Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**682**
Land:	Kina
Kilde:	Human Rights Committee
Titel:	Hong Kong, Concluding observations on the fourth periodic report
Udgivet:	27. juli 2022
Optaget på baggrundsmaterialet:	12. oktober 2022

Advance unedited version

Distr.: General
27 July 2022

Original: English

Human Rights Committee

Concluding observations on the fourth periodic report of Hong Kong, China

Draft prepared by the Committee*

1. The Committee considered the fourth periodic report submitted by Hong Kong, China (CCPR/C/CHN-HKG/4) at its 3891st, 3893rd and 3895th meetings (CCPR/C/SR.3891, 3893 and 3895), held on 7, 8 and 12 July 2022, in hybrid format owing to restrictions imposed in connection with the coronavirus disease (COVID-19) pandemic. At its 3912nd meeting, held on 22 July 2022, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of Hong Kong, China and the information presented therein. It expresses appreciation for the opportunity to engage in constructive dialogue with Hong Kong, China's delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful for the written replies to the list of issues, which were supplemented by the oral responses provided by the delegation and additional information subsequently submitted in writing.

B. Positive aspects

3. The Committee welcomes:

(a) The adoption of the Sex Discrimination (Amendment) Ordinance 2021;

(b) The adoption of the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020;

(c) The establishment of a Commission on Children in 2018 to formulate long-term targets and strategic directions concerning the holistic development and important growth stages of children;

(d) The introduction of statutory paternity leave in 2015;

(e) The launch of the Unified Screening Mechanism in 2014.

* Adopted by the Committee at its 135th session (27 June to 27 July 2022).

C. Principal matters of concern and recommendations

Constitutional and legal framework within which the Covenant is implemented

4. The Committee acknowledges the commitment by both the Central People's Government and the Hong Kong Special Administrative Region ("HKSAR") Government to the principle of the one country, two systems, which is aimed at preserving the autonomy of the HKSAR in managing its own affairs. The Committee notes the unique legislative arrangements under this principle and the complexities around the fulfilment of its Covenant obligations by Hong Kong, China therewithin, given the fact that the Central People's Government is not bound by the Covenant. It also notes with appreciation that the provisions of the Covenant have been incorporated or guaranteed in local laws of Hong Kong, China, including the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China ("the Basic Law") and the Hong Kong Bill of Rights Ordinance. However, the Committee is deeply concerned that the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("the National Security Law") prevails over other local laws in case of conflicts and consequently overrides fundamental rights and freedoms protected by the Covenant. Reiterating its previous concerns about the constitutional interpretation by the Standing Committee of the National People's Congress ("the Standing Committee"), the Committee is also concerned about the absence of measures to ensure the full conformity of the interpretation of the Basic Law by the Standing Committee with the Covenant (arts. 2 and 14).

5. Hong Kong, China should ensure that the Covenant prevails over local legislation and laws applicable in Hong Kong, including the National Security Law, and bring these laws and practices in full conformity with the Covenant. It should also ensure that all the interpretations, including those by the Standing Committee, of the Basic Law and all other laws applicable in Hong Kong, and practices are in full conformity with the Covenant and the principle of "one country, two system".

National human rights institution

6. While noting the assertion of Hong Kong, China about the existing institutional framework of statutory organizations mandated to promote and safeguard human rights, namely the Equal Opportunities Commission, the Office of the Privacy Commissioner for Personal Data, and the Ombudsman, the Committee remains concerned about the gaps in the mandate and powers of those organizations, individually and collectively, to promote and protect all the rights enshrined in the Covenant and their insufficient independence to carry out their respective mandates. (arts. 2 and 14).

7. The Committee urges Hong Kong, China to establish an independent national human rights institution with a comprehensive mandate and appropriate powers in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). Until such an institution is established, Hong Kong, China should take concrete measures to strengthen the independence and effectiveness of the existing institutions and to expand their mandate.

