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YEAR-END HONG KONG HUMAN RIGHTS REVIEW
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1. 前言

隨著《中華人民共和國香港特別行政區維護國家安全法》（下稱：《港區國安法》）在港頒布與實施，中國在香港全面鞏固了其國家安全框架，對香港的人權狀況造成深遠的影響。政府以模糊不清的國家安全定義，賦予執法機構廣泛的權力限制人權，並且不受本地的行政、立法和司法機關的有效監察。這套國家安全框架為新聞和學術自由帶來前所未有的壓力。同時，香港人的表達、和平集會與結社自由、以及其他權利，在2020年均面臨嚴峻的挑戰。

1. Foreword

With the enactment of the National Security Law in Hong Kong, China solidified a comprehensive national security framework in the city that has had a far-reaching effect on the human rights situation in Hong Kong. The vague and all-encompassing definition of national security has given government authorities, including law enforcement agencies, expansive powers to constrain human rights, with only nominal oversight by Hong Kong's administrative, legislative and judicial systems. Political censorship and institutional pressure on press and academic freedom were unprecedented. The rights to freedom of expression, peaceful assembly and association, among other human rights, were greatly stifled in Hong Kong in 2020.

2. 全方位的國家安全框架對人權帶來威脅

2.1 新法例

2020 年，當局在香港急速推展「國家安全」的法律，兩項新法律以「國家安全」之名獲得通過，對表達自由和其他人權造成了極大限制。

2.1.1 國歌法

香港立法會於 2020 年 6 月 4 日通過《國歌法》，並於 2020 年 6 月 12 日正式生效；這條新法律將「侮辱」或「不當使用」中國國歌的行為列為刑事罪行，並處以最高 50,000 港元罰款及監禁三年。¹

香港政府強調《國歌法》將「維護國家尊嚴，增強公民的國家觀念，以及弘揚愛國精神」。² 但是，條文所載的定義過於寬鬆和主觀，容易令法例被過份詮釋和濫用。

根據國際人權法和國際標準，表達自由同樣保護被某些人視為冒犯，但不屬於蓄意或有可能煽動即時暴力的思想和言論，有關法律和標準同時明確指出，用和平手法批評或侮辱民族、國家或其象徵，即使行為具有冒犯性，但仍不足以構成危害國家安全，或其他應被禁制的理由。³

2.1.2 港區國安法

2020 年 6 月 30 日，中國全國人民代表大會常務委員會（全國人大常委會）一致通過《港區國安法》，將「分裂國家」、「顛覆國家政權」、「恐怖活動」和「勾結外國或境外勢力危害國家

2. Human Rights curtailed under all-encompassing national security framework

2.1. New legislations

“National security” legislation underwent profound expansion in Hong Kong during 2020. Two new laws were passed in the name of “national security”, greatly restricting the freedom of expression and other human rights in the city.

2.1.1. National Anthem Law

Hong Kong’s Legislative Council passed the National Anthem Law on 4 June 2020. Under the new law, which came into effect on 12 June 2020, behaviours of “insulting” or “misusing” the Chinese national anthem would be criminalized and subject to a fine of up to HK\$50,000 (US\$6,500) and a maximum penalty of three years’ imprisonment.¹

The Hong Kong government maintained the new law will “preserve the dignity of the country”, enhance the sense of national identity and promote patriotism.² However, the overly broad and subjective provisions of the new law leave it open to wide interpretation and abuse.

Under international human rights law and standards, the right to freedom of expression protects ideas and speech that some may find offensive if they are not intended or likely to incite imminent violence. They also make clear that peaceful criticism of, or insult to, the nation or its symbols, even if offensive, does not constitute a threat to national security or justify prohibition on other grounds.³

2.1.2. National Security Law

On 30 June 2020, China’s National People’s Congress Standing Committee (NPCSC) unanimously passed the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (NSL).⁴

The NSL sets out four areas of criminal offences – namely, “secession”, “subversion”, “terrorism” and

¹ National Anthem Ordinance (2 of 2020)(unofficial Instrument no. A405 in Hong Kong e-Legislation), *Hong Kong E-Legislation*, 2020, www.elegislation.gov.hk/hk/A405.pdf

² Government of the Hong Kong SAR, “CE signs anthem law”, press release, 11 June 2020, https://www.news.gov.hk/eng/2020/06/20200611/20200611_200601_164.html

³ Article 6, 7 of Johannesburg Principles on National Security, Freedom of Expression and Access to Information, adopted on 1 October 1995 by a group of experts in international law, national security, and human rights convened by Article 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand in Johannesburg, <https://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf>

安全」四類行為列為刑事罪行，最高刑罰可判處終身監禁。⁴ 法例甚至將司法管轄權加諸非香港居民以及從未涉足香港的人。

2.1.2.1 執法機構和起訴程序

儘管《港區國安法》有一項尊重和保障人權的一般性規定，但法律的其他部分卻容許當局行使極其廣泛的執法權力，包括不受地方司法管轄權限制，有效繞過了香港立法和司法系統的監督。⁵

根據《港區國安法》，調查機構擁有搜查處所、限制或禁止旅行、凍結或沒收資產、審查網絡資訊以及進行秘密監視（包括在沒有法院命令的情況下截取通訊）的廣泛權力。當局亦有權要求組織和個人提供可能會自證其罪的資料。

2.1.2.2 即時的寒蟬效應

《港區國安法》迅速在香港社會造成令人深感不安的寒蟬效應。法例通過後兩天，港府宣布在2019年反對《逃犯條例修訂草案》運動（下稱：2019年反修例運動）中被廣泛使用的政治口號：「光復香港 時代革命」帶有「香港獨立」和「分裂國家」的含意，嚴厲禁止任何人使用。⁶ 同時，不少曾支持2019年反修例運動的市民和企業均刪除了他們的社交媒體帖文和帳戶，以免遭受當局報復。

至少有七個活躍的政治團體在《港區國安法》通過後一星期內宣布解散。例如在《港區國安法》通過一小時後，黃之鋒、羅冠聰和周庭隨即宣布退出香港眾志，而香港眾志亦在同一天下午宣布解散。宣布解散的其他團體還包括支持香港獨立

“collusion with foreign or external forces to endanger national security” –with a maximum penalty of life imprisonment. The new law also asserts jurisdiction over people who are not residents of Hong Kong and have never even set foot in Hong Kong.

2.1.2.1. Law enforcement agencies and prosecution process

Although the NSL has one provision generically recognizing human rights safeguards, other parts of the law allow the authorities to exercise sweeping powers, including immunity from local jurisdiction, effectively bypassing oversight by Hong Kong’s legislative and judicial systems.⁵

Under the NSL, investigating authorities have expansive powers to search properties, restrict or prohibit travel, freeze or confiscate assets, censor online content and engage in covert surveillance, including intercepting communications all without a court order. The authorities can also require information from organizations and individuals, even if the information in question may be self-incriminating.

2.1.2.2. Immediate chilling effect

The chilling effect of the NSL on Hong Kong civil society has been rapid and deeply disturbing. Two days after the law was passed, the Hong Kong government declared that “Liberate Hong Kong, the revolution of our times” (a political slogan commonly chanted during the 2019 protest movement) connotes “Hong Kong independence”, or separating Hong Kong from China, and effectively forbade its use.⁶ Individuals and business that had shown support for the 2019 protest movement deleted their social media posts and accounts for fear of retaliation from the authorities.

At least seven politically active groups announced disbandment in the week after the NSL was passed. Joshua Wong, Nathan Law and Agnes Chow withdrew from the pro-democracy group Demosistō one hour after the NSL was passed. Demosistō announced its disbandment in the same afternoon. Other groups that disbanded included pro-independence group Hong Kong

⁴ The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, *Hong Kong E-Legislation*, 2020, [https://www.elegislation.gov.hk/doc/hk/a406/eng_translation_\(a406\)_en.pdf](https://www.elegislation.gov.hk/doc/hk/a406/eng_translation_(a406)_en.pdf)

⁵ Article 60 of The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

⁶ Government of the Hong Kong SAR, “Government statement”, press release, 2 July 2020, <https://www.info.gov.hk/gia/general/202007/02/P2020070200869.htm?fontSize=1>

的香港民族黨、學生動源，以及其他呼籲對香港和中國實施制裁的團體。

此外，包括前立法會議員在內的數十名民主運動人士在《港區國安法》實施後相繼離港，其中包括前香港專上學生聯會秘書長兼前立法會直選議員羅冠聰。羅冠聰擔心他的政治活動可能會為他的人身安全帶來即時威脅。⁷ 其後他亦成為被香港警察以涉嫌「勾結外國勢力」通緝的多名政治人物之一。⁸

2.1.2.3 與國家安全相關的拘捕

《港區國安法》立法後，不少社運人士和學生逐漸成為香港警察國家安全處（下稱：國安處）的重點打擊對象。2020年，當局以國家安全為由拘捕超過40人，當中包括一些純粹展示政治口號或標語的和平示威者。⁹ 四人（包括一名19歲青年）被當局以《港區國安法》起訴，所有人在候審期間不獲保釋。同時，香港政府通緝30名在香港境外的不同政見人士，指他們涉嫌違反《港區國安法》，當中包括前立法會議員許智峯、羅冠聰和梁頌恆。

法例對國家安全的定義既廣泛且模糊，讓執法部門可以輕易濫用作任意拘捕。國安處可以在毋須提出具體《港區國安法》控罪的情況下，拘捕涉及「國家安全元素」的案件嫌疑人。例如人民力量成員譚得志於2020年9月6日，國安處就他在《港區國安法》生效前的言論以涉嫌違反《刑事罪行條例》第10條「發表煽動文字」罪拘捕。雖然當局沒有以《港區國安法》起訴譚得志，但他的案件卻由專責處理《港區國安法》案件的指定法官審理。與其他被控《港區國安法》的人一樣，譚得志被捕後一直被拒保釋。

National Party, Studentlocalism and other groups calling for sanctions against Hong Kong and China.

