



# HONG KONG

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**AMNESTY  
INTERNATIONAL**



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# 1. INTRODUCTION

Amnesty International provides the following information to the United Nations (UN) Human Rights Committee ahead of the adoption of the list of issues in advance of the 4<sup>th</sup> periodic report of Hong Kong at the Committee's 129<sup>th</sup> session in June 2020.

This submission sets out some of Amnesty International's key concerns and recommendations related to the implementation of the International Covenant on Civil and Political Rights (the Covenant) by the government of the Hong Kong SAR (HKSAR). It highlights concerns with regard to judicial independence (Article 1, 2, 14); freedom of expression and association (Article 19, 22); freedom of peaceful assembly (Article 21); use of force by law enforcement officials (Article 7); arbitrary arrest or detention and torture or other cruel, inhuman or degrading treatment (Articles 7, 9); discrimination on the grounds of sexual orientation, gender identity, gender expression and sex characteristics (Article 26); asylum-seekers and refugees (Articles 2, 7); migrant workers (Articles 2, 8, 26); and sex workers (Articles 2, 7, 14). It is not an exhaustive list of concerns with regard to the implementation of the Covenant. It is not an exhaustive account.

## 2. JUDICIAL INDEPENDENCE (ARTICLES 1, 2 AND 14)

Hong Kong's rule of law and judicial independence and impartiality, which have long constituted critical elements in the protection of human rights, appear to be facing intensifying pressure from a variety of sources, ranging from authorities in mainland China to representatives or supporters of such authorities in Hong Kong, in particular over cases deemed to be politically sensitive.

In 2014, China's State Council White Paper on the "One Country, Two Systems" policy in Hong Kong cited Hong Kong's judges as an example of "those who administrate Hong Kong", for whom "loving the country is the basic political requirement".<sup>1</sup> This shows that the State Council sees judges in Hong Kong as primarily serving administrative purposes, rather than part of an independent judicial system that is free from interference by government officials from other branches. The independence of judicial tribunals is essential to a fair trial and a prerequisite of the rule of law.<sup>2</sup>

Following a verdict and the imprisonment of seven police officers who assaulted protester Ken Tsang during the 2014 pro-democracy Umbrella Movement protests, there was escalating criticism of the trial from pro-Beijing media outlets and commentators. Opinions published in *People's Daily*, a state media outlet representing the viewpoints of the Central Committee of the Chinese Communist Party, suggested that the judgment of this case was influenced by the British nationality of judges.<sup>3</sup>

In October 2019, a man was given a community service sentence for desecrating the national flag. After the judgement was handed down, former Chief Executive Leung Chun-ying urged the Department of Justice to seek a stronger punishment. A *People's Daily* commentary also called for a more serious punishment for anyone who abused the national flag.<sup>4</sup> The Prosecutors subsequently requested the Court of Appeal to

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<sup>1</sup> PRC State Council, *The practice of the "One Country, Two Systems" policy in the Hong Kong Special Administrative Region*, 2014, [english.gov.cn/archive/white\\_paper/2014/08/23/content\\_281474982986578.htm](http://english.gov.cn/archive/white_paper/2014/08/23/content_281474982986578.htm)

<sup>2</sup> Amnesty International, *Fair Trial Manual Second Edition* (Index: POL 30/002/2014), chapter 12.4.

<sup>3</sup> 王平 (Wang Ping), 警察被重判冲击香港法治 (Police heavily sentenced, a blow to rule of law in Hong Kong) *People's Daily (Overseas Edition)*, 21 February 2017, [paper.people.com.cn/rmrbhwb/html/2017-02/21/content\\_1751735.htm](http://paper.people.com.cn/rmrbhwb/html/2017-02/21/content_1751735.htm) [unofficial English translation].

<sup>4</sup> People's Daily Commentary (人民日报评论), 侮辱国旗只被判 200 小时社会服务 人民日报评论: 侮辱国旗当严惩 (Only sentenced to 200 hours of community service for desecrating the national flag. People's Daily Commentary: Desecrating the national flag should be severely punished), *Tencent*, 31 October 2019, [new.qq.com/omn/20191031/20191031A04V2N00.html](http://new.qq.com/omn/20191031/20191031A04V2N00.html).

review the man's sentence. In April 2020, the Court of Appeal revoked the community service sentence and gave the man a sentence of 20 days' imprisonment.<sup>5</sup>

Amnesty International recommends that Hong Kong government:

- safeguard the independence of the Hong Kong judiciary;
- work with the Standing Committee of the National People's Congress to ensure interpretations of the Basic Law are exercised with restraint and in compliance with the fundamental principles governing the rule of law, as provided for in the Covenant.

## 3. FREEDOM OF EXPRESSION AND ASSOCIATION (ARTICLES 19 AND 22)

### 3.1 INTERPRETATION OF THE BASIC LAW

The Hong Kong government claims that any advocacy of Hong Kong's independence or self-determination, even by non-violent means, is "illegal" or in violation of the Basic Law".

In October 2016, two elected representatives to the Legislative Council refused to pledge allegiance to China when being sworn into office as they hold pro-independence views. The Hong Kong government applied for a judicial review in the High Court, arguing that the pair should not be allowed to take the oath a second time. While the legal process was still ongoing, the NPCSC issued an interpretation of Article 104 of the Hong Kong Basic Law concerning oath-taking.<sup>6</sup> The interpretation said, contrary to previous practice, that anyone not taking the oath properly the first time cannot re-take it or take office, effectively barring the two elected representatives from assuming their office. In 2017, the High Court disqualified four elected pro-democracy legislators for failing to fulfil the requirements of the same NPCSC interpretation.<sup>7</sup>

The interpretation risks undermining the principle of "One Country Two Systems" and appears to be a further attack on the freedom of expression of those who advocate independence or self-determination for Hong Kong.<sup>8</sup>

### 3.2 NATIONAL SECURITY (ARTICLE 21)

The Hong Kong government's expansive interpretation of "national security", which follows that of the Chinese central authorities, lacks clarity and legal predictability and has been used arbitrarily as a pretext to restrict the rights to freedom of expression and association and to repress dissent and political opposition. By

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<sup>5</sup> Jasmine Siu, "Hong Kong protester who was given community service for desecrating national flag gets 20 days in jail", *South China Morning Post*, 24 April 2020, [www.scmp.com/news/hong-kong/law-and-crime/article/3081499/hong-kong-protester-who-was-given-community-service](http://www.scmp.com/news/hong-kong/law-and-crime/article/3081499/hong-kong-protester-who-was-given-community-service).

