HONG KONG

SUBMISSION TO THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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AMNESTY INTERNATIONAL

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INTRODUCTION

Amnesty International provides the following information to the UN Committee on Economic, Social and Cultural Rights (hereinafter "the Committee") ahead of the 4th periodic report of Hong Kong at the Committee's 73rd session in February - March 2023.

This submission sets out some of Amnesty International's key concerns and recommendations related to the implementation of the International Covenant on Economic, Social and Cultural Rights (hereinafter "the Covenant") by the government of Hong Kong SAR (hereinafter "Hong Kong"). It highlights a crackdown on the city's largest trade unions, severe encroachment of academic freedom in both schools and universities and widespread censorship of public libraries, films and school teaching materials since the enactment of the National Security Law (hereinafter "NSL") in June 2020. It also highlights the long-standing problem of discrimination against minorities and marginalized groups including LGBTI people, non-refoulement protection claimants and migrant domestic workers. It is, however, not an exhaustive account of Amnesty International's concerns regarding implementation of the Covenant.

After the enactment of NSL, the civil society landscape of Hong Kong has changed drastically since the last review session. Some of the local civil society groups that used to take part in the review process were forced to disband, prosecuted, or deterred from continuing international advocacy work for fear of reprisal and/or in breach of the new national security law which is vague and arbitrary.[1]

NON-DISCRIMINATION (ARTICLES 2(2), 6-7, 9, 11 AND 12)

DISCRIMINATION ON THE GROUNDS OF SEXUAL ORIENTATION, GENDER IDENTITY, GENDER EXPRESSION AND SEX CHARACTERISTICS

Same-sex marriages or civil partnerships are still not recognized in Hong Kong and legal challenges in 2019 and 2022 also failed.[2] In particular, the Hong Kong Court of Appeal in *Sham Tsz Kit v Secretary for Justice* (CACV 557/2020, 24 August 2022) ruled that overseas same-sex marriages are not recognized in Hong Kong. Moreover, the policy requiring transgender people to undergo surgery before having their gender legally recognized was upheld by the Hong Kong Court of First Instance in 2019.[3] Forcing people to

[1]UN Human Rights Committee, *Concluding observations on the fourth periodic report of Hong Kong, China*, 27 July 2022, para. 50, tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCHN-HKG%2FCO%2F4&Lang=en

[2] Amnesty International, *Hong Kong: A serious setback for equal marriage* (Press Release, 18 October 2019), amnesty.org/en/latest/press-release/2019/10/hong-kong-a-serious-setback-for-equal-marriage/; "LGBTQ activist Jimmy Sham loses bid to have overseas same-sex marriages recognised in Hong Kong", *Hong Kong Free Press,* 26 August 2022, hongkongfp.com/2022/08/25/lgbtq-activist-jimmy-sham-loses-bid-to-have-overseas-same-sex-marriages-recognised-in-hong-kong/

[3] Amnesty International, *Hong Kong: Court ruling a setback in fight for equality for transgender people* (Press Release, 1 February 2019), amnesty.org/en/latest/news/2019/02/hong-kong-setback-for-equality-for-transgender-people/

undertake medical treatment in order to obtain legal gender recognition violates their right to the highest attainable standard of health.

In a study in 2016, Equal Opportunities Commission ("EOC", a statutory body tasked with enforcing the anti-discrimination law) found that lesbian, gay, bisexual, transgender and intersex (LGBTI) persons have for many years experienced extensive discrimination in different aspects of their public lives including in employment, education and the provision of services.[4] There were some successful challenges in court from 2018 to 2021 against the Hong Kong government's failure to protect LGBTI people from discrimination in different specific aspects like spousal dependent visas,[5] employment benefits and joint tax assessment,[6] public housing,[7] parental rights,[8] and after-death arrangements.[9] However, the Hong Kong government has no stated plan to pass any anti-discrimination law covering sexual orientation or gender identity. Further, there is still no legislation in Hong Kong to recognize a person's changed, acquired, or intended gender for all legal purposes despite the EOC's support for it[10] and the Court of Final Appeal's Judgment in *W v The Registrar of Marriages* (FACV 4/2012, 16 July 2013).

RECOMMENDATIONS

Amnesty International recommends that the Government of Hong Kong:

- Adopt comprehensive anti-discrimination legislation and measures relating to sexual orientation, gender identity, gender expression and sex characteristics to ensure that LGBTI people are able to enjoy their economic, social and cultural rights without any discrimination.

