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前言 Foreword

2018 年香港的人權狀況嚴重倒退，特別在表達、和平集會和結社自由範疇，政府的限制更為明顯。在表達和結社自由方面，香港政府針對倡議改變政府政策或更換政府的個人或團體，剝奪其人權，聲稱倡議香港獨立或自決會危害「國家安全」，因此是「違法」或「不擁護基本法」，即使他們以非暴力手段爭取。政府引用的「國家安全」概念欠缺清晰和法律可預測性，被任意運用壓制異議和政治反對聲音。這些限制對在香港行使表達自由造成寒蟬效應。

The human rights condition in Hong Kong deteriorated severely in 2018, especially in the areas of freedom of expression, peaceful assembly and association. In terms of freedom of expression and association, the Hong Kong government deprived the civil and political rights of individuals or groups advocating a change of government or government policies, claiming that any advocacy for Hong Kong's independence or self-determination, even by non-violent means, threatens "national security" and therefore is "illegal" or does "not uphold the Basic Law". The concept of "national security" as used by Hong Kong government lacks clarity and legal predictability and is arbitrarily applied to suppress dissent and political opposition. These restrictions have a chilling effect on the enjoyment of the right to freedom of expression in the city.

9 名雨傘運動領袖被當局以模稜兩可且含糊不清的普通法「公眾妨擾」的罪名檢控。當局檢控雨傘運動的參加者，尋求對和平示威者判處刑期長的監禁，此舉對香港的言論與和平集會自由的權利造成負面影響，若他們被定罪，政府可參照法庭裁決，進一步檢控其他雨傘運動示威者，影響尤為深遠。

Nine Umbrella Movement leaders were prosecuted on vague and ambiguous charges of the common law offence of "public nuisance". By seeking lengthy prison sentences against peaceful protesters, the prosecution of participants in the Umbrella Movement has a chilling effect on the rights to freedom of expression and peaceful assembly in Hong Kong, especially when the government could refer to any guilty verdicts to further charge other Umbrella Movement protesters.



近年政府擴闊對「國家安全」的演譯以剝奪市民的權利的次數愈來愈多，這種擴闊用語的做法，被形容為伸延「紅線」，令人人自危，因而造成自我審查。除傳媒外，2018 年亦有文化場館作自我審查，企圖取消可能政治敏感的活動；2018 年，一名中國藝術家因安全理由取消原訂於香港舉行的展覽，他援引 2015 年的香港書商失蹤的事件作為不想來香港的理由。當表達自由得不到保障，更甚者當政府亦參與限制表達自由，多元文化空間必受影響。

The government has more frequently deprived citizens of their rights in recent years by expanding the interpretation of “national security”. The expansion of the term, sometimes described as extending the “red line”, making people feel insecure which in turn has led to more self-censorship. In addition to the media, some cultural venues also self-censored and attempted to cancel activities that might be politically sensitive. A Chinese artist cancelled an exhibition originally planned in Hong Kong for security reasons, citing the case of the missing Hong Kong booksellers in 2015 as a reason for not wanting to come to Hong Kong. When freedom of expression is not protected – and even worse when the government also imposes restrictions on it, the diversity of culture will also be affected.

11 月，聯合國一個定期檢視各國人權狀況的程序 - 普遍定期檢討 - 審議中國，包括香港的人權狀況。數個國家關注香港的人權狀況並提出建議，包括法國提出的建議「保障表達自由、集會以自由及結社自由，包括香港；並應消除任何對資訊自由所構成的障礙，特別是針對人權捍衛者的」，以及澳洲提出的建議「要確保在一國兩制之下，香港的人權、自由及法治得到體現。」

In November the Universal Periodic Review (UPR), a unique process in which United Nations member states regularly examine the human rights record of individual states, reviewed China including Hong Kong. Several states raised concerns about and provided recommendations on human rights in Hong Kong, including the recommendations to “(g)uarantee freedom of expression, assembly and association, and to remove obstacles to freedom of information on the internet, in particular for human rights defenders” from France; and “(u)phold the rights, freedoms and rule of law embodied in the one country, two systems framework for Hong Kong” from Australia.



1. 表達及結社自由與國家安全

Freedom of Expression and Association, and National Security



- 1.1 2018 年香港的表達自由狀況進一步惡化。香港政府聲稱倡議香港獨立或自決會危害「國家安全」，即使以非暴力手段，因此是「違法」或「不擁護基本法」。政府引用的「國家安全」概念欠缺清晰和法律可預測性，被政府任意運用。2018 年政府以此為藉口限制表達和結社自由，壓制異議和政治反對聲音。主張自決的社團香港眾志指兩名成員於前往中國時遭當局扣查盤問，香港政府並沒採取行動捍衛他們的權利，也沒主動與中國大陸商討如何防止出現同類事件。

Freedom of expression in Hong Kong further deteriorated in 2018. The Hong Kong government claimed that any advocacy of Hong Kong's independence or self-determination, even by non-violent means was "illegal" or did "not uphold the Basic Law". The Government's interpretation of "national security" lacks clarity and legal predictability and was used arbitrarily. In 2018, the government used it as a pretext to restrict the right to freedom of expression and association and to repress dissent and political opposition. Pro-self-determination party Demosisto claimed that two of their members were detained and interrogated by the Chinese authorities during their visits to mainland China. The Hong Kong government did nothing to protect their rights and also did not proactively negotiate with Chinese authorities to prevent similar happenings in future.



