

**Civil Human Rights Front
Submission to the
Human Rights Committee
For the Universal Periodic Review**

Hong Kong Special
Administrative Region (HKSAR)
China

2018

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1. Universal suffrage

Hong Kong lacks universal suffrage, which is stipulated in articles 45 and 68 of the Basic Law (constitutional law of Hong Kong) as the ultimate election methods of the Chief Executive and all members of the Legislative Council (LegCo). For years the topics has been discussed by the civil society. Currently, half of the seats (35 out of 70) in the LegCo is constituted by the Functional Constituency, where candidates are elected by 6.5% of total registered voters, resulting minorities vetoing majority. The Chief Executive is elected by an Election Committee, composed of 1,200 members, who are mainly controlled by pro-Beijing tycoons and political parties, does not represent the voice of the public.

Unrepresentative elections

The 1,200 seats Election Committee is made up of professional and special interest groups, and are extremely disproportionately distributed to each group. Sectors with tremendously larger number of voters do not necessarily have more seats than sector with very small number of voters. The Education Sector, for instance, has only 30 members in the Committee despite its 80,843 registered voters. On the other hand, Ariculture and Fisheries Sector has twice the number of members, i.e. 60, while its candidates are voted by only 154 voters (bodies). These registered bodies are companies. Therefore it is the company owners that have the votes, not those who work in the industry. The Chinese People's Political Consultative Conference Sector with 51 members has only 91 registered voters. On top of the disproportionate distribution, 300 out of the 1,200 members were uncontested in the election in December 2016 due to monopoly of the each sector by the power holders.¹

Among the 70 seats in the LegCo, half of the seats, i.e. 35, are elected in the Functional Constituency. Its composition, similar to the Election Committee of the Chief Executive election, is constituted of only professional and special interest groups. Its composition is just like in the Election Committee of the Chief Executive election, are professional and special interest groups. The mechanism makes the pan-democrats the minority in the LegCo, i.e. 29:40 after 2016 LegCo election, despite their supporting rate of 55% against the 41% of the pro-establishment camp in the Geographical Constituency (direct election). 12 candidates from the pro-establishment camp receive their seats without election rivals.² With split voting system within the LegCo, where legal bills proposed by legislators (instead of by government) has to be passed by majority of both Functional and Geographical Constituency to be enacted, legislators directly elected by citizens have very little power.

Civil Human Rights Front urges the Committee to request that the Hong Kong Government abolishes Functional Constituency and Split Voting

¹ Voter Registration Statistics: Election Committee Subsector, <https://www.voterregistration.gov.hk/eng/statistic20164.html> (accessed 26 March 2018)

² 2016 Election Committee Subsector Elections, Election Results, <https://www.elections.gov.hk/ecss2016/eng/results.html?1522171555364> (accessed 26 March 2018)

System, and replace all its seats with directly elected seats, and implement universal suffrage in the 2022 Chief Executive election.

Pre-selection of election candidates

The Hong Kong Government did not only omit its obligation to implement free elections, but also took as much actions as possible to pre-select candidates from running elections, which breaches Article 2 and 25 of the ICCPR, that every citizen shall have the right to be elected at genuine periodic elections, without any of distinctions such as political opinion. Since 2016, 9 candidates were rejected candidacy in LegCo election (6 in 2016 and 3 in the 2018 by election), and 6 elected legislators were dismissed from the LegCo for their alleged not “accurately, solemnly and sincerely” at the oath taking.

Starting from 2016 LegCo election, candidates of the opposition were asked to sign a Confirmation Form to declare their upholding of the Basic Law. Some of those were accepted candidacy by the Returning Officer even though they refused to sign the confirmation, some were accepted after signing the confirmation, while some were barred from running the election even after signing the form. One of the candidates, Edward Leung, from the Localist, for example, received E-mail from the Returning Officer after signing the form to suspect his support of Hong Kong independence.³ Leung was eventually denied candidacy even after declaring for the second time that he did not support independence. The decision was made in reference of Leung’s speech about Hong Kong independence on social media as evidence, that he did not genuinely uphold the Hong Kong Basic Law. Rimsky Yuen, the then Secretary of Justice, was supportive of this decision.