Adopt a gender recognition law to ensure the rights of transgender persons and gender diverse persons are respected and their rights to dignity, physical integrity and autonomy are guaranteed.

DISCRIMINATION AGAINST PERSONS CLAIMING NON-REFOULEMENT PROTECTION

The principle of non-refoulement has been recognized in Hong Kong law and court rulings. Since March 2014, a Unified Screening Mechanism (USM) has covered claims on all applicable grounds including risk of torture under the Convention against Torture, absolute and non-derogable rights under the Hong Kong Bill of Rights and persecution risk with reference to the Refugee Convention.[11]

Due to the COVID-19 pandemic, at the end of December 2021, there were 741 claims pending screening by the Immigration Department.[12] Under sections 32 and 37ZK of the Immigration Ordinance, "illegal immigrants" may be detained during the removal procedures and the screening process of their non-refoulement claims. From 2014 to the end of 2021, only 257 out of 20,453 claims (1.2%) were held to be

[4] HKSAR Equal Opportunities Commission & Gender Research Centre, CUHK, *Report on Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status*, January 2016, eoc.org.hk/eoc/upload/ResearchReport/20161251750293418312.pdf
[5] Amnesty International, *Hong Kong moves closer to achieving LGBTI equality with landmark judgment* (Press Release, 4 July 2018), amnesty.org/en/latest/news/2018/07/hong-kong-moves-closer-to-lgbti-equality-landmark-judgment/
[6] Amnesty International, *Hong Kong: Court ruling a huge step forward for same-sex equality* (Press Release, 6 June 2019), amnesty.org.uk/press-releases/hong-kong-huge-step-forward-same-sex-equality-thanks-court-ruling
[7] Amnesty International, *Hong Kong: Court victory for same-sex couple denied housing is a triumph for LGBTI rights* (Press Release, 4 March 2020), amnesty.org/en/latest/news/2020/03/hong-kong-court-victory-for-same-sex-couple-denied-housing-triumph-lgbti-rights/
[8] "'A huge relief': Hong Kong's LGBT+ community hails court ruling granting parental rights for same-sex partners", *Hong Kong Free Press*, 11 June 2021, hongkongfp.com/2021/06/11/hong-kongs-lgbt-community-hails-step-forward-as-court-grants-parental-rights-for-same-sex-partners/
[9] "Gay widower drops legal challenge after Hong Kong gov't affirms equality in after-death arrangements", *Hong Kong Free Press,* 7 October 2021, hongkongfp.com/2021/10/07/gay-widower-drops-legal-challenge-after-hong-kong-govt-affirms-equality-in-after-death-arrangements/
[10] HKSAR Equal Opportunities Commission, *Response of the Equal Opportunities Commission: Inter-Departmental Working Group on Gender Recognition Consultation Paper: Part 1 Gender Recognition,* January 2018, eoc.org.hk/eoc/upload/2018121622321114772.pdf
[11] HKSAR Immigration Department, *Notice to Persons Making a Non-refoulement Claim*, 1 August 2021, immd.gov.hk/pdf/notice_non-refoulement_claim_en.pdf
[12] HKSAR Immigration Department, 'Appendix 14 Torture/Non-refoulement Claim Cases', *Immigration Department Annual Report 2021*, immd.gov.hk/publications/a_report_2021/en/appendix14.html

substantiated under the USM, with 65% of these substantiated at appeal stage[13]Claimants whose claims are found to be unsubstantiated will be detained pending removal. According to the Immigration Department, repatriation arrangements normally take one to six months. At the end of September 2022, 638 non-refoulement claimants were detained in 3 designated facilities including Castle Peak Bay Immigration Centre (CIC) and the government was planning to expand detention capacity by 36% in 2023. The respective detention periods and reasons are unclear. The lack of official statistics on the individual periods of detention makes independent monitoring and complaints difficult to pursue.