- 1.2 3 月，香港大學法律學院副教授戴耀廷在台灣出席論壇時，就中國日後若所有人都享有自決權的情況作出討論，香港政府立即強烈譴責戴耀廷的言論並強調，「任何有關港獨主張，均不符合一國兩制、基本法以及香港社會的整體和長遠利益」。¹

In March, Benny Tai, Associate Professor of Law at the University of Hong Kong, attended a seminar in Taiwan, where he discussed a possible future where everyone in China enjoyed the right to self-determination. The HKSAR government immediately and strongly condemned his remarks and emphasised that ‘the advocacy of Hong Kong independence runs against “One Country, Two Systems” and the Basic Law as well as the overall and long term interest of society of Hong Kong’.²

- 1.3 7 月，香港警方行使《社團條例》第 8 條，以「維護國家安全、公眾安全、公眾秩序及保護他人的權利和自由」為理由³，建議保安局長禁止香港民族黨運作，因為其倡議香港獨立；9 月，政府刊憲宣佈正式禁止香港民族黨運作，任何人擔任成員、為其捐款、參與其活動或以成員身份行事等，都可被判罰款或監禁。保安局表示，執法部門會處理有關團體的案件。事件對香港結社和言論自由造成沉重打擊。以「國家安全」為藉口來壓制異見聲音是專制政府常用的手法。⁴

In July, Hong Kong Police cited section 8 of the Societies Ordinance, “in the interests of national security, public safety, public order, and the protection of the rights and freedoms of others”⁵, to recommend the Secretary for Security prohibit the operation of the Hong Kong National Party (HKNP) because it advocates for Hong Kong’s independence from China. In September, the government officially issued the ban on the Party. After the ban, anyone who

¹ 香港政府《特區政府回應傳媒查詢》(2018 年 3 月 30 日) <https://www.info.gov.hk/gia/general/201803/30/P2018033000531.htm?fontSize=11>

² Hong Kong government, *Response by HKSAR Government to media inquiries*, 30 March 2018. www.info.gov.hk/gia/general/201803/30/P2018033000690.htm?fontSize=11

³ 香港政府 (2018 年 7 月 17 日)《保安局局長會見傳媒開場發言》<https://www.info.gov.hk/gia/general/201807/17/P2018071700530.htm>

⁴ Amnesty International, *Hong Kong: Proposed ban on pro-independence political party a dangerous blow for freedom of association and expression*, 17 July 2018.

⁵ Hong Kong government, *Response by Secretary for Security to media inquiries* (Chinese only), 17 July 2018. <https://www.info.gov.hk/gia/general/201807/17/P2018071700530.htm>



is a member, raises money, or participates in or acts on behalf of HKNP could be fined or imprisoned. The Security Bureau claimed that law enforcement agencies would deal with offences related to the HKNP. The ban is a dangerous blow to freedom of association and expression in Hong Kong, with potentially far-reaching consequences. To use sweeping references to “national security” to silence dissenting voices is a tactic favoured by repressive governments.⁶

- 1.4 8 月，香港外國記者會邀請香港民族黨召集人陳浩天演講，該演講由香港外國記者會第一副主席(同時為《金融時報》亞洲新聞編輯)馬凱 (Victor Mallet) 主持；10 月，馬凱欲為其工作簽證續期時遭當局拒絕；一個月後，馬凱訪港時被拒入境。馬凱簽證續期被拒顯然是政府對外國記者會講座的秋後算賬，破壞香港的新聞自由。

In August, The Foreign Correspondents Club (FCC) hosted a talk by Andy Chan, the convener of the Hong Kong National Party. The host of the talk was Victor Mallet, a *Financial Times* journalist and the vice-president of the FCC. In October, the government denied the application to renew Mallet’s work visa. One month later, he was turned away at the border when he tried to enter Hong Kong as a tourist. The refusal to renew Victor Mallet’s visa appeared to be a delayed act of retaliation by the Hong Kong government for the FCC talk and damages press freedom in Hong Kong.

- 1.5 1 月、10 月和 12 月，政府取消周庭、劉小麗和朱凱迪參加立法會補選和鄉郊代表選舉的資格，政府聲稱周庭及劉小麗「不擁護基本法」，因其或其所屬團體支持自決的主張，政府基於某種政治立場而剝奪其參選權利，破壞表達自由，事件亦令市民在作出政治討論時為了避免與政府立場有衝突而作出自我審查。及後，現任立法會議員朱凱迪則因「隱晦地支持獨立是香港人的一個選項」而被指為「不擁護基本法」。民主派立法會議員發表公開聲明譴責政府政治審

⁶ Amnesty International, *Hong Kong: Proposed ban on pro-independence political party a dangerous blow for freedom of association and expression*, 17 July 2018.



