

FOURTH REPORT OF  
HONG KONG SPECIAL  
ADMINISTRATIVE REGION  
IN THE LIGHT OF THE  
INTERNATIONAL  
COVENANT ON CIVIL AND  
POLITICAL RIGHTS –  
SUBMISSION BY  
AMNESTY  
INTERNATIONAL  
HONG KONG

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## **1. INTRODUCTION**

Amnesty International Hong Kong (AIHK) is submitting this briefing, in response to the Hong Kong Special Administrative Region's (Hong Kong) government's invitation for public views on the implementation of the International Covenant on Civil and Political Rights (ICCPR) in Hong Kong since the Human Rights Committee last examined the Hong Kong report in 2013.

AIHK is the Hong Kong membership section of Amnesty International, which has been working on and advocating globally for human rights since 1961 and is the world's largest human rights organization. Amnesty International is a global movement of more than 7 million people in over 150 countries and territories. Although they come from many different backgrounds, our supporters are united by a determination to work for a world in which everyone enjoys human rights. Amnesty international is independent of any government, political ideology, economic interest or religions [and is funded mainly by our membership and public donations].

The briefing covers some keys issues of the organization's concerns since 2013, without implying that these are exhaustive. These main issues include:

- Judicial independence and interpretation of the Basic Law
- Freedom of expression
- Lesbian, gay, bisexual, transgender and intersex (LGBTI) people
- Asylum-seekers and refugees
- Migrant workers and human trafficking
- Sex workers

AIHK welcomes the Hong Kong government's practice of conducting public consultations when drafting its reports to United Nations' treaty bodies and would appreciate any opportunity to present additional information, in writing or in person, to the Hong Kong government.

## **2. JUDICIAL INDEPENDENCE AND INTERPRETATION OF THE BASIC LAW (ARTICLES 1, 2 AND 14)**

### **2.1 JUDICIAL INDEPENDENCE**

Hong Kong's rule of law and judicial independence and impartiality, which have long constituted critical elements in the protection of human rights in Hong Kong, 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 "One Country, Two Systems" policy in Hong Kong* described Hong Kong's judges as administrators and required that people who govern Hong Kong should above all be patriotic.<sup>1</sup> In reaction, 1800 lawyers marched in silence to protest against the White Paper claiming it would jeopardize judicial independence.<sup>2</sup>

The right to a fair and public hearing by a competent, independent and impartial tribunal is guaranteed under Article 14(1) of the ICCPR.

General Comment No. 32 on Article 14 of the ICCPR states that "The notion of a 'tribunal' in article 14, paragraph 1 designates a body, regardless of its denomination, that is established by law, is independent of the executive and legislative branches of government or enjoys in specific cases judicial independence in deciding legal matters in proceedings that are judicial in nature."<sup>3</sup> The independence of judicial tribunals is essential to a fair trial and a prerequisite of the rule of law. The judiciary as a whole and each judge individually must be free from interference either by officials or private individuals, and this must be guaranteed by the state, enshrined in law and respected by all governmental institutions.<sup>4</sup>

In 2017, soon after the District Court announced the verdict and two years' prison sentences of seven police officers who assaulted protester Ken Tsang following his arrest during the 2014 pro-democracy Umbrella Movement protests,<sup>5</sup> local protests began in support of the police officers. This was followed by escalating criticism of the trial from pro-Beijing media outlets and commentators. Opinions published in the People's Daily and Global Times and in their social media WeChat accounts focused on the British nationality of the judge.

Among the posts made online against the sentencing judge, David John Dufton, comments questioned his political stance as a "British person",<sup>6</sup> criticized Hong Kong's judicial system for being largely controlled by British judges and people "cultivated under the British colonial government",<sup>7</sup> "predisposed to favour the pro-democracy camp",<sup>8</sup> and the legal system's lack of loyalty to the Chinese Constitution. Criticism of the judgment whether through demonstrations or in the media, on the internet or in the Legislative Council, are protected by the right to freedom of expression. However, attacks in state mouthpieces appear to be part of a well-orchestrated

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<sup>1</sup> PRC State Council, *The practice of the "Once Country, Two Systems" policy in the Hong Kong Special Administrative Region*, 2014,

[http://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> "Hong Kong lawyers march to defend judiciary in wake of Beijing's white paper", *South China Morning Post*, 27 June 2014. <http://www.scmp.com/news/hong-kong/article/1541814/hong-kong-lawyers-stage-silent-march-oppose-beijings-white-paper>

<sup>3</sup> General Comment 32: Article 14 (Right to equality before courts and tribunals and to a fair trial) (2007), para. 18.