In June 2020, at least 28 immigration detainees at CIC went on a hunger strike to protest long-standing problems of indefinite periods of detention and very poor sanitation, hygiene conditions and healthcare at CIC. These problems increased due to the pandemic.[14] In an open letter to the Director of Immigration on 4 August 2020, Amnesty International raised these concerns and highlighted that section 37ZK of the Immigration Ordinance is used to justify prolonged detention with no judicial oversight. It was also noted in the letter that a woman detainee was strip-searched in the presence of a male doctor due to the lack of a female duty medical officer at CIC.[15] In a press release of 17 December 2020, the Immigration Department confirmed that there were 211 detainees at the CIC who had lodged non-refoulement claims and argued that it has strictly followed established detention policies in accordance with the law. However, it remains unclear if there is any female duty medical officer at CIC.[16] The UN Refugee Agency (UNHCR) has stated that the detention of asylum seekers is "inherently undesirable"[17]. Amnesty International believes that detention solely for immigration purposes is only permissible in the most exceptional of circumstances and that a presumption against such detention exists. In addition, any failure to provide adequate health care to detainees violates articles 2 and 12 of the Covenant.

There are also concerns over the government policy of denying non-refoulement claimants the right to work and providing inadequate assistance in terms of housing and food allowances and other allowances.[18] The length of time taken to process claims results in non-refoulement claimants living in extremely poor conditions for prolonged periods, in particular during the pandemic, in violation of articles 6 and 11 of the Covenant.

RECOMMENDATIONS

Amnesty International recommends that the Government of Hong Kong:

- Cease the use of indefinite detention without judicial scrutiny and establish in law maximum limits on detention in accordance with the guidelines of the UN Refugee Agency (UNHCR).
- Ensure that conditions and detention are humane and dignified and take urgent steps to address overcrowding, poor sanitation and hygiene conditions and ensure that a female duty medical officer is available at CIC.
- Immediately provide all detainees access to adequate health care.
- Adopt legislation to guarantee non-refoulment claimants' enjoyment of economic, social and cultural rights, and ensure that they have access to all measures and allowances necessary to guarantee the right to an adequate standing of living.

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[13] HKSAR Immigration Department, Annual Report 2021, immd.gov.hk/publications/a_report_2021/en/chapter6.html
[14] Global Detention Project, Hong Kong (China), globaldetentionproject.org/countries/asia-pacific/hong-kong-china#country-updates; Chew, Surabhi Chopra, Rachel Li, "Covid-19 and Immigration Detention in Hong Kong" in V., Phillips, M. & Yamada Park, M. (eds) 2020. COVID-19 Impacts on Immigration Detention: Global Responses, International Detention Coalition and HADRI/Western Sydney University, p. 23 - 25, https://doi.org/10.26183/swc5-fv98
[15] Amnesty International Hong Kong, open letter dated 4 August 2020, https://web.archive.org/web/20211117144836/https:/www.amnesty.org.hk/wp-content/uploads/2021/03/INHUMANE-CONDITIONS-AT-CASTLE-PEAK-BAY-IMMIGRATION-CENTRE-NOT-IN-LINE-WITH-INTERNATIONAL-LAWS-AND-STANDARDS.pdf
[16] HKSAR Immigration Department, *Response to untrue report on Castle Peak Bay Immigration Centre by individual media organisation*, 17 December 2020, immd.gov.hk/eng/press/press-releases/20201217.html
[17] UNHCR, *Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention,* (2012), para. 5
[18] "Cost of living: A refugee family runs out of money in Hong Kong", Aljazeera, 2 January 2023, aljazeera.com/features/2023/1/2/cost-of-living-no-future-for-asylum-seekers-in-hong-kong Also expertly covered in Refugee Concern Network, Justice Centre Hong Kong Joint Submission, Parallel Report to the CESCR completing the fourth periodic report submitted by Hong Kong, China, December 2020, p. 3 - 9, tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FICO%2FHKG%2F43933&Lang=en

DISCRIMINATION AGAINST MIGRANT DOMESTIC WORKERS

As of 31 December 2021, there were about 339,000 migrant domestic workers in Hong Kong, of whom about 56 per cent and 41 per cent were from the Philippines and Indonesia respectively.[19] During the review period, the unfavourable working conditions faced by migrant domestic workers recognized by the Committee in its previous Concluding Observations remain.

"TWO-WEEK RULE"

The "two-week rule" which was introduced in 1987 requires migrant domestic workers to find a new job within 14 days of their employment contract ending or being terminated or leave the city. The Committee, migrant worker groups and unions and Amnesty International have long criticized the policy for exacerbating migrant domestic workers' vulnerability to exploitation by both their employers and placement agencies.[20] The difficulty of finding new employment within the two-week time limit often leaves migrant domestic workers with little choice but to remain in abusive and/or exploitative conditions or accept jobs with unfavourable work conditions in order to maintain their immigration status. The Committee urged the Hong Kong Government to review such policies in its Concluding Observations in both 2005 and 2014.