查及伸延「紅線」以取消候選人參與選舉。

In January, October and December, Hong Kong authorities banned Agnes Chow, Lau Siu-Lai and Eddie Chu from standing for LegCo by-elections and the election for non-indigenous villager representatives respectively. The government claimed that Agnes Chow and Lau Siu-Lai did “not uphold the Basic Law” due to their affiliated parties’ and their individual views on self-determination. However, the Hong Kong government’s decision to disqualify them appears to discriminate against a particular opinion on political grounds, which would be a violation of freedom of expression. This has made people self-censor their political discourse for fear of running afoul of the authorities. Later, current legislator Eddie Chu was accused of “not upholding the Basic Law” because he “implicitly supported independence as an option for Hong Kong people”. Pan-democrat lawmakers issued a joint statement condemning the government for political censorship and extending the “red line” to bar candidates from standing for elections. This is not compatible with the Hong Kong authorities’ obligation to protect and ensure the freedoms of expression.

- 1.6 11 月，中國藝術家巴丟草表示因來自中國當局的安全威脅，取消在香港舉辦的首個展覽。同月，中國流亡作家馬建原訂於訪港期間於古蹟及藝術館大館進行講座，卻臨時被大館以「不願見到大館成為任何個別人士促進其政治利益的平臺」⁷為由取消；雖然及後大館願意重新提供場地，但仍進一步引起公眾對自我審查的憂慮。

In November, Chinese artist Badiucuo cancelled his first solo exhibition in Hong Kong citing security threats from Chinese authorities. The same month, Ma Jian, a Chinese writer was scheduled to speak at the Tai Kwun Centre for Heritage and Arts during his visit in Hong Kong but Tai Kwun’s management, just days before the event, attempted to cancel the talk because they “do not want Tai Kwun to become a platform to promote the political interests of any individual.”⁸ Though later Tai Kwun reversed this decision and allowed the talk to go ahead, it still raised more concerns of self-censorship.

⁷ https://www.taikwun.hk/zh/taikwun/press/press_release

⁸ https://www.taikwun.hk/en/taikwun/press/press_release



- 1.7 主張自決的香港眾志於 8 月 26 日召開記者招待會，指兩名黨員分別於 2018 年 3 月及 8 月，於到訪中國大陸時被當局扣查，據報當局就他們在香港眾志、雨傘運動、及其他集會的參與盤問了數小時。其中一名成員表示他被拘留的地點並非官方設施，這增加了受酷刑和其他虐待的風險。國際特赦組織香港分會形容中國當局此舉是試圖構成寒蟬效應。

At a press conference on October 26, Hong Kong pro-self-determination party Demosisto claimed that two of their members were detained by the Chinese authorities during their visits to mainland China in March and August 2018. They were reportedly interrogated for several hours about their participation in the Demosistō party, the Umbrella movement and other protests. One of them reported they were detained in an unofficial detention facility, which increases the risk of torture and other ill-treatment. Amnesty International Hong Kong described the incident as “a chilling attempt” by the Chinese authorities to silence Hong Kong’s activists.

1.8 相關法例及國際標準 Related legislation and international standards.

《公民權利和政治權利國際公約》（《公約》）第 21 條保障和平集會的權利，訂明「對此項權利的行使不得加以限制，除去按照法律以及在民主社會中為維護國家安全或公共安全、公共秩序，保護公共衛生或道德或他人的權利和自由的需要而加的限制。」1997 年 7 月 1 日前英國已簽署落實《公約》並於 1976 年延伸適用於香港。

Article 21 of the International Covenant on Civil and Political Rights (“ICCPR”) provides for the right of peaceful assembly. It states “(n)o restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” The ICCPR was ratified by the United Kingdom in 1976 and extended to Hong Kong.



《公民權利和政治權利國際公約》第 19 條確認香港人的表達自由，訂明表達自由的限制必需由法律規定，並只限於為「尊重他人的權利或名譽」或「保障國家安全或公共秩序，或公共衛生或道德。」所必需。

Freedom of expression is enshrined in Article 19 of the ICCPR, which states that this right is subject only to restrictions which are “provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) For the protection of national security or of public order (order public) or of public health or morals”.

由國際法專家於 1995 年草擬、聯合國促進和保護意見和表達自由權問題特別報告員及法官和律師獨立性問題特別報告員認可，備受國際廣泛採用的《約翰內斯堡關於國家安全、言論自由和獲取資訊自由原則》在原則七甲具體訂明，和平行使表達自由而「不應被視為威脅國家安全」，亦不應「受到任何限制和懲罰」的例子包括，但不限於，「倡議以非暴力手段改變政府政策或更換政府」以及「批評或侮辱國家或其象徵、政府、政府機構或官員，或外國或其象徵、政府、政府機構或官員」。

The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, drafted by experts in international law in 1995, and endorsed by the United Nations special rapporteurs on freedom of expression and on the independence of judges and lawyers, in Principle 7 states, “expression which shall not constitute a threat to national security includes but is not limited to ... advocates non-violent change of government policy or the government itself” and “constitutes criticism of, or insult to, the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agencies or public officials”.