With the precedent, three more candidates in the 2018 LegCo by-election were disqualified after signing the same Confirmation Form. Reason given to one of whom, Ms. Agnes Chow, was because of her affiliation with political party Demosisto that holds “democratic self-determination”, which was deemed as a form of independence, as its political belief.⁴ Such series of actions, including the signing of confirmation form, the follow up questioning of candidates and the reasons given by the Returning Officers are received as political screening of candidates and means to eliminate oppositions, which is not in line with ICCPR.

Civil Human Rights Front urges the Committee to request that the Hong Kong Government to stop the pre-selection practice.

Disqualification of elected legislators

2 legislators have been ousted from the LegCo due to their controversial oath taking on October 2016. Later the Department of Justice lodged judicial review

³ Kris Cheng, Hong Kong Free Press, “Political censorship’: Gov’t sends email asking for election candidate’s stance on HK independence”, 23 July 2016, <https://www.hongkongfp.com/2016/07/23/political-censorship-govt-sends-email-asking-for-election-candidates-stance-on-hk-independence/> (accessed 28 March 2018)

⁴ European Union External Action, Statement by the Spokesperson on the decision to bar Agnes Chow from running for a Legislative Council by-election, 29 January 2018, https://eeas.europa.eu/headquarters/headquarters-homepage/38968/statement-spokesperson-decision-bar-agnes-chow-running-legislative-council-election_en (accessed 28 March 2018)

against another 4 legislators, whose oath takings were eventually ruled by the Court of Appeal as invalid, after the announcement of interpretation of the Hong Kong Basic Law by the Standing Committee of the National People's Congress (NPCSC). As the issue had already entered into the judicial process, the making of the interpretation at this very highly sensitive moment was publicly received as asserting pressure to the Court, resulting 6 elected legislators carrying 185,727 votes from Hong Kong citizens losing their seats in the LegCo.

2. Rule of law

Interpretation of the Basic Law

If there should be a need for an interpretation of the Basic Law, it should be recognized and initiated by The Court of Final Appeal, instead of Hong Kong Government and/or China, in order to safeguard the judicial independence and high autonomy of Hong Kong. However, the fifth interpretation on oath taking was actively made by the NPCSC, not through the standard process. It also went way beyond “interpretation” of laws with 2.5 pages of explanation, undermining the independence of the judiciary.⁵ The unnecessary and inappropriate provisions, especially during the course of legal process, are inevitably give impression that the NPCSC is making new legislations for Hong Kong that undermines the independence of judiciary.⁶

Civil Human Rights Front urges the Committee to request that NPCSC not to initiate interpretation of the Basic Law without the request from the Court of Final Appeal of Hong Kong.

3. Human rights defenders

Registration of political parties

Political parties in Hong Kong are registered as companies, however some, such as Demosisto or Hong Kong National Party, have been unable to do so.^{7,8} Their

⁵ Interpretation of Article 104 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, http://www.basiclaw.gov.hk/en/basiclawtext/images/basiclawtext_doc25.pdf (accessed 28 March 2018)

⁶ The Hong Kong Bar Association, Statement concerning the interpretation made by National People's Congress Standing Committee of Article 104 of the Basic Law, 7 November 2016, <http://www.hkba.org/sites/default/files/20161107%20-%20Statement%20re%20NPCSC%20interpretation%20BL104%20%28Eng%20Version-web%29.pdf> (accessed 28 March 2018)

⁷ Demosisto, <https://www.demosisto.hk/donation?lang=en> (accessed 28 March 2018)

⁸ Elson Tong, Hong Kong Free Press, “Pro-independence Hong Kong National Party appeals against Companies Registry's denial of registration”, 11 April 2017, <https://www.hongkongfp.com/2017/04/11/pro-independence-hong-kong-national-party-appeals-companies-registry-denial-registration/> (accessed 28 March 2018)

attempts to open bank accounts have also been denied.⁹ Societies are also in similar situations, that their names and descriptions face political censorship.