Dozens of pro-democracy activists, including former lawmakers, fled Hong Kong after the NSL was in effect. Nathan Law, former secretary-general of Hong Kong Federation of Students and elected as a Legislative Councilor in 2016, left Hong Kong shortly after the NSL was enacted. Law worried that continuing his political activism could pose an imminent threat to his personal safety.⁷ In fact, Law is one of activists and politicians wanted by the Hong Kong police for allegedly “colluding with foreign forces”.⁸

2.1.2.3. National security related arrests

Activists and students were increasingly targeted by the National Security Department of the Hong Kong Police Force, which was newly set up to enforce the NSL. In 2020, authorities arrested 40 individuals under the NSL, including peaceful protesters merely displaying political slogans.⁹ Four were officially charged under the law and denied bail, including one 19-year-old young activist. About 30 activists residing outside Hong Kong were also declared as wanted by the Hong Kong government under the NSL, including ex-legislators Ted Hui, Nathan Law and Baggio Leung.

The broad and vague definitions of the law has allowed arbitrary enforcement. The National Security Department appeared to actively target activists in cases with a “national security element” without putting forward national security law charges. For example, activist Tam Tak-chi was arrested on 6 September 2020 for sedition by the Department under the Crimes Ordinance for acts that allegedly took place prior to the enactment of the NSL. Although Tam was not charged with NSL offences, a judge designated to adjudicate national security cases was assigned to hear his case. Tam has been denied bail since his arrest, a common practice for people arrested under national security related charges.

⁷ Nathan Law, “Beijing’s tyranny forced me to flee Hong Kong, but I will fight for democracy in exile”, *The Guardian*, 1 October 2020, www.theguardian.com/commentisfree/2020/oct/01/beijing-hong-kong-democracy-exile-china-national-security-law

⁸ See Table 1.

⁹ Clifford Ho, “Hong Kong national security law: ‘about 30 people overseas’ on the wanted list of police, including self-exiled ex-lawmakers Ted Hui and Baggio Leung”, *South China Morning Post*, 27 December 2020, www.scmp.com/news/hong-kong/law-and-crime/article/3115411/hong-kong-national-security-law-about-30-people

表一：以《港區國安法》起訴的人士及罪名

Table 1: Charged under the NSL

被捕日期 Date of Arrest	姓名 Name	涉及罪行 NSL related charges	現況 Current situation
1/7/2020	唐英傑 Tong Ying-kit	「煽動他人分裂國家」 「恐怖活動」 “Incitement to secession” “Engaging in terrorist activities”	正在還押，自 7 月 6 日起被拒保釋 Denied bail and remanded since 6 July
27/10/2020	鍾翰林 Tony Chung	「分裂國家」 “Secession”	正在還押，自 10 月 29 日起被拒保釋 Denied bail and remanded since 29 October
24/11/2020	馬俊文 (外號「美國隊長 2.0」) Ma Chun-man (also known as “Captain America 2.0”)	「煽動他人分裂國家」 “Inciting secession”	正在還押，自 11 月 24 日起被拒保釋 Denied bail and remanded since 24 November
3/12/2020	黎智英 Jimmy Lai	「勾結外國或境外勢力危害國家安全」 “Colluding with foreign forces”	12 月 23 日獲准保釋，保額為 1,000 萬港元，期間禁止與外國政府官員會面、接受媒體採訪、發表評論或在社交媒體上發表文章 政府對他的保釋提出上訴後，黎智英於 12 月 31 日再度被還押 Granted bail on 23 December 23 with HK\$10 million (US\$1.3 million) security. Forbidden to meet with foreign government officials, take media interviews, comment or post on social media. Lai was remanded again on 31 December after the government appealed against his bail.

2.1.2.4 大規模取消立法會議員和選舉候選人資格

「維護國家安全」已逐漸成為政府合理化政治打壓的借口。在《港區國安法》生效後一個月，當局褫奪 12 名立法會選舉候選人的參選資格，其中包括黃之鋒和幾名現任立法會議員和年輕的社運人士。

香港政府在聲明中指出，被取消參選資格的候選人基於他們過往的行為，包括主張香港獨立、要求外國政府干預香港事務和原則上反對《港區國家法》，被認為不能履行其憲法責任。¹⁰

這次大規模取消立法會候選人資格，明顯是針對那些政治主張與政府不同的候選人，構成對某種政治主張和立場的歧視，侵犯了個別人士行使表達和結社自由的權利。

全國人大常委會在 11 月更通過決議，授權香港政府在毋須經過任何正式司法程序下，取消被認為「不愛國」的立法會議員的議員資格。¹¹ 同日，香港政府隨即根據全國人大常委會的決定，取消其中四名已被禁止參與下次選舉的現任立法會議員的議員資格。¹² 15 名民主派議員亦於同日集體辭職以抗議北京的決定。

2.1.3 建議

儘管「維護國家安全」原則上可以成為限制人權的其中一項合法依據，但各國政府不應以「國家安全」作借口，肆意剝奪人民受到國際法和標準保障的權利。

2.1.2.4. Mass disqualification under the NSL

The authorities increasingly use “safeguarding national security” to legitimize politically motivated repression. One month after the NSL was enacted, 12 pro-democracy candidates were barred from running in Hong Kong’s Legislative Council elections. These included Joshua Wong, as well as several incumbent lawmakers and young activists.

The Hong Kong government said in a statement that the disqualified candidates were deemed to be incapable of upholding their constitutional duties owing to past behaviours, including advocating for Hong Kong independence, soliciting intervention by foreign governments and objecting to the NSL in principle.¹⁰

This mass disqualification appeared to be a concerted effort specifically targeting candidates who had advocated viewpoints at odds with those of the government. This would amount to discrimination against a particular opinion on political grounds, which is a violation of the rights to freedom of expression and association.

Another blow to opposition voices came in November, when the NPCSC passed a resolution empowering the Hong Kong government could disqualify Hong Kong lawmakers deemed “unpatriotic” without any further formal judicial process.¹¹ On the same day, the Hong Kong government applied the NPCSC’s decision to disqualify four of the 12 politicians already barred from the next election, each of whom were sitting opposition members of the Legislative Council for the ongoing term.¹² On the same day, 15 opposition lawmakers resigned en masse to protest Beijing’s decision.

2.1.3. Recommendations

While protection of “national security” is in principle a legitimate ground for the restriction of many human rights, governments should not use “national security” as an excuse to deny people their human rights as protected by international law and standards.

¹⁰ Government of the Hong Kong SAR, “HKSAR Government supports Returning Officers’ decisions to invalidate certain nominations for Legislative Council General Election”, press release, 30 July 2020, www.info.gov.hk/gia/general/202007/30/P2020073000481.htm

¹¹ “(Authorized release) NPCSC’s decision on the qualification of members of the Hong Kong Legislative Council” ((受權發佈)全國人民代表大會常務委員會關於香港特別行政區立法會議員資格問題的決定), *Xinhuanet*, 11 November 2020, www.xinhuanet.com/politics/2020-11/11/c_1126725802.htm

¹² Government of the Hong Kong SAR, “HKSAR Government announces disqualification of legislators concerned in accordance with NPCSC’s decision on qualification of HKSAR legislators”, press release, 11 November 2020, www.info.gov.hk/gia/general/202011/11/P2020111100779.htm

根據國際公認的人權標準，除非有真正和明確的原因要保護國家生存或領土完整免遭受「明顯和即時的威脅或武力侵害」，否則「維護國家安全」不能成為限制自由和權利的合法依據。¹³

國際特赦組織香港分會促請香港政府，撤銷那些僅因行使表達權利或其他人權而被控的人士的全部控罪。同時，當局亦須確保《國歌法》和《港區國安法》的條文和執法，符合國際法和標準。¹⁴ 當局須根據國際人權法和標準，為任何旨在維護國家安全或打擊恐怖主義的法律條文作出更清晰和精準的定義。¹⁵

According to internationally recognized human rights standards, “national security” cannot be invoked to justify restrictions on rights and freedom unless genuinely and demonstrably intended to protect a state’s existence or territorial integrity against clear and imminent threats or use of force.¹³

Amnesty International Hong Kong recommends that the Hong Kong authorities drop all charges against those who have simply exercised their right to freedom of expression or other human rights. The authorities should ensure that the provisions and implementation of the National Anthem Law and National Security Law should be in line with international laws and standards.¹⁴ It should also ensure that any legal provisions aimed at protecting national security or counter-terrorism are clearly and narrowly defined and conform to international human rights law and standards.¹⁵

¹³ Article 6, 7 of Johannesburg Principles.

¹⁴ Amnesty International Hong Kong, *Fourth Report of Hong Kong Special Administrative Region in the light of the International Covenant on Civil and Political Rights - submission by Amnesty International Hong Kong* (January 2018).

¹⁵ UN General Assembly, Report on best practices and lessons learned on how protecting and promoting human rights contribute to preventing and countering violent extremism (Report of the UN High Commissioner for Human Rights), UN Doc. A/HRS/33/29, para. 9; Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34; Comments on The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (“National Security Law”), UN Doc. OL CHN 17/2020.

