

Freedom of Assembly Rights and the Public Order Ordinance

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

Framework in Hong Kong

The HKSAR Public Order Ordinance (the Ordinance) is a colonial-era law which gives power to police and other public authorities in the HKSAR to limit protests and assemblies which might affect public order. The Patten reforms (1994-1995) brought the Ordinance in line with the ICCPR. After 1995 the police were merely to be notified of such public gatherings, rather than police permission being required. However, in 1997, the Hong Kong Provisional Legislative Council overturned Patten's amendments, reinstating the requirement that the police permission is required for public gatherings. The range and vague definitions in the Ordinance offer authorities the possibility for broad application, and thus the ability to deter undesired protests.

Since the Occupy protests, more than one hundred people who have been involved in protests have been charged under the Ordinance, with many facing 'illegal assembly' charges. The decision to prosecute criminal offences, including those under the Ordinance, is the responsibility of the Secretary for Justice, an appointed official. Rimsky Yuen, former Secretary for Justice, has sought stronger sentences for pro-democracy activists, despite advice from the Department of Justice not to do so.

The vague nature of the Ordinance means that it can be abused and result in the violation of human rights, including freedom of speech and freedom of assembly. The Ordinance has been repeatedly criticized by the UN Human Rights Committee for failing to fully meet international human rights standards. Unlike in the People's Republic of China (PRC), the ICCPR has been extended to the HKSAR. Its implementation is covered under Article 39 of the Basic Law.

Challenges

- The Public Order Ordinance has been used to limit the rights of peaceful assembly under Article 21 of the ICCPR. Police are also deploying hard lined tactics, limiting assembly rights. Protestors are increasingly facing arbitrary interferences with their right to privacy.

Cases, facts and comments

- Certain terms in the Ordinance, "disorder in public places" or "unlawful assembly" have facilitated the excessive restriction of ICCPR rights, during the Occupy Central movement and protests in the Northeast New Territories.
- The government sought to maximise sentencing for activists, with many peaceful protestors receiving jail time. For example, with Joshua Wong, Nathan Law and Alex Chow, the Secretary for Justice sought to increase their sentences, leading to charges for 'illegal assembly', attracting imprisonment, rather than community service.
- Police are increasingly deploying more restrictive crowd control measures. For example, setting up Designated Public Activity Areas far away from the protest location, especially involving PRC representatives.
- Additionally, police are extensively using camera and video recording devices during protests. For example, recording in May 2018 in response to students performing a classical version of the PRC national anthem 'off key'. This is despite there not being a law against such activity then.



	<ul style="list-style-type: none">The law was also used in an unprecedented manner to charge 2 lawmakers and their staff with ‘illegal assembly’ while they were conducting a protest inside the Legislative Council.
<ul style="list-style-type: none">The Public Order Ordinance has been used to prosecute protestors using charges which are inconsistent with the rule of law, as they lack sufficient clarity and uncertainty.	<ul style="list-style-type: none">Prosecutors have recently used the Public Order Ordinance to charge 51 protestors with rioting following clashes with police in Mong Kok in February 2016.Under s19 of the Public Order Ordinance, a riot is “an unlawful assembly” where someone commits a “breach of the peace”, the assembly is “a riot” and the persons assembled are “riotously assembled”. Prosecutors have wide discretion to define an act as a “riot”. Government officials have misused the word.In the Mong Kok cases, prosecutors sought sentences of between 3 and 10 years as a deterrence. The majority of those charged are young people with no criminal record. Trials are ongoing, but more than 30 have been found guilty, and the longest sentence was 7 years.

Recommendations

Public protests

- HKSAR should abolish provisions in Part III of the Public Order Ordinance relating to notification of public meetings within one year.**
- HKSAR should bring the Public Order Ordinance in line with the ICCPR by fully implementing recommendations on Freedom of Expression and Assembly made by the United Nations Human Rights Committee within two years.**
- HKSAR should immediately lift all limits on the time periods for public assemblies and processions at Civic Square.**
- Consistent with Human Rights Committee recommendations, HKSAR should establish clear guidelines for police and for records for the use of video-recording devices and make such guidelines accessible to the public, within one year.**

Prosecutions

- HKSAR should remove the responsibilities of the Secretary of Justice to decide criminal prosecutions within one year.**

Questions to ask in advance

- Civic Square, a focus of the 2014 pro-democracy Occupy Central movement, was closed for more than three years, reopening in December 2017. However, permits to demonstrate are only granted on Sundays or public holidays. On what grounds does the HKSAR government continue to place such restrictions, with reference to Article 21 of ICCPR?*
- Noting the Human Rights Committee’s view that the Public Order Ordinance facilitates restrictions of ICCPR rights, what is the time frame for the HKSAR government to reform the Public Order Ordinance, ensuring that it is in full compliance with the ICCPR?*

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