"LIVE-IN REQUIREMENT"

Also unchanged is the requirement for migrant domestic workers to live in the employing household, a policy which was introduced in the 1970s and has long been denounced as discriminatory and inhumane. The Committee in its 2014 Concluding Observations recommended that the Hong Kong Government take immediate action to repeal it. However, the Court of Appeal upheld the rule in a 2020 judgement, deeming such a requirement does not directly lead to exploitation.[21] The live-in rule also placed domestic workers in a much more vulnerable situation during the pandemic.

COVID-19 PANDEMIC

As a marginalized group, migrant domestic workers were disproportionately affected by the COVID-19 pandemic. Due to the live-in requirement, without jobs, migrant domestic workers had nowhere to stay, and nowhere to self-isolate if they tested positive after their employment was terminated and before they are able to leave Hong Kong.[22] There were media reports that some were fired by their employers after developing symptoms or testing positive for COVID-19, leaving them homeless.[23] Limited capacity boarding houses run by Employment Agencies became seriously overcrowded and local NGOs rallied to set up temporary shelters including Help for Domestic Workers, who reported they had received over 60 calls in one week from domestic workers who had been made homeless.

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[19] HKSAR Immigration Department, 'Visa" and Policies Branch - Entry for Employment – Foreign Domestic Helpers', *Immigration Department Annual Report 2021*, Ch.2, immd.gov.hk/publications/a_report_2021/en/chapter2.html

[20] International Women's Initiative, Modern Slavery in Hong Kong: The Inhumane Living Conditions of Migrant Domestic Workers, 5 September 2019, https://hongkongcares.org/wp-content/uploads/2021/12/Global-Policy-Review-Policy-Briefs-Foreign-Domestic-Workers-in-Hong-Kong.pdf. Hong Kong Federation of Asian Domestic Workers Unions, *Fit for Purpose? Assessing Compliance with the Code of Practice*, 2022, idwfed.org/en/updates/media-launch-of-fit-for-purpose-assessing-compliance-with-the-code-of-practice-1/fit-for-purpose_final_en-cn-2.pdf

[21] *Lubiano Nancy Almorin v Director of Immigration*, CACV 112/2018, 21 September 2020, legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=130932; "Anger as Hong Kong court keeps 'discriminatory' live-in rule for migrant maids", *Reuters,* 22 September 2020, reuters.com/article/hongkong-migrants-rights-idINKCN26D1BO

[22] "Covid-positive domestic worker, baby left to wait overnight outside Hong Kong hospital", *Hong Kong Free Press*, 25 February 2022, hongkongfp.com/2022/02/24/covid-positive-domestic-worker-baby-left-to-wait-overnight-outside-hong-kong-hospital/

[23] "Covid-19: Show "kindness" to domestic workers, Hong Kong labour chief says amid reports of firing, homelessness", *Hong Kong Free Press*, 7 March 2022, hongkongfp.com/2022/03/07/covid-19-employers-should-show-kindness-to-domestic-workers-labour-chief-says-amid-reports-of-firing-homelessness/

EXCESSIVE AGENCY FEES

Migrant domestic workers are commonly heavily indebted due to illegal and excessive agency fees.[24] All these factors pressurize migrant domestic workers to stay in abusive situations, including non-payment of wages, exploitative hours with no rest days, restrictions on freedom of movement, confiscation of identity documents, physical and sexual violence, and lack of food.[25] In 2017, the government introduced a Code of Practice (CoP) that sets out the statutory requirements and minimum standards with which Foreign Domestic Workers' employment agencies should comply, including a prescribed maximum rate of commission. However, so far, the CoP has failed to protect foreign domestic workers' rights to favourable work conditions and other rights protected under the Covenant. According to research conducted by CSOs, ineffective enforcement of the CoP remains a problem.[26]

RECOMMENDATIONS

Amnesty International recommends that the Government of Hong Kong:

- Take immediate action to repeal the two-week rule and the live-in requirement with a view to ensuring that migrant domestic workers are not forced to work in situations of exploitation and abuse.
- Adopt legal measures to ensure migrant domestic workers enjoy equal treatment in terms of working conditions as other workers, including with regards to remuneration, limits on working hours, and social security, in line with international human rights standards.

  Ensure effective investigations, revocation of licences and prosecution of employment agencies that are not compliant with the statutory requirements and other requirements set out in the CoP.