3. 表達自由權利

3.1 新聞自由

在香港，新聞自由和獨立傳媒機構日益受壓，出版商和新聞工作者在單純行使新聞採訪的權利時，亦面臨越來越大被捕、刑事拘留和人身安全的風險。

3.1.1 民主派傳媒創辦人因《港區國安法》被捕

8月10日，《蘋果日報》創辦人黎智英和該報四名管理層，因涉嫌勾結外國或境外勢力危害國家安全、串謀詐騙和其他罪行被捕。警方當日動員過百警力搜查《蘋果日報》總部，並翻閱編採室內的新聞材料，有可能侵害機密消息來源和傳媒線人的私隱。國安處在12月11日以「勾結外國或境外勢力危害國家安全罪」起訴黎智英，該罪行最高刑罰為終身監禁。

3.1.2 加強對公共廣播服務的控制

公共廣播電台香港電台（下稱：港台）因被指節目偏頗、有違公正原則，多次遭到政府和部分公眾人士嚴厲抨擊，令港台的編採自主遭受巨大壓力。

2020年6月19日，港台的時事諷刺電視節目《頭條新聞》在開播30多年後被無限期暫停。該節目其中一集因批評香港警察，收到數以千計（當中包括來自警務處處長鄧炳強本人）的投訴。在《頭條新聞》被無限期暫停前，廣播事務管理局已就節目「污衊和侮辱警務人員」向港台作出警告。

11月3日，港台《鏗鏘集》編導蔡玉玲因深入追查2019年7月21日元朗「白衣人」無差別襲擊

3. Right to Freedom of Expression

3.1. Press freedom

Press freedom and independent media institutions are increasingly under threat in Hong Kong. Publishers and journalists alike are facing rising risks of arrest, criminal detention and physical harm when merely exercising their right of newsgathering.

3.1.1. Pro-democracy newspaper owner arrested on National Security Law charges

On 10 August, Jimmy Lai, owner of the pro-democracy newspaper *Apple Daily*, and four other personnel from the newspaper's management were arrested on suspicion of collusion with a foreign country or external elements to endanger national security, conspiracy to defraud and other offences. Police raided the newspaper's offices, searching through documents that may have contained materials obtained or created for journalistic purposes, potentially putting confidential sources and informants at risk. On 11 December, the National Security Department of the Hong Kong Police Force later charged Jimmy Lai with "collusion with a foreign country or external elements to endanger national security" under the National Security Law, an offence that carries a maximum penalty of life imprisonment.

3.1.2. Tightening control on public service broadcasting

Public service broadcaster Radio Television Hong Kong (RTHK) came under heavy criticism from the government and certain sections of the general public on numerous occasions for alleged breaches of impartiality in its programming. These attacks have put the broadcaster's editorial independence under considerable pressure.

On 19 June 2020, RTHK's political satire TV programme "Headliner" was suspended indefinitely after being on air for more than 30 years. The show received thousands of complaints, including from the Commissioner of Police, about an episode critical of the police. Following the complaints and prior to the programme's suspension, the Communications Authority later warned RTHK that the programme had "denigrated and insulted" the Hong Kong Police.

事件（下稱：721 事件），被警方以涉嫌「作出虛假陳述」上門拘捕。蔡玉玲以記者慣常的調查手法，透過運輸署的網上車牌查冊系統，追查「721 事件」中無差別用藤條和木棍攻擊乘客和示威者的白衣施襲者當日使用的車輛所屬何人。蔡玉玲被指在查冊過程中，未有如實申報查冊的用途，但問題是「發給車輛登記細節證明書申請表」中根本沒有「新聞採訪」這項查冊用途可供記者選擇。¹⁶

3 月，政府取消了其他本地電視台必須播放港台節目的指示，該指示最早追溯至 1990 年，當時政府要求香港的免費電視廣播公司，每週至少播放 2.5 小時的港台節目。同時，政府 5 月宣布成立專責小組檢討香港電台的管理，令外界揣測政府正試圖加強控制港台。

3.1.3 限制傳媒報道公眾活動

9 月 22 日，香港警務處修訂《警察通例》，規定只有已登記政府新聞處新聞發布系統的傳媒機構，以及「國際認可或知名」的非本地傳媒，才能被警方承認為「傳媒代表」。該修訂變相意味警方不再承認由香港記者協會（下稱：記協）、香港攝影記者協會等新聞工作者組織所發出的記者證。新措施進一步限制了傳媒的採訪權以及公眾獲取資訊的權利，尤其近年很多記錄公眾事件的影片和報道是出自公民媒體、學生記者和自由身新聞工作者之手，而非已向政府登記的傳媒機構。

另一方面，記者亦成為警察行使過度武力的對象。2020 年 5 月 10 日，數十名記者採訪警方在旺角的示威驅散行動時，遭警員命令下跪及停止拍攝之後，被點名要求他們在警察攝錄機前逐一

On 3 November, RTHK's Choy Yuk-ling was arrested on suspicion of making false statements when carrying out an in-depth investigation into the police's mishandling of a mob attack in Yuen Long West Rail Station on 21 July 2019. Choy had searched vehicle registration records, which are public official records often accessed by journalists, to trace the owners of the cars used by the group of white-clad assailants who had indiscriminately attacked passengers, including protesters returning from a rally, with canes and wooden clubs. Choy was charged with making false statements when searching for relevant information in the government database, as she failed to indicate journalistic investigation as her purpose. But news reporting was not an available option in the application form for accessing particulars of a vehicle.¹⁶

In March, the government rescinded a requirement that other domestic TV stations to show RTHK programmes. The requirement was introduced in 1990 that obliged free-to-air television broadcasters in Hong Kong to broadcast at least 2.5 hours of RTHK programmes per week. Meanwhile, the government announced a review of RTHK's governance and management in May, amid wide speculations that it is attempting to assert greater control over RTHK.

3.1.3. Restrictions on media coverage of public events

On 22 September, the police made changes to the Police General Orders to stipulate that only government-registered media outlets or “internationally recognized and renowned” foreign media would be recognized by the police as “media representatives”. This change has been interpreted to mean that accreditation from press associations such as the Hong Kong Journalists Association (HKJA) and HK Press Photographers Association will no longer be recognized by the police. The new measures placed further restrictions on media coverage of public events and the public's right of access to information, as much important footage and media coverage of public events has come not from government-registered media organizations, but from others such as freelance journalists, students and citizen media.

Journalists were subjected to excessive use of force by the police. When reporting on a protest-dispersal operation in Mong Kok on 10 May, dozens of reporters were ordered by police officers to kneel and stop filming,

¹⁶ Cannix Yau, “Why RTHK journalist was arrested, and what that could mean for future of investigative reporting in Hong Kong”, *South China Morning Post*, 5 November 2020, <https://www.scmp.com/news/hong-kong/politics/article/3108497/why-rthk-journalist-was-arrested-and-what-could-mean-future>

讀出姓名、身份證號碼等個人資料。當日部份記者更被警員近距離發射胡椒噴霧。2020 年 12 月，個人資料私隱專員公署在調查一宗於 2019 年 12 月發生的同類事件後，裁定警員在正進行直播的鏡頭前展示記者身份證，屬違反《個人資料（私隱）條例》。¹⁷

3.1.4 記協對警方的不當行為提出司法覆核

12 月 21 日，高等法院原訟庭駁回由記協提出，針對警方不當處理記者採訪的司法覆核申請。記協指在 2019 年反修例運動期間，記者屢次遭受「故意具侵略性和造成阻礙的警察戰術，以及不必要和過度的武力」。¹⁸然而，法庭拒絕接受記協用「假定事實」的方式，單單依賴 13 名新聞記者的書面證供作為主要證供，就論證警方系統性向記者行使過度武力。法庭促請記協直接向警方或政府採取法律行動。記協在回應法庭裁決的聲明中強調：「在現有投訴警察機制存在根本缺陷的情況下，要就不當行為和濫權向警方問責，實在極為困難。」¹⁹

聯合國人權事務委員會和禁止酷刑委員會曾多次評論，現行投訴警察機制的重重局限令香港政府不足以履行調查人權侵害的義務。過去 20 年，兩個委員會均呼籲香港政府成立完全獨立的機制，處理和調查針對所有警務人員和官員的投訴。²⁰

after which they were called on to read out their personal details, including names and identity card numbers in front of a police camera. Some of them were fired upon by pepper spray at close range. In December 2020, after examining a similar incident from December 2019, the Office of the Privacy Commissioner of Personal Data (PCPD) proclaimed that it was a breach of the Personal Data (Privacy) Ordinance for a police officer to display a reporter's ID card in front of a live-streaming camera.¹⁷

3.1.4. HKJA legal challenge against improper treatment of journalists

On 21 December, the Court of First Instance rejected a judicial review application launched by the Hong Kong Journalists Association (HKJA) against the police over alleged improper treatment of media during protests. The HKJA claimed that journalists have been subjected to “a pattern of deliberately aggressive and obstructive police tactics as well as unnecessary and excessive force” during anti-extradition bill protests in 2019.¹⁸ The court rejected the HKJA's assumed facts approach that based exclusively upon written testimonies of 13 journalists as primary evidence to substantiate the police systematically deployed excessive force to deal with journalists. The court urged the HKJA to take legal action directly against the police or the government. In a statement responding to the court ruling, the HKJA stressed that “given the fundamental flaws in the existing police complaint mechanism, it is extremely difficult to hold the police accountable for improper conducts and abuse of power.”¹⁹

The UN Human Rights Committee and the Committee against Torture have each repeatedly commented on the limitations of current police complaint mechanisms in fulfilling the Hong Kong government's obligation to investigate human rights violations. Both committees have called for two decades on the Hong Kong

