



## Protection of Human Rights Defenders

There were no recommendations made on the Hong Kong Special Administrative Region, China (HKSAR) in the Second UPR Cycle.

### Framework in HKSAR

*HKSAR and Mainland signed a new notification agreement on 14 December 2017. Notification is to be made within 7 working days of the imposition of criminal compulsory measures, instituting criminal prosecution or confirmation of identities in unnatural deaths, and within 30 working days for terrorist activities or suspected offences endangering national security.*

*Article 39 of the Basic Law provides that the International Covenant on Civil and Political Rights (ICCPR) shall be incorporated through HKSAR laws. However, despite protections, since 2013 human rights defenders have been increasingly targeted. Legal measures have restricted rights to public participation, excessive criminal penalties have been pursued and defenders have been harassed, abused and attacked.*

### Challenges

### Cases, facts and comments

<ul style="list-style-type: none"> <li>Legal proceedings have been instituted to oust elected Legislative Council (LegCo) members, minimising opposition voices. In doing so, the HKSAR Government has restricted the right to public participation and the free expression of electors under Article 25 of the ICCPR.</li> </ul>	<ul style="list-style-type: none"> <li>In November 2016, the Standing Committee of the National People's Congress (NPCSC) issued an interpretation of Basic Law Article 104, which went beyond 'interpretation', infringing upon the rule of law.</li> <li>The Department of Justice (DoJ) subsequently instituted legal proceedings against 6 elected LegCo members from the opposition based on their irregular oaths. Members of the pro-establishment camp who failed to take "regular" oaths did not face the same legal actions.</li> <li>LegCo pursued 2 of 6 ousted members for HK\$1.86m of wages and subsidies after their disqualification.</li> </ul>
<ul style="list-style-type: none"> <li>Human rights defenders are increasingly targeted using laws which contravene ICCPR protections, such as Article 21, and rule of law principles.</li> <li>The Secretary of Justice, a non-independent role, has pursued heavy penalties for human rights defenders.</li> </ul>	<ul style="list-style-type: none"> <li>In 2017, the DoJ sought harsher sentences against 13 activists who opposed a development project in 2014 and three student leaders of the 2014 Umbrella Movement. This was after 15 had served community services and one, Alex Chow, initially received a suspended jail sentence. The 16 were sentenced to 6-13 months' imprisonment.</li> <li>The DoJ sought heavier charges against 9 leaders of the 2014 Umbrella Movement, "public nuisance" under common law (max. 7 years) instead of under Public Order Ordinance (max. 3 months).</li> </ul>
<ul style="list-style-type: none"> <li>Human rights defenders are under surveillance from mainland agents, harassed, abused and attacked by pro-PRC and PRC United Front Work Department sponsored organisations.</li> </ul>	<ul style="list-style-type: none"> <li>Human rights defenders have reported electronic and other means of surveillance. While attending events, pro-democracy activists have been physically assaulted.</li> <li>In 2014, LegCo member James To was followed by two mainland intelligence agents covertly for a week. The pair was arrested and released without explanation.</li> <li>In 2017, Nathan Law was attacked at the HKSAR airport after returning from a seminar in Taiwan.</li> </ul>



	<ul style="list-style-type: none"><li>• Reports indicate that retired Hong Kong police officers undertake surveillance of human rights defenders for mainland intelligence agencies.</li></ul>
<ul style="list-style-type: none"><li>• The Public Order Ordinance, a law which breaches the ICCPR and which the UN Human Rights Committee has called to be amended, has been used to prosecute human rights defenders.</li></ul>	<ul style="list-style-type: none"><li>• 9 participants of a demonstration against the “interpretation of Basic Law” were charged with “participation in unlawful assembly” and “inciting others to participate in unlawful assembly”.</li><li>• 13 citizens arrested in the 2016 Mong Kok unrest were charged with “rioting”. The heaviest penalty, 7 years in jail, is the highest received in HKSAR.</li></ul>
<ul style="list-style-type: none"><li>• The HKSAR Government has failed to adequately protect human rights defenders, consistent with the ICCPR and the Declaration on Human Rights Defenders.</li><li>• The HKSAR and PRC detainee notification mechanism is inadequate.</li></ul>	<ul style="list-style-type: none"><li>• 2 members of pro-democracy political party Demosistō were detained and questioned during their visit to the Mainland in March and August 2018. They were demanded to sit on a chair with arm and foot restraints and attached to a machine resembling a lie detector.</li><li>• Chief Executive Carrie Lam refused to comment on the case “because she was unable to verify if it happened”. No notification was received from mainland authorities about their detention and questioning.</li></ul>

#### Recommendations

- **HKSAR should immediately enable all political parties to register, ensuring their rights to take part in the conduct of public affairs are upheld.**
- **HKSAR should amend the Electoral Affairs Commission Ordinance to formally recognise political parties, with administration handled by the Electoral Affairs Commission, within two years.**
- **HKSAR should introduce a clear statutory definition of what constitutes a charitable purpose, protecting the work of human rights orientated civil society organisations, in accordance with recommendations from the Law Reform Commission, within two years.**
- **HKSAR should investigate and prosecute all incidents involving physical assault and other threats towards human rights defenders (including local politicians and activists), especially physical altercations during protests.**
- **HKSAR should ensure the personal protection of all persons striving for the realisation of human rights and fundamental freedoms, consistent with ICCPR and the Declaration on Human Rights Defenders.**

#### Questions to ask in advance

- *What measures will the HKSAR Government take to protect human rights defenders in the next 5 years, including enabling political parties to register?*
- *What is HKSAR’s timetable for implementing the Law Reform Commission’s recommendations on charitable organisations?*

#### Contact

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