TRADE UNION RIGHTS (ARTICLE 8)

CRACKDOWN ON TRADE UNIONS

The collective dimension of the right to work is addressed in article 8, which articulates the right of everyone to form trade unions and join the trade union of his/her choice as well as the right of trade unions to function freely. The Hong Kong authorities have used national security as a pretext to eliminate independent trade unions, especially those with broad membership, effective mobilization capacity and strong international networks.

Since the implementation of the NSL, at least 62 trade unions were forced to dissolve, including two of Hong Kong's largest trade unions: the city's largest teachers' union, the Hong Kong Professional Teachers' Union (HKPTU), and the largest pro-democracy confederation of trade unions, the Hong Kong Confederation of Trade Unions (HKCTU).[27] Both ceased operation in August and October 2021 respectively in the face of enormous pressure from the authorities.

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[24] Amnesty International, *Exploited for profit, failed by governments: Indonesian Migrant Domestic Workers Trafficked to Hong Kong* (Index: ASA 17/029/2013), p.62, amnesty.org/en/documents/asa17/029/2013/en/; 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), ohchr.org/sites/default/files/Documents/HRBodies/CMW/Discussions/2014/AI_DGD2014.pdf

[25] Amnesty International, *Hong Kong: Guilty verdict in migrant domestic worker abuse trial a 'damning indictment' of authorities' failure* (Press Release, 10 February 2015), amnesty.org.uk/press-releases/hong-kong-guilty-verdict-migrant-domestic-worker-abuse-trial-damning-indictment

[26] Hong Kong Federation of Asian Domestic Workers Unions, Fit for Purpose: Assessing compliance with the Code of Practice, 2022, p.48 idwfed.org/en/updates/media-launch-of-fit-for-purpose-assessing-compliance-with-the-code-of-practice-1/fit-for-purpose_final_en-cn-2.pdf?fbclid=IwAR3XGRJBN8KA-axSg19yeSVIXaT6wZaSIx9XgLLHPXuJL6FYUEcLKpzLJbY

[27] Hong Kong Labour Rights Monitor, Hong Kong Trade Union Movement under the National Security Law: Two Years into the Authoritarian Rule, hklabourrights.org/wp-content/uploads/2022/06/Report_20220629_NSL_ENG-1.pdf

HKPTU, founded in 1973 with over 95,000 members, represents over 90% of the profession. On 31 July 2021, HKPTU came under heavy criticism in China's state media outlets, namely People's Daily and Xinhua News Agency. Hours after the reports, the Hong Kong Education Bureau announced its decision to scrap all links with HKPTU. On 10 August 2021, HKPTU decided to officially disband, citing "enormous pressure".[28]

On 19 September 2021, HKCTU announced its decision to disband due to political pressure. Founded in 1990, HKCTU comprised almost 100 affiliated unions with around 145,000 members. Founded over 30 years ago, the HKCTU has made enormous contributions to improving life for people in Hong Kong through securing improvements in labour legislation, wages, and social protection. It has also provided support to working people in other countries facing repression. Similar to HKPTU, the decision to disband came amid rumours propagated by the Chinese state media outlets that HKCTU would be the next target of a national security probe.[29] Mung Siu Tat, the then Chief Executive of HKCTU, later revealed in a media interview that he was contacted by proxies from Beijing three times in a month, threatening that the NSL department would take action if he declined to answer questions.[30] HKCTU passed a resolution of dissolution on 3 October 2021. However, in March 2022, the national security police alleged that HKCTU failed to comply with the police's request for provision of information and was financially supported by overseas organizations. As a result, four former members of HKCTU were taken away for questioning and the office of HKCTU was also searched, with computers and documents seized.

In addition, Hong Kong's Registry of Trade Unions launched an investigation into at least four other trade unions including Hong Kong Journalists Association, questioning if the unions' activities are relevant to their principles. Also, the Hospital Authority Employees Alliance, the city's largest public healthcare workers union founded in 2019, was alleged by the Registry to have violated section 34 of the Trade Unions Ordinance by using the union's funds for political purposes. Meanwhile, the registration of the General Union of Hong Kong Speech Therapists was also cancelled by the Registry once the police alleged that one of its publications was "seditious". The right of workers' and employers' organizations to express opinions through the press or otherwise is an essential aspect of trade union rights. Freedom of opinion and expression and, in particular, the right not to be penalized for one's opinions, is an essential corollary of freedom of association, and workers and their organizations should enjoy freedom of opinion and expression in their publications and in the course of their trade union activities.[31]