Civil Human Rights Front urges the Committee to request the Hong Kong Government to immediately enable all political parties and societies to register, regardless of their political ideologies, to ensure their political rights are in accordance with ICCPR.

Decision by the Secretary for Justice to prosecute and appeal of cases of human rights defenders

Since the Umbrella Movement in 2014, more and more activists were arrested, being tried and sent to jail. The Government seemed to have paid much effort to make sure the activists are sentenced imprisonment. The Department of Justice lodged appeal against 13 activists who stormed into LegCo in hope of stopping a controversial northeast New Territories development proposal¹⁰, and 3 activists who stormed into the so called “Civic Square” that kick-started the Occupy Movement.¹¹ The two groups were sentenced 6 to 13 months of imprisonment after all 16 served their first sentences, namely community service and suspended jail sentence, on in August 2017. The sentence has been much harsher comparing the same conviction in the past, which might be weeks of jailing. The activists applied for appeal at the Court of Final Appeal and the Occupy Trio was eventually set free in February 2018.¹² It was reported that the Secretary of Justice at the time pushed for harsher punishment, despite the opposing opinion from his top prosecutors.¹³

Civil Human Rights Front urges the Committee to ask the Hong Kong Government whether pushing for harsher sentence for human rights defenders with taxpayers’ money despite the non-jail terms were handed down, will help to build a better society, and to request the HKSAR to remove the responsibilities of the Secretary of Justice to decide criminal prosecutions.

⁹ Cannix Yau, SCMP, “Six months and counting: Demosisto party still waiting for a reply on its registration”, 11 September 2016, <http://www.scmp.com/news/hong-kong/politics/article/2018409/six-months-and-counting-demosisto-party-still-waiting-reply> (accessed 28 March 2018)

¹⁰ Karen Cheung, Hong Kong Free Press, “13 activists who stormed Hong Kong legislature jailed following successful appeal by Justice Dept.”, 15 August 2017, <https://www.hongkongfp.com/2017/08/15/13-activists-stormed-hong-kong-legislature-jailed-following-successful-appeal-justice-dept/> (accessed 28 March 2018)

¹¹ German Foreign Office, Statement by Human Rights Commissioner Bärbel Kofler on the sentencing of three pro-democracy activists and leading figures in the peaceful Occupy Central protests in 2014 to several months in prison, 18 August 2017, <https://www.auswaertiges-amt.de/en/Newsroom/170817-kofler-occupy-central-proteste/291984> (accessed 28 March 2018)

¹² Karen Cheung, Hong Kong Free Press, “Hong Kong democracy activists Joshua Wong, Alex Chow, Nathan Law free to go after Occupy sentence appeal”, 6 February, <https://www.hongkongfp.com/2018/02/06/breaking-hong-kong-democracy-activists-joshua-wong-alex-chow-nathan-law-free-go-occupy-sentence-appeal/> (accessed 28 March 2018)

¹³ Kris Cheng, Hong Kong Free Press, “Hong Kong justice chief insisted on pursuing harsher sentences for pro-democracy activists – report”, 18 August 2017, <https://www.hongkongfp.com/2017/08/18/hong-kong-%EF%BB%BFjustice-chief-insisted-pursuing-harsher-sentences-pro-democracy-activists-report%EF%BB%BF/> (accessed 28 March 2018)

4. Right to liberty and security

Article 23 of Basic Law

Article 23 of Basic Law, aka National Security Law, is one of the most concerned laws in Hong Kong. Back in 2003 500,000 people participated in the annual 1st July demonstration, organised by Civil Human Rights Front, with theme of opposing the legislation of Basic Law Article 23, for their fear that it might be used to suppress human rights and democratic development. This marked the largest demonstration since 1989. As of today, existing laws already fulfill the constitutional responsibility under Article 23.