按此原則，一些人或政權感到被冒犯的行為或言論，亦屬表達自由保障的範圍。只有當有關行為或言論有意圖和可能鼓吹即時暴力，才應受到懲罰。

According to these Principles, freedom of expression can protect ideas and speech that some may find offensive, and may only be punished if they are intended and likely to incite imminent violence.



《公民權利和政治權利國際公約》第 15 條亦訂明：「任何人的任何行為或不行為，在其發生時依照國家法或國際法均不構成刑事罪者，不得據以認為犯有刑事罪。所加的刑罰也不得重於犯罪時適用的規定。」換言之，任何新的法例都不應被引用，以對法例生效前的行為作出刑事懲罰。

Article 15 of ICCPR also states: “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed.” In other words, no new law should be used retroactively to criminally punish actions that took place before it was in force.

1.9 我們的建議 Our recommendations

政府應遵守國際人權公約訂明的責任以及《基本法》的規定，保障香港的表達自由。「國家安全」應根據國際標準清晰界定。為維護國家安全而對表達自由所施加的限制應是必須且相稱的限制，只有那些旨在及可能造成即時暴力的行為才應受到懲罰。

The government should protect the freedom of expression in Hong Kong according to its international human rights obligations and as provided for in the Basic Law. National security should be clearly and strictly defined in law and any restrictions on freedom of expression for the protection of national security should be proportionate and necessary. Only actions which are intended and likely to incite imminent violence may be punished.



2. 和平集會權利 Right to Peaceful Assembly



2.1 2018 年香港的和平集會權利因政府的行為而蒙上一層陰影。11 月，9 名參與 2014 年「雨傘運動」的領袖接受審訊，包括法律學者戴耀廷教授、社會學教授陳健民、退休牧師朱耀明、學生領袖張秀賢與鍾耀華、立法會議員陳淑莊與邵家臻，以及政治領袖黃浩銘與李永達。

The government's actions threw a gloom over the right to peaceful assembly in Hong Kong in 2018. In November, nine leaders of the 2014 Umbrella Movement protests stood trial. Among them were Law professors Benny Tai, Sociology professor Chan Kin-Man and retired pastor Chu Yiu-ming. In addition to these three, the other six were student leaders Tommy Cheung Sau-yin and Eason Chung Yiu-wa, legislators Tanya Chan and Shiu Ka-chun, and political leaders Wong Ho-ming and Lee Wing-tat.

2.2 基於 9 人在整體和平的雨傘運動中行使其表達自由及和平集會自由的權利，他們被控以模糊不清且模稜兩可的罪名。控方利用這些民主領袖討論非暴力公民抗命運動所舉行的記者招待會、傳媒採訪及公眾會議作為主要證據。控方亦罕有地以普通法檢控全部 9 人「公眾妨擾」的罪名，與成文法之下的同一罪名相比，刑罰更重，且罪名相對模糊。

The nine were prosecuted on vague and ambiguous charges, based on their peaceful exercise of the right to freedom of expression and peaceful assembly, in connection to their actions in the largely peaceful protests. Prosecutors used press conferences, media interviews and



public meetings in which the pro-democracy leaders discussed their non-violence civil disobedience campaign as key court evidence. Unusually, prosecutors decided to base the charge against all nine individuals on the common law offence of “public nuisance”, which both makes the charges more ambiguous and carries harsher sentences compared to similar charges under statutory law.

- 2.3 當局持續在無故拖延後檢控雨傘運動的重要領袖，其餘數以百計的示威者則無法預料政府會否也檢控他們。這種前景不明的狀況，再加上當局利用模糊不清的罪名和重刑，都對香港的和平集會與言論自由的權利造成負面影響。雨傘運動的 9 名示威活動領袖有機會被定罪，其寒蟬效應更加深遠，因為政府可參照法庭有關「串謀」或「煽動他人作出公眾妨擾」方面的裁決，進一步檢控其他雨傘運動示威者。

By continuing to prosecute prominent leaders of the Umbrella Movement protests after undue delay, hundreds of other protesters remain uncertain if the government is planning to pursue charges against them as well. This uncertainty, together with the use of vague and ambiguous charges and harsh sentences, is having a negative impact on the rights to freedom of peaceful assembly in Hong Kong. The negative impact of potential convictions of Umbrella Movement leaders could be felt more widely, as the government could refer to these judgements to further charge some other protesters in the Umbrella Movement in the future with the offences of “inciting others to cause public nuisance” or “conspiracy to commit public nuisance”.