<sup>6</sup> Hong Kong Bar Association, *The Hong Kong Bar Association's statement concerning the interpretation made by National People's Congress Standing Committee of Article 104 of the Basic Law*, 7 November 2016, [www.hkba.org/sites/default/files/20161107%20-%20Statement%20re%20NPCSC%20interpretation%20BL104%20%28Eng%20Version-web%29.pdf](http://www.hkba.org/sites/default/files/20161107%20-%20Statement%20re%20NPCSC%20interpretation%20BL104%20%28Eng%20Version-web%29.pdf); Hong Kong Special Administrative Region (HKSAR), *Interpretation of Article 104 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress*, [www.basiclaw.gov.hk/en/basiclawtext/images/basiclawtext\\_doc25.pdf](http://www.basiclaw.gov.hk/en/basiclawtext/images/basiclawtext_doc25.pdf)

<sup>7</sup> Amnesty International Hong Kong, *Year-end Human Rights Review 2017 – Hong Kong*, [www.amnesty.org.hk/wp-content/uploads/2018/03/AnnualHRReview\\_2017\\_20180309\\_FormatRevised\\_Clean.pdf](http://www.amnesty.org.hk/wp-content/uploads/2018/03/AnnualHRReview_2017_20180309_FormatRevised_Clean.pdf), p.10.

<sup>8</sup> Amnesty International, *Hong Kong: Nine arrested in authorities' retaliatory campaign against pro-democracy activists* (Press release, 27 April 2017).

accusing political parties, academics and other organizations and individuals of threatening national security, the authorities have rationalized censorship, harassment and prosecutions that violate human rights.

In a dangerous blow to freedom of association and expression, in 2018 the government prohibited the operation of the Hong Kong National Party under Section 8 of the Societies Ordinance (Cap. 151), adopting the Hong Kong Police's view that such a ban would be "in the interests of national security, public safety, public order and the protection of the rights and freedoms of others".<sup>9</sup> The Societies Ordinance has previously been singled out by the Human Rights Committee as needing reform.<sup>10</sup>

Academics and students limit their own expression and political engagement for fear of being accused of threatening China's sovereignty or colluding with "external forces". These types of accusations can result in loss of funding or income, and removal from academic institutions, as the Hong Kong government exercises significant influence over most universities there. The government condemned open academic discussion of the right to self-determination. In March 2018, Benny Tai, Associate Professor of Law at the University of Hong Kong, discussed the right to self-determination in China during a seminar in Taiwan. The HKSAR government immediately and strongly condemned his remarks and emphasized that "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".<sup>11</sup>

In September 2015, the governing council of the University of Hong Kong rejected a nomination committee's choice to appoint Johannes Chan Man-mun, Professor of Law, and former Dean of the Faculty of Law, as a pro-vice-chancellor. Media, academics and students claimed these decisions were retaliation for the two academics' support for the Umbrella Movement protests the year before.<sup>12</sup>

The government also disqualified candidates in local elections, claiming that these candidates did "not uphold the Basic Law" due to their individual and respective affiliated parties' views on self-determination.<sup>13</sup> The decision appears to discriminate against a particular opinion on political grounds, which would also be a violation of freedom of expression.

When delivering a speech on 27 May 2017, the National People's Congress chairperson, Zhang Dejiang, urged the Hong Kong government to "steadfastly implement the constitutional obligation of national security under the Basic Law". In April 2020, the Director of the Liaison Office of the Central People's Government in the HKSAR urged the Hong Kong government "to enact, amend and activate national security laws".<sup>14</sup>

The call for enacting national security laws in Hong Kong aroused public concern that the Central Government would require Hong Kong to enact laws to prohibit acts such as "subversion against the Central People's Government", "theft of state secrets" and the establishment of "ties with foreign political organizations or bodies" by "political organizations or bodies" in Hong Kong, under Article 23 of the Basic Law.

In mainland China, under the pretext of protecting national security, the government under President Xi Jinping has introduced a series of laws in China that could seriously restrict human rights. The definition of "national security" in these laws is virtually limitless. Mainland government targets such as human rights defenders, activists and dissidents are frequently detained and persecuted, many on "national security" charges, such as "inciting subversion of state power" and "illegally providing state secrets to foreign entities".<sup>15</sup>

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<sup>9</sup> Amnesty International, *Hong Kong: Proposed ban on pro-independence political party a dangerous blow for freedom of association and expression* (Press Release, 17 July 2018).

<sup>10</sup> Concluding Observation of the UN Human Rights Committee (hereinafter HRC): Hong Kong, UN Doc. CCPR/C/79/Add.117 (1999), para. 20.

<sup>11</sup> HKSAR Government Press Releases, *Response by HKSAR Government to media inquiries*, 30 March 2018, [www.info.gov.hk/gia/general/201803/30/P2018033000690.htm?fontSize=11](http://www.info.gov.hk/gia/general/201803/30/P2018033000690.htm?fontSize=11).

<sup>12</sup> Amnesty International, *Amnesty International Report 2015/16* (Index: POL 10/2552/2016), p.122.

<sup>13</sup> Amnesty International Hong Kong, *Year-end Human Rights Review 2018 – Hong Kong*, [www.amnesty.org.hk/wp-content/uploads/2019/03/HKReview\\_2018.pdf](http://www.amnesty.org.hk/wp-content/uploads/2019/03/HKReview_2018.pdf), p.7.

<sup>14</sup> Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region, 骆惠宁在2020年香港“全民国家安全教育日”活动的致辞 (Luo Huining's speech for 2020 Hong Kong National Security Education Day), 15 April 2020, [www.locpg.gov.cn/jstdt/2020-04/15/c\\_1210558684.htm](http://www.locpg.gov.cn/jstdt/2020-04/15/c_1210558684.htm) [unofficial English translation]; Kathy Zhang, "Luo Huining: HK can't emerge as weak national security link", *China Daily*, 15 April 2020, [www.chinadailyhk.com/article/127608](http://www.chinadailyhk.com/article/127608)

<sup>15</sup> Amnesty International, *Hong Kong: President Xi's attack on human rights a grave threat to city's freedom* (Press release, 29 June 2017).

Amnesty International recommends that Hong Kong government:

- ensure that all legislation in Hong Kong, including any new legislation proposed under Article 23 of the Basic Law, conform to guarantees of the rights to freedom of expression, association and peaceful assembly. Any legislation prohibiting “any act of treason, secession, sedition” or “subversion against the Central People’s Government” must not criminalize or restrict the legitimate exercise of human rights;
- Ensure that participation in public affairs, whether through public discussions, political affiliation or other peaceful engagement, is not restricted on discriminatory grounds or solely for being critical of the government or the political system espoused by the government.