<sup>4</sup> Amnesty International, *Fair Trial Manual Second Edition* (Index: Pol 30/002/2014), Chapter 12.4

<sup>5</sup> Amnesty International, *Hong Kong: Ensure due process in case of protester assaulted by police* (Press release: 19 October 2015); *Hong Kong: Police officers must face justice for attack on protester* (Press release: 15 October 2014)

<sup>6</sup> 王平, "警察被重判冲击香港法治", *人民日报海外版*, 21 February 2017.

[http://paper.people.com.cn/rmrhwb/html/2017-02/21/content\\_1751735.htm](http://paper.people.com.cn/rmrhwb/html/2017-02/21/content_1751735.htm)

<sup>7</sup> 王平, "警察被重判冲击香港法治", *人民日报海外版*, 21 February 2017. [http://paper.people.com.cn/rmrhwb/html/2017-02/21/content\\_1751735.htm](http://paper.people.com.cn/rmrhwb/html/2017-02/21/content_1751735.htm)

<sup>8</sup> "Beijing throws the book at Hong Kong's foreign judges", *South China Morning Post*, 9 March 2017. <http://cdn4.i-scmp.com/news/hong-kong/law-crime/article/2077521/experts-line-throw-book-hong-kongs-foreign-judges>

campaign designed to amplify the Chinese government's opinion and attack the independence and impartiality of Hong Kong's courts.

In a protest on January 2018, dozens of people made abusive and insulting remarks towards Principal Magistrate Bina Chainrai, again largely based on her race, after she sentenced retired police officer Frankly Chu, who had been found guilty in December 2017, to three months imprisonment for hitting a bystander with a baton during the Umbrella Movement protests.

## 2.2 INTERPRETATION OF THE BASIC LAW

In October 2016, two pro-independence elected representatives to the Legislative Council refused to pledge allegiance to China when being sworn into office. 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, a move which would prevent them from taking office. While the legal process was still ongoing, the Standing Committee of the National People's Congress (NPC) of China issued an interpretation of Article 104 of the Hong Kong Basic Law concerning oath-taking. The interpretation said anyone not taking the oath properly the first time cannot take office, effectively barring the two pro-independence advocates.

The interpretation resulted in thousands of people taking to the streets in protest. Many viewed the intervention as undermining the principle of "One Country Two Systems", the independence of the Hong Kong judiciary and as a further attack on the freedom of expression of those who advocate independence or self-determination for Hong Kong.<sup>9</sup>

In July 2017, the High Court disqualified four elected pro-democracy legislators – Nathan Law, Leung Kwok-hung, Lau Siu-lai and Yiu Chung-yim – for failing to sincerely take the oath of office, a requirement specified in the interpretation of the Basic Law.

The interpretation fueled anxiety among many in Hong Kong over a possible erosion of fundamental safeguards for judicial independence.

Amnesty International remains concerned about the potential for NPC interpretations to undermine judicial independence – a fundamental safeguard for the protection of human rights – particularly when requests for such interpretations are not made by judicial bodies in Hong Kong.

**Amnesty International calls on the Hong Kong government to safeguard the independence of the Hong Kong judiciary, and to work with the Standing Committee of the NPC to ensure interpretations do not weaken this fundamental principle, as provided for in the ICCPR.**

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<sup>9</sup> Amnesty International, *Hong Kong: Nine arrested in authorities' retaliatory campaign against pro-democracy activists* (Press release: 27 April 2017)

### **3. RIGHTS TO FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY** **(ARTICLES 19 AND 21)**

A series of actions taken by the Hong Kong authorities in recent years increased concerns about whether the rights to freedom of expression and peaceful assembly are at risk.