The Hong Kong authorities also vowed to step up control over trade unions through further legal regulation. Hong Kong's Secretary for Labour and Welfare Law Chi-kwong warned that trade unions' registrations would be revoked if they violated the NSL.[32]

RECOMMENDATIONS

Amnesty International recommends that the Government of Hong Kong:

- Ensure that no one is criminalized for exercising the right to form trade unions and join a trade union of their choice, or subjected to threats, attacks, harassment, smear campaigns, intimidation or reprisals for the exercise of such rights.
- Guarantee in law and in practice that no trade union is disbanded or restricted from establishing a federation or confederation and that all trade unions should be allowed to function freely.

[28] "Hong Kong's largest teachers' union to disband following pressure from gov't and Chinese state media", *Hong Kong Free Press*, 11 August 2021, hongkongfp.com/2021/08/10/breaking-hong-kongs-largest-teachers-union-to-disband-following-pressure-from-govt-and-chinese-state-media/

[29] "Hong Kong's largest pro-democracy union coalition to disband, cites threats to safety", *Hong Kong Free Press*, 17 October 2021, hongkongfp.com/2021/09/20/hong-kongs-largest-pro-democracy-union-coalition-to-disband-cites-threats-to-safety/

[30] "Beijing loyalists stalk Hong Kong civil society leaders", *Financial Times,* 28 December 2021, https://www.ft.com/content/4947c416-1d16-40a4-94d2-3b4c7dff1584

[31] ILO, *Interim Report – Report No 397, March 2022: Case No 3406 (China – Hong Kong Special Administrative Region) Complaint date: 17-Mar-21*, para. 214, ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:4141472

[32] "Trade unions may be revoked if violated the national security law", *The Standard*, 16 May 2021, thestandard.com.hk/breaking-news/section/4/172337/Trade-unions-may-be-revoked-if-violated-the-national-security-law

RIGHT TO EDUCATION (ARTICLES 13 AND 14)

ACADEMIC FREEDOM UNDERMINED

According to the Committee's General Comment No. 13, "the right to education can only be enjoyed if accompanied by the academic freedom of staff and students".[33]

STUDENTS ARE BANNED FROM PEACEFULLY EXPRESSING "POLITICAL VIEWS" ON CAMPUS

Since the enactment of the NSL, Hong Kong's Education Bureau (EDB) has effectively stifled all forms of peaceful expression of what it deems "political" messages at schools, severely encroaching on the academic freedom of the city. According to the new EDB guidelines on safeguarding national security issued in February 2021 ("NSL Schools Guidelines"), teachers must bar or dissuade students from all activities that involve the expression of political views on campus, including displaying propaganda items that may be in breach of the national security law, chanting political slogans, and singing songs that contain political messages. Schools must also ensure that displays of words or objects within the campus, including library collections, bulletin boards and leaflets, have no contents that endanger national security.[34]

SCHOOLTEACHER DEREGISTERED AND UNIVERSITY PROFESSOR FIRED

In July 2020, the ruling body of the University of Hong Kong (HKU) (which includes appointees of the Chief Executive of Hong Kong) decided to dismiss Benny Tai, an associate law professor for "misconduct" related to his court conviction for his role in the Occupy Central Movement in 2014. This decision was taken even though the university senate (which comprises mainly teaching staff) had decided earlier that there were insufficient grounds to dismiss Tai.[35] The decision of HKU came a day after another local university decided not to renew the contract of a lecturer who is a pro-democracy lawmaker and had taught at the university since 2007.

In October 2020, Hong Kong's Education Bureau said that a junior school teacher had been stripped of his teaching registration for "spreading the idea of Hong Kong independence". According to the media, the teacher had given pupils a worksheet containing questions such as "What is freedom of speech?" and "What is the reason for advocating Hong Kong independence?"

