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Human Rights Committee**List of issues in relation to the fourth periodic report of Hong Kong, China*****Constitutional and legal framework within which the Covenant is implemented (arts. 2, 14)**

1. In light of the Committee's previous concluding observation (CCPR/C/CHN-HKG/CO/3, para. 5), please indicate the extent to which Hong Kong, China has made an effort to ensure that the interpretations of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of National People's Congress do not undermine the obligations of Hong Kong, China under the Covenant, particularly under articles 2 and 14 of the Covenant, or conflict with the principle of the rule of law; and that the exercise of power of the Standing Committee to interpret the Basic Law remains within the purview of article 158 of the Basic Law. Please also clarify whether the decision made by the National People's Congress in relation to the Co-location Arrangement is in compliance with the provisions of the Covenant. Furthermore, please explain how Hong Kong, China deals with the situation in which interpretations of the Basic Law by the Standing Committee or decisions of the National People's Congress are not in line with the Covenant.

2. In light of the Committee's previous concluding observations (para. 7), please provide information on the steps taken to establish an independent human rights institution with a mandate to deal with all the rights enshrined in the Covenant and with adequate power, as prescribed in the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), including through strengthening the independence and extending the mandates of the Equal Opportunity Commission and other existing institutions to promote and protect the rights enshrined in the Covenant (periodic report, para. 9).

State of emergency and laws on national security, anti-sedition and anti-terrorism (arts. 2, 4, 7, 9, 10, 14, 15, 17, 18, 19, 21, 22 and 25)

3. Please clarify the relationship between the Covenant and the National Security Law adopted on 30 June 2020, and indicate the measures put in place or envisaged to ensure that the application and enforcement of the Law are not contrary to the provisions of the Covenant, particularly articles 7, 9, 10, 14, 15, 17, 18, 19, 21, 22 and 25. In particular, please clarify the compatibility with the Covenant of those provisions of the Law that: (a) provide for the definitions of 'secession', 'subversion', and 'terrorist activities'; and (b) give powers to the Chief Executive to designate judges to handle cases concerning offences endangering national security and to the Secretary for Justice to give a direction to the Court of First Instance in relation to a jury trial. Furthermore, please indicate any efforts made to ensure that the process of adoption of this legislation is transparent and the views of citizens of Hong Kong, China are taken into consideration in the process.

* Adopted by the Committee at its 129th session (29 June to 24 July 2020).

4. Concerning the National Security Law, please elaborate on: (a) the procedural and legislative measures envisaged to enforce articles 56 and 57; (b) its scope of application, including its extraterritorial application; and (c) the meaning of the phrase ‘collusion with a foreign country or with external elements to endanger national security’ provided for in article 29. Please also elaborate on (a) the powers and immunities given to the enforcement mechanisms established by the Law, and the measures envisaged to ensure the compatibility of those powers and immunities with the Covenant; (b) the powers and immunities given under the Law to the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region (HKSAR) and the Office for Safeguarding National Security of the Central People’s Government in the Hong Kong Special Administrative Region and the accountability mechanisms overseeing these bodies. Furthermore, please provide information on any amendments made or envisaged to the laws of Hong Kong, China, in accordance with the National Security Law.

5. Please provide information on the compatibility of the Emergency Regulations Ordinance with article 4 of the Covenant, and clarify whether derogations from non-derogable provisions of the Covenant during states of emergency are explicitly prohibited; whether procedural safeguards related to derogation are provided; what constitutes “public danger” and “emergency”; and whether the Legislative Council has the power to approve, amend or repeal any emergency regulations adopted under the Ordinance. Please indicate whether repeal of the 1922 Ordinance or a comprehensive revision of its provisions with a view to ensuring its compatibility with the Covenant is being considered.

6. In light of the Committee’s previous concluding observations (para 14), please indicate the measures taken or envisaged to ensure that the scope of the offences of ‘treason’, ‘sedition’ and the definition of ‘foreign political organizations or bodies’ are appropriately and narrowly defined in the foreseen legislation and the Crimes Ordinance. Please also clarify concerns that imprecise and broad definitions of terms are used in the United Nations (Anti-Terrorism Measures) Ordinance, in particular the definition of a ‘terrorist act’, and the adverse implications of those definitions for the protection of rights enshrined in the Covenant and indicate any measures taken to address the concerns. Furthermore, please provide information on the legal safeguards in place for persons suspected of, or charged with, terrorism or related crimes; and on the cases in which persons, particularly those organizing and participating in protests, are charged with terrorism or related crimes.