Non-discrimination

8. The Committee notes the efforts made by Hong Kong, China to improve its anti-discrimination legislation, including the adoption of the Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020 and the Sex Discrimination (Amendment) Ordinance 2021. The Committee, however, remains concerned about the persisting lacuna in the existing anti-discrimination framework in providing protection against all forms of discrimination based on all prohibited grounds of discrimination, including age, sexual orientation and gender identity, in all spheres, and the fragmentary approach of Hong Kong, China to address it. In this context, the Committee regrets the explicit intention of Hong Kong, China not to adopt comprehensive anti-discrimination legislation. Furthermore, the Committee is concerned that a minimal number of racial discrimination complaints have been filed with the Equal Opportunities Commission despite the reportedly frequent incidents of

racial discrimination experienced by migrant workers, and that none of the discrimination claims brought before the Commission under the four anti-discrimination ordinances has been successful (arts. 2, 3, 25 and 26).

9. The Committee urges Hong Kong, China to reconsider its position and take concrete steps to adopt comprehensive anti-discrimination legislation that prohibits all forms of direct, indirect and multiple discrimination, based on all prohibited grounds of discrimination, including age, sexual orientation and gender identity in all public and private spheres. Hong Kong, China should enhance the capacity and effectiveness of the Equal Opportunities Commission to competently carry out its complaint handling and other mandates.

Discrimination against lesbian, gay, bi-sexual, transgender and intersex persons

10. The Committee is concerned about the lack of efforts made by Hong Kong, China to sensitize its population to the effects of discrimination based on sexual orientation and gender identity on the affected persons. It is also concerned about the absence of a legal framework to address discrimination, harassment, hate speech and hate crimes continuously faced by lesbian, gay, bi-sexual, transgender and intersex persons. It is also concerned that, despite setting up an inter-departmental working group on gender recognition in 2014, no progress has been made towards drafting a gender-recognition law and transgender persons continue to be required to undergo surgery in order to have their gender marker changed in their identity documents (arts. 2, 25 and 26).

11. Hong Kong, China should:

(a) Intensify its efforts to combat discrimination against lesbian, gay, bi-sexual, transgender and intersex persons, including by conducting public awareness-raising campaigns;

(b) Adopt a legal framework to explicitly prohibit and prevent discrimination, harassment, hate speech and hate crimes against lesbian, gay, bi-sexual, transgender and intersex persons, ensure that all such cases are thoroughly investigated, prosecuted and sanctioned, and provide access to effective remedies for victims;

(c) Put in place a quick, transparent and accessible procedure for legal gender recognition of transgender persons and immediately discontinue the policy of requiring medically unnecessary gender reassignment surgery.

National Security Law

12. The Committee notes with concern that the National Security Law was passed by the National People's Congress of the People's Republic of China without consultation with the public and civil society in Hong Kong, China. The Committee is deeply concerned about the overly broad interpretation of and arbitrary application of the Law, reportedly leading to the arrests of over 200 persons since its enactment in 2020, including 12 children, on grounds of endangering national security, with 44 of the convictions of 12 persons under the Law not falling within the four categories of offences specified therein. Furthermore, it is concerned that, despite article 4 of the Law guaranteeing respect and protection of human rights in safeguarding national security, the application of the Law and the Implementation Rules for Article 43 of the National Security Law ("the Implementation Rules") have unduly restricted a wide range of Covenant rights, as mentioned throughout the present concluding observations (arts. 2, 4, 7, 9, 10, 12, 14, 15, 17, 18, 19, 21, 22 and 25).

13. The Committee notes with grave concern the following shortcomings of the National Security Law:

(a) The lack of clarity on "national security" and on the types of behaviour and conduct that constitute a criminal offence under the Law, which undermine the principle of legal certainty;

(b) The transfer of national security cases to the organs of the Central People's Government, China not being a party to the Covenant, for investigation, prosecution, trial

and execution of penalties, as provided for in articles 55, 56 and 57, which may lead to the *de facto* breach of obligations of Hong Kong, China under the Covenant;

(c) The absence of mechanisms, provided for in the Law, allowing suspects of national security offences to challenge enforcement measures carried out by the authorities of the Central People's Government and seek judicial remedies in case of violation of Covenant rights by law enforcement officers of the Central People's Government;

(d) The excessive power of the Chief Executive and other measures provided for in the Law, which can effectively undermine the independence of judiciary and procedural safeguards for access to justice and right to a fair trial, as specified in paragraph 35;

(e) The extensive investigative powers of the Department for Safeguarding National Security of the Police Force of the HKSAR and the absence of judicial oversight thereof, provided for in article 43 of the Law and its Implementation Rules;

(f) The lack of clarity on the grounds for invoking extraterritorial application of the Law (arts. 2, 4, 7, 9, 10, 12, 14, 15, 17, 18, 19, 21, 22 and 25).