- 2.4 2 月，社運人士梁天琦等人因參與 2016 年 2 月 8 日晚至 9 日凌晨的衝突，而被當局以《公安條例》下含糊不清的「參與暴動」罪名判處 6 年監禁。然而，《公安條例》對「暴動」的定義模糊，指「任何參與非法集結的人破壞社會安寧，該結集即屬暴動」。該法例過去多次被聯合國人權委員會批評未能有效保障國際人權法所列載的和平集會權利。由於政府多次以《公安條例》內模糊的罪名檢控社運人士，社運人士指這些檢控是基於政治動機，即使社運人士動用武力，政府檢控是否公平仍然受到質疑。



In February, activist Edward Leung Tin-kei, together with other activists, was sentenced to six years' imprisonment, under the vague charge of "taking part in a riot", for taking part in unrest that broke out on the night of 8 February 2016. In the Public Order Ordinance, the definition of riot is vague, and states when any person taking part in an unlawful assembly "commits a breach of the peace, the assembly is a riot" This law was criticized by the United Nations Human Rights Council as it may facilitate excessive restriction to civil and political rights. Due to the government's repeated use of vague charges of the Public Order Ordinance to prosecute activists, activists have increasingly argued the government's motivation is political and now question the fairness of the prosecutions, even when activists used violence

2.5 相關法例及國際標準 Related legislation and international standards.

《基本法》第三章「居民的基本權利和義務」確定香港的人權應受到保障。第 39 條更明確訂明《公民權利和政治權利國際公約》、《經濟、社會與文化權利的國際公約》和國際勞工公約適用於香港的有關規定繼續有效。

In the Hong Kong Basic Law, human rights are safeguarded under Chapter III: Fundamental Rights and Duties of the Residents in the law. Article 39 expressly states that the provisions of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and international labour conventions as applied to Hong Kong shall remain in force.

聯合國人權事務委員會於 1999 年及 2013 年就《公約》於香港的實行狀況發表審議結論，均提及對《公安條例》的關注：「有關集會自由，委員會知悉香港特區經常有公眾示威活動舉行，並注意到代表團表示，當局從未拒絕讓公眾舉行示威。雖然如此，委員會關注到當局可引用《公安條例》，不當地限制市民享有公約第 21 條所保證的權利……香港特區應檢討及修訂該條例，使其條文符合公約第 21 條的規定」⁹；「委員會感到關切的是：(a)《公安

⁹ Concluding observations of the Human Rights Committee, Hong Kong Special Administrative Region, UN Doc. CCPR/C/79/Add.117, 15 November 1999, para. 19.



條例》中的某些詞語，諸如『擾亂公共場所秩序』或『非法集會』，其實際執行可能會造成對《公民權利和政治權利國際公約》權利的過度限制；(b) 越來越多的示威者被逮捕和起訴；和(c) 警方在示威期間使用相機和攝錄機.....香港特區應確保《公安條例》的實施符合《公民權利和政治權利國際公約》的規定。它還應為警方使用攝錄器材進行記錄制定明確的準則，並允許公眾查閱這些準則」¹⁰

The UN Human Rights Committee when issuing its concluding observations in 1999 and 2013 with regards to the implementation of the ICCPR in Hong Kong expressed concerns over Hong Kong's Public Order Ordinance stating “(w)ith regard to freedom of assembly, the Committee is aware that there are very frequent public demonstrations in HKSAR and takes note of the delegation's statement that permission to hold demonstrations is never denied. Nevertheless, the Committee is concerned that the Public Order Ordinance could be applied to restrict unduly enjoyment of the rights guaranteed in article 21 of the Covenant. The HKSAR should review this Ordinance and bring its terms into compliance with article 21 of the Covenant.”¹¹ “The Committee is concerned about (a) the application in practice of certain terms contained in the Public Order Ordinance, inter alia, “disorder in public places” or “unlawful assembly”, which may facilitate excessive restriction to the Covenant rights, (b) the increasing number of arrests of, and prosecutions against, demonstrators, and (c) the use of camera and video-recording by police during demonstrations (arts. 17 and 21). Hong Kong, China, should ensure that the implementation of the Public Order Ordinance is in conformity with the Covenant. It should also establish clear guidelines for police and for records for the use of video-recording devices and make such guidelines accessible to the public.”¹²

¹⁰ Concluding observations on the third periodic report of Hong Kong, China, adopted by the Human Rights Committee at its 107th session (11-28 March 2013), UN Doc. CCPR/C/CHN-HKG/CO/3, 29 April 2013, para. 10

¹¹ Concluding observations of the Human Rights Committee, Hong Kong Special Administrative Region, UN Doc. CCPR/C/79/Add.117, 15 November 1999, para. 19.