Non-discrimination and equality between men and women (arts. 2, 3, 25 and 26)

7. With reference to the periodic report (paras. 23, 186-187 and Annex-26C), please elaborate on any further steps taken to ensure that anti-discrimination legislation, namely the Sex Discrimination Ordinance, the Disability Discrimination Ordinance, the Family Status Discrimination Ordinance and the Race Discrimination Ordinance, prohibit all forms of discrimination, in all spheres, in both the public and the private sectors, on all the grounds prohibited under the Covenant. Please indicate whether Hong Kong, China is considering developing comprehensive anti-discrimination legislation in this regard. In light of the Committee’s previous concluding observations (para. 19), please indicate any steps taken to extend the application of the Race Discrimination Ordinance to the Government, particularly the Hong Kong Police Forces and Correctional Services Department; and provide information on the number of racial discrimination cases brought to the Equal Opportunities Commission against police and correctional officers and the outcome of those cases.

8. In light of the Committee’s previous concluding observations (para. 23), please indicate any steps taken to recognize same-sex partnership and to address discrimination faced by same-sex couples. Please provide an update on any legislative developments for the recognition of transgender persons and clarify the compatibility with the Covenant of certain requirements for legal recognition of gender reassignment, such as deprivation of reproductive ability and gender confirmation surgery. Furthermore, please indicate the measures taken to protect lesbian, gay, bisexual, transgender and intersex persons, particularly from hate speech and hate crimes, to facilitate their right to hold events such as gay pride parades, and the measures taken to respond to reports of inhumane and degrading treatment experienced by transgender persons in custody, including intrusive and humiliating full-body search, solitary confinement, and lack of access to hormone treatment.

Domestic violence, gender-based violence (arts. 2, 3, 6, 7 and 26)

9. In light of the Committee's previous concluding observations (para. 18), please indicate the extent to which measures have been taken to enhance the enforcement of the Domestic and Cohabitation Relationship Violence Ordinance, and to protect and support victims of domestic violence. Please also indicate the measures taken to respond to the cases of suicide committed by parents together with their children or leaving them unattended.

Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment, liberty and security of person (arts. 6, 7, 9, 10 and 14)

10. Please provide information on the laws regulating the use of force by the police, and the extent to which they comply with the 1990 Basic Principles on the Use of Force and Firearms and the 2020 UN Human Rights Guidance on the use of Less Lethal Weapons in Law Enforcement. With reference to the periodic report (paras. 31-32), please provide detailed information on the cases of torture or ill-treatment in which the defence of lawful authority or justification has been recognized and examples of court rulings in which the non-derogable character of the prohibition of torture has been recognized. Please comment on reports that the commander in chief of the riot police instructed his subordinates to aim for and shoot at protesters' heads at a siege at the City University of Hong Kong on 12 November 2019. Please also clarify whether this instruction constitutes a lawful authority, justification or excuse for the subordinate officers, as stipulated in Section 3(4) of the Crimes (Torture) Ordinance.

11. In light of the Committee's previous concluding observations (para. 12), please indicate any steps taken to establish an independent mechanism with adequate investigative powers, including through strengthening the existing ones, to effectively handle complaints about human rights violations committed by the police, including the excessive use of force. Please update the information on the complaints filed with the Complaint Against Police Office, including the number of complaints, investigations and prosecutions, and the sanctions imposed. Please indicate any steps taken to improve the regulations governing the use of force by law enforcement officials in accordance with relevant international norms and standards and to strengthen training for law enforcement officials. Furthermore, please comment on reports that police officers do not often produce their warrant cards when exercising their police power or wear any form of identification on their uniform or inform the suspected, at the time of arrest, of the reasons for their arrest.

12. Please provide updated information on deaths, including suicides in custody, including the number of deaths in custody, investigations carried out and the outcome thereof and the measures taken to prevent the recurrence. Please also provide information on cases of torture and ill treatment during detention and in places of detention, including the number of cases, investigation and prosecution of such cases, the sanctions imposed on perpetrators and the measures taken to prevent their recurrence. Please also specify any measures taken to strengthen the independence and effectiveness of the monitoring and complaint mechanisms for persons in places of detention and on the steps taken to prevent reprisals against complainants. Furthermore, please indicate any measures taken to mitigate the impact of COVID-19 pandemic on the persons in detention, including immigration detention facilities.