14. The Committee welcomes the assurance of the Delegation that the development of future legislation under article 23 of the Basic Law would involve public consultations. Hong Kong, China should:

(a) Take concrete steps to repeal the current National Security Law and, in the meantime, refrain from applying the Law;

(b) Ensure that the legislative process for enacting a new national security law is inclusive and transparent, facilitating the free, open and meaningful participation of civil society and the public, and that it addresses the concerns relating to the current National Security Law expressed by international human rights mechanisms, including this Committee, with a view to ensuring that the new legislation fully conforms with the Covenant.

Sedition

15. Noting that the sedition offence of the Crime Ordinance was resuscitated in 2020 for the first time in decades, the Committee is concerned that a number of academics, journalists and representatives of civil society have been arrested and charged with seditious offences for having exercised their legitimate right to freedom of speech such as chanting slogans in public, clapping in courts and expressing criticism of government activities. Law enforcement officials and prosecutors have allegedly failed to specify the precise nature of the threat posed by such activities. The Committee is particularly concerned that sedition is regarded as a national security crime and therefore sedition cases are investigated by the Department for Safeguarding National Security of the Police Force of the HKSAR, as upheld by the Court of Final Appeal. It is also concerned about the excessive investigative powers under the Implementation Rules, which are also applicable to sedition cases(arts. 2, 4, 7, 9, 10, 12, 14, 15, 17, 18, 19, 21, 22 and 25).

16. Hong Kong, China should:

(a) Repeal the sedition provisions of the Crime Ordinance and refrain from using them to suppress the expression of critical and dissenting opinions;

(b) Immediately stop applying the National Security Law and the Implementation Rules to sedition cases;

(d) Review pending sedition cases to ensure no one is prosecuted or targeted for the legitimate exercise of his/her right to freedom of expression.

State of emergency

17. The Committee is concerned that the Emergency Regulations Ordinance is not in conformity with article 4 of the Covenant and notes (a) the unfettered power conferred on the Chief Executive to make regulations without any effective vetting procedures through the legislature, for the breach of which criminal penalties of up to life imprisonment may be imposed; (b) the absence of definition of "emergency" or "public danger", which does not

meet the threshold of state of emergency stipulated in article 4 of the Covenant; (c) the lack of adequate judicial review of these regulations, thus depriving the persons subject to them of their right to challenge the legality, necessity and proportionality of such measures; (d) the absence of explicit prohibition of derogations from non-derogable provisions of the Covenant during states of emergency (arts. 2, 4, 7, 9, 10, 12, 14, 15, 17, 18, 19, 21, 22 and 25).

18. Hong Kong, China should revise the Emergency Regulations Ordinance with a view to bringing it into full compliance with article 4 of the Covenant and the Committee's general comment No. 29 (2001) on states of emergency (article 4).

Right of peaceful assembly and excessive use of force

19. The Committee regrets the absence of specific information provided by Hong Kong, China on the guidelines and orders regarding the use of force by police officers, and is concerned that existing guidelines and orders are allegedly not compliant with the Covenant and relevant international human rights standards. The Committee is deeply concerned about the excessive and indiscriminate use of less lethal weapons and chemical substances, including rubber pellets, sponge bullets, tear gas and water cannons containing chemical irritants, against unarmed protesters including pregnant women, bystanders, commuters and journalists during protests from July to November 2019. It is also concerned about the instruction given by the commander-in-chief of the riot police to his subordinates to aim for and shoot at protestors' heads in the context of protests near the City University of Hong Kong. Furthermore, the Committee is concerned about the absence of information regarding the outcome of investigations into complaints lodged against the police and the extent and nature of disciplinary action, if any, faced by individual police officers held liable in this regard (arts. 6, 7, 9, 10, 14 and 21).