¹² Concluding observations on the third periodic report of Hong Kong, China, adopted by the Human Rights Committee at its 107th session (11-28 March 2013), UN Doc. CCPR/C/CHN-HKG/CO/3, 29 April 2013, para. 10



《和平集會和結社自由權利問題特別報告員的報告》指出，按照國際人權法，任何想舉辦示威遊行的人應無需經當局批准或授權便能舉行。國家可能要求事先獲得通知，但通知制度不應過分官僚，而應只是為了讓當局可促進集會的進行，以及採取措施保護公眾安全及其他人的權利。(第 28 段)

The Special Rapporteur on the rights to freedom of peaceful assembly and of association pointed out that, according to the International Human Rights Law, the exercise of assembly freedoms should not be subject to previous authorization by the authorities, but at the most to a prior notification procedure, such a notification should be subject to a proportionality assessment, not unduly bureaucratic. It only allows State authorities to facilitate the exercise of the right to freedom of peaceful assembly and to take measures to protect public safety and order and the rights and freedoms of others.

《和平集會和結社自由權利問題特別報告員及法外處決、即審即決或任意處決問題特別報告員關於適當管理集會問題的聯合報告》，指出，即使有需要事先作出通知，若任何人未能遵守相關規定，亦不應遭到罰款或入獄的刑事或行政制裁。僅僅因為舉辦者沒有事先作出通知不應是將集會列為非法的理由，亦不應以此作為驅散集會的理據。(第 23 段)

The Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies indicates that “failure to notify authorities of an assembly does not render an assembly unlawful, and consequently should not be used as a basis for dispersing the assembly. Where there has been a failure to properly notify, organizers, community or political leaders should not be subject to criminal or administrative sanctions resulting in fines or imprisonment.”



雖然和平集會的權利並非絕對，但只有在法律規定，而限制屬必要且與合法目標相稱的情況下，才能對上述權利施加限制，有關的合法目標僅限於維護國家安全、公共安全、公共秩序，保護公共衛生或道德或他人的權利和自由。即使為達到合法目標而考慮作出限制時，實際所施加的限制應是必須的，且與所應對的具體威脅相稱。

Although freedom of peaceful assembly is not an absolute, it is only possible to impose restrictions on these rights if they are provided in law and fit a legitimate aim. The legitimate aim is limited to the protection of national security or public safety, public order, public health or morals, or freedom and rights of others. Even when it is necessary to impose the restriction to achieve the legitimate aim it must be necessary and proportionate.

就其性質而言，公眾示威會對日常生活造成一定程度的干擾，包括妨礙交通。聯合國和平集會自由權和結社自由權問題特別報告員指出，猶如公共空間被用作其他日常用途一般，和平集會應被視為對公共空間的合法使用。即使法例看似中立，如禁止阻塞交通或妨礙商業活動，若毫無例外地適用於和平示威，也可能造成非法限制和平集會權利的結果。

Public protests, by their own nature, involve a certain level of disruption to daily life, including disruption of traffic. The Special Rapporteur on the rights to freedom of peaceful assembly and of association stated that, peaceful assembly should be considered as an equally legitimate use of public space. Temporary disruption of vehicular or pedestrian traffic is not, in and of itself, a reason to impose restrictions on an assembly.



2.6 我們的建議 Our recommendations

國際特赦組織呼籲香港政府撤回對雨傘運動領袖的指控，因為有關指控僅是基於他們和平行使其言論與和平集會自由的權利；並停止對和平示威者作出於政治動機的起訴與其他司法程序，以壓制批評聲音及阻嚇任何人在公共領域的參與。政府亦應檢視《公安條例》，針對未能符合《公民權利和政治權利國際公約》標準的部份，進行修訂，以確保港人的表達自由、結社及和平集會權利受到充份保障。

Amnesty International urges the Hong Kong government to drop the charges against the nine leaders of the Umbrella Movement as they stem solely from the peaceful exercise of their rights to freedom of expression and peaceful assembly. The Government should stop using politically motivated prosecutions and other legal procedures against peaceful protesters to silence critical voices and deter people from participation in the public sphere. Hong Kong authorities should bring the Public Order Ordinance into line with Hong Kong's obligations under the ICCPR to respect and protect the rights to freedom of expression, association and peaceful assembly.



3. 女同性戀、男同性戀、雙性戀、跨性別和雙性人 Lesbian, Gay, Bisexual, Transgender and Intersex People



3.1 QT 和她的同性伴侶在英國透過民事結合註冊，她於 2011 年來港工作，其伴侶申請受養人簽證，入境處以香港不承認同性婚姻或民事結合為由拒絕。簽證申請人於是就政府決定提出司法覆核，初審敗訴，但上訴庭於 2017 年 9 月裁定現行做法屬歧視，判她上訴得直。¹³入境處再作上訴，2018 年 7 月 4 日，終審法院駁回了入境處關於 QT 和同性伴侶受養人簽證的上訴。最終的上訴裁定政府拒絕申請不恰當，是對平等權利的侵犯。QT 的同性伴侶於是獲得配偶簽證，可以以受養人身份留港。