Treatment of aliens, including migrants, refugees and asylum seekers (arts. 7, 9, 12, 13 and 24)

13. Please explain the procedural safeguards for claimants against arbitrary detention of aliens, provided in the Immigration Ordinance, including the judicial oversight and protection of individuals in vulnerable situations. Please indicate any steps taken to allow the persons whose claims have been substantiated by the Torture Claim Appeal Board or recognized as refugees to work, and to recognize their right of abode, particularly that of their children born in Hong Kong. Furthermore, please provide information on the on-going review of the Immigration Ordinance. In addition, please provide information on the implementation of the Committee's previous concluding observations on the same issue (para. 15).

14. Please explain the reasons for the low number of persons whose claims have been substantiated by the Torture Claim Appeal Board, and comment on reports that the threshold for granting protection is not adequate and that the screening mechanism is not effective. Please also indicate any steps taken to improve the Unified Screening Mechanism for claimants, including as to the dissemination of information on the application and appeal procedures, provision of free legal aid and timely publication of decisions of the appeal board. In addition, please provide information on the guidelines and training made available to the relevant officials, in relation to the protection of asylum seekers in vulnerable situations, such as survivors of torture, sexual and gender-based violence or trafficking.

Elimination of slavery, servitude and trafficking in persons (arts. 2, 7, 8 and 26)

15. In light of the Committee's previous concluding observations (para. 20), please indicate any steps taken to ensure that all forms of trafficking in person are criminalized and to extend the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) to Hong Kong, China. Please also comment on reports that the lack of understanding of trafficking among law enforcement and judicial officials and the weak interagency coordination have led to a low number of cases being investigated, prosecuted and convicted. Please provide annual statistical data, including information available on cases involving public officials as perpetrators or accomplices, in this regard. Furthermore, please provide information on the measures taken to prevent victims of trafficking from being penalized for unlawful acts their traffickers compelled them to commit and to improve the identification of victims as well as the referral and provision of protection and assistance to victims of trafficking.

16. In view of Hong Kong, China's intention to maintain the two-week rule and the live-in requirements for migrant domestic workers (paras. 62 and 65), please specify any legislative and institutional measures taken to strengthen the protection of migrant domestic workers from labour exploitation and abuse by their employers and employment agencies and to facilitate their reporting thereof. Please also indicate the measures taken to strengthen the sanctions for employment agencies that are routinely engaged in the trafficking of migrant domestic workers, and charge migrant domestic workers excessively high fees and lure them into debt bondage; and explain how Hong Kong, China deals with the employment agencies that continue to operate after losing their licenses, sometimes reopening under a different name. Furthermore, please clarify the differences between migrant domestic workers and other migrant workers in calculating the number of years of residence in Hong Kong for the application of a permanent residence status.

Access to justice, independence of the judiciary and fair trial (arts. 2 and 14)

17. Please provide information on the measures taken to strengthen the independence of the judiciary and to protect judges from external interference, as well as retaliation and intimidation for their decisions. Please also provide updated information on the accessibility and adequacy of legal aid and the eligibility criteria of legal aid applicants. Please further indicate any steps taken to establish an independent legal aid authority since the Legal Aid Services Council review in 2013.

Right to privacy (art.17)

18. Please provide information on any guidance given to law enforcement officials to interpret the conditions for authorization of interception or covert surveillance, prescribed in Section 3(1)(a) of the Interception of Communications and Surveillance (Amendment) Ordinance 2016. Please also provide information on the executive authorization for Type 2 surveillance, indicating interception and surveillance devices and production, and any oversight procedures. In addition, please provide information on the number of executive authorizations issued or renewed. Furthermore, please provide information on the authorizations of interception and/or covert surveillance issued in the context of the COVID-19 response and clarify the efforts made to ensure that these measures are in conformity with the requirements of article 17 of the Covenant.

19. Please specify the measures taken to strengthen the personal data protection by public authorities, including the Registration and Electoral Office, following the incident during the 2017 Chief Executive Election. Please also provide an update on the complaints brought to the Office of the Privacy Commissioner for personal Data, including annual statistical data on the number of complaints filed and the outcomes thereof, indicating separately the complaints brought against law enforcement officials. Furthermore, please comment on reports that police officers have accessed private data contained on the smartphones of persons arrested without warrants during the anti-extradition bill protests.

Freedom of expression (arts. 19 and 20)

20. Please comment on reports that journalists, academics, students, politicians and human rights defenders are increasingly facing threats, physical and cyber attacks, harassment and intimidation. Please also comment on reports of the increased self-censorship and intensified external pressure on journalists, refusals of extension of a working visa or entry into Hong Kong for foreign journalists and human rights activists, incidents of disappearance, arbitrary detention, and torture and ill-treatment of publishers and booksellers, and censorship of social media. Furthermore, please provide information on the measures taken to address the above-mentioned issues and further to create an environment conducive to freely express one's opinions, including dissenting opinions

21. Please provide information on the legislative and institutional framework concerning the ownership and management of media corporations. Please also provide information on any progress made in developing new legislation on access to information, and in limiting the broad exceptions available under the Code of Access to Information.