20. Hong Kong, China should take concrete measures to effectively prevent and eliminate all forms of excessive use of force by law enforcement officers. In particular, it should:

(a) Ensure that all allegations of excessive use of force by police, particularly in policing protests from July to November 2019, are investigated promptly, thoroughly and impartially, that those responsible are prosecuted and, if found guilty, punished and that the victims obtain redress; and consider establishing a commission of inquiry in this regard;

(b) Review the existing guidelines and regulations on the use of force by law enforcement officials to ensure their full conformity with the Covenant, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement;

(c) Strengthen training of law enforcement officials on the use of force, especially in the context of demonstrations, and the employment of non-violent means and crowd control;

(d) Maintain record on the use of force by law enforcement officials, which should be available for public scrutiny.

Police oversight mechanisms

21. The Committee is concerned that no concrete steps have been taken by Hong Kong, China to implement its previous recommendation of establishing a fully independent police oversight mechanism. The Committee remains concerned about the lack of independence, capacity and powers of the Complaint Against Police Office and of the Independent Police Complaints Council, which has also been confirmed in a progress report by a panel of international experts and a judgement of the High Court of 19 November 2020 (arts. 6, 7, 9, 10 and 14).

22. The Committee urges Hong Kong, China to take concrete steps, without delay, to establish a fully independent mechanism with adequate powers and mandate to conduct a proper investigation into complaints into misconduct or abuse of power by the police and to formulate binding decisions in respect of investigations conducted and findings thereon.

Treatment of persons deprived of their liberty

23. The Committee regrets the absence of updated and detailed information on deaths in detention and on the complaints, filed with the Complaint Investigation Unit under the Department of Correctional Services, about torture, ill treatment and abuse of authority in correctional institutions. The Committee is concerned about the ineffectiveness of the existing complaint mechanisms for persons deprived of their liberty, namely the Complaint Investigation Unit and the Justices of the Peace, due to their lack of independence, powers and capacity (arts. 6, 7, 9, 10 and 14).

24. Hong Kong, China should take concrete measures to eradicate torture and ill-treatment, in particular by

(a) Ensuring that all persons deprived of their liberty have access to an independent and effective complaints mechanism without fear of reprisal;

(b) Establishing an independent complaint mechanism with adequate powers and capacity, mandated to deal with complaints about torture, ill-treatment and abuse of authority in the places of detention and to conduct visits and monitoring of such places without prior notice and on an unsupervised basis;

(c) Ensuring that all allegations of torture and ill-treatment are promptly thoroughly and effectively investigated, perpetrators are prosecuted and, if convicted, punished appropriately and that victims receive full reparation.

Treatment of aliens, including migrants, refugees and asylum seekers

25. The Committee is concerned that there is no legal framework governing the granting of asylum and subsequently all asylum seekers, including those fleeing from torture and other serious human rights violations, are subject to immigration laws, which renders their stay illegal and subjects them to negative stereotypes and denial of their basic rights. While noting the launch of the Unified Screening Mechanism in 2014, the Committee remains concerned about the minimal substantiation rates (1.25 per cent) of non-refoulement applications, the very high number of judicial review applications to challenge the USM decisions, and the non-publication of the decisions made by the Torture Claims Appeal Board. It is also concerned that asylum seekers, including those whose applications have been granted, are prohibited from working in Hong Kong in general and live on the Government-funded humanitarian assistance, which is far below subsistence level and their children have no access to tertiary education (arts. 7, 9, 12, 13, 14 and 24).

26. Hong Kong, China should:

(a) Review its overall immigration policy and legislation with a view to bringing them in line with international human rights and humanitarian standards and strengthening the protection of migrants, asylum seekers and refugees and combatting negative stereotypes;

(b) Enhance the effectiveness of the Unified Screening Mechanism and the quality of its decisions by rationalizing the threshold, improving legal counsel and interpretation services, raising awareness of claimants about the procedures and publishing the decision of the Torture Claims Appeal Board;

(c) Take concrete measures to allow asylum seekers to work and to raise the level of humanitarian assistance to ensure an adequate standard of living, and to allow asylum-seeking children to access tertiary education.