SCHOOL LIBRARY BOOKS AND TEXTBOOKS CENSORED

According to the NSL Schools Guidelines, all schools must ensure that all teaching materials and collections in school libraries do not endanger national security. However, no clear or concrete criteria have been given and thus schools must set their own standards when considering whether any collection might be in violation

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[33] OHCHR, *CESCR General Comment No. 13: The Right to Education (Art.13)*, 8 December 1999, para. 38, refworld.org/pdfid/4538838c22.pdf

[34] Amnesty International Hong Kong, *Submission to Constitutional and Mainland Affairs Bureau on the Hong Kong Special Administrative Region's third report under the UN Convention on the Rights of the Child*, 9 April 2021, web.archive.org/web/20211107115120/https://www.amnesty.org.hk/wp-content/uploads/2021/04/AIHK-Submission-to-the-HKSAR-government-on-the-Convention-on-the-Rights-of-the-Child-9-April-2021-2.pdf; HKSAR Government Press Releases, *LCQ22: Restricting students' freedom of expression*, 8 July 2020, www.info.gov.hk/gia/general/202007/08/P2020070800306.htm; HKSAR Education Bureau, *National Security: Special Measures for Schools*, 4 February 2021, edb.gov.hk/attachment/en/sch-admin/national-security/specific-measures.pdf

[35] "'End of academic freedom': University of Hong Kong to fire pro-democracy activist and law prof. Benny Tai", *Hong Kong Free Press,* 29 July 2020, hongkongfp.com/2020/07/28/breaking-hong-kong-university-to-fire-pro-democracy-activist-and-law-prof-benny-tai-source/

of the law, resulting widespread of self-censorship at schools. Local media reported that since June 2021, three secondary schools removed more than 400 books. Hundreds of books which touched on topics such as the 2019 protests and the 1989 Tiananmen crackdown had been removed from some school libraries.[36]

In a media report, four current staff of HKU (once a beacon for freedom of expression and thought and the city's highest-ranked university), speaking on condition of anonymity, said they are more cautious about what they say in class for fear that their students could report them to the authorities. Their self-censorship began after the enactment of the NSL in June 2020. Some HKU staff referred to a climate of fear and uncertainty about what constitutes a breach of the law – an echo of the common criticism of the NSL that its expansive definition of "national security" lacks clarity and legal predictability.[37]

RECOMMENDATIONS

Amnesty International recommends that the Government of Hong Kong:

- Stop using national security as a pretext to unnecessarily censor educational activities and teaching materials, which s undermines the academic freedom of all members of the education sector including students and teachers.
- Ensure and facilitate a campus environment where all members of the education sector feel respected and secure to freely express their opinions by peaceful means.

CULTURAL RIGHTS (ARTICLE 15(1)(A))

CENSORING MOVIES

In September 2020, the Office for Film, Newspaper and Article Administration (the governmental body responsible for enforcing the film classification system under the Film Censorship Ordinance) ordered two documentaries "Taking Back the Legislature" and "Inside the Red Brick Wall" to add warning messages citing depictions of "acts that may constitute criminal offences under prevailing laws".[38] The two documentaries had in fact premiered without any censorship during the Hong Kong Independent Film Festival in January 2020 before the enactment of the NSL. In June 2021, the movie "Far From Home" was not issued a screening permit because the director refused to change the plot of the movie as requested. All three movies are about the 2019 Hong Kong protests.

In 2021, the EU Office in Hong Kong & Macau called off the screening of a documentary "Taiwan Equals Love" when Hong Kong's Film Censorship Authority allowed only an edited version to be screened. In October 2021, Hong Kong's legislature passed a bill which will enable the government to ban films deemed contrary to national security from being screened and published in the city. Some legislators raised concerns that the new law only targeted traditional forms of screening without addressing showings on streaming platforms like Netflix or other online platforms like YouTube. In response, the Secretary for Commerce and

[36] "Hong Kong schools should remove books that endanger national security, education secretary says", *Hong Kong Free Press,* 7 June 2022, hongkongfp.com/2022/06/06/hong-kong-schools-should-remove-books-that-endanger-national-security-education-secretary-says/

[37] "One of Asia's most prestigious universities is on the frontline of a battle for democracy", *CNN,* 18 September 2021, edition.cnn.com/2021/09/18/asia/hong-kong-university-nsl-china-intl-hnk-dst/index.html

[38] "Hong Kong Filmmakers Decry Government Warning Messages on Protest Documentaries", *Art Asia Pacific*, 23 September 2020, artasiapacific.com/news/hong-kong-filmmakers-decry-government-warning-messages-on-protest-documentaries

Economic Development said the government would need more time to "carefully and comprehensively" consider adding further changes to the local film censorship system.[39]

Under the new law, any person who exhibits an unauthorized film could face up to three years in jail and a HK$1 million fine. Filmmakers may not challenge the censorship body's decision, as the new legislation will bar the Board of Review from reconsidering decisions made on national security grounds.