¹⁷ Office of the Privacy Commissioner of Personal Data, *Investigation Report published under Section 48(2) of the Personal Data (Privacy) Ordinance, Chapter 486, Laws of Hong Kong, Tai Po Mega Mall Incident*, 22 December 2020, https://www.pcpd.org.hk/english/enforcement/commissioners_findings/files/FINAL_Investigation_Report_R20_3370_Eng.pdf

¹⁸ Kris Cheng, “Aggressive and obstructive: Hong Kong Journalists Association files legal challenge against police over treatment of press at protests”, *Hong Kong Free Press*, 4 October 2019, <https://hongkongfp.com/2019/10/04/aggressive-obstructive-hong-kong-journalists-association-files-legal-challenge-police-treatment-press-protests/>

¹⁹ “HKJA Extremely Disappointed by High Court's Ruling on Police Obstruction of Media Coverage” (高等法院裁定警方妨礙傳媒採訪及向記者使用過度武力的司法覆核敗訴 記協表示極度失望), Hong Kong Journalist Association, 21 December 2020, <https://www.hkja.org.hk/zh/%E8%81%B2%E6%98%8E/%E9%AB%98%E7%AD%89%E6%B3%95%E9%99%A2%E8%A3%81%E5%AE%9A%E8%AD%A6%E6%96%B9%E5%A6%A8%E7%A4%99%E5%82%B3%E5%AA%92%E6%8E%A1%E8%A8%AA%E5%8F%8A%E5%90%91%E8%A8%98%E8%80%85%E4%BD%BF%E7%94%A8%E9%81%8E%E5%BA%A6/>

²⁰ Concluding Observation of the UN Human Rights Committee (hereinafter HRC): Hong Kong, UN Doc. CCPR/C/79/Add.117 (1999), para. 11; Concluding observations of UN Human Rights Committee: Hong Kong: Hong Kong SAR, UN Doc. CCPR/C/HKG/CO/2 (2006), para. 9; Concluding observations of UN Human Rights Committee: Hong Kong, UN Doc. CCPR/C/HKG/CO/3 (2013), para. 12; Concluding observations of UN Committee against Torture: Hong Kong, UN Doc. CAT/C/HKG/CO/4 (2009), para. 12; Concluding observations of UN Committee against Torture: Hong Kong, UN Doc. CAT/C/CHN-HKG/CO/5 (2016), para. 9; See also Amnesty International, *Missing Truth, Missing Justice* (Index: ASA 17/1868/2020).

government to establish a fully independent mechanism to receive and investigate complaints against all officials.²⁰

3.1.5 建議

國際特赦組織建議，香港政府應根據《公民權利和政治權利國際公約》第19條的規定，採取有效措施確保新聞自由，傳媒機構和人員的工作不受審查和阻礙，包括廢除任何對表達自由（特別是針對傳媒）直接或間接的不合理限制。政府亦應通過全面、適時和獨立的機制，調查針對新聞工作者的人權侵害行為，包括對記者的威脅、襲擊、騷擾和恐嚇，將涉嫌侵害人權者在公平審訊下繩之於法，以及為受害人提供有效補救和適當賠償。同時，政府必須確保公共服務廣播的編輯和管理自主不受商業和政治因素影響。²¹

3.1.5. Recommendations

Amnesty International recommends that the Hong Kong government implement measures in line with Article 19 of the International Covenant on Civil and Political Rights (ICCPR), so as to take effective steps to guarantee a free, uncensored and unhindered press, including repealing any unreasonable direct or indirect restrictions on the freedom of expression, in particular for the media; address threats, attacks, harassment and intimidation of journalists, including by thoroughly, promptly and independently investigating human rights violations and abuses against them and bringing the suspected perpetrators to justice in fair trials, and by providing effective remedies and adequate reparations to the victims. Meanwhile, the government should ensure the editorial and managerial independence of public-service broadcasting that is free from commercial and political influence.²¹

3.2 學術自由

2020年，香港的教育界面對前所未有的政治審查和壓力。教育局出於政治動機、任意地決定杜絕校園內的「政治訊息」，並對老師和學生進行更嚴格的審查，令教育工作者所享有的表達自由和專業判斷受到嚴重限制。

3.2. Academic Freedom

Political censorship and pressure on the local education sector were unprecedented in 2020. Freedom of expression enjoyed by education professionals was severely limited and their professional judgments compromised, giving way to arbitrary and politically motivated decisions of the Education Bureau (EDB) to remove “political messages” at schools and put teachers and students under tighter scrutiny.

3.2.1 政府禁絕校園傳播政治訊息

11月19日，100多名包括應屆畢業生在內的示威人士在香港中文大學校園內舉辦遊行，其中有人呼喊支持獨立和民主的口號。雖然遊行在完全和平的情況下進行，警方卻隨即以「參與未經批准集會」和「煽動分裂國家」的罪名，拘捕包括學生和兩名區議員在內的八名男子，顯示當局以

3.2.1. Government pressure to ban “political messages” at schools

On 19 November, more than 100 people, including graduating students, joined a protest march on the Chinese University of Hong Kong (CUHK) campus, during which pro-independence and pro-democracy slogans were chanted. Despite being entirely peaceful, the police subsequently arrested eight men, including students and two district councillors, for “unlawful assembly” and “inciting secession”. The crackdown was a blatant attack on the freedoms of expression and

²¹ UN Educational, Scientific and Cultural Organization (UNESCO), Public service broadcasting: a best practices sourcebook, UN Doc.CI/COM/PSB/2005/VG1 (2005).

「國家安全」之名肆意打壓在校園內的表達自由及和平集會權利。

6 月，九龍塘香島中學一名音樂老師因容許學生演奏《願榮光歸香港》而遭校方終止合約。9 月，該校一名中四學生因在網上課堂中以「光復香港 時代革命」的示威標語作為頭像照，被校方處罰停課一週。

上述事件與教育局杜絕校園內和平表達「政治訊息」的立場一脈相承，教育局在 7 月初宣布，學生不應在校園內「舉行任何活動作政治表態」，並稱學校「不應被用作表達政治訴求的場地」。²² 作為政府積極宣傳國家安全教育的一部分，教育局同時禁止在校園內演奏或呼喊在示威活動中常用的歌曲和口號。²³

3.2.2 加強對教材的審查

自 2019 年起，政府已就教科書內有關人權和民主的內容進行有系統的審查，關於中國內地的負面資訊亦遭到刪除或修訂（參見表二）。自《港區國安法》生效後，教育局更要求學校對其圖書館藏書進行審查，並移除可能違反《港區國安法》的書籍。²⁴

教育局沒有事前徵詢教育界和公眾意見，就在 2020 年 11 月宣布全面改革通識科課程，大幅削減該課程的教學時間，同時加強對「國家發展」的教育。改革包括簡化評分系統至只有「合格」和「不合格」兩個級別，所有教科書需經教育局審查，課時亦將減半。雖然教育局局長楊潤雄否認修訂學科與 2019 年反修例運動有關，但通識科一直被親北京的政界人士和傳媒抨擊為令學生思想「激進化」。新課程將會增加國民教育的內

peaceful assembly on campus in the name of “national security”.

In June, a music teacher at Heung To Middle School had her contract discontinued for allowing her students to perform “Glory to Hong Kong”, a protest anthem popular during the 2019 protest movement for its pro-independence message. In September, the school also suspended a Form 4 student (equivalent to Grade 10) from class for a week as a penalty for displaying a “Free Hong Kong, Revolution Now” protest slogan in his profile picture during online classes.

These punishments echoed with the EDB’s stance to stifle peaceful expression of “political messages” at schools. Earlier in July, the EDB declared that students should not participate in any form of political activities that “express their political stance” on campus, saying schools “should not be used as a venue for anyone to express their political demands”.²² As part of the government actively “promoting” national security education in schools, the bureau has banned songs and slogans widely used in the protests.²³

3.2.2. Censorship on education materials after the NSL

Since 2019, the government has effectively censored content related to human rights and democracy in school textbooks. Negative information about mainland China was removed or revised as a result (see Table 2 below). After enactment of the National Security Law, the EDB also urged schools to review their library collections and remove books that may breach the new law.²⁴

With minimal professional and public consultation in advance, the EDB in November announced an overhaul of the Liberal Studies curriculum to drastically reduce teaching hours while strengthening education on “national development”. These changes included simplifying the grading system into pass or fail, having all textbooks vetted by EDB and halving the number of hours it is being taught. Although the EDB chief denied the overhaul had anything to do with the protests in 2019, the subject had long been attacked by pro-Beijing political leaders and media for “radicalizing the students”. The new curriculum will also increase the

²² Government of the Hong Kong SAR, “LCQ22: Restricting students’ freedom of expression”, press release, 8 July 2020, www.info.gov.hk/gia/general/202007/08/P2020070800306.htm

²³ Staff reporter, “Hong Kong bans protest anthem in schools as fears over freedoms intensify”, *Reuters*, 8 July 2020, www.reuters.com/article/us-hongkong-protests-education-idUSKBN24900E

²⁴ Chan Ho-him, “National security law: Hong Kong schools told to remove books that might fall foul of the legislation”, *South China Morning Post*, 6 July 2020, <https://www.scmp.com/news/hong-kong/education/article/3092043/national-security-law-hong-kong-schools-told-remove-books>

容，課程的其中一部份要求學生前往中國內地進行學習之旅。

上述各項措施均顯示，政府正以更嚴格的監管制度加強言論審查，並刪除對香港和中國政府帶有批判性的教材內容。

contents of national education and require students to join a study tour to mainland China as a part of the syllabus.

These attempts demonstrated the government's intention to increase censorship via tighter institutional oversight and expunge teaching materials that may be critical of the Hong Kong and Chinese governments.