27. The Committee is concerned that Hong Kong, China's policy of dealing with asylum seekers appears to be based on the legal framework of administrative detention. In this context, it is particularly concerned about the broad powers of the Immigration Department to detain persons pending removal and during screening of non-refoulement claims and often for excessive periods of time, which have been further expanded through the amendments made to the Immigration Ordinance in 2021, and the decision to increase the capacity of immigration detention by converting the Tai Tam Gap Correctional Institution into an immigration detention centre. The Committee is also concerned about the limited procedural safeguards against arbitrary detention of asylum seekers, including judicial oversight and

protection of individuals in vulnerable situations, provided for in the Immigration (Amendment) Ordinance 2021 (arts. 7, 9, 12, 13, 14 and 24).

28. Hong Kong, China should:

(a) Avoid the administrative detention of asylum seekers and migrants, prioritizing non-custodial alternatives and ensuring that detention is used only as a measure of last resort and for the shortest possible period of time, and from separating migrant families;

(b) Review the Immigration (Amendment) Ordinance 2021 with a view to bringing its immigration policy and legislation in line with international human rights and humanitarian standards and international best practice;

(c) Strengthen the procedural safeguards against arbitrary detention, including judicial oversight and individual assessment of asylum seekers, particularly those in vulnerable situations.

Trafficking in persons

29. While noting the efforts made by Hong Kong, China to combat human trafficking, including the adoption of an action plan and increased training provided for law enforcement officials, the Committee remains concerned at the persisting gap in prohibiting all forms of human trafficking in its various provisions of laws relating to human trafficking. While regretting the lack of clarification by Hong Kong, China on the definition of victims for the screening process, the Committee is concerned about the very small number of victims identified through its victim screening procedure. The Committee also notes with regret the expressed intention of Hong Kong, China not to extend the application of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) to it (arts. 2, 7, 8 and 26).

30. Hong Kong, China should:

(a) Review its legal provisions on anti-trafficking with a view to criminalizing all forms of human trafficking in line with relevant international human rights standards and consider adopting a comprehensive anti-trafficking law to this end;

(b) Improve the quality of victim screening and identification, including by reviewing the definition of victims of human trafficking and strengthening training for law enforcement officials; protect the victims, including from being sanctioned for crimes that they are compelled to commit and/or through immigration proceedings; and provide them with all necessary assistance;

(c) Ensure that cases of trafficking are thoroughly investigated and that perpetrators are prosecuted and, if found guilty, given sentences commensurate with the seriousness of the crimes;

(d) Reconsider its position and take steps towards the extension of the Palermo Protocol to Hong Kong, China, in order to strengthen its commitment to fight trafficking in persons in the region.

Migrant workers

31. While noting some isolated cases in which migrant domestic workers were permitted to change employers based on evidence of exploitation or abuse committed against them, the Committee is concerned that Hong Kong, China has not taken concrete steps to repeal the "two-weeks rule" or to adopt a systematic approach to address its adverse effects on the enjoyment of Covenant rights by migrant domestic workers. It is also concerned that this rule, along with the live-in requirements, continues to put those workers at high risk of abuse and exploitation by their employers and employment agencies and to prevent them from reporting exploitative employment and abuse due to fears of losing their job and having to leave Hong Kong (arts. 2, 7, 8 and 26).

32. Recalling its previous recommendations, Hong Kong, China should repeal the two-week rule and the live-in requirements and in the meantime take concrete actions to address their adverse effects on migrant domestic workers. It should also provide effective complaint mechanisms for reporting abuse and exploitation, taking into account the unique working situations of those workers and ensure that cases of exploitation and abuse are thoroughly investigated and that perpetrators are prosecuted and, if found guilty, punished with appropriate sanctions and that victims have access to effective remedies.

Access to justice, independence of the judiciary, and fair trial

33. The Committee is concerned that the recent legal aid reform has further restricted the rights to access to legal aid and to counsel of one's choice, particularly of those charged under the National Security Law, by hindering people seeking legal aid from choosing their own criminal lawyers and limiting the number of judicial review cases which solicitors and barristers are allowed to take annually (arts. 2 and 14).