#### 3.1 RIGHT OF PEACEFUL ASSEMBLY AND PROTEST

- Police's excessive use of force at the beginning of Umbrella Movement protests (Articles 19 and 21)

In late September 2014, a week-long sit-in by thousands of students culminated in a group of protesters entering the fenced-off Civic Square in front of the local government's headquarters, while thousands continued to demonstrate outside.<sup>10</sup>

Police's excessive use of force against protesters in the Civic Square -the quick use of pepper spray and tear gas, deployment of riot police in full gear and arrests at government headquarters - triggered the 79-day pro-democracy protests between September and December 2014, known as the Umbrella Movement protests.<sup>11</sup>

The protests were overwhelmingly peaceful. The presence of smaller groups of people within a public assembly who use violence is not a sufficient reason for the police to restrict, prohibit or disperse the whole assembly. Any decision to disperse a peaceful demonstration must be taken as a last resort.

Under international law, restrictions on peaceful assemblies are only permissible if they are necessary to protect legitimate public interests or the rights of others. Any legitimate restrictions must be proportionate and the least restrictive available. Police should avoid any use of force, but if they do use force, it must have a legitimate objective recognized under human rights law and be kept to the minimum level required for police to achieve this objective.

On 3 October, counter-demonstrators attacked protesters, including sexually assaulting, harassing and intimidating women and girls, in the Mongkok and Causeway Bay areas of Hong Kong and the police failed to intervene for several hours.<sup>12</sup>

Under international standards, a peaceful assembly does not become illegal because some counter-demonstrators act in an unruly or even violent way. The authorities have an obligation to

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<sup>10</sup> Amnesty International, *Hong Kong: Police response to student pro-democracy protest an alarming sign* (Press release: 27 September 2014).

<sup>11</sup> Amnesty International, *Hong Kong: Heavy-handed policing will only inflame protests* (Press release: 28 November 2014).

<sup>12</sup> Amnesty International, *Hong Kong: Women and girls attacked as police fail to protect peaceful protesters* (Press release: 3 October 2014)

protect peaceful protesters from violent attacks. Demonstrators must be allowed to exercise their rights to freedom of expression and peaceful assembly.

- Arrests, prosecutions, and the Public Order Ordinance (Articles 9, 10, 19 and 21)

On 1 July 2014, organizers estimated that more than 500,000 people took part in a pro-democracy march, followed by a sit-in in the business district. More than 500 protesters were arrested the following night on charges of “illegal assembly” and “obstruction of a public place”. Some reported they were not allowed access to lawyers and were not provided with food and water for several hours before being released without charge.<sup>13</sup>

In 2015, police in Hong Kong formally arrested 955 people who had taken part in the Umbrella Movement protests. A further 48 were arrested after the protests, for a range of offences including “unlawful assembly” and “unauthorized assembly”. Among those arrested were opposition lawmakers, the three co-founders of the “Occupy Central” civil disobedience campaign, and leaders of two student groups – Alex Chow and Nathan Law of the Federation of Students and Joshua Wong of “Scholarism”, a youth-led pro-democracy organization.

Many of the protesters arrested due to their involvement in the Umbrella Movement protests were released, but police notified them that criminal investigations were still ongoing and they would be re-arrested and charged, should there be sufficient evidence to prosecute them. More than three years on from the start of the Umbrella Movement protests in 2014, scores of the protesters arrested at the time remain in legal limbo, uncertain if they will face charges. A pattern of long intervals between initial arrests and the decision to prosecute means that only a small proportion of the protesters who had been arrested were convicted to date. According to the government, as of 31 August 2017, 225 people who were arrested have had or were undergoing judicial proceedings.<sup>14</sup>

In July 2016, Joshua Wong and Alex Chow were found guilty of “taking part in an unlawful assembly” and Nathan Law was found guilty of “inciting others to take part in an unlawful assembly”, vague provisions in Hong Kong’s Public Order Ordinance, for their roles in events in the Civic Square protests outside government headquarters in September 2014 that triggered the Umbrella Movement protests (see above).<sup>15</sup> In August 2017, the three were handed jail terms between six to eight months on review. The court originally ordered community service or suspended sentences but prosecutors successfully appealed, seeking harsher penalties.<sup>16</sup>