A woman, QT, entered a civil union with her same-sex partner in the United Kingdom. She moved to Hong Kong for work in 2011. Her partner's application for a dependent visa was rejected by the Immigration Department on the grounds that Hong Kong did not recognize same-sex marriages or civil partnerships. The visa applicant then filed a judicial review to challenge the government's decision. While the government prevailed in the first instance, in September 2017 the Hong Kong Court of Appeal ruled that the Immigration Department's refusal was discriminatory.¹⁴ On 4 July 2018, the Court of Final Appeal turned down the appeal of the Immigration Department and ruled that the government's refusal was unlawful

¹³ QT v. Director of Immigration, CACV117/2016 (HK, Court of Appeal, 25 September 2017)

¹⁴ QT v. Director of Immigration, CACV117/2016 (HK, Court of Appeal, 25 September 2017)



and violated the right to equality. QT's same-sex partner was consequently granted a spousal visa.

- 3.2 2017 年，高級入境事務主任梁鎮罡對公務員事務局提出司法覆核，因為他的同性丈夫無法享有公務員配偶福利，並獲得勝訴；在梁初審獲得勝訴後，香港政府提出上訴，上訴法院在 2018 年 6 月推翻了判決，裁定政府若給與同性伴侶相同的配偶福利會影響婚姻在公眾眼中的價值。梁已對此案提出上訴。

In 2017, senior immigration officer Angus Leung Chun-kwong initiated a judicial review against the Civil Service Bureau because his husband could not enjoy the spousal benefits of civil servants. The Hong Kong government filed an appeal after Leung won the case at the Court of First Instance. The Court of Appeal overturned the judgment in June 2018, ruling that the government could diminish the status of marriage in the eyes of public by granting same-sex couples access to spousal benefits. Leung has appealed the case.

- 3.3 2018 年 1 月，性傾向條例家校關注組向民政事務局投訴，要求公眾圖書館的開放書架移除以 LGBTI 為主題的兒童書籍，因為這些書向兒童傳播了不道德的信息。其後，康樂及文化事務署將十本與 LGBTI 有關的兒童書籍從開放書架移至公共圖書館的封閉式書架。政府部門聲稱，該決定是為了確保兒童在閱讀這些書籍時會得到適當的指導。

In January 2018, the Family School Sexual Orientation Discrimination Ordinance Concern Group lodged a complaint with the Home Affairs Bureau, requesting all LGBTI-themed children's books be removed from public libraries' open shelves as they send "unethical" messages. In response, the Leisure and Cultural Service Department removed ten LGBTI-themed children's books from open shelves to closed stacks in public libraries. The Department claimed that the decision was to ensure children receive proper guidance when reading these books.



3.4 相關法例及國際標準 Related legislation and international standards.

人人平等，不受歧視是國際人權公約重要原則，見諸《公民權利和政治權利國際公約》第 2 及第 26 條、《經濟、社會與文化權利的國際公約》第 2 及 3 條，上述兩條公約並按《基本法》第 39 條適用於香港。

Equality and non-discrimination are important principles of international human rights law as indicated in Articles 2 and 26 of the ICCPR and Articles 2 and 3 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The covenants are applicable to Hong Kong in accordance with the Basic Law, Article 39.

而將《公民權利和政治權利國際公約》大部分條文納入本地法律的《香港人權法案條例》(香港法例第 383 章)第 II 部第 1(1)條訂明「人人得享受人權法案所確認之權利，無分種族、膚色、性別、語言、宗教、政見或其他主張、民族本源或社會階級、財產、出生或其他身分等等」。第 22 條亦訂明「人人在法律上一律平等，且應受法律平等保護，無所歧視」，「法律應禁止任何歧視，並保證人人享受平等而有效之保護，以防因種族、膚色、性別、語言、宗教、政見或其他主張、民族本源或社會階級、財產、出生或其他身分而生之歧視」。

The Hong Kong Bill of Rights Ordinance (Chapter 383, Legislation of Hong Kong), which incorporated most of the ICCPR articles, states in Part II Article 1(1) “The rights recognized in this Bill of Rights shall be enjoyed without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” and Article 22 “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.



負責審議《公民權利和政治權利國際公約》的聯合國人權事務委員會，其 2013 年的審議結論中就關注香港「沒有法律明文禁止基於性取向的歧視，而且男女同性戀、雙性戀和變性者據報告在私營部門遭受歧視」，並建議香港政府「應考慮頒佈立法，明確禁止基於性取向和性認同的歧視，採取必要措施制止對同性戀的偏見和社會鄙視，並明確表示不容忍任何形式的基於性取向和性認同的騷擾、歧視或暴力行為」，並應「按照《公約》第 26 條，確保未婚同居的同性伴侶享有給予未婚同居的異性伴侶的同樣福利。」¹⁵ 委員會亦建議香港政府「應考慮按照《公約》的規定制訂全面禁止歧視的法律。此一立法應規定當局有義務促進平等和消除歧視」。¹⁶