Between October and December 2015, five staff of Causeway Bay Book Store from Hong Kong went missing from within the Chinese border, Thailand and Hong Kong to China and later appeared to be in China. Li Bo, one of the booksellers, showed up on Chinese TV channel, stating that he returned to China “by his own means voluntarily” to “assist mainland authorities in an investigation”. This created a vast horror in the society. General discussion feared that they were abducted by Chinese agents for publishing books about political scandals of Chinese leaders. The Hong Kong Government failed to investigate the case. Moreover, the notification mechanism between Hong Kong and China for any cross border detention of citizens failed to function.

However, considering the current political situation, especially Xi’s remark in the 19th Party Congress that Beijing Authority has “comprehensive jurisdiction” over Hong Kong and the constitutional amendment February 2018 to abolish term limits of Chinese President, stronger suppression on Hong Kong is to be expected.

Civil Human Rights Front urges the Committee to request that legislation on the basis of Article 23 only be proposed after universal suffrage has been fully implemented, to ensure that any proposed legislation fully complies with the ICCPR and the rule of law.

5. Right to peaceful assembly

HKSAR is increasingly using the Public Order Ordinance to arrest and prosecute protestors, restricting assembly rights and human rights activism.¹⁴ Activists are subject to arrest for organising public protests. 9 activists were charged with incitement to behave in a disorderly manner in a public place, taking part in an unlawful assembly, obstructing a police officer in the execution of his duties, and assaulting a police officer in protest in November 2016 against the interpretation

¹⁴ Initium, “Three convicted of rioting in Mongkok unrest, sentenced to three years’ imprisonment” (Chinese article), 17 March 2017, <https://theinitium.com/article/20170316-dailynews-Mong-Kok-riots/> (accessed 28 March 2018)

of the Hong Kong Basic Law by the National People's Congress (NPCSC) to rule the oath taking of 2 elected legislators as invalid.¹⁵

Civil Human Rights Front urges the Committee to request the abolishment by the Hong Kong Government of provisions in Part III of the Public Order Ordinance relating to notification of public meetings and the amendment of the Public Order Ordinance, in particular s17B on 'disorder in public places' and s18 on 'unlawful assembly', ensuring it is consistent with the ICCPR.

Civic Square, the originating place of the 2014 pro-democracy Occupy movement, was closed since June 2014. It only reopens in December 2017 with restriction of opening hour between 10 am to 6:30 pm on Sundays or public holidays, when no officials are supposed be working and are available to receive petitions.¹⁶ The protest area of the Legislative Council has also been reinforced with fences, which makes it difficult for protesters to stay over.

Civil Human Rights Front urges the Committee to request the Hong Kong Government to immediately lift all limits on the time periods for public assemblies and processions at Civic Square and any other protest areas.

6. Abuse of police authority

Police are increasingly using excessive force during political protests. During the Umbrella Movement in 2014, police resorted to violence against more than 1300 people, with 500 being admitted to hospitals.¹⁷ After the Occupy Movement, the police have escalated their force against protesters, such as pepper spray merely due to verbal conflict at confrontations. Police Force's guidelines to the use of force have never been publicised, making the public very difficult to determine whether the behaviour of the police officers are in compliance with the guidelines. The public also feel threatened by the crowd control mounted water cannon that may be ready this year.¹⁸

Civil Human Rights Front urges the Committee to request HKSAR to, consistent with the suggestions by the UNCAT back in February 2016, immediately (i) conduct an independent investigation into excessive use of force by police during the Umbrella Movement; (ii) prosecute perpetrators, including police officers complicit in acts or allowed them to occur, and

¹⁵ Earnst Kao, SCMP, "Hong Kong activists arrested over protest against Basic Law interpretation by Beijing", 27 April, <http://www.scmp.com/news/hong-kong/politics/article/2091065/hong-kong-activists-arrested-suspected-participation-protest> (accessed 28 March 2018)

¹⁶ Information Services Department, "'Civic Square' to reopen", 27 December 2017, http://www.news.gov.hk/en/categories/admin/html/2017/12/20171227_140258.shtml (accessed on 28 March 2018)