The charge of “unlawful assembly” and other vague provisions in Hong Kong’s Public Order Ordinance and their implementation have been repeatedly criticized by the Human Rights Committee for failing to fully meet international human rights law on the right to peaceful assembly, however the Hong Kong government has failed to implement relevant

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<sup>13</sup> Amnesty International, *Hong Kong: Mass arrests a disturbing sign for peaceful protest* (Press release: 2 July 2014)

<sup>14</sup> Amnesty International, *Hong Kong: Freedom of expression under attack as scores of peaceful protesters face “chilling” prosecutions* (Press release: 26 September 2017)

<sup>15</sup> Amnesty International, *Hong Kong: Guilty verdicts against student leaders latest blow for freedom of expression* (Press release: 21 July 2016)

<sup>16</sup> Amnesty International, *Hong Kong: “Vindictive” jail terms for pro-democracy leaders* (Press release: 17 August 2017)

recommendations from previous reviews.<sup>17</sup>

The right to peaceful assembly is guaranteed in international and Hong Kong Law. Anyone who wishes to hold an assembly should be able to do so without requiring the authorities' permission or authorization. While states may require prior notice of assemblies, the purpose of such notification must be to facilitate peaceful assembly and in order to enable the authorities to take measures to protect public safety and order or the rights of others, and such notification regime should not be unduly bureaucratic.

In case where a notification regime is put in place, failure to comply with notice requirement should not be subject to criminal sanctions or administrative sanctions resulting in fines or imprisonment. As the Special Rapporteurs on peaceful assembly and association and on extrajudicial, summary or arbitrary executions have emphasized, the mere fact that the assembly is not notified "does not render an assembly unlawful, and consequently should not be used as a basis for dispersing the assembly."<sup>18</sup>

Peaceful assembly is a legitimate and valid use of public space. It is a violation of international law to arrest and detain people solely for exercising their rights to freedom of expression and peaceful assembly.

Many of the charges brought against activists under the Public Order Ordinance are for actions in relations to largely peaceful protests that would be protected under international human rights and Hong Kong law. The prosecutions of many peaceful protesters and the imprisonment of the three young activists, based on public order laws that do not fully meet international human rights law and standards on the right of peaceful assembly, are having a chilling effect on freedom of expression and peaceful assembly, especially for those taking on sensitive issues such as Hong Kong's autonomy or the promotion of democracy.

In addition to being arrested and charged first with "unlawful assembly", later changed to the equally ambiguous charge of "public nuisance" with a maximum penalty of seven years' imprisonment, one of the Occupy Central cofounders, Benny Tai, was sanctioned by the Hong Kong University administration in August 2015 for his handling of anonymous donations related to the protests, which the administration claimed violated university procedures. In September 2015, the university's governing council 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.<sup>19</sup>

### **Amnesty International calls on the Hong Kong Government to:**

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<sup>17</sup> Concluding observations of the Human Rights Committee, Hong Kong Special Administrative Region, UN Doc. CCPR/C/79/Add.117, 15 November 1999, para. 19; Concluding observations on the third periodic report of Hong Kong, China, adopted by the Human Rights Committee at its 107th session (11-28 March 2013), UN Doc. CCPR/C/CHN-HKG/CO/3, 29 April 2013, para. 10;

<sup>18</sup> Christof Heyns and Maina Kiai, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, 4 February 2016, para.23.