### 3.3 PRESS FREEDOM

Mainland authorities continue to exert influence over Hong Kong’s media – through direct pressure from the Liaison Office of the Central People’s Government in the HKSAR or through indirect interference from editors and owners who have close ties to and interests within mainland China. Fears about the right to freedom of the press were raised when Kevin Lau Chun-to, the former chief editor of Hong Kong local newspaper *Ming Pao*, was removed from his post by the management of the newspaper in January 2014.<sup>16</sup> Under Lau, *Ming Pao* had reported on alleged human rights violations and wrongdoings of high-ranking officials in Hong Kong and China. In February 2014, he was publicly attacked with a cleaver, resulting in critical injuries. After the attack, thousands of Hong Kong people took to the streets to march in defence of freedom of expression. Many saw the attack as a retaliation for his reports targeting the Hong Kong and mainland Chinese governments. The two men who said they were hired to attack Kevin Lau were eventually sentenced to 19 years in prison in August 2015. However, the police failed to identify the person who hired them. Journalists working on China issues have experienced direct censorship and interventions from mainland authorities. According to the annual press freedom index launched by the Hong Kong Journalists Association (HKJA) in 2013, Hong Kong has never scored above 50 on a scale of 1 to 100.<sup>17</sup> Journalists, NGOs and other civil society actors spoke to Amnesty International about deteriorating press freedom in Hong Kong and the pressure they felt to self-censor.<sup>18</sup>

When journalists or news media refuse to self-censor, they may be subjected to pressure by other, more direct, means.<sup>19</sup> In August 2018, after the ban of the Hong Kong National Party, former Hong Kong Chief Executive and current mainland high state official Leung Chun-ying publicly criticized the Foreign Correspondents’ Club (FCC) of Hong Kong for hosting the convener of the Hong Kong National Party, Andy Chan, to give a luncheon talk during which he spoke about Hong Kong independence.<sup>20</sup> In October 2018, the moderator for the event, Victor Mallet, then vice-president at the Hong Kong FCC and Asia editor for the *Financial Times*, was denied extension of his Hong Kong work visa and refused entry into Hong Kong. The Hong Kong government has refused to disclose the reason for the denial.<sup>21</sup>

Five Hong Kong-based publishers and booksellers disappeared in 2015 after printing books critical of the Chinese government. The Mighty Current Media and the Causeway Bay Bookstore that the five booksellers were linked to was known for selling books on Chinese leaders and political scandals that were banned in mainland China but popular with mainland Chinese tourists visiting Hong Kong.<sup>22</sup> One of the booksellers, Lam Wing-kee, returned in Hong Kong in 2016 and said he had been arbitrarily detained, ill-treated in

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<sup>16</sup> Hong Kong Journalists Association, *Around 13000 People Say “No” to Violence* ([Press release](#), 2 March 2014).

<sup>17</sup> Hong Kong Journalists Association, *2019 Annual report*, July 2019, [www.hkja.org.hk/PDF/HKJA\\_Annual\\_Report\\_2019\\_eng\\_s.pdf](http://www.hkja.org.hk/PDF/HKJA_Annual_Report_2019_eng_s.pdf).

<sup>18</sup> Amnesty International, *Beijing’s “red line” in Hong Kong* (Index: ASA 17/0944/2019), p.23.

<sup>19</sup> Amnesty International, *Beijing’s “red line” in Hong Kong* (Index: ASA 17/0944/2019), p.23–24.

<sup>20</sup> Leung Chun-ying verified Facebook profile, 外國記者協會應該知道港獨是絕對的和清晰的紅線 (Foreign Correspondents’ Club should know Hong Kong independence is the absolute and clear red line), 8 August 2018, [www.facebook.com/leung.cy.108/posts/678101259219021](https://www.facebook.com/leung.cy.108/posts/678101259219021) [unofficial English translation]; The Foreign Correspondents’ Club, Hong Kong, verified Facebook page, *Video of FCC Club Lunch: Andy Chan Ho-tin, Convener, Hong Kong National Party, on Hong Kong nationalism*, 14 August 2018, [www.facebook.com/fcchk.org/videos/fcc-club-lunch-andy-chan-ho-tin-convener-hong-kong-national-party-on-hong-kong-n/321168738655457/](https://www.facebook.com/fcchk.org/videos/fcc-club-lunch-andy-chan-ho-tin-convener-hong-kong-national-party-on-hong-kong-n/321168738655457/)

<sup>21</sup> Amnesty International, *Hong Kong: Denial of Visa for FT journalist a chilling move against press freedom* (Index: ASA 17/9218/2018); HKSAR Government Press Releases, *Transcript of remarks by CE at media session before Exco meeting*, HKSAR, 9 October 2018. [www.info.gov.hk/gia/general/201810/09/P2018100900465.htm](http://www.info.gov.hk/gia/general/201810/09/P2018100900465.htm)

<sup>22</sup> Amnesty International Hong Kong, *Open letter to Chief Executive on 5 missing booksellers*, 4 March 2016, [www.amnesty.org.hk/en/open-letter-to-chief-executive-on-5-missing-booksellers/](http://www.amnesty.org.hk/en/open-letter-to-chief-executive-on-5-missing-booksellers/)

detention and forced to “confess”.<sup>23</sup> Gui Minhui, another one of five Hong Kong-based publishers and booksellers and a Swedish national, reappeared on Chinese state media in 2016 to give what appeared to be a forced “confession”. Under tight surveillance after a brief release in 2017, Gui was seized by plainclothes police while travelling to Beijing for medical reasons with two Swedish diplomats in 2018.<sup>24</sup> Gui Minhui was subsequently sentenced by a Chinese court to 10 years in prison for “illegally providing intelligence to foreign entities”, with the court claiming that he had voluntarily renounced his Swedish nationality.<sup>25</sup>

Amnesty International recommends that Hong Kong government:

- implement measures in line with Article 19 of the Covenant, so as to take effective steps to guarantee a free, uncensored and unhindered press, including repealing any unreasonable direct or indirect restrictions on 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.

## 4. FREEDOM OF PEACEFUL ASSEMBLY (ARTICLE 21)

The Hong Kong government continues to place excessive restrictions on the right to freedom of peaceful assembly.

Many people arrested due to their involvement in protests in Hong Kong during 2014 and 2019 were prosecuted on vague charges related to “unlawful assembly”, “unauthorized assembly” or “public disorder”. On 18 April 2020, police arrested 15 prominent pro-democracy leaders for “organizing and taking part in unauthorized assembly”. Five of them are also charged with “announcing unauthorized assembly”.<sup>26</sup> These charges are based on the Public Order Ordinance (Cap. 245), the provisions and application of which fail to meet international human rights law and standards on the right to peaceful assembly.<sup>27</sup>

In April 2019, nine protesters, including the co-founders of the 2014 Occupy Central campaign, were convicted of charges such as “conspiracy to commit public nuisance”, “incitement to commit public nuisance” and “incitement to incite public nuisance”. These vague and ambiguous charges appeared to be politically motivated and intended as a pretext to deter peaceful exercise of the rights to peaceful assembly and expression. Prosecutors cited press conferences, media interviews and public meetings in which the pro-democracy leaders had discussed their non-violent campaign of direct action as key evidence to support the accusations of unlawful behaviour.<sup>28</sup>

The government did not charge the leaders of the Umbrella Movement when they first turned themselves in in 2014, but they were arrested in 2015. Charges against them changed in 2017, and the hearings concluded in 2019. Almost six years on from the start of the Umbrella Movement protests, scores of the protesters remain in legal limbo, uncertain if the police will proceed with the charges against them. Because the government has continued to prosecute prominent leaders of the Umbrella Movement protests after

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<sup>23</sup> “Full, complete transcript of returned bookseller Lam Wing-kee’s press conference and Q&A”, *Hong Kong Free Press*, 20 June 2016, [hongkongfp.com/2016/06/20/full-complete-transcript-of-returned-bookseller-lam-wing-kees-press-conference-and-qa/](http://hongkongfp.com/2016/06/20/full-complete-transcript-of-returned-bookseller-lam-wing-kees-press-conference-and-qa/).