¹⁷ Committee against Torture, Concluding observations on the fifth periodic report of China with respect to HKSAR, China, CAT/C/CHN-HKG/CO/5, 3 February 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/017/38/PDF/G1601738.pdf?OpenElement> (accessed 28 March 2018)

¹⁸ Kris Cheng, HKFP, "Hong Kong police to receive 3 water cannon vehicles, worth HK\$27m, this year", 19 January 2018, <https://www.hongkongfp.com/2018/01/19/hong-kong-police-receive-3-water-cannon-vehicles-worth-hk27m-year/> (accessed 28 May 2018)

ensure that those found guilty are convicted and adequate penalties applied; (iii) provide full redress to the victims, including fair and adequate compensation; (iv) publicise the Police Force's guidelines to the use of force, ensuring they are in compliance with international standards; and (v) Strengthen ongoing training for all law enforcement officers on the absolute prohibition of torture and on international standards on the use of force, as well as on their liability in the event of excessive use of force.

The Independent Police Complaints Council remains an advisory body of the investigations of the Complaints Against Police Office, with no power to conduct own investigations.

Civil Human Rights Front urges the Committee to request that HKSAR, consistent with HRC concluding observations, establish a fully independent mechanism mandated to conduct independent, proper and effective investigation into complaints about the inappropriate use of force or other abuse of power by the police.

7. Press freedom

Press freedom has been rapidly decreasing in the past decades. Its ranking dropped by 22 places over the past 10 years, from 51 in 2008 to 73 in 2017 on the Press Freedom Index.¹⁹ This reflects the suppression of the city's press freedom under the pressure of Beijing since the handover. Chinese investment to 35 percent of the mainstream media and the ever-worsening self-censorship together with the significant pressure given by the Hong Kong Government, are the main reasons of the late development. 9 out of 26 (35%) mainstream media outlets are now under Chinese control or have Chinese stakes. One of the city's most popular free-to-air TV broadcaster, Television Broadcasts (TVB), was found by the territory's regulators to be controlled by a Communist Party cadre. The former assistant editor-in- chief of Hong Kong Commercial Daily, Long Zhenyang, told Radio Free Asia that all media outlets in Hong Kong with Chinese capital were "directly managed" by Beijing's Liaison Office in Hong Kong, which even gave the newspaper direct orders from time to time. The media have been bought for political purposes, he said.

Self-censorship, one of the biggest problem faced by the media in the city, according to the 2017 Annual Report of the Hong Kong Journalist Association (HKJA), was indicated by the most recent survey by the HKJA and University of Hong Kong that around 30% of journalist respondents practised self-censorship, and the actual rate may be even higher. Many journalists who responded to the survey thought the disappearance of five booksellers in late 2015 was of major concern that press freedom had deteriorated in the past year. Other reasons include sacking of critical commentators and second-guess Beijing on sensitive issues.

¹⁹ 2017 World Press Freedom Index | RSF, <https://rsf.org/en/ranking> (accessed 28 March 2018)

The former Chief Executive, Leung Chung-ying also put pressure on media several times by issuing letters to interfere the publishing of articles critical against himself.

Civil Human Rights Front urges the Committee to request that HKSAR defends Hong Kong's freedom of expression and press freedom in its dealings with Beijing, and legislates to ensure Chinese capitals have no means to control the local media.

8. Academic freedom

In the past years saw measures by politicians, university councils and pro-establishment academics that are harmful to academic freedoms. Academics critical against the government are at risk of not being appointed of important positions,²⁰ or even removed from the university.²¹ The measures are believed to suppress the thoughts of independence among students. This does not only hinder students' development of critical thinking and limit the views to the pro-establishment camp, but also create more counter reaction from the students against the government.

Civil Human Rights Front urges the Committee to request that HKSAR remove the Chief Executive as ex officio chancellor of public front tertiary institutions and immediately grant university councils the right to appoint their own members.