<sup>19</sup> Amnesty International, *Amnesty International report 2015/16*, p.122

- **ensure that police handling of protests is proportionate to public order concerns and conforms to guarantees of freedom of expression enshrined in Article 19 of the ICCPR and Article 27 of the Basic Law;**
  - **drop prosecutions and other legal procedures regarding activists that are aimed at deterring 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 ICCPR to respect and protect the rights to freedom of expression, association and peaceful assembly.**
- Booksellers (Article 9, 10 and 19)

In late 2015, five booksellers associated with a bookshop in Hong Kong, Gui Minhui, Lui Por, Cheung Chi-ping, Lee Po and Lam Wing-kee, went missing in Thailand, mainland China and Hong Kong. The Mighty Current Media and the Causeway Bay Bookstore that the five booksellers were linked to was known for its books on Chinese leaders and political scandals, which were banned in mainland China but were popular with mainland Chinese tourists visiting Hong Kong.<sup>20</sup>

Their situations were known only after they reappeared on television in mainland China in early 2016. For Lui Por, Cheung Chi-ping and Lam Wing-kee, who are Hong Kong residents, the Guangdong Provincial government informed the Hong Kong government in February 2016 – months after their vanishing – that they were suspected of involvement in “illegal activities in mainland China”, and were under “compulsory criminal measures”.<sup>21</sup> Lam Wing-kee returned to Hong Kong in June 2016 and held a press conference in which he said he was arbitrarily detained, ill-treated in detention and forced to “confess”.

Lee Po, a Hong Kong resident with British nationality, who went missing in Hong Kong in December 2015 and was apparently deprived of his liberty for months, repeatedly stated that he returned to mainland China “by his own means voluntarily” in order “to assist mainland authorities in an investigation” and renounced his British nationality. It aroused grave concerns in Hong Kong and internationally regarding whether his statements were given under duress.

Gui Minhui, a Swedish national, went missing in Thailand in October 2015. He appeared on Chinese state television CCTV making a “confession” in January 2016, in which he said he had voluntarily surrendered to the Chinese authorities over his supposed involvement in a hit-and-run accident in 2003. He was released in October 2017 and remains in mainland China.

The present Chief Executive of Hong Kong Carrie Lam remarked in television interviews in mid-2017 that the vanishing of booksellers from Hong Kong and their subsequent detention by mainland Chinese security officials is a “matter for the mainland authorities”, to which mainland but not Hong Kong law would be applicable.<sup>22</sup>

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<sup>20</sup> AIHK, *Open letter to Chief Executive on 5 missing booksellers*, 4 March 2016

<sup>21</sup> Amnesty International, *China: Authorities' revelations on detained Hong Kong booksellers "smoke and mirrors"* (Press release: 5 February 2016)

<sup>22</sup> Mabel Au, “Carrie Lam has the opportunity to defend human rights in Hong Kong, but she must stand up to the Chinese government”, *Independent*, 30 June 2017

In December 2017, Hong Kong and mainland China reviewed the mechanism whereby the governments should notify each other of the detention of their residents within seven working days. However, the mechanism allows 14 working days for “serious and complicated criminal cases” and 30 working days for “cases involving terrorist activities or national security offences”. The unclear definition of national security offences in mainland Criminal law and the long timeframes provided for in the mechanism, however, fail to adequately protect the individuals in detention from human rights violations.<sup>23</sup>

**Amnesty International calls for the Hong Kong government to publicly condemn any violation of fair trial rights and rights pertaining to arrest and detention by mainland China authorities and to urge that those responsible be brought to justice, and ensure that preventive measures are put in place to respect, protect and fulfill the rights to freedom of expression and other human rights in Hong Kong.**

### 3.2 PRESS FREEDOM (ARTICLE 19)

Mainland authorities continues to exert influence over Hong Kong’s media – through direct pressure from the liaison office in Hong Kong or through indirect interference from editors and owners who have close ties to and interests within mainland China. There are questions as to why many outspoken critics of the government and people who are perceived to be independent in political affairs have been dismissed from their jobs.<sup>24</sup>

As one example, fears to the right to freedom of the press were raised when Kevin Lau Chun-to, the former chief editor of *Ming Pao* newspaper, was removed from his post in January 2014. 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 brutally 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.

The Hong Kong government has been swift to condemn violent attacks targeting journalists, but most of the incidents remain unresolved. In the case of Kevin Lau, although the two men who said they were hired to attack Kevin Lau were eventually sentenced to 19 years in prison in August 2015, the police failed to identify the person who hired them.

In October 2014, over 20 journalists from Television Broadcasts Limited, a local television station, issued an open letter criticizing perceived self-censorship by the broadcaster in its reporting of the police beating of Umbrella Movement protester Ken Tsang (see above).