As a result, the documentary "Revolution of Our Times" and the movie "May You Stay Forever Young" have only been screened outside of Hong Kong over concerns that they may violate the NSL.

CENSORING BOOKS

In June 2009, according to the Home Affairs Bureau, 149 titles about the 1989 pro-democracy protests and Tiananmen Square crackdown were in Hong Kong's public libraries, with a total of 1,162 copies available for lending or reference. In 2020, Hong Kong public libraries placed nine titles written by prominent democracy advocates and activists under review and all nine books have since been removed from library shelves. By 2021, the number of titles about the 1989 pro-democracy protests and the 4 June 1989 Tiananmen Square crackdown that could be borrowed from public libraries had dropped to 41 titles (34%). Titles purged included those published by the now dissolved Hong Kong Alliance in Support of Patriotic Democratic Movements of China, as well as by a former leader of that group and by former leaders of the 1989 protests now in exile overseas.[40]

The Leisure and Cultural Services Department (LCSD) claimed that public libraries in Hong Kong have adhered to guidelines by the 1994 UNESCO Public Library Manifesto, at the same time complying with Hong Kong law including the NSL. However, according to the Manifesto, libraries "[collections] and services should not be subject to any form of ideological, political and religious censorship" and "[material] must reflect current trends and the evolution of society, as well as the memory of human endeavour and imagination".[41]

After the enactment of the NSL, various books have been removed from public libraries, including "Hong Kong Nationalism", "Theory of the Hong Kong City-state", "I don't want to be Chinese again", "For Those Dressed in Black", "Resistance amid Travelling and Dinning", June Fourth Incident related publications, the Apple Daily, and publications of those prosecuted under the NSL, most notably Joshua Wong and Jimmy Lai. However, in April 2022 the Hong Kong government refused a legislators request to disclose the list of library materials which had been removed from public libraries because making the list available "may lead to wide circulation of such library materials with malicious intent … and is thus unfavourable to safeguarding of national security."[42]

RECOMMENDATIONS

Amnesty International recommends that the Government of Hong Kong:

- Review all relevant law and policies, in particular those in relation to films, publications and public libraries, to ensure that Article 15 of the Covenant is duly complied with and that everyone can "express themselves freely, to communicate, act, and engage in creative activities".
- Stop all political and ideological censorship of all kinds of creative and artistic works or production including films and books, and repeal all relevant laws and policies relating to censorship
- Guarantee in law and in practice the right to take part in cultural life, in particular creative freedom which includes the dissemination, exposition and performance of any creative or artistic work or production.

[39] "Hong Kong passes bill to censor films 'contrary' to China's national security – HK$1m fine, 3 years jail for offenders", *Hong Kong Free Press*, 27 October 2021, hongkongfp.com/2021/10/27/hong-kong-passes-bill-to-censor-films-contrary-to-chinas-national-security-hk1m-fine-3-years-jail-for-offenders/

[40] "Exclusive: Hong Kong public libraries purge 29 titles about the Tiananmen Massacre from the shelves", *Hong Kong Free Press*, 21 November 2021, hongkongfp.com/2021/11/21/hong-kong-public-libraries-purge-29-titles-about-the-tiananmen-massacre-from-their-shelves/

[41] ditto

[42] "Hong Kong gov't refuses to say which library books are banned under national security law", *Hong Kong Free Press*, 7 April 2022, hongkongfp.com/2022/04/07/hong-kong-govt-refuses-to-say-which-library-books-are-banned-under-national-security-law/

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HONG KONG

SUBMISSION TO THE UN COMMITTEE ON SOCIAL, ECONOMIC, AND CULTURAL RIGHTS

This submission sets out some of Amnesty International's key concerns and recommendations related to the implementation of the International Covenant on Economic, Social and Cultural Rights (hereinafter "the Covenant") by the government of Hong Kong SAR (hereinafter "Hong Kong"). It highlights a crackdown on the city's largest trade unions, severe encroachment of academic freedom in both schools and universities and widespread censorship of public libraries, films and school teaching materials since the enactment of the National Security Law (hereinafter "NSL") in June 2020. It also highlights the long-standing problem of discrimination against minorities and marginalized groups including LGBTI people, non-refoulement protection claimants and migrant domestic workers. It is, however, not an exhaustive account of Amnesty International's concerns regarding implementation of the Covenant.

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