The UN Human Rights Committee stated its concerns in the Concluding Observations in 2013 “about the absence of legislation explicitly prohibiting discrimination on the basis of sexual orientation and reported discrimination against lesbian, gay, bisexual and transgender persons in the private sector” in Hong Kong. The Committee also recommended the Hong Kong government should “consider enacting legislation that specifically prohibits discrimination on ground of sexual orientation and gender identity, take the necessary steps to put an end to prejudice and social stigmatization of homosexuality and send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation or gender identity”, “ensure that benefits granted to unmarried cohabiting opposite-sex couples are equally granted to unmarried cohabiting same-sex couples, in line with article 26 of the Covenant”¹⁷ and “consider introducing comprehensive anti-discrimination laws, in accordance with the Covenant [which] should impose obligations on the authorities to promote equality and to eradicate discrimination”¹⁸

¹⁵ Concluding observations on the third periodic report of Hong Kong, China, adopted by the Human Rights Committee at its 107th session (11-28 March 2013), UN Doc. CCPR/C/CHN-HKG/CO/3, 29 April 2013, para. 23

¹⁶ Concluding observations on the third periodic report of Hong Kong, China, adopted by the Human Rights Committee at its 107th session (11-28 March 2013), UN Doc. CCPR/C/CHN-HKG/CO/3, 29 April 2013, para. 19

¹⁷ Concluding observations on the third periodic report of Hong Kong, China, adopted by the Human Rights Committee at its 107th session (11-28 March 2013), UN Doc. CCPR/C/CHN-HKG/CO/3, 29 April 2013, para. 23

¹⁸ Concluding observations on the third periodic report of Hong Kong, China, adopted by the Human Rights Committee at its 107th session (11-28 March 2013), UN Doc. CCPR/C/CHN-HKG/CO/3, 29 April 2013, para. 19



而負責審議政府在落實《經濟、社會與文化權利的國際公約》方面的進展的經濟、社會與文化權利委員會，則於 2014 年審議結論中關注「基於性取向和性別認同的歧視，尤其是在就業、教育、醫療和住屋方面」及「缺乏全面反歧視立法」，因而促請香港政府「依照《公約》第 2 條第 2 款並考慮到委員會關於在經濟、社會和文化權利方面不歧視的第 20 號一般性意見 (2009 年)，通過全面反歧視立法」，並「採取適當措施，確保男女同性戀者、雙性戀者和跨性別人士能夠充分享有其經濟、社會和文化權利而不受歧視」¹⁹。

The Committee on Economic, Social and Cultural Rights (which reviews states parties' progress on implementation of the ICESCR) also commented on the issues of non-discrimination in Hong Kong. The Committee stated its concerns in the Concluding Observations in 2014 about “the prevalent and widespread discrimination against... as well as on the grounds of sexual orientation and gender identity, particularly in employment, education, health care and housing” and “the absence of comprehensive anti-discrimination legislation” in Hong Kong. The Committee urged the Government to “take steps to adopt comprehensive anti-discrimination legislation in compliance with article 2, paragraph 2, of the Covenant and taking into account the Committee’s general comment No.20 (2009) on non-discrimination in economic, social and cultural rights” and “take adequate measures to ensure that lesbians, gays, bisexual and transgender persons are able to fully enjoy their economic, social and cultural rights without any discrimination”.²⁰

¹⁹ Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China, adopted by the Committee on Economic, Social and Cultural Rights at its 52th session (28 April–23 May 2014). UN Doc. E/C.12/CHN/CO/2, 13 June 2014, para 41

²⁰ Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China, adopted by the Committee on Economic, Social and Cultural Rights at its 52th session (28 April–23 May 2014). UN Doc. E/C.12/CHN/CO/2, 13 June 2014, para 41



3.5 我們的建議 Our recommendations

香港政府有履行國際公約以及回應委員會審議結論的責任。在 2016 年 1 月出版的一份關於 LGBTI 人士所面對的歧視的研究報告中，平等機會委員會建議香港政府立法禁止基於性傾向、性別認同和雙性人身份的歧視。國際特赦組織促請政府參照平等機會委員會建議，從速落實全面的法例，禁止基於性傾向、性別認同及雙性人身份的歧視。國際特赦組織促請香港政府為企業及教育機構豎立榜樣，不審查關於性傾向、性別認同和性徵多元化的資訊，並容許同性婚姻或民事結合的公務員獲得伴侶福利。

The Hong Kong government has the responsibility to implement the international conventions and take account of the Treaty Bodies' Concluding Observations. In a research report on discrimination faced by LGBTI people published in January 2016, the Equal Opportunities Commission (EOC) recommended the Hong Kong government to enact legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status. Amnesty International urges the government to take EOC's suggestions and enact comprehensive legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status as soon as possible. The Hong Kong government has an obligation to promote equal rights in employment and education. Amnesty International urges the government to set an example for corporations and educational institutions by not censoring information related to diversity in sexual orientation, gender identity and sex characteristics, as well as granting civil servants in same-sex marriages or civil unions access to spousal benefits.