Surveys conducted by the Hong Kong Journalist Association in recent years found that journalists were pessimistic about Hong Kong’s press freedom amid self-censorship and attacks on

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<sup>23</sup> Hong Kong government, *HKSAR and Mainland sign new arrangements on notification mechanism*, 14 December 2017

<sup>24</sup> Amnesty International, *Hong Kong must be alert to gradual erosion of its freedom of expression* (Press release: 28 May 2014)

journalists.<sup>25</sup>

The Human Rights Committee stated in General Comment No. 34 on Article 19 of the ICCPR: “A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society. The Covenant embraces a right whereby the media may receive information on the basis of which it can carry out its function. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output.”<sup>26</sup>

Media and journalists – including “citizen journalists” and bloggers – play a key role in the effective realization of all aspects of freedom of expression. Restrictions on media entities can negatively affect the right of all individuals to freedom of expression. Journalists and bloggers may face particular risks arising from their work; states have an obligation of due diligence to protect them against such attacks or threats, which are not only an attack on their lives and physical integrity but also a violation of their own and others’ right to freedom of expression.

**Amnesty International calls on the Hong Kong government to implement measures in line with Article 19 of the ICCPR, so as to take effective steps to guarantee a free, uncensored and unhindered press and to prevent and stop harassment and attacks on journalists.**

### 3.3 NATIONAL SECURITY LAW (ARTICLES 19, 21 AND 22)

When delivering a speech on 27 May 2017, the National People’s Congress chairperson, Zhang Dejiang, urged Hong Kong government to “steadfastly implement the constitutional obligation of national security under the Basic Law”.

This aroused public concern that it 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

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<sup>25</sup> Hong Kong Journalist Association, *Press Freedom Deteriorates in Hong Kong*, 27 March 2015; *Survey reveals worrying trend of confidence decline in press freedom*, 22 March 2016.

<sup>26</sup> General Comment 34: Article 19 (Freedoms of opinion and expression) (2011), para.13 (references omitted).

state power” and “leaking state secrets”.<sup>27</sup> Amnesty International has documented governments around the world claiming threats to “national security” to justify silencing of political opposition, human rights defenders and critical media reporting.

The last time an Article 23 proposal was considered in Hong Kong in 2003, half a million people came out on the streets to protest and the idea was put aside. But since the 2014 Umbrella Movement protests, Beijing seems intent on pushing through these heavy-handed national security reforms.

Internationally recognized human rights standards, as reflected, for instance, in the “Johannesburg Principles on National Security, Freedom of Expression and Access to Information” allow governments to restrict the exercise of some rights, including freedom of expression, on the ground of national security in order to “protect a country’s existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force”, whether from an internal or external force. However, the same Principles emphasize that such restriction are not legitimate if “their genuine purpose or demonstrable affect is to protect interests unrelated to national security”, including to protect a government from embarrassment or exposure of wrong-doing, or to entrench a particular ideology.<sup>28</sup>

**Amnesty International calls on the Hong Kong government to ensure that all legislations 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. The Hong Kong government should modernize Hong Kong legislation by removing outdated colonial provisions, such as those on sedition, and develop any legislation in line with human rights and international laws and standards.**

#### **4. RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX (LGBTI) PEOPLE (ARTICLES 2 AND 26)**

Hong Kong’s present anti-discrimination ordinances do not cover sexual orientation. In January 2016, the Equal Opportunities Commission’s study found that lesbian, gay, bisexual, transgender and intersex (LGBTI) people in Hong Kong experience extensive discrimination in many aspects of their public life, such as in employment, education and the provision of services; and public opinion had visibly shifted in the past decade in favour of the passing of

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<sup>27</sup> Amnesty International, *Hong Kong: President Xi’s attack on human rights a grave threat to city’s freedom*, 29 June 2017.