22. Please provide information on the measures taken to ensure that the Hong Kong, China's policies relating to the allocation of funding into and appointment and management of academic institutions do not undermine the freedom of these institutions, as provided in article 19 of the Covenant. Furthermore, please comment on concerns that the National Anthem Ordinance may unduly restrict the rights enshrined in the Covenant, particularly under articles 19 and 21 and provide information on the enforcement of the Ordinance.

Peaceful assembly (arts. 7, 9, 10, 19, 21)

23. Please provide information on any steps taken to review the Public Order Ordinance in accordance with the Committee's previous concluding observations (CCPR/C/79/Add.117, para. 19). Please elaborate on restrictions or conditions imposed on public meetings, including those for which notification has been given under the "national security" provisions of the Ordinance. Please also comment on reports that the Ordinance has been abused to dissuade people from taking part in peaceful protests for fear of being prosecuted, in light of the significant increase in the number of persons arrested and prosecuted under the Public Order Ordinance. Please also explain the reasons for the long delayed legal proceedings brought against leaders of the Umbrella Movement protests and provide information on the current status of the proceedings.

24. Please comment on reports that the Hong Kong, China has excessively restricted the exercise of freedom of peaceful assembly in recent years, as illustrated by the increased number of public assembly applications rejected based on unjustifiable grounds, the revocation of notices of no objection, the application of the Emergency Regulations Ordinance to ban the use of face masks at protests and crackdowns on demonstrations, and resort to public nuisance laws. Please also provide information on the numbers of protesters arrested between 1 June 2019 and 31 May 2020, prosecutions, convictions and the charges against those convicted, and respond to allegations that the extensive use of arrest power is part of a "catch, detain and release" intimidation policy. In particular, please provide information on the arrest of the 15 prominent pro-democracy figures on 18 April 2020, including prosecutions, convictions and charges against them.

25. Please comment on reports that: (a) the use of water cannons containing water with chemical irritants constitutes a health risk, (b) live ammunition was used to fire warning shots in a number of recent instances, and (c) law enforcement officials physically and sexually assault protesters and bystanders, during protests in July to November 2019; and that a

legislative councillor, Mr. Hui Chi-fung, was pepper sprayed from short range on 31 December 2019. In this regard, please provide information on the cases filed with the Complaint Against Police Office, including the number of complaints, investigations and prosecutions, and sanctions imposed. Please also provide information on any independent inquiries conducted in this regard. Furthermore, please comment on reports of arbitrary arrest and detention of non-violent protesters, human rights defenders, journalists, rescue and medical personnel and bystanders during protests in 2019 and onwards and of ill-treatment and assaults during police custody, and provide statistical data on the numbers of persons arrested and convicted in connection with public protests.

Freedom of association (art. 22)

26. Please provide information on the registration process for associations and political parties, provided for in the Societies Ordinance; and clarify reports that any refusal or cancellation by the police of registration, or prohibition, of a society does not require the approval of a court or any independent tribunal and that the judicial review of such decision is limited to the procedure, not the merit of the decision. Please indicate any guidance provided to police officers dealing with registration of a society, in relation to the application of the Societies Ordinance, including the interpretation of terms such as “national security” or “protection of the rights and freedoms of others”. Furthermore, please indicate any steps taken or envisaged to expedite the processing of the large backlog of union registration applications.

Participation in public affairs (arts. 2, 3, 25, 26 and 27)

27. In light of the Committee’s previous concluding observations (para. 6) and the periodic report (para. 172-181), please indicate what additional concrete measures are being taken or planned to introduce universal and equal suffrage, which will fully implement the right to vote and be elected in genuine elections provided in article 25 and the anticipated timeline for their introduction. In light of the disqualification of six candidates, including four candidates for the 2018 Legislative Council by-elections, one for the 2019 Village Representative election, and one for the 2019 District Council election, please provide information on the criteria used by the Electoral Affairs Commission to disqualify candidates, and provide an explanation about the compatibility with the Covenant of the interpretation by the Standing Committee of National People’s Congress of article 104 of the Basic Law regarding the oath of office. Furthermore, please indicate the measures taken to improve representation of women and of persons belonging to religious and ethnic minority groups in the legislature.