<sup>24</sup> Amnesty International, *China: Bookseller handed outrageous 10-year sentence must be released* ([Press Release](#), 25 February 2020).

<sup>25</sup> Amnesty International, *China: Bookseller handed outrageous 10-year sentence must be released* ([Press Release](#), 25 February 2020).

<sup>26</sup> Amnesty International, *Hong Kong: 15 democracy leaders arrested* ([Urgent Action](#), 22 April 2020).

<sup>27</sup> Concluding Observation of the HRC: Hong Kong, UN Doc. CCPR/C/79/Add.117 (1999), para. 19; Concluding observations of the HRC: Hong Kong, UN Doc. CCPR/C/HKG/CO/3 (2013), para. 10.

<sup>28</sup> Amnesty International, *Hong Kong: Free jailed pro-democracy Umbrella Movement protest leaders* ([Press Release](#), 24 April 2019).

undue delay, hundreds of other protesters remain uncertain if the government is planning to pursue charges against them as well.<sup>29</sup> Together with the use of vague and ambiguous charges, this uncertainty is having a negative impact on the rights to freedom of peaceful assembly in Hong Kong by dissuading people from taking part in peaceful protests for fear of being prosecuted. According to Articles 14–15 of Hong Kong’s Public Order Ordinance, those wishing to organize a protest are required to obtain “a notice of no objection” from the police before an assembly may proceed. Police have the power to prohibit public gatherings or impose requirements or conditions on public gatherings where the police “reasonably consider it necessary in the interest of national security or public safety, public order or for the protection of the rights and freedom of others”.

As protests, this time against an extradition bill, again became more frequent and larger in 2019, the Hong Kong police adopted a tougher approach to restricting public assemblies, ranging from revoking “notices of no objection” for marchers to objecting to protests outright on the grounds of “public security concerns”.<sup>30</sup> From 9 June to 31 December 2019, the Hong Kong Police banned 47 of 537 applications for public procession or meeting.<sup>31</sup> In October 2019, the government announced a sweeping ban on full or partial face-coverings such as face masks at protests. The mask ban has far-reaching repercussions for the human rights to peaceful assembly, privacy, dignity, health and protection against discrimination. The mask ban was fast-tracked using the Emergency Regulations Ordinance (ERO, see also below), a colonial-era law with vague wording that essentially provides a blank cheque for the government to restrict human rights without any conditions or safeguards.<sup>32</sup> In April 2020, the Court of Appeal ruled the mask ban unconstitutional only during “authorized assemblies”, but let it stand for others, whether or not they involve violence.

Since 2019 the police have effectively adopted a zero-tolerance approach for disruptions caused by protesters when policing assemblies. Amnesty International has documented an alarming pattern of reckless and indiscriminate tactics being employed by the Hong Kong Police Force to control crowds.<sup>33</sup> There was only minimal willingness from the police to facilitate assemblies and no willingness to negotiate in case of problems or tension.

Amnesty International recommends that Hong Kong government:

- ensure that police handling of protests is necessary and proportionate to public order concerns and conforms to guarantees of the rights to freedom of expression and peaceful assembly enshrined in Articles 19 and 21 of the Covenant and Article 27 of the Basic Law;
- drop prosecutions and other legal procedures regarding activists that deter participation in peaceful protests and other measures that unduly restrict the freedom of peaceful assembly;
- bring the Public Order Ordinance into line with Hong Kong’s obligations under the Covenant to respect, protect and fulfil the rights to freedom of expression, association and peaceful assembly.

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<sup>29</sup> Amnesty International, *Umbrella Movement: End Politically Motivated Prosecutions in Hong Kong* (Index: ASA 17/9379/2018), pp.7 & 9.

<sup>30</sup> Holmes Chan, “‘Don’t forget our original intentions’: Thousands protest in Kowloon, as Hong Kong police fire tear gas”, *Hong Kong Free Press*, 2 December 2019, [www.hongkongfp.com/2019/12/02/pictures-hong-kong-police-fire-tear-gas-whampoa-tsim-sha-tsui-mong-kok-disrupting-protest-calm/](http://www.hongkongfp.com/2019/12/02/pictures-hong-kong-police-fire-tear-gas-whampoa-tsim-sha-tsui-mong-kok-disrupting-protest-calm/); “Riot police move in, end rally in support of Uighurs”, RTHK, 22 December 2019, [news.rthk.hk/rthk/en/component/k2/1499065-20191222.htm](http://news.rthk.hk/rthk/en/component/k2/1499065-20191222.htm); Kris Cheng, “Hong Kong police ban major protest against anti-mask law, citing risk of bombs, arson and unrest”, *Hong Kong Free Press*, 18 October 2019, [www.hongkongfp.com/2019/10/18/hong-kong-police-ban-major-protest-anti-mask-law-citing-risk-bombs-arson-unrest/](http://www.hongkongfp.com/2019/10/18/hong-kong-police-ban-major-protest-anti-mask-law-citing-risk-bombs-arson-unrest/)

<sup>31</sup> According to the reply from the Hong Kong Police Force to our inquiry on 24 January 2020: “Between June and Dec 2019, Police received a total of 537 notifications regarding public order event of different themes. Police had raised no prohibition or objection to 490 public order events. Also, police had raised prohibition or objection to 47 public order events.

<sup>32</sup> Amnesty International Hong Kong, *Submission to Legislative Council Subcommittee on the Prohibition on Face Covering Regulation*, 8 November 2019, [www.amnesty.org.hk/wp-content/uploads/2019/11/SubmissionLegCoSubcommitteePFCRERO0811FINAL.pdf](http://www.amnesty.org.hk/wp-content/uploads/2019/11/SubmissionLegCoSubcommitteePFCRERO0811FINAL.pdf)

<sup>33</sup> Amnesty International, *How not to police a protest: Unlawful use of force by Hong Kong police* (Index: ASA 17/0576/2019); Amnesty International, *Hong Kong: Arbitrary arrests, brutal beatings and other torture in police detention revealed* (Press Release, 19 September 2019).

# 5. THE USE OF THE EMERGENCY REGULATION ORDINANCE 1922

In April 2020, the Court of Appeal overruled a previous judgment and held that the government has the power to issue emergency regulations on grounds of “public danger”. The current wording and application of the Emergency Regulation Ordinance (ERO) mean that it can be used in situations that are not states of emergency, despite the fact that the powers provided under the ERO reflect those normally reserved for states of emergency. When imposing the “mask ban” (see above) in October 2019, Chief Executive Carrie Lam stressed that Hong Kong was not in a “state of emergency”.