<sup>28</sup> *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, adopted on 1 October 1995 by a group of experts in international law, national security, and human rights convened by ARTICLE 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand in Johannesburg, <https://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf>; see especially Principle 2.

legislation to protect LGBTI persons from discrimination, with over 55% of the general public and over 90% of the young population aged 18 to 24 agreeing such legislation is needed.<sup>29</sup>

Amnesty International research has shown that, among other things, transgender people report degrading and humiliating treatment in custody in Hong Kong. They are often subject to particularly abusive police practices including intrusive and humiliating full body searches carried out e.g. by male officers on transgender women if the identification card of the person in custody gives the gender as male, which also means the transgender women are initially sent to male detention centres. The practice of placing transgender detainees in isolation or in solitary cells, and eventually in psychiatric facilities, continues. 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.

Despite the absence of the explicit inclusion of sexual orientation and gender identity in the anti-discrimination ordinances, the Hong Kong courts have struck down government practices that discriminate against LGBTI individuals. For example, following a 2013 Court of Final Appeal judgment, legislation that came into effect in July 2014 allows transgender people to marry in the gender of their choice, but only if they have undergone full sex reassignment surgery. More recently, in April 2017, the Court of First Instance ruled that the government's refusal to extend work benefits to the same-sex husband of a civil servant was discrimination based on sexual orientation. In September, the Court of Appeal ruled that the Immigration Department's refusal to grant a dependent visa to the same-sex civil partner of a foreign professional on a work visa was discriminatory. The court judgments were a step forward in ensuring full and equal protection in the law for LGBTI people. The government should drop the appeals it has initiated against both of the 2017 decisions and instead bring the city's anti-discrimination protections in line with international law and standards.

**Amnesty International calls on the Hong Kong government to take action to prevent discrimination against LGBTI individuals, and adopt comprehensive anti-discrimination legislation relating to sexual orientation and gender identity.**

## **5. ASYLUM-SEEKERS AND REFUGEES (ARTICLES 2, 7, 9 AND 13)**

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 claimants. However, the acceptance rate of the Universal Screening Mechanism (USM) adopted

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<sup>29</sup> Equal Opportunities Commission, *Report on Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status*, 2016

in 2014 is lower than 1%, and the over 8,000 asylum seekers awaiting assessments as of April 2017 remain at risk of human rights violations and are deprived of their right to work.<sup>30</sup>

In response to the rise of torture protection claimants in recent years, some lawmakers suggested new immigration detention options for asylum and torture claimants. Some, including the former Chief Executive of Hong Kong, Leung Chun-ying, have even proposed withdrawal from the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>31</sup> This is not in line with international law and standards. International standards applicable to irregular migrants and asylum-seekers contain a strong presumption against detention and place clear restraints on its use. With respect to asylum-seekers, the UNHCR has stated that their detention is “inherently undesirable.”<sup>32</sup> For immigration detention to be justifiable under international law, certain conditions must be met. International law requires the state to demonstrate in each individual case that detention is necessary and proportionate to the objective to be achieved, which must be one of three legitimate objectives:

- preventing absconding
- verifying identity
- ensuring compliance with a deportation order.<sup>33</sup>

Everyone, including all migrants and asylum-seekers, has the right to liberty, including freedom from arbitrary arrest and detention. Amnesty International opposes the detention of refugees, asylum-seekers and migrants solely for the purposes of immigration control apart from, in the most exceptional circumstances, for short periods immediately prior to deportation. It urges the Hong Kong government not to pursue any proposals for the routine or automatic use of such detention.

**Amnesty International urges the Hong Kong government to uphold its obligations to protect individuals from torture and other ill-treatment, including by respecting the principle of non-refoulement, which has been codified in numerous international human rights instruments and additionally forms part of customary international law and therefore applies to all states, regardless of whether they are parties to the relevant treaties.**

## **6. MIGRANT WORKERS AND HUMAN TRAFFICKING (ARTICLES 2, 8 AND 26)**

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<sup>30</sup> Security Bureau of the Hong Kong government, *An update on the comprehensive review of the strategy of handling non-refoulement claims*, 6 June 2016.

