated timeline for their introduction. In the light of the disqualification of six candidates – four candidates for the 2018 Legislative Council by-elections, one for the 2019 village representative elections and one for the 2019 District Council elections – please provide information on the criteria used by the Electoral Affairs Commission to disqualify candidates, and provide an explanation about the compatibility with the Covenant of the interpretation by the Standing Committee of article 104 of the Basic Law, regarding the oath of office. Please indicate the measures taken to improve the representation of women and of persons belonging to religious and ethnic minority groups in the legislature.