The ERO 1922 is an outdated and deeply flawed piece of legislation. The colonial-era law was last used more than 50 years ago, and gave the then-governor sweeping powers to adopt “any regulations whatsoever” deemed “desirable”, including to restrict human rights without any conditions or safeguards. Under its wording, emergency measures in a broad range of areas can only be imposed and then repealed by the executive branch of government; they supersede any other piece of legislation or other rule in case of conflict, seemingly regardless of which rule is more recent or its position in the legal hierarchy. Moreover, there are no requirements of periodic review, explicit renewal or any other prescribed form of emergency regulations ceasing to have effect. Both the decision to declare that an “emergency or public danger” exists and all measures taken in response are at the exclusive discretion of the executive, without expressly requiring involvement of the Legislative Council. In terms of process, using the ERO means that Hong Kong’s legislature is bypassed during the law-making process. However, it should be noted that the Hong Kong Government has internationally confirmed that any “regulations under the ERO would be subsidiary legislation and therefore subject to vetting by the Legislative Council”.<sup>34</sup> The present use of the ERO has also been subject to judicial review.

In its reports to the Human Rights Committee, the Hong Kong Government has always referred to the ERO in the context of states of emergency as set out in Article 4 of the Covenant. For example, when responding to concerns about the absence of detailed legislation covering emergencies and that the provisions of Article 18 of the Basic Law did not correspond with those of Article 4 of the ICCPR, it stated that any regulations necessitated by future “emergencies” would be consistent with Article 4.<sup>35</sup> At no point did it state that the ERO could be applied outside of situations as contemplated by Article 4, or that “occasions of ... public danger” would be subject to a separate framework. Instead, it acknowledged that the power granted under the ERO “appears to be very wide” but that it was subject to the human rights protection of the Covenant, among others.<sup>36</sup>

Amnesty International recommends that Hong Kong government to

- clarify which powers and procedures allowed under the ERO are applicable to states of emergency and how situations of “public danger” are defined in contrast to emergencies, on the one hand, and to disturbances of public order in normal times, on the other;
- expressly limiting the application of the ERO to states of emergency in the sense of Article 4 of the Covenant in order to clarify the law and limit the scope for abuse;
- amend the ERO in order to bring it into line with the requirements under the Covenant, especially Article 4, in particular, by subjecting any use of the ERO to a time limit, mandatory periodic review and express renewal to consider whether each regulation needs to be continued, and allowing for full scrutiny of both the declaration of an “occasion of emergency or public danger” and any implementing measure.

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<sup>34</sup> Addendum, UN Doc. CCPR/C/HKSAR/99/1/Add.1 (2000), para. 43. A public hearing on the ERO and the mask ban based thereon took place on 8 November 2019; see Amnesty International Hong Kong, *Submission to Legislative Council Subcommittee on the Prohibition on Face Covering Regulation*, 8 November 2019, [www.amnesty.org.hk/wp-content/uploads/2019/11/SubmissionLegCoSubcommitteePFCRERO0811FINAL.pdf](http://www.amnesty.org.hk/wp-content/uploads/2019/11/SubmissionLegCoSubcommitteePFCRERO0811FINAL.pdf)

<sup>35</sup> Consideration of Reports submitted by States Parties under Article 40 of the Covenant, Hong Kong Special Administrative Region of the People’s Republic of China, UN Doc. CCPR/C/HKSAR/99/1 (1999), paras 93–97.

<sup>36</sup> Addendum, UN Doc. CCPR/C/HKSAR/99/1/Add.1 (2000), para. 43.

- to refrain from using emergency legislation for the purpose of regulating the right of peaceful assembly, and to ensure that all restrictive measures taken under the ETO are compatible in full with Hong Kong's obligations under the Covenant.

## 6. USE OF FORCE BY LAW ENFORCEMENT OFFICIALS (ARTICLE 7)

Amnesty International documented numerous instances of unnecessary and excessive use of force by Hong Kong police during protests in 2019. These include the dangerous use of less-lethal weapons and other law enforcement equipment such as rubber bullets and bean bag and foam rounds, which led to serious eye injuries in some cases; assaults against protesters, bystanders and others who were not resisting, including beating them with batons and shields; misuse of chemical irritants such as pepper spray and tear gas;<sup>37</sup> aggressive tactics to obstruct journalists and other observers at protest sites;<sup>38</sup> and use of water cannons to shoot liquid mixed with irritants and dye that indiscriminately marked individuals for later identification regardless of their involvement in the protests or involvement in violent activities. The use of water cannon also indiscriminately endangered the health of people as a result of the chemical irritant added.<sup>39</sup> Police fired live ammunition as “warning shots” in at least eight instances and directly against protesters in three other cases, allegedly in self-defence, resulting in serious injury.<sup>40</sup>

Amnesty International documented a clear pattern of police officers using unnecessary and excessive force during arrests of protesters, with anti-riot police and a Special Tactical Squad (commonly known as “raptors”) responsible for the worst violence. Almost every arrested person who was interviewed described being beaten with batons and fists during their arrest, even when they posed no resistance.<sup>41</sup>

In November 2019, the police laid siege to the Hong Kong Polytechnic University campus as part of a standoff with protesters. The Police deployment of tear gas and water cannon included an apparent attempt to keep people, including hundreds of protesters, volunteer medics, social workers, journalists and other observers, from leaving the scene.<sup>42</sup>

Investigation of police misconduct, including excessive use of force, remains in the hands of the police themselves through the Complaints Against Police Office (CAPO), with the Independent Police Complaint Council (IPCC) having only advisory and oversight functions.

The IPCC is institutionally limited in its capacity and ability to carry out independent, impartial, effective and thorough investigations. The IPCC endorsed 5,338 complaints as properly handled by CAPO from 2017 to 2019, including complaints of police officers fabricating evidence and assaulting citizens.<sup>43</sup> Only 3.5% of these complaints were considered to have been substantiated, and no police officers were prosecuted.<sup>44</sup>

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<sup>37</sup> Amnesty International, *How not to police a protest: Unlawful use of force by Hong Kong police* (Index: ASA 17/0576/2019); Amnesty International, *Hong Kong: Rampaging police must be investigated* ([Press Release](#), 1 September 2019).

<sup>38</sup> Amnesty International Hong Kong, *24 NGOs to Carrie Lam: Cease the criminal investigations of human rights observers, drop all related charges* ([Open Letter](#), 12 February 2020).

<sup>39</sup> Amnesty International, *Hong Kong: Water cannons pose real danger in hands of trigger-happy police* ([Press Release](#), 9 August 2019).

<sup>40</sup> HKSAR Government Press Releases, *Police severely condemn law-breaking acts of extremely violent protestors*, 26 August 2019, [bit.ly/3cmWAl](https://www.hkma.gov.hk/en/press-releases/2019/08/26)s; *Police severely condemn violent protests in multiple districts*, 1 September 2019, [bit.ly/2VHan05](https://www.hkma.gov.hk/en/press-releases/2019/09/01); *Police strongly condemn continued violent protests*, 30 September 2019, [bit.ly/211QrNm](https://www.hkma.gov.hk/en/press-releases/2019/09/30); *Police severely condemn massive violent protests*, 2 October 2019, [bit.ly/2Prpwio](https://www.hkma.gov.hk/en/press-releases/2019/10/02); *Open fire in Yuen Long*, 5 October 2019, [bit.ly/2vI0iv8](https://www.hkma.gov.hk/en/press-releases/2019/10/05); *Radical protestors vandalised facilities in various districts and police officers drew their service arms from their holsters*, 11 November 2019, [bit.ly/32xGOzB](https://www.hkma.gov.hk/en/press-releases/2019/11/11); *Police open fire in Yau Ma Tei*, 18 November 2019, [bit.ly/39514ef](https://www.hkma.gov.hk/en/press-releases/2019/11/18)

<sup>41</sup> Amnesty International, *Hong Kong: Arbitrary arrests, brutal beatings and other torture in police detention revealed* ([Press Release](#), 19 September 2019).