表二：被審查教科書和課程大綱

Table 2: Censorship in school textbooks and syllabuses

時序 Timeline	有關科目 Subject involved	審查內容 Censored content
5/2020	香港中學文憑試歷史科試卷 DSE History paper	歷史科卷一當中，其中一條試題要求考生回答是否同意「1900年至1945年間，日本為中國帶來的利多於弊」 An essay question requiring students to evaluate whether “Japan did more good than harm to China in the period 1900-1945”
6/2020	基本法教材 Teaching materials on Basic Law	示威與表達自由的權利（課堂活動） Right to protest; freedom of expression (Class activity)
《港區國安法》實施後 Enactment of National Security Law		
8/2020	通識科 Liberal Studies	2003年沙士、中國黑市器官販賣、烏坎示威、六四天安門事件 SARS, illegal organ trade and Wukan protests in mainland China; June Fourth Tiananmen Massacre
8/2020	通識科 Liberal Studies	銅鑼灣書店股東李波「被失蹤」事件、香港「連儂牆」的照片 Disappearance of bookseller Lee Bo; a picture of “Lennon Wall” in Hong Kong
8/2020	通識科 Liberal Studies	公民抗命、有關香港民族黨和香港眾志的介紹 Civil disobedience; introduction on political parties <i>Hong Kong Indigenous</i> and <i>Demosistō</i>
8/2020	通識科 Liberal Studies	集會權利、示威權利、人大釋法的影響 Freedom of assembly; right to protest; impact of NPC's interpretation of Basic Law
8/2020	通識科 Liberal Studies	三權分立 Separation of power

3.2.3 吊銷教師執照

2020年，教育局史無前例地以違反專業操守和欠缺教師能力為由，吊銷兩名教師的教師註冊，進一步加劇教育界內的寒蟬效應。²⁵ 9月，一名教師因設計的教案讓學生討論表達自由、當時已被取消社團註冊的香港民族黨等議題，被指「有計劃散播港獨信息」而被吊銷教師註冊，並被禁止踏足校園。雖然學校較早前已就指控進行內部調查，調查結果顯示沒有教職員在校內提倡港獨，但教育局仍堅持對校長、副校長和其他三名教師採取紀律處分。11月，另一名老師因涉嫌「嚴重扭曲第一次鴉片戰爭（1839至1842年間）的歷史事實」而被吊銷教師註冊。身為律師的香港教育專業人員協會副主席莊耀洸指出，教育局吊銷教師註冊的機制並不透明，形容這種由上而下的懲罰嚴重性「不符合比例、嚴重過重」。²⁶

3.2.4 高等教育機構的學術自由受到威脅

高等教育機構的學術自由同樣正在收窄，不少敢言的學者因表達政治立場而遭到紀律處分或不公平待遇。自2014年起積極倡議公民抗命的法律學者戴耀廷，在2019年被判入獄16個月，香港大學校務委員會投票通過取消戴耀廷的終身教席，並於2020年7月把他解僱。超過2,500名港大學生、教職員和校友聯署反對校方的解僱決定。至於親北京傳媒則指戴耀廷威脅國家安全，《人民日報》更形容戴耀廷就香港未來撰寫的評論「嚴重危害國家安全」。²⁷

8月，任職嶺南大學的文化研究學者葉蔭聰亦不獲實任終身教席，他懷疑校方決定可能牽涉「政

3.2.3. Revocation of teachers' licenses

The chilling effect on the education sector was further reinforced by the EDB's unprecedented decision to revoke the licenses of two teachers for breaching professional conduct and lack of competence.²⁵ In September, a teacher was de-registered and barred from school for designing a lesson plan that allegedly “spread pro-independence messages”, which included class discussion on the freedom of expression and the disbanded pro-independence Hong Kong National Party. Despite an internal investigation concluding no staff member was advocating independence, the EDB insisted on taking disciplinary actions against the principal, vice-principal and three other teachers involved. In November, another teacher was also stripped of his license for allegedly “distorting the historical facts” of the First Opium War (1839-1842) that led to China ceding Hong Kong to the British. Hong Kong Professional Teachers' Union Vice-President Chong Yiu-kwong, who is also a lawyer, said the EDB's mechanism for de-registering teachers was not transparent, and the severity of such top-down punishment “disproportionate and overly severe”.²⁶

3.2.4. Academic freedom under threat in higher education institutes

Academic freedom in higher education institutes shrank as outspoken scholars faced disciplinary action and unfavourable treatment due to their political stance. Legal scholar Benny Tai, who has advocated civil disobedience since 2014, was sentenced to 16 months in jail in 2019. He was subsequently sacked by the University of Hong Kong (HKU) in July 2020, after its governing council voted to remove him from his tenured post based on this conviction. Over 2,500 HKU students, staff and alumni signed a petition opposing his dismissal. Chinese state media and pro-Beijing media in Hong Kong have branded Tai as a threat to national security. *People's Daily* said Tai “severely endangers national security” by writing a commentary about the future of Hong Kong.²⁷

In August, cultural scholar Ip lam-chong was also rejected for a tenured position at Lingnan University. He

²⁵ HK independence talk not for schools”, *news.gov.hk*, 6 October 2020, https://www.news.gov.hk/eng/2020/10/20201006/20201006_180617_247.html; Government of the Hong Kong SAR, “EDB cancels registration of teacher”, press release, 12 November 2020, www.info.gov.hk/gia/general/202011/12/P2020111200664.htm?fontSize=1.

²⁶ “Mr. Chong Yiu-kwong: De-registration is disproportionate”, Hong Kong Professional Teachers' Union, 21 October 2020, www.hkptu.org/80170

²⁷ “People's Daily Commentary: Defending “One Country Two System, the important measure that goes steady and far” (人民銳評：維護 “一國兩制” 行穩致遠的重要舉措), *People's Daily*, 21 May 2020, <http://www.takungpao.com.hk/opinion/text/2020/0522/451891.html>

治考慮」，與他作為《獨立媒體》創辦人及專欄作家的身份有關。²⁸

3.2.5 建議

教育權必須建基在學術自由之上才能得以充分實踐，當中包括對體制或制度表達意見的自由，並允許學術界成員履行其職能時，不受歧視或擔心受到政府或其他人的壓迫。²⁹

國際特赦組織呼籲教育局尊重學校管理層和教育專業人士的專業判斷，避免過分干預學校的政策和教職員管理。

教育局應就吊銷教師註冊和其他紀律處分程序，訂立明確且公開的指引和理據。利用行政手段終止教師教席必須是別無他選的最後選擇，並須在嚴格的公眾監督和專業判斷制衡下進行。同時，制度亦應讓教師就處分作出充分申辯的機會，教育局有責任確保其決策過程的透明公開和向公眾負責。

任何教育專業人員、教師工會、學生組織或學生，都不應因為行使他們和平表達政見和集會自由等權利而遭受迫害、限制或不公平待遇。

suspected the decision may have involved "political considerations" targeting him as the co-founder of Hong Kong In-media, an independent news platform, and an outspoken columnist.²⁸

3.2.5. Recommendations

The right to education can only be enjoyed if accompanied by academic freedom, which includes the liberty to express opinions about the institution or the system, and allowing the members of the academic community to fulfil their functions without discrimination or fear of repression by the state or other actors.²⁹

Amnesty International calls on the Education Bureau to respect the professional judgments of school management bodies and education professionals and refrain from overly interfering with school policies and staff management.

The Education Bureau should also make public comprehensive guidelines and subsequent justifications concerning de-registration and other disciplinary actions against teachers. The use of administrative means to bar teachers from the teaching profession should serve as a last resort under strict public scrutiny and careful professional consideration. Teachers must have sufficient opportunity to defend themselves effectively. EDB has the duty to maintain transparency and accountability of its decision-making process.

By no means should any education professional, teacher's union, student or student association be persecuted, restricted or unfavourably treated for exercising their rights, including peaceful expression of political views and freedom of assembly.

²⁸ "Co-founder of Hong Kong In-media rejected for tenure at Lingnan University. The alleged politically motivated decision infringed academic freedom" (獨媒創辦人葉蔭聰被嶺大拒終身約 申請上訴失敗 質疑評審或含政治動機 干擾學術自由), *Stand News*, 25 August 2020, <https://bit.ly/3tDVUAR>

²⁹ Committee on Economic, Social and Cultural Rights, General Comment 13, The Right to Education (Article 13 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/1999/10, para. 39.