34. Hong Kong, China should take effective measures, including by establishing an independent legal aid authority, to guarantee the rights to access to timely and competent legal aid and to counsel of one's choice, including those charged under the National Security Law.

35. The Committee is deeply concerned that certain provisions of the National Security Law substantially undermine the independence of judiciary and restrict the rights to access to justice and to fair trial. In particular, it is concerned that:

(a) Articles 44 and 47 provide the Executive with excessive power, such as the power to appoint judges, on a list which is not made public, to hear national security cases in consultation with the Committee for Safeguarding National Security of the HKSAR and the Chief Justice and to issue a binding certificate to the courts whether an act involves national security or whether the relevant evidence involves State secrets when such questions arise in the adjudication of a case;

(b) Article 44 also provides that the judges who make any statement or behaved in any manner endangering national security to be removed;

(c) Article 42 introduces more stringent threshold for bail, as pointed out by the Court of Final Appeal in February 2021, which creates a presumption against bail for those charged under the Law. About 74 per cent of persons charged with national security crimes allegedly have been denied bail without proper reasoning and many people have been in pre-trial detention, including 11 children, and some of them are reportedly in pretrial detention for more than a year;

(d) Article 46 authorizes the Secretary for Justice to decide on the cases to be tried by jury and there have been no national security cases tried by jury so far. (arts. 2 and 14).

36. Hong Kong, China should:

(a) Pending the repeal of the National Security Law, refrain from applying it, particularly the articles 42, 44, 46 and 47;

(b) Take all measures necessary to strengthen the independence of judiciary and protect the judiciary from any form of interference;

(c) Respect and protect the right to a fair trial without discrimination based on political opinion or other grounds.

37. The Committee is concerned about harassment, intimidation and physical attacks faced by lawyers such as Chow Hang-Tung, who have requested judicial reviews or represented opposition figures or protestors (arts. 7 and 14).

38. Hong Kong, China should take measures necessary to protect lawyers, particularly those who represent opposition figures or protesters and request judicial reviews, from harassment, intimidation and attacks in line with the Basic Principles on the Role of Lawyers (1990). It should also ensure that all such allegations are promptly, independently and thoroughly investigated, that perpetrators are prosecuted and, if

found guilty, punished with appropriate sanctions and that victims have access to effective remedies.

Right to privacy

39. The Committee is concerned that Section 3(1)(a) of the Interception of Communications and Surveillance (Amendment) Ordinance, Article 43(6) of the National Security Law and Schedule 6 of the Implementation Rules, which facilitate arbitrary intrusion into privacy for the purpose of public security or national security, are not compatible with article 17 of the Covenant. In this context, it is concerned about allegations of unrestricted surveillance carried out at schools and the excessive surveillance and interception of trade unions' data. While noting the statutory powers of the Office of the Privacy Commissioner for Personal Data to demand the cessation or restriction of disclosure of doxing content conferred under the Personal Data (Privacy) Amendment Ordinance 2021, the Committee notes with concern that the Office removed 90 per cent of social media posts, which reportedly contained doxed information between October 2021 and May 2022 and issued 774 cessation notices and six persons have been arrested. While regretting the absence of detailed information provided by Hong Kong, China on the application of the Amendments, including the criteria used for cessation, the Committee is concerned about allegations that the amendments were designed to curb freedom of speech and expression on social media and to influence social media platforms. In addition, it is concerned that the digital applications that residents and visitors must download as part of the COVID-19 response allegedly facilitate extensive access to the data stored on devices (arts. 17 and 19).

40. Hong Kong, China should:

(a) Pending the repeal of the National Security Law, refrain from applying article 43(6) of the National Security Law and Schedule 6 of the Implementation Rules;

(b) Take concrete steps to bring the Interception of Communications and Surveillance (Amendment) Ordinance and the Personal Data (Privacy) Amendment Ordinance 2021 in line with Article 17 of the Covenant;

(c) Strengthen the capacity, mandate and powers of the Office of the Privacy Commissioner for Personal Data so as to carry out independent and effective oversight of surveillance activities and interference with privacy and ensure access to effective remedies in cases of abuse;

(d) Ensure that the data collected through the digital applications used in the context of COVID-19 response, are used strictly for specific and legitimate objectives and are deleted when such objectives have been met.