<sup>42</sup> Amnesty International Hong Kong, *Hong Kong: Police must defuse campus standoff to avoid more tragedy* ([Press Release](#), 18 November 2019); Amnesty International Hong Kong, *24 NGOs to Carrie Lam: Cease the criminal investigations of human rights observers, drop all related charges* ([Open Letter](#), 12 February 2020).

<sup>43</sup> Independent Police Complaints Council, *Report 2018/19*, pp.43–45.

<sup>44</sup> Independent Police Complaints Council, *Report 2018/19*, pp.43–46.

Between 2010 and 2018, among all of the cases of police misconduct substantiated by the IPCC, the police only referred one case for prosecution, while officers in the majority of cases were only given “advice”, which is often not recorded in their divisional record file.<sup>45</sup> Although the IPCC decided to take the initiative to conduct a fact-finding study of several public order events connected to the 2019 protests, the representative of the IPCC admitted that the study was not an investigation and would not reach any conclusions related to the reportable complaints.<sup>46</sup>

In March 2020, the Hong Kong police arrested Cheng Lai-king, an opposition politician, under a colonial-era sedition law after she had reposted a message on social media. The message revealed the identity of a police officer allegedly involved in a case in which a journalist was shot in the eye by riot police during the protests in 2019. In the social media post, Cheng called for police accountability. She was charged with “seditious intent”, a crime that has not been invoked since 1952.<sup>47</sup> This prosecution, which appears politically motivated, has also created a chilling effect for those who pursue accountability for the excessive use of force by the police during the protests that began in 2019.

Amnesty International recommends that Hong Kong government:

- ensure that the law and regulations governing the use of force by law enforcement officials are in line with international law and standards, including the UN Basic Principles on the Use of Force and Firearms for Law Enforcement Officials, and that all law enforcement officials are properly trained accordingly;
- take necessary measures to establish a fully independent mechanism mandated to conduct independent, proper and effective investigations into complaints about the inappropriate use of force or other abuse of power by the police and empowered to formulate binding decisions in respect of investigations conducted and findings regarding such complaints.

## 7. ARBITRARY ARREST OR DETENTION AND TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT (ARTICLES 7, 9 AND 14)

Amnesty International documented multiple instances of arbitrary and unlawful arrests during the protests in 2019. Most of the arrested people interviewed by Amnesty International did not know what behaviour they were engaging in that was considered suspicious or criminal at the time of arrest.<sup>48</sup>

Amnesty International has also found evidence of torture and other ill-treatment in detention. In several cases, detained individuals were severely beaten in custody and suffered other ill-treatment amounting to torture.

According to individuals arrested during the 2019 protests who were interviewed by Amnesty International, police violence most commonly occurred before and during arrest. In several cases, detained protesters also

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<sup>45</sup> Amnesty International, Hong Kong Human Rights Monitor and Human Rights Watch, *Open letter calling for an independent commission of inquiry*, 28 June 2019,

[www.hrw.org/sites/default/files/supporting\\_resources/190628\\_hk\\_lam\\_police\\_force.pdf](http://www.hrw.org/sites/default/files/supporting_resources/190628_hk_lam_police_force.pdf).

<sup>46</sup> Kelly Ho, “Hong Kong activist loses legal challenge over police watchdog probe into handling of protests”, *Hong Kong Free Press*, 16 April 2020, [hongkongfp.com/2020/04/16/hong-kong-activist-loses-legal-challenge-over-police-watchdog-probe-into-handling-of-protests](http://hongkongfp.com/2020/04/16/hong-kong-activist-loses-legal-challenge-over-police-watchdog-probe-into-handling-of-protests).

<sup>47</sup> Human Rights Watch, *Hong Kong: Dubious Arrest of Pro-Democracy Politician*, 27 March 2020, [www.hrw.org/news/2020/03/27/hong-kong-dubious-arrest-pro-democracy-politician](http://www.hrw.org/news/2020/03/27/hong-kong-dubious-arrest-pro-democracy-politician)

<sup>48</sup> Amnesty International, *Hong Kong: Arbitrary arrests, brutal beatings and other torture in police detention revealed* (Press Release, 19 September 2019).

reported being severely beaten in custody and suffering other ill-treatment amounting to torture. In multiple instances, the abuse appears to have been meted out as “punishment” for talking back or appearing uncooperative.<sup>49</sup>

Amnesty International recommends that the Hong Kong government:

- ensure that arbitrary detention is prohibited in all circumstances;
- ensure individuals in detention are protected from coerced “confessions”, torture and other ill-treatment;
- establish an adequately resourced and independent mechanism to investigate all allegations of torture and other ill-treatment by members of law enforcement agencies.

## 8. DISCRIMINATION ON THE GROUNDS OF SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION AND SEX CHARACTERISTICS (ARTICLES 2, 17 AND 26)

Hong Kong’s present anti-discrimination ordinances do not cover sexual orientation, gender identity or sex characteristics. In January 2016, a study by the Equal Opportunities Commission, a statutory body tasked with implementation of the existing anti-discrimination ordinances, found that lesbian, gay, bisexual, transgender and intersex (LGBTI) people in Hong Kong experience extensive discrimination in many aspects of their public lives, such as in employment, education and the provision of services.<sup>50</sup>

In several instances of issue-specific rulings, the Court of Final Appeal and lower courts have held the blanket denial of partnership rights for same-sex couples to be discriminatory despite same-sex marriages or civil partnerships not yet being recognized in Hong Kong. The court ruled that it was discriminatory for the government to deny all same-sex couples access to spousal dependent visas, employment benefits and joint tax assessment; in addition, the local High Court recognized the same regarding public housing.<sup>51</sup>

However, the High Court has held that same-sex couples in Hong Kong have no constitutional right to marry under the territory’s Basic Law or other domestic human rights protections and that, therefore, the government also was not under an obligation to provide any alternative form of legal recognition that would essentially endow equivalent rights.<sup>52</sup>

The High Court also upheld a government policy requiring transgender people to undergo surgery before having their gender legally recognized.<sup>53</sup>

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<sup>49</sup> Amnesty International, *Hong Kong: Arbitrary arrests, brutal beatings and other torture in police detention revealed* ([Press Release](#), 19 September 2019).

<sup>50</sup> Equal Opportunities Commission, *Report on Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status*, January 2016, [www.eoc.org.hk/eoc/upload/ResearchReport/20161251750293418312.pdf](http://www.eoc.org.hk/eoc/upload/ResearchReport/20161251750293418312.pdf).