4. 和平集會權利

自 2019 年反修例運動後，當局對和平集會權的打壓持續，情況更在新型冠狀病毒肺炎（下稱：新冠肺炎）疫情下進一步惡化。為應對疫情，香港政府引用《預防及控制疾病條例》實施多項緊急公共衛生措施，實際上禁絕所有和平集會活動。³⁰

除了一系列緊急措施外，政府還繼續以《公安條例》打壓集會和示威活動。《公安條例》是一項源自殖民地時代的嚴苛法律，政府過往曾多次以《公安條例》起訴和平集會的組織者和參與人士。根據《公安條例》，集會組織者必須在活動進行之前向警方申請「不反對通知書」。然而，警方在 2020 年只對 67% 的集會申請發出「不反對通知書」，相比起來警方在 2019 年發出「不反對通知書」的比率則為 95%。³¹

4.1 以新冠肺炎疫情為由實施各種限制

當局為應對新冠肺炎疫情實施禁止羣組聚集（下稱：限聚令），導致和平集會的自由和權利進一步受到限制。3 月，政府引用緊急法實施《預防及控制疾病（禁止羣組聚集）規例》，規定「出於共同目的」的公共聚會人數不得超過四人。此後限聚令被多次修改，到 2020 年底限聚人數更進一步收窄至限制二人或以上的公眾地方聚會。如果未能遵守該禁令，將被處以 5,000 港元的定額罰款。

自限聚令實施後，當局至少拒絕了 14 場公眾集會的申請，其中包括六四燭光晚會和七一遊行。³²雖然集會的主辦單位承諾會在集會進行期間遵守

4. Right to peaceful assembly

Repression of the right to peaceful assembly persisted following the protests in 2019 and worsened under COVID-19 emergency measures. The Hong Kong government invoked the Prevention and Control of Disease Ordinance and announced public health emergency laws in response to COVID-19 that virtually banned all peaceful protests.³⁰

Besides the additionally imposed restrictions based on emergency laws, the government continued to prohibit assemblies and protests under the Public Order Ordinance (POO), a draconian colonial-era law that has been used to prosecute people who organized and participated in peaceful assemblies in a number of occasions. Under the POO, those wishing to organize a protest are required to obtain a “Notice of No Objection” from the police before an assembly may proceed. The police only issued “Notices of No Objection” to 67% of applications for public assemblies and protests in 2020, compared to 95% in 2019.³¹

4.1. Restrictions justified under COVID-19

The right to freedom of peaceful assembly was further curtailed after the authorities imposed physical distancing regulations in response to the COVID-19 pandemic. In March, the government invoked the emergency law and introduced the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation, banning public gatherings “for a common purpose” of more than four people. The ban was revised several times and, at year end, applied to gatherings of more than two people. Failure to comply with the ban was subject to a fixed penalty fine of HK\$5,000 (US\$650).

The authorities subsequently banned at least 14 protests citing the COVID-19 pandemic, including the annual June Fourth Tiananmen commemoration vigil and 1 July protest march, despite pledges to observe

³⁰ Emergency Regulations Ordinance (Amended 71 of 1999 s. 3), *Hong Kong E-Legislation*, 1922, www.elegislation.gov.hk/hk/cap241

³¹ 何嘉瑤, “2020 Review: street protests and assemblies banned in the name of social gathering ban and national security law” (2020 大事回顧 | 消滅街頭抗爭 | 借疫禁上街 以國安法恫嚇港人 六四 7.1 「維園見」成絕響), *Apple Daily*, 30 December 2020, <https://hk.appledaily.com/local/20201230/GJH6W2OHGNF3TFLBKBME6C6XU/>

³² Government of the Hong Kong SAR, “LCQ3: Freedom of assembly and procession amid the epidemic”, press release, 27 June 2020, <https://www.info.gov.hk/gia/general/202006/24/P2020062400501.htm>

社交距離，並提供了詳細的防疫措施，但政府仍以新冠肺炎疫情為由，歷史性地首度禁止上述兩項集會舉行。成千上萬的民眾仍自發到維園悼念六四事件 31 週年，警方則根據《公安條例》拘捕和檢控 26 人參與或煽惑參與未經批准集結。

截至 2020 年 12 月 19 日，當局根據限聚令共發出超過 7,588 張告票，其中 90% 以上是由警方發出。³³ 即使參與和平集會人士已遵守社交距離的規定，仍有機會成為被票控的對象，亦有純粹路過示威活動的途人同樣被罰款。9 月，一名 12 歲的女童在旺角購買顏料時，被一名正在附近驅散示威的防暴警察撲倒在地，甚至被膝壓制服。其後警方以女童及其哥哥涉嫌違反限聚令向二人作出票控，但警方最後在沒有進一步解釋的情況下，撤銷了該項票控。

4.1.1 建議

政府應對新冠肺炎疫情的相關法律、規則和指引必須清晰明確。為避免任意或濫用公權力的情況發生，相關法律、規則和指引必須盡可能避免過於廣泛的詮釋空間。

若出於公眾衛生或其他合法目的對和平集會的自由實施任何限制，該限制必須「有必要」和「符合比例」，當局亦應該考慮示威者為遵守公共衛生限制而自願採取的措施，例如保持足夠的社交距離、限制人數和出席人士佩戴口罩等。

4.2 《緊急法》和《禁蒙面法》

2019 年 10 月，行政長官林鄭月娥引用《緊急情況規例條例》（下稱：《緊急法》）訂立《禁止蒙面規例》（下稱：《禁蒙面法》），禁止市民在集會及遊行時使用物品遮掩面部。《緊急法》

physical distancing by organizers of both assemblies, who provided the authorities with detailed plans for preventive measures.³² It was the first time the government prohibited either of these two annual protests. Despite the ban, thousands convened to commemorate June Fourth at the traditional protest site, and 26 activists were charged with “unauthorized assembly” under the POO for joining the vigil.

As of 19 December, the Hong Kong authorities issued over 7,588 penalty tickets under the public gathering ban, over 90% of which were issued by the police.³³ Peaceful protesters were often targeted under the new ban despite having observed social distancing measures. Passers-by who did not engage in protests were also fined on several occasions. In September, a 12-year-old girl shopping for art supplies was tackled to the ground as she ran away in fright from heavily armed riot police who were performing protest dispersal operation in the vicinity. She and her brother received a fixed penalty ticket. The police later revoked the ticket without any explanation.

4.1.1. Recommendations

Laws, regulations and instructions must be established clearly in the COVID-19 response. Overly broad discretion should be reduced as much as possible as that may leads to arbitrary or otherwise excessive exercise of powers.

Any restriction placed on the right to freedom of peaceful assembly to protect public health or other legitimate concerns must be necessary and proportionate. Authorities must also take into account the measures that demonstrators are voluntarily implementing to comply with public health restrictions, such as keeping enough physical distance, limiting their own numbers or wearing masks.

4.2. Emergency law and mask ban prosecution

In October 2019, Chief Executive Carrie Lam ordered an almost total ban on mask-wearing at public assemblies under the Emergency Regulation Ordinance (ERO), a colonial law dated back to 1922 that empowers the city's chief to impose emergency measures. The abruptly imposed mask ban was criticized at the time for posing

³³ “Penalty for violating social gathering ban and mask-wearing law increased as more than 200 were fined” (禁聚令及口罩令加辣逾周 逾 200 人被罰 5000 元), *Oriental Daily* (hk.on.cc), 19 December 2020, https://hk.on.cc/hk/bkn/cnt/news/20201219/bkn-20201219194928383-1219_00822_001.html

是一條 1922 年頒布的殖民地法例，賦予首長採取緊急措施的權力。而倉促立法的《禁蒙面法》亦曾被批評對和平集會權利構成違憲和不合比例的限制。

《禁蒙面法》其後觸發一連串的法律挑戰，終審法院最終在 2020 年 12 月駁回有關的司法覆核。終審法院五名法官一致裁定，為應對在 2019 年所發生的暴力衝突，針對非法和合法集會的反蒙面禁令屬必須和合憲，法官亦認為行政長官在《緊急法》下被賦予的權力，依然受到立法和司法機關監督的有效制衡。

根據警方資料，截至 2020 年 11 月 30 日為止，警方以《禁蒙面法》拘捕了 683 人並對 138 人作出起訴。³⁴ 當中包括社運人士黃之鋒和古思堯，二人被控在 2020 年 9 月一次「未經批准」的示威活動中佩戴口罩。³⁵

4.2.1 建議

國際特赦組織敦促政府立即全面撤銷《禁蒙面法》，因為這是對和平集會、表達自由和私隱權的過度限制。《緊急法》不但是一項過時且存在嚴重缺陷的法例，它亦允許政府在幾乎沒有保障措施的情況下限制人權，因此有修訂法例的迫切需要。

4.3 有關 2019 年反修例示威活動的拘捕和刑事檢控

在 2019 年 6 月 9 日至 2020 年 11 月 30 日期間，有超過 10,000 人在反修例示威活動中被捕，當中 2,389 人被刑事起訴。³⁶ 大部份人被控《公安條例》下的暴動罪（佔 29%）和非法集結罪

unconstitutional and disproportional restrictions on the right to peaceful assemblies.

The mask ban was met with a legal challenge that was eventually dismissed by the Court of Final Appeal in late December 2020, as five judges ruled unanimously that the mask ban for both illegal and legal assemblies was necessary and constitutional in response to the citywide violent clashes in 2019, based on their analysis that the Chief Executive's power under ERO was still effectively balanced via legislative and judicial oversight.

As of 30 November, 683 people had been arrested and 138 had been prosecuted for violating the mask ban law, according to the police.³⁴ Activists Joshua Wong and Koo Sze-yiu were among these, arrested in September 2020 for wearing face masks at an “unauthorised” protest.³⁵

4.2.1. Recommendations

Amnesty International urges the complete and immediate withdrawal of the mask ban law on the premise that it is an excessive restriction of the rights to peaceful assembly, expression and privacy. Further, the Emergency Regulations Ordinance is an outdated and deeply flawed piece of legislation that allows the government to restrict human rights with almost no safeguards and is therefore in urgent need of amendment.