Freedom of expression

41. The Committee is concerned about the adverse effect of the overly broad interpretation and arbitrary application of the National Security Law and sedition legislation, and its impact on the exercise of freedom of expressions. This includes: (a) the closure of media outlets, in some cases voluntarily for fear of reprisals, raids on their offices and freezing of their assets; (b) the blocking of websites and media accounts and the removal of online content; (c) the arrest and arbitrary detention of journalists, politicians, academics, students and human rights defenders who have expressed dissenting opinions; (c) intimidation, attack or threat of attack against journalists; (d) censorship; (e) interference with the editorial independence of public media outlet such as Radio Television Hong Kong, and (f) difficulties in obtaining or renewing visas for foreign journalists, among others. While noting the intention of Hong Kong, China to prepare a new law regulating disinformation, the Committee notes concerns raised about its potential adverse impact on the enjoyment of freedom of expression given the current environment (arts. 19, 20, 21 and 22).

42. Hong Kong, China should: (a) stop applying the National Security Law and sedition legislation against journalists, politicians, academics, human rights defenders and members of the public duly exercising their right to freedom of expression; (b) discontinue all cases against journalists and individuals charged for exercising their right to freedom of expression and provide them with adequate compensation; (c)

ensure the editorial independence of all media outlets; and (d) protect journalists from intimidation and attacks and investigate all such cases. It also should ensure transparent, participatory and meaningful consultation with the public and civil society in enacting a new law relating to disinformation and ensure that the draft is in full compliance with the Covenant.

43. The Committee is also concerned that: (a) safeguarding national security has become one of the criteria for the public library collections, and the Leisure and Cultural Services Department examines whether the content of library material complies with the National Security Law or the provision of service related to such material serves the interests of national security; (b) more than a hundred books have allegedly been withheld from shelves of public libraries for such reasons, and (c) the list of library materials withdrawn for allegedly breaching the Law or other legislation or for being contrary to the interests of national security has not been published (arts. 19, 20 and 21).

44. Hong Kong, China should:

(a) Immediately stop censoring books and materials in the public libraries, including school libraries and reinstate those books and materials that have been removed for allegedly breaching the National Security Law or for being contrary to the interests of national security;

(b) Publish the list of those books and materials;

(c) Take concrete steps necessary to ensure non-recurrence.

Peaceful assembly

45. While noting the massive number of people who participated in protests between June 2019 and early 2020, the Committee is concerned that Hong Kong, China has labelled entire assemblies as violent because of isolated cases of use of violence by some protestors, and consequently responding to protestors as rioters. More importantly, it is concerned that such a massive scale of protests may indicate the failure of a participatory governance system of Hong Kong, China (arts. 7, 9, 10, 19, 21 and 25).

46. Recalling its obligation under article 21 of the Covenant, as elaborated in the Committee's general comment No. 37 (2020) on the right of peaceful assembly, Hong Kong, China should take all measures necessary to respect and ensure the right of peaceful assembly. It should facilitate assemblies and impose proportionate restrictions only where strictly necessary to achieve one of the permitted goals identified in the Covenant. Furthermore, it should strengthen its governance system with a view to ensuring the free, effective and meaningful participation of its citizens in the conduct of public affairs, including the legal and decision-making process.

47. The Committee is concerned about the undue restrictions on the exercise of the right of peaceful assembly, including the Public Order Ordinance, which prescribes the de facto authorization system for public assemblies and criminalizes the participation in an unauthorized public assembly, and the Prohibition on Face Covering Regulation. It is also concerned that COVID-19 regulations have been invoked to impose undue restrictions on the right of peaceful assembly, through discriminatory application allegedly depending on the purpose of assemblies or organizers. The Committee is further concerned about the excessively high number of arrests, prosecution and conviction of protesters, particularly between 2019 and 2021 (arts. 4, 7, 9, 10, 19 and 21).