<sup>51</sup> Amnesty International, *Hong Kong moves closer to achieving LGBTI equality with landmark judgment* ([Press Release](#), 4 July 2018); Amnesty International, *Hong Kong: Court ruling a huge step forward for same-sex equality* ([Press release](#), 6 June 2019); Amnesty International, *Hong Kong: Court victory for same-sex couple denied housing is a triumph for LGBTI rights* ([Press Release](#), 4 March 2020).

<sup>52</sup> Amnesty International, *Hong Kong: A serious setback for equal marriage* ([Press Release](#), 18 October 2019).

<sup>53</sup> Amnesty International, *Hong Kong: Court ruling a setback in fight for equality for transgender people* ([Press release](#), 1 February 2019); Amnesty International, *Hong Kong: A serious setback for equal marriage* ([Press release](#), 18 October 2019); Amnesty International Hong Kong, Submission to Inter-departmental Working Group on Gender Recognition for the Consultation Paper (Part 1) on Gender Recognition, [2017], [www.amnesty.org.hk/wp-content/uploads/2017/12/Gender-Reg-Submission\\_AIHK\\_Eng\\_28nov2017.pdf](http://www.amnesty.org.hk/wp-content/uploads/2017/12/Gender-Reg-Submission_AIHK_Eng_28nov2017.pdf)

Amnesty International research has shown that, among other things, transgender people report degrading and humiliating treatment in custody in Hong Kong.<sup>54</sup> They are often subject to particularly abusive police practices, including intrusive and humiliating full-body searches carried out, for example, by male officers on transgender women if the identification card of the person in custody gives the gender as male, which also means that transgender women are initially sent to male detention centres. Instead of being sent to detention centres corresponding to their gender identities, transgender persons continue to be placed in isolation or in solitary cells, and eventually in psychiatric facilities. Placing transgender persons in solitary cells can amount to torture or other ill-treatment if used as a form of punishment, in pretrial detention, for prolonged periods or indefinitely. Prisons do not usually allow transgender detainees to continue hormone treatment, with potentially serious consequences for their health.

Amnesty International recommends that Hong Kong government:

- take the necessary steps to identify, eliminate and prevent all discrimination against LGBTI individuals;
- adopt comprehensive anti-discrimination legislation relating to sexual orientation, gender identity, gender expression and sex characteristics, including a mandate to investigate allegations of discrimination against LGBTI people.

## 9. ASYLUM-SEEKERS AND REFUGEES (ARTICLES 2, 7 AND 14)

The principle of non-refoulement has been recognized in Hong Kong law and court rulings, and the government is required to assess non-refoulement protection claims prior to removal of those who make “torture-protection” claims, which are so called since they are essentially based on Article 7 of the Covenant and Article 3 of the Convention against Torture.<sup>55</sup>

Currently, Hong Kong adopts a Unified Screening Mechanism in which the Immigration Department and the Torture Claims Appeal Board assess claims filed by people seeking non-refoulement protection against expulsion, return or extradition from Hong Kong to another country.<sup>56</sup> Among the 15,587 non-refoulement claims determined by the Immigration Department from the end of 2009 to the end of November 2018, only 125 (0.8%) were held to be substantiated.<sup>57</sup>

The UN Refugee Agency (UNHCR) has stated that the detention of asylum-seekers is “inherently undesirable”.<sup>58</sup> Amnesty International believes that detention solely for immigration purposes is only allowed in the most exceptional of circumstances and that a presumption against such detention exists. The organization opposes migration-related detention where resorted to solely on the grounds of sovereignty and the power to control a state’s borders, and the deterrent power of detention against irregular entry or stay. Amnesty International also opposes migration-related detention for the sole purpose of determining the elements on which an individual’s claim to asylum is based. Hong Kong continues to detain non-refoulement claimants, however. As of the end of November 2018, 381 individuals (including 60 non-refoulement claimants pending final determination of their claims) were detained.<sup>59</sup> Since 11 January 2019, the

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<sup>54</sup> Amnesty International, *Harmfully isolated: Criminalizing sex work in Hong Kong* (Index: ASA 17/4032/2016), p.20.

<sup>55</sup> Hong Kong is not a party to United Nations Convention Relating to the Status of Refugees.

<sup>56</sup> Hong Kong Immigration Department, *Making a Claim for Non-refoulement Protection in Hong Kong*, [www.immd.gov.hk/eng/useful\\_information/non-refoulement-making-claim.html](http://www.immd.gov.hk/eng/useful_information/non-refoulement-making-claim.html).

<sup>57</sup> Legislative Council, ‘Annex A’, *Legislative Council Subcommittee to Follow Up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims- Follow-up matters to the meeting of 27 November 2018* (LC Paper No. CB(2)592/18-19(01)), 11 January 2019, [www.legco.gov.hk/yr16-17/english/hc/sub\\_com/hs54/papers/hs5420181127cb2-592-1-e.pdf](http://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs54/papers/hs5420181127cb2-592-1-e.pdf), p. 4.

<sup>58</sup> UNHCR, *Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention* (2012), para. 5.

<sup>59</sup> Legislative Council, *Legislative Council Subcommittee to Follow Up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims- Follow-up matters to the meeting of 27 November 2018* (LC Paper No. CB(2)592/18-

Immigration Department stopped keeping statistics on the individual periods of detention and is currently failing to provide comprehensive information related to immigration detentions.<sup>60</sup>

In response to the increasing number of torture-protection claimants in recent years, some lawmakers suggested new immigration detention options for asylum and torture claimants. Some, including former Chief Executive Leung Chun-ying, have even proposed withdrawal from the Convention against Torture as a “solution” to the increase of torture protection claimants, under the assumption that Hong Kong would then be relieved of its obligation under the Convention to determine non-refoulement claims, despite non-refoulement being a rule of customary international law.<sup>61</sup>

There are also concerns over the government policy of denying asylum-seekers the right to work. The government only provides a housing allowance of HK\$1,500 paid directly to the apartment owner, food allowance in the form of pre-paid supermarket cards of HK\$1,200, HK\$300 for utilities and petty cash for transportation to appointments per month, subjecting the asylum seekers to destitute living conditions in Hong Kong (HK\$100 = US\$12.90). The prolonged time of processing claims results in asylum seekers living in extremely poor conditions for a long period of time without any means to improve their quality of life, which could amount to cruel treatment.

Amnesty International recommends that Hong Kong government:

- uphold its obligations to protect individuals from torture and other ill-treatment, including by respecting the principle of non-refoulement;
- evaluate the effectiveness and adequacy of information on seeking asylum provided by the Hong Kong government, including proactive consultations with non-governmental organizations.

## 10. MIGRANT DOMESTIC WORKERS (ARTICLES 2, 8 AND 26)

Migrant domestic workers continue to face abuse and discrimination in Hong Kong. Of the more than 350,000 migrant domestic workers in Hong Kong, thousands – nearly all women – have been trafficked for exploitation and forced labour.<sup>62</sup> Research by Amnesty International shows that many migrant domestic workers are heavily indebted due to illegal and excessive agency fees.<sup>63</sup>

The “Two-Week Rule”, which stipulates that migrant domestic workers must find new employment or leave Hong Kong within two weeks after an employment contract ends, along with the requirement that migrant domestic workers must live with their employers, increases the risk of them suffering human and labour rights abuses. Employers often subject them to physical or verbal abuse; restrict their freedom of movement; prohibit them from practicing their faith; pay them less than the statutory Minimum Allowable Wage; deny them adequate rest periods; and arbitrarily terminate their contracts, often in collusion with employment

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19(01)), 11 January 2019, [www.legco.gov.hk/yr16-17/english/hc/sub\\_com/hs54/papers/hs5420181127cb2-592-1-e.pdf](http://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs54/papers/hs5420181127cb2-592-1-e.pdf), p.3.