4.3. Arrests and prosecutions of protesters from the 2019 protests

Over 10,000 people have been arrested in relation to anti-extradition bill protests between 9 June 2019 to 30 November 2020, with 2389 (23%) people criminally prosecuted as of 30 November 2020.³⁶ Most of the defendants were charged with rioting (29%) and illegal assembly (17%) under the POO, a law frequently used

³⁴ Alvin Lum, “Court of Final Appeal ruled emergency law constitutional” (終院裁定政府終極勝訴 緊急法合憲 陳弘毅促探討撤禁蒙面法), *Citizen News*, 21 December 2020, [眾新聞 - 終院裁定政府終極勝訴 緊急法合憲 陳弘毅促探討撤禁蒙面法 \(hknews.com\)](https://www.hknews.com/hong-kong/court-of-final-appeal-ruled-emergency-law-constitutional)

³⁵ Shibani Mahtani, “Hong Kong police arrest activist Joshua Wong for wearing a mask as repression deepens”, *The Washington Post*, 26 September 2020, www.washingtonpost.com/world/asia_pacific/joshua-wong-hong-kong-arrest/2020/09/24/87b72fc6-fe30-11ea-b0e4-350e4e60cc91_story.html

³⁶ “Lawbreakers will bear legal consequences” (法網恢恢 後果自負), Hong Kong Police, 11 December 2020, www.facebook.com/HongKongPoliceForce/posts/3778907235530546?comment_id=3781883_925232877

(佔 17%)，以及《刑事罪行條例》下的刑事毀壞(佔 15%)。《公安條例》經常被用來禁止和結束和平集會，以及事後起訴「參與未經批准集會」的人士，例如 15 名民主派和社運人士就因在 2020 年 4 月組織和參與「未經批准集結」被捕。

4.3.1 刑事檢控和判刑概述

根據律政司的資料，截至 2020 年 11 月 30 日，在反修例示威活動中被檢控的 2,389 人中，其中 826 人的刑事訴訟已經結案。當中認罪或被定罪的有 436 人(52%)，另外有 238 人(28%)自簽擔保守行為，承諾在一段指定時間內遵守法紀而結案，亦有 147 人(17%)在律政司撤控或審訊後被判無罪獲釋。³⁷

4.3.2 任意拘捕的重點個案

2020 年 8 月，警方拘捕民主派前立法會議員林卓廷和其他六人，指他們涉嫌在元朗 721 事件中「參與暴動」。當時數百名穿白衣的施襲者無差別襲擊從遊行回來的示威人士和途人，林卓廷是其中一名最早在網上直播事發經過的人，他當時臉部和雙臂受傷。林卓廷因 721 事件被捕被認為是警方有意扭曲 721 事件的論述，將它從一件針對示威者和途人的無差別襲擊事件，改寫為不同派別人士的鬥毆事件。³⁸

其他以不同身份參與 2019 年反修例運動的人，亦遭受任意拘捕和政治檢控的風險。社工陳虹秀在 2019 年 8 月 31 日的示威現場呼籲警方保持冷靜，反被警方以涉嫌「暴動」拘捕和起訴，2020 年 9 月區域法院裁定表面證供不成立，她獲當庭釋放。另一名社工許麗明則被指在 2019 年 9 月

to prohibit and end largely peaceful protests. For instance, 15 prominent pro-democracy leaders and activists were arrested in April 2020 for organizing and joining “unauthorized assemblies” that took place more than six months before their arrests. Meanwhile, criminal damage (15%) was the third most frequently charged offence.

4.3.1. Overview of criminal proceedings and sentencing

According to the Department of Justice (DOJ), as of 30 November 2020, criminal proceedings had concluded for 826 of the 2,389 prosecuted in relation to anti-extradition bill protests. 436 people (52%) had their cases concluded after either pleading guilty or being convicted at trial. An additional 238 people (28%) were “bound over”, meaning their cases was settled with a promise of good behaviour for a specified period of time. 147 people (17%) walked free after DOJ withdrew their cases or they were acquitted after trial.³⁷

4.3.2. Highlighted cases of arbitrary arrests

In August 2020, police arrested former pro-democracy lawmaker Lam Cheuk Ting and six others for allegedly “rioting” during the Yuen Long mob attacks on 21 July 2019. Lam was among the first people to report on the Yuen Long incident via online live broadcast, when hundreds of armed white-clad assailants attacked passers-by and protesters. Lam had sustained injuries on his face and both arms then. His arrest was seen as a spin by the police to reframe the indiscriminate mob attack against protesters and unsuspecting citizens as a gang fight between groups.³⁸

Others who took part in the anti-extradition bill protests in various capacities were also subjected to the risk of arbitrary arrests and politically motivated prosecution. Social worker Chen Hung-sau was arrested for rioting as she urged the police to calm down during the violent clashes on 31 August 2019. She walked free after the District Court ruled the prosecutor could not prove a prima facie case in September 2020. Another social worker Hui Lai-ming also faced trial for allegedly

³⁷ Reply from Hong Kong Department of Justice regarding prosecution statistics of cases in relation to the anti-extradition bill protests, 12 January 2021.

³⁸ See Albert Cheng, “Hongkongers won’t tolerate any police spin on Yuen Long mob attack”, *South China Morning Post*, 4 September 2020, <https://www.scmp.com/comment/opinion/article/3100081/hongkongers-wont-tolerate-any-police-spin-yuen-long-mob-attack>; “Yuen Long attack: Hong Kong police accused of re-writing history”, *BBC*, 26 August 2020, www.bbc.com/news/world-asia-china-53915500; Rachel Wong, “Two Hong Kong democrats arrested over 2019 protests; Lam Cheuk-ting detained over alleged ‘rioting’ during Yuen Long mob attack”, *Hong Kong Free Press*, 26 August 2020, <https://hongkongfp.com/2020/08/26/two-hong-kong-democrats-arrested-over-2019-protests-lam-cheuk-ting-detained-over-alleged-rioting-during-yuen-long-mob-attack/>

29 日一次示威活動中推撞警員，被控阻差辦公罪，2020 年 12 月裁判法院裁定案中警員的供詞不可靠和前後矛盾，判許麗明無罪釋放。

4.3.3 建議

香港政府應根據《公民權利和政治權利國際公約》的規定，徹底檢討和修訂《公安條例》，包括確保沒有獲發「不反對通知」的和平集會將不會被視為「未經批准集會」、「非法集會」等非法活動。

聯合國和平集會和結社自由特別報告員曾指出，根據國際人權法，行使和平集會的權利毋須當局事先批准，充其量只需要一個事先知會當局的程序，但這個通知程序亦應合理，而且不能過於官僚主義。政府有責任促進和平集會的自由和權利得以行使。³⁹

obstructing the police, as she was accused of pushing a police officer during a march on 29 September 2019. Her case was acquitted in December 2020 after the magistrate court found the police testimonies unreliable and inconsistent with video footage on the spot.

4.3.3. Recommendations

Provisions of the Public Order Ordinance should be thoroughly reviewed and amended in line with ICCPR, including to ensure peaceful assemblies that do not receive “Notices of No Objection” are not branded illegal as “unauthorised assembly” and “unlawful assembly”.

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has pointed out that, according to international human rights law, the exercise of the right to peaceful assembly should not be subject to previous authorization by the authorities. At most a prior notification procedure would be permissible, but such notification should be subject to a proportionality assessment and must not be unduly bureaucratic. It is the duty of state authorities to facilitate the exercise of the right to freedom of peaceful assembly.³⁹

³⁹ Report to the Human Rights Council, Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, UN Doc. A/HRC/20/27 (2012).

5. 其他與新冠肺炎疫情有關的人權問題

前線醫護人員因表達對公共衛生政策的關注而遭到報復。同時，弱勢社群受到新冠肺炎疫情的影響尤其嚴重，可惜政府一直未能適時和恰當地解決相關問題。

5.1 醫務人員的罷工遭報復

2 月，新冠肺炎疫情爆發初期，政府遲遲未有因應疫情實施入境管制，約 9,000 名醫院管理局（下稱：醫管局）醫護人員進行罷工，要求當局立即封關堵截病毒源頭。其後，醫管局要求相關人員解釋其「缺勤」原因，並重申僱主有權採取後續行動。11 月，醫院管理局決定扣減罷工醫護人員在罷工期間的薪酬。

5.1.1 建議

政府必須確保醫護人員和提供基本服務的工人享有參與集體行動的權利，當中包括《經濟社會文化權利國際公約》第 8 條所規定，自行選擇成立和參加工會，以及罷工的權利。此外，根據《基本法》第 39 條，國際勞工組織《關於組織權利和集體談判權的公約》繼續適用於香港，政府必須採取積極措施，確保所有工人不會因為加入工會或參與工會活動，而遭受任何形式的報復。⁴⁰

5.2 支援失業和就業不穩定工人

受新冠肺炎疫情影響，香港 2020 年第三季失業率高達 6.4%，全港超過 25 萬人失業，創 15 年新高。但政府推出的「保就業計劃」旨在提供補貼予承諾不會裁員的僱主，未有直接資助已失業工人。樂施會在 12 月發表的報告顯示，香港多達 45.5% 失業人口來自貧窮家庭，當中半數以上的失業貧窮人口已失業超過 3 個月。⁴¹ 此外，「保

5. Other COVID-19-related human rights issues

Frontline health workers faced reprisals when they raised safety concerns. Marginalized groups have been disproportionately affected by the COVID-19 pandemic, while the government has persistently failed to address such disparities in a timely and adequate manner.

5.1. Medical workers' strike faced reprisals

Around 9,000 hospital health workers went on strike in February against the government's delay in implementing border controls in response to the COVID-19 pandemic. The Hospital Authority demanded that the individuals involved explain their "absence from duty" and reiterated that employers have the right to take follow-up actions. In November, the Hospital Authority decided to deduct salary paid to workers who went on strike.

5.1.1. Recommendations

The government must ensure that health and essential workers can exercise collective action, including their rights to strike and to form and join trade unions of their own choices as enshrined in Article 8 of International Covenant on Economic, Social and Cultural Rights (ICESCR). Moreover, according to International Labour Organization (ILO) Convention on right to organize and collective Bargaining Convention, which applies to Hong Kong under Article 39 of the Basic Law, the government must take positive steps to ensure all workers are free of reprisal for being members of trade unions or participating in union activities.⁴⁰

5.2. Support to unemployed and precarious workers

Under the effect of the COVID-19 pandemic, the unemployment rate in Hong Kong reached 6.4% in the third quarter of 2020, with more than 250,000 people out of work, a 15-year record. However, the Employment Support Scheme that was introduced by the government to subsidize employers who promised not to make redundancies provided no relief to unemployed workers. According to a report published by Oxfam in December, 45.5% of the total unemployed population in Hong Kong were from poor households, while more than half of the

⁴⁰ Convention 98: Right to Organise and Collective Bargaining Convention, 1949.