9. Right of movement

An increasing number of human rights defenders and lawmakers are being denied entry to HKSAR, such as Benedict Rogers, British human rights activist who founded Hong Kong Watch, Freddy Lim, one of the founding leaders of Taiwan's New Power Party, and Chang Tieh-chih, Taiwanese political and cultural commentator who used to work as editor-in-chief of prominent Hong Kong lifestyle publication City Magazine. HKSAR did not provide any detailed reasons for these incidents, but simply shifted its responsibilities to China and described immigration control as "foreign affairs".

Civil Human Rights Front urges the Committee to ask HKSAR whether or not does it have the authorities to make decisions on immigration affairs.

²⁰ Kris Cheng, HKFP, "Johannes Chan appointment to HKU key position rejected, 12 votes to 8", 29 September, <https://www.hongkongfp.com/2015/09/29/johannes-chan-appointment-to-hku-key-position-rejected/> (accessed 28 March 2018)

²¹ Kris Cheng, HKFP, "I am a troublemaker": Hong Kong Baptist University denies contract extension for staff union chair", 27 February 2018, <https://www.hongkongfp.com/2018/02/27/i-troublemaker-hong-kong-baptist-university-denies-contract-extension-staff-union-chair/> (accessed 28 March 2018)

10. Mishandling of Asylum Seekers

Hong Kong has an acceptance rate for non-refoulement claims as low as 0.9%.²² Non-refoulement claimants are considered as illegal immigrants, even if their non-refoulement claims are substantiated. Asylum seekers, whose profile were thrust onto the public stage in Fall 2016 when their role in assisting the American whistleblower were depicted in a Hollywood production, have drawn the attention of and being targeted by the HKSARG.

Since then, these families faced difficulties including cut off by the HK authorities of most if not all of the support payments and being targeted for immediate deportation to their home countries where they face documented threats of persecution, torture and death. In a suspiciously short time, their cases were processed in high priority by Hong Kong immigration authorities and all were quickly rejected on the same day in 2017.²³

In addition to refusing to offer state protection to them, the HKSARG has also failed to investigate numerous reports regarding threats made to them by the Sri Lankan CID, who is notorious for use of torture in its investigations.²⁴ In early 2018, Hong Kong Police was accused by civil society of the arbitrary arrest, detention and questioning of several Sri Lankan witnesses, all vulnerable asylum seekers, who reported that the HK Police attempted to coerce them into providing damaging false statements against the families.²⁵ Apart from the asylum seekers, the HKSARG also targeted and persecuted their legal Counsel through various intimidation tactics.²⁶

Civil Human Rights Front urges the Committee to request that the HKSARG stop targeting the refugees.

²² Acceptance rate of 2017. See Immigration Department, 'Statistics on Non-Refoulement Claim', 18 January 2018, <https://www.immd.gov.hk/eng/facts/enforcement.html> (accessed 28 March 2018)

²³ Human Rights Watch, "Canada: Expedite Snowden-Linked Asylum Cases". 17 July 2017, <https://www.hrw.org/news/2017/07/17/canada-expedite-snowden-linked-asylum-cases> (28 March 2018)

²⁴ Michael Simkin, For the Refugees, "REFUGEES WHO SHELTERED SNOWDEN NOW LIVE IN FEAR IN HONG KONG", 26 February 2018, <https://fortherefugees.com/refugees-who-sheltered-snowden-now-live-in-fear-in-hong-kong/> (accessed 29 March 2018)

²⁵ RTHK, "HK police accused of abuse over Snowden families", 8 February 2018, <http://news.rthk.hk/rthk/en/component/k2/1379843-20180208.htm> (accessed 8 February 2018)

²⁶ Raquel Carvalho, SCMP, "'Authorities want me removed from case,' lawyer for asylum seekers who helped Snowden claims", 17 July 2017, <http://www.scmp.com/news/hong-kong/law-crime/article/2102898/authorities-want-me-removed-case-lawyer-asylum-seekers-who> (accessed 28 March 2018)