<sup>60</sup> Legislative Council, ‘Annex A’, *Legislative Council Subcommittee to Follow Up Issues Relating to the Unified Screening Mechanism for Non-refoulement Claims- Follow-up matters to the meeting of 27 November 2018 (LC Paper No. CB(2)592/18-19(01))*, 11 January 2019, [www.legco.gov.hk/yr16-17/english/hc/sub\\_com/hs54/papers/hs5420181127cb2-592-1-e.pdf](http://www.legco.gov.hk/yr16-17/english/hc/sub_com/hs54/papers/hs5420181127cb2-592-1-e.pdf), p.4.; Census and Statistics Department, *2017 Hong Kong Annual Digest of Statistics*, 2018, [www.statistics.gov.hk/pub/B10100032017AN17B0100.pdf](http://www.statistics.gov.hk/pub/B10100032017AN17B0100.pdf), p.43.

<sup>61</sup> Amnesty International Hong Kong, *Open letter to the Chief Executive – on Hong Kong’s legal obligation to protect asylum seekers*, 14 April 2016.

<sup>62</sup> Amnesty International, *Exploited for profit, failed by governments: Indonesian Migrant Domestic Workers Trafficked to Hong Kong* (Index: ASA 17/029/2013).

<sup>63</sup> Amnesty International, *Exploited for profit, failed by governments: Indonesian Migrant Domestic Workers Trafficked to Hong Kong* (Index: ASA 17/029/2013), p.62 ; Amnesty International, *Abusive labour migration policies: submission to the UN Committee on Migrant Workers’ Day of General Discussion on Workplace Exploitation and Workplace Protection*, 7 April 2014 (Index: IOR 42/002/2014).

agencies. The Hong Kong authorities fail to properly monitor employment agencies and punish those who violate the law.<sup>64</sup>

Amnesty International recommends that Hong Kong government:

- take concrete and immediate actions to repeal or amend laws and regulations that foster abuse and exploitation of migrant domestic workers, including the “Two-Week Rule” and legislation that forces migrant workers to live with their employers and excludes them from the Minimum Wage Ordinance;
- establish a body where relevant government agencies, workers and employers agree on recruitment and placement agency fees and work towards the international standard of no fee to the employee;
- adopt a comprehensive law on prevention, prosecution, and protection to combat human trafficking and forced labour;
- pursue with the Central Government in Beijing the extension of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol, ratified by the People’s Republic of China in 2010) to the Hong Kong Special Administrative Region, and subsequently incorporate its provisions into Hong Kong law and implement it in policy and practice.

## 11. SEX WORKERS (ARTICLES 2, 9 AND 14)

The legal framework in Hong Kong fails to protect the rights of sex workers and leads to sex workers taking unnecessary risks, such as working covertly or on their own, in order to work within the narrow confines of the law. For example, laws that prohibit the operation of a “vice establishment” of two or more people force sex workers to work in isolation and prohibits them from working with others for their own safety, which in turn makes them more at risk of robbery, rape or other harms. In some cases, sex workers have been physically assaulted by clients and even killed.<sup>65</sup>

Sex workers receive little protection from the police and are sometimes deliberately targeted by them. In 2016, Amnesty International reported that police in Hong Kong were engaging in questionable tactics to arrest sex workers, including accepting sexual services as an investigatory technique, entrapment, and obtaining confessions through coercion or deception.<sup>66</sup> Undercover police officers are permitted to receive certain sexual services from sex workers in the course of their work to secure evidence. These policing tactics create antagonistic relationships between law enforcement officials and sex workers, making it more difficult for sex workers to report crimes committed against them.

Many sex workers in Hong Kong are migrants or from mainland China and must obtain permits to work in Hong Kong. As immigration laws prohibit migrants and people from mainland China from engaging in sex work, they do so in breach of their conditions of stay and risk being arrested. The risk of arrest may render them fearful of engaging with any local authorities or NGOs. They may also be less likely to report crimes committed against them, for fear of being arrested themselves.

The stigmatized and criminalized nature of sex work routinely forces sex workers to operate at the margins of society in clandestine and dangerous environments with little recourse to safety or state protection. As a result, sex workers face an increased risk of violence and abuse, and such crimes against them often go unreported, under-investigated and/or unpunished, offering perpetrators impunity.

Amnesty International recommends that the Hong Kong government:

- ensure that laws related to sex work target the exploitation and abuse that sex workers face, rather than criminalizing aspects of sex work. The Legislative Council should repeal specific criminal laws that are used to prosecute and punish sex workers or criminalize related aspects of sex work;

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<sup>64</sup> Amnesty International, *Exploited for profit, failed by governments: Indonesian Migrant Domestic Workers Trafficked to Hong Kong* (Index: ASA 17/029/2013), pp. 94–95.

<sup>65</sup> Amnesty International, *Harmfully isolated: Criminalizing sex work in Hong Kong* (Index: ASA 17/4032/2016), p.45.

<sup>66</sup> Amnesty International, *Harmfully isolated: Criminalizing sex work in Hong Kong* (Index: ASA 17/4032/2016).

- ensure that the Hong Kong Police Force expressly prohibits coercive police conduct, rape, other sexual abuse, and extortion, as well as receiving sexual favours or any other inappropriate benefit from sex workers, including as a part of undercover operations, in all circumstances. Any allegations of such conduct must be independently investigated by the authorities.



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# HONG KONG

## SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE, 129<sup>TH</sup> SESSION, 29 JUNE – 24 JULY 2020, LIST OF ISSUES

Amnesty International provides the following information to the United Nations (UN) Human Rights Committee ahead of the adoption of the list of issues in advance of the 4<sup>th</sup> periodic report of Hong Kong at the Committee's 129<sup>th</sup> session in June 2020.

This submission sets out some of Amnesty International's key concerns and recommendations related to the implementation of the International Covenant on Civil and Political Rights (the Covenant) by the government of the Hong Kong SAR (HKSAR). It highlights concerns with regard to judicial independence (Article 1, 2, 14); freedom of expression and association (Article 19, 22); freedom of peaceful assembly (Article 21); use of force by law enforcement officials (Article 7); arbitrary arrest or detention and torture or other cruel, inhuman or degrading treatment (Articles 7, 9); discrimination on the grounds of sexual orientation, gender identity, gender expression and sex characteristics (Article 26); asylum-seekers and refugees (Articles 2, 7); migrant workers (Articles 2, 8, 26); and sex workers (Articles 2, 7, 14). It is not an exhaustive list of concerns with regard to the implementation of the Covenant. It is not an exhaustive account.