⁴¹ "Number of poor and unemployed skyrockets to 110,000 – 1.6 times more than Q2 last year, but CSSA not reaching most", Oxfam, 8 Dec 2020, <https://www.oxfam.org.hk/en/news-and-publication/covid-effects-on-unemployment-and-poor>

就業計劃」的資助範圍亦未有涵蓋自由業者等就業情況不穩定的人。在勞動市場短期內難以改善的情況下，貧窮問題將會進一步惡化。

另一方面，由於經濟衰退，預計實際工資將持續下降，導致領取法定最低工資的工人人數增加。然而，在物價指數持續不跌反升的情況下，政府卻表示有可能再將現時 37.5 港元時薪的法定最低工資水平凍結兩年。持續的失業率，加上凍結法定最低工資水平，預計將進一步加劇貧富差距。

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5.2.1 建議

政府應就「保就業計劃」的資助範圍擴展至失業和就業不穩定工人。同時，為符合《經濟社會文化權利國際公約》第 7 條的規定，政府亦應就法定最低工資的條例和水平進行檢討和調整，以確保所有工人及其家人均可享有可供給體面生活水平的「公平和良好的工作條件」。

5.3 青山灣入境事務中心內的人道問題

2020 年 6 月，青山灣入境事務中心內至少有 28 名羈留外籍移民絕食，抗議中心內存在已久的惡劣環境以及被無限期羈留的問題。上述問題更因新冠肺炎疫情而進一步惡化。根據國際特赦組織和公民社會團體所收集到的信息，新進入青山灣入境事務中心的羈留人士並沒有按規定進行 14 天檢疫隔離。另外，不少羈留人士供稱中心沒有為他們提供口罩，中心內亦沒有採取社交距離措施。青山灣入境事務中心關注組指出，當局給予羈留人士的防疫物資不足，而且中心僅在一名羈留人士確診新冠肺炎後，才開始規定羈留人士必

unemployed poor have been unemployed for more than three months.⁴¹ Moreover, many precarious workers such as freelancers are not covered by the Employment Support Scheme. Thus, it is expected that more people will fall into poverty if the labour market does not improve in the foreseeable future.

On the other hand, as real wage continued to plummet due to the economic downturn, the number of workers receiving the statutory minimum wage was expected to increase. However, there were calls from the government to freeze the statutory minimum wage level at HK\$37.5 (US\$4.8) per hour for another two years, whereas essential commodity prices recorded rises amid negative economic circumstances.⁴² The persisting unemployment rate, coupled with the freeze in the statutory minimum wage, was expected to further exacerbate the disparity of wealth distribution among the city's inhabitants.

5.2.1. Recommendations

The government should provide direct and immediate financial support to unemployed and precarious workers who are not covered by the Employment Support Scheme. The statutory minimum wage legislation and level should be reviewed and adjusted to ensure just and favourable conditions of work, including a decent living for all workers and their families, as required in Article 7 of the ICESCR.

5.3 Inhumane conditions at Castle Peak Bay Immigration Centre

In June 2020, at least 28 immigration detainees at Castle Peak Bay Immigration Centre (CIC) went on a hunger strike to protest longstanding problems of indefinite periods of detention and very poor conditions at CIC. These issues were compounded due to the COVID-19 pandemic. According to information collected by Amnesty International and other civil society organizations, new arrivals at CIC had not been subject to 14-day quarantine before admission, contrary to regulations. Also, many detainees reported that they were not provided with face masks and that social distancing measures were not implemented. According to the CIC Detainees' Rights Concern Group, the authorities only started to provide masks to all detainees every day after one of them tested positive for COVID-19. In a reply dated 14 January 2021, the Immigration

⁴² Government of the Hong Kong SAR, Census and Statistics Department, "Consumer Prices", 21 Dec 2020, <https://www.censtatd.gov.hk/hkstat/sub/so270.jsp>

須戴上口罩。⁴³入境事務處在 2021 年 1 月 14 日回覆國際特赦組織的信中證實，目前已為所有羈留人士提供口罩，並每日為他們檢查體溫。⁴⁴

不少長期被羈留在青山灣入境事務中心的人士指出，他們沒有被告知羈留期限。部份人因等候旅行證件而被無限期羈留，而其他人則正在等待「免遣返保護聲請」的審批結果，以避免被驅逐出境。

5.3.1 建議

國際特赦組織呼籲香港政府為青山灣入境事務中心的羈留人士，提供適時、定期和不受限制的醫療服務，並採取緊急措施，改善中心內擠迫以及衛生環境惡劣的問題。當局亦應停止對被羈留人士的無限期羈留，並釋放所有純粹因移民問題而被羈留的外籍移民，特別是那些在短期內無法進行遣返，或無法確保其健康權益的人士。

Department confirmed that all detainees are currently provided with masks and have their temperature taken every day.⁴⁴

Many detainees held indefinitely at CIC said they were not notified of the duration of their detentions. Some individuals were detained indefinitely because they were waiting for their travel documents, while others were being held pending the result of their “non-refoulement” claim to protect them against deportation.

5.3.1. Recommendations

Amnesty International calls on the Hong Kong authorities to allow detainees at CIC prompt, regular and unrestricted access to medical care on request or as necessary; take urgent steps to address overcrowding and poor sanitation and hygiene conditions within CIC; cease the use of indefinite detention; and release all immigration detainees solely held for migration-related reasons, especially those whose deportation cannot be carried out promptly or whose right to health cannot be upheld.

⁴³ 曾鳳婷, “A Thai detainee at the Castle Peak Bay Immigration Centre was tested positive for COVID-19” (青山灣入境事務中心逾期居留泰籍漢確診中心暫停外來人士探訪), *HKOI*, 22 August 2020, [新冠肺炎 | 青山灣入境事務中心逾期居留泰籍漢確診 暫停探訪服務 \(hk01.com\)](#)

⁴⁴ Reply to Amnesty International Swiss Section from Hong Kong Immigration Department regarding “Detention Conditions at the Castle Peak Bay Immigration Centre”, 14 January 2021.

6. 性小眾 (LGBTI) 權利

2020 年已婚同性伴侶在香港透過司法覆核，成功爭取共同申請公屋和繼承伴侶遺產的兩項權利，但同時亦在另外一些平權官司中遭遇挫敗。

6.1 法庭上的勝利與挫敗

3 月，高等法院裁定香港房屋委員會（下稱：房委會）拒絕在海外註冊婚姻的同性伴侶以家庭單位申請公屋的做法構成歧視，屬於違憲。這宗案件為同性伴侶爭取到申請公共房屋的平等權利，是今年第一宗性小眾的司法勝利。9 月，高等法院在另一宗司法覆核案中裁定，同性伴侶在配偶沒有訂立遺囑的情況下，與異性戀夫婦一樣擁有繼承伴侶遺產的平等權利。

儘管有這些法律上的勝利，社運人士岑子杰要求香港政府正式承認海外註冊同性婚姻的司法覆核案，則在 9 月被高等法院宣判敗訴，法官認為政府制度上不承認同性婚姻，做法沒有違憲。

6.1.1 建議

平等和不受歧視的權利受到《公民權利和政治權利國際公約》和《經濟社會文化權利國際公約》等國際人權法的保障。⁴⁵ 雖然不少政府政策因違法歧視而遭受司法挑戰，但為性小眾人士爭取平等權利的責任，不應只訴諸由個人提出的法律訴訟。

國際特赦組織呼籲政府從速檢討現行法例、政策和做法，以消除對性取向、性別認同和雙性別的一切歧視，並就全面且具體的反歧視條例進行立法。

6. Rights of Lesbian, Gay, Transgender and Intersex People (LGBTI)

Married same-sex couples in Hong Kong won access to public rental housing and to their partners' inheritance in 2020 but were also met with setbacks.

6.1. Legal wins and setbacks

In March, Hong Kong's High Court ruled that it was unconstitutional and discriminatory for the Housing Authority to bar same-sex couples whose marriages are registered overseas from applying for public rental housing as a family unit. It marked the first judicial win concerning same-sex couples' equal right to apply for public housing. Subsequently in September, the High Court ruled that same-sex couples enjoy equal rights under Hong Kong's inheritance law, which they will benefit from the estate of their deceased same-sex married partners like the heterosexual counterparts.

Despite these legal wins, activist Jimmy Sham lost a lawsuit against the government in September. The judge dismissed Sham's demand for an official recognition of his same-sex marriage registered overseas, holding the general exclusion of same-sex couples from the institution of marriage in Hong Kong to be constitutional.

6.1.1. Recommendations

Equality and non-discrimination are protected by international human rights law as indicated in Articles 2 and 26 of the ICCPR, and Articles 2 and 3 of the ICESCR.⁴⁵ While specific current government policies are subject to legal challenges on the grounds of unlawful discrimination, the burden to achieve equal rights for LGBTI community should not lay solely on individual legal pursuits.

Amnesty International calls on the government to commit to a speedy and thorough review of all laws, policies and practices and end all discrimination on the grounds of sexual orientation, gender identities and intersex status, and to swiftly adopt comprehensive and specific anti-discrimination legislation.

⁴⁵ Article 2, 6 of the ICCPR; Article 2, 3 of the ICESCR.