48. Hong Kong, China should:

(a) Revise the Public Order Ordinance and repeal the Prohibition on Face Covering Regulation, with a view to bringing its legislation on public assembly in line with article 21 of the Covenant and the Committee's general comment No. 37 (2020);

(b) Ensure that COVID-19 regulations are applied without exception or discrimination and do not unduly restrict the right of peaceful assembly;

(c) Discontinue charges against and release all persons who are arbitrarily arrested and detained in connection with the 2019 protests and all unauthorized assemblies.

Freedom of association

49. The Committee is concerned at the excessive number of civil society organizations, including trade unions and student unions, which have relocated or ceased to operate since the enactment of the National Security Law and invocation of sedition legislation in 2020. It is also concerned that trade unions have allegedly been targeted after a series of city-wide strikes in 2019 through deregistration, the filing of criminal charges against the leadership of trade unions and their increased vulnerability due to their relations with international trade-union organizations. The Committee is also concerned about the excessive powers of the police to refuse or cancel the registration of a society or to prohibit a society provided for in the Societies Ordinance, which is not subject to judicial review on merits. Furthermore, the Committee notes with concern the Delegation's vague response, stating that the National Security Law does not apply to "normal" activities of civil society organizations, without clarifying what constitutes normal activities, which does not explicitly assure the protection of civil society organizations and their representatives who have been engaged with the Committee for this review from being charged under the National Security Law (arts. 2, 4, 19 and 22).

50. Hong Kong, China should:

(a) Refrain from taking any action that is likely to curb the exercise of the freedom of association and ensure a safe environment for the activities of civil society organizations, including trade unions and student unions;

(b) Remove all the restrictive measures imposed on trade unions and discontinue all cases against trade unionists charged in connection with their union activities;

(c) Review the Societies Ordinance and other relevant legislation with a view to removing the procedural and substantive obstacles to register and run a society and bringing them in line with article 22 of the Covenant;

(d) Ensure that members and representatives of civil society organizations will not be charged under the National Security Law or victimized in any other form as a result of their engagement with the Committee for the current review as well as with other international human rights mechanisms, including other treaty bodies, the Human Rights Council, the Special Procedures and the Universal Periodic Report as well as with international NGOs.

Participation in public affairs

51. The Committee acknowledges the commitment of Hong Kong, China to introducing universal suffrage. However, the Committee is concerned about the non-compliance of the electoral system with the requirements of Article 25 of the Covenant, which has further deteriorated since the electoral changes in 2021. The concerns include: (a) the significantly reduced number of seats directly elected by public voters for both the Election Committee and the Legislative Council; (b) the diminishing representativeness of the Election Committee following the changes made to the composition and membership of its sectors and sub-sectors; (c) the restricted candidate eligibility, which gives little or no chance for candidates of opposition parties to stand for election; (d) the absence of participation of public voters in electing the Chief Executive and (e) the vague criteria and process of disqualification of candidates and elected officials (arts. 2, 3, 25, 26 and 27).

52. Hong Kong, China should take concrete steps, with a clear timeline, to introduce universal suffrage. In the meantime, it should reform the electoral system in line with article 25 of the Covenant and the Committee's general comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service, including by: (a) increasing the number of seats to be elected by public voters in the Election Committee and the Legislative Council, (b) increasing the number of

public voters in the Election Committee, (c) introducing public voting for the election of the Chief Executive and (d) revising the candidate eligibility to ensure diversity among candidates; (e) review the criteria and process of disqualification and repeal discriminatory criteria. Furthermore, it should reverse the decision to disqualify elected officials.

D. Dissemination and follow-up

53. Hong Kong, China should widely disseminate the Covenant, its fourth periodic report and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. Hong Kong, China should ensure that the periodic report and the present concluding observations are translated into the official languages of Hong Kong, China.

54. In accordance with rule 75, paragraph 1, of the Committee's rules of procedure, Hong Kong, China is requested to provide, by 28 July 2025, information on the implementation of the recommendations made by the Committee in paragraphs 14 (The National Security Law); 42 (Freedom of expression) and 50 (Freedom of association) above.

55. The Committee requests Hong Kong, China to submit its next periodic report by 27 July 2028 and to include in that report specific up-to-date information on the implementation of the recommendations made in the present concluding observations and of the Covenant as a whole. The Committee also requests Hong Kong, China, in preparing the report, to broadly consult civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words.