<sup>31</sup> AIHK, *Open letter to the Chief Executive – on Hong Kong’s legal obligation to protect asylum seekers*, 14 April 2016

<sup>32</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>33</sup> Human Rights Committee, Concluding Observations: [Australia](#), UN Doc. A/55/40 vol. I, (2000), paras. 526 and 527; UNHCR/OHCHR, *Summary Conclusions from Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons*, (2011), para. 3; Guideline 4(1) of the [UNHCR Detention Guidelines \(above\)](#).

Migrant workers continue to face abuse and discrimination in Hong Kong. Thousands of the over 350,000 migrant domestic workers in Hong Kong, nearly all women, have been trafficked for exploitation and forced labour, and are heavily indebted with illegal and excessive agency fees.<sup>34</sup>

The “Two-Week Rule”, which stipulates that after an employment contract ends migrant domestic workers must find new employment or leave Hong Kong within two weeks, and the requirement that migrant domestic workers must live with their employers, increases their risk of 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 agencies. The Hong Kong authorities fail to properly monitor employment agencies and punish those who violate the law.

Exceptionally, in a landmark judgment in February 2015, Hong Kong resident Law Wan-Tung was found guilty of intimidating, assaulting and causing bodily harm to her employees, Indonesian migrant domestic workers Erwiana Sulistyaningsih and Tutik Lestari Ningsih. She was sentenced to six years in prison. The guilty verdict was a damning indictment of the government’s failure to reform the system that traps women in a cycle of abuse and exploitation.<sup>35</sup>

The Hong Kong government continues to deny that trafficking is an issue in Hong Kong, most recently in response to the 2017 US Department of State Trafficking in Persons Report (TIP), which stated that Hong Kong is a destination, transit and source territory for men, women and children subjected to sex trafficking and forced labour.<sup>36</sup> The same report in 2015 had stated that Hong Kong authorities had never prosecuted or convicted traffickers for subjecting victims to forced labor, despite numerous reports of forced labor abuses perpetrated against migrant domestic workers.<sup>37</sup> Likewise, Amnesty International in 2013 documented how Indonesian women were trafficked for exploitation and forced labour, the abuses they experienced, and the Hong Kong government’s failure to adequately protect migrant domestic workers.<sup>38</sup>

Hong Kong’s anti-trafficking laws are limited to trafficking “for the purpose of prostitution” and only in cases that involve transnational movement. Amnesty International and local human rights groups have called for broader anti-trafficking protections that comply with the definition set forth in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women

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<sup>34</sup> Amnesty International, *China: Hong Kong SAR: Submission to the United Nations Committee on the Elimination of Discrimination Against Women: 59<sup>th</sup> session, 20 October– 7 November 2014* (Index: ASA 17/052/2014); *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); Census and Statistics Department, *2017 Hong Kong Annual Digest of Statistics*, 2018, p.43.  
<http://www.statistics.gov.hk/pub/B10100032017AN17B0100.pdf>

<sup>35</sup> Amnesty International, *Hong Kong: Guilty verdict in migrant domestic worker abuse trial a ‘damning indictment’ of authorities’ failure* (Press release: 10 February 2015)

<sup>36</sup> Hong Kong government, *Response to US Trafficking in Persons Report*, 30 June 2016.  
<http://www.info.gov.hk/gia/general/201606/30/P201606301004.htm>

<sup>37</sup> Amnesty International, *Hong Kong: Human trafficking ‘wake-up call’ for authorities* (Index: ASA 17/035/2014)

<sup>38</sup> Amnesty International, *Exploited for Profit, Failed by Governments* (Index: ASA 17/029/2013), 21 November 2013.

and Children, supplementing the United Nations Convention against Transnational Organized Crime (the UN Anti-trafficking, or Palermo, Protocol). Under the Palermo Protocol, trafficking in persons is defined as the acquisition of people – their recruitment, transportation, transfer, harbouring, or receipt – through fraud, deception or coercion, with the aim of exploiting them. Exploitation includes at a minimum the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs. In concluding observations on China, the CEDAW Committee has expressed concern at the lack of comprehensive anti-trafficking legislation in Hong Kong and called on the government to “[c]onsider extending the applicability of the Palermo Protocol to Hong Kong, China, and adopt comprehensive anti-trafficking legislation”.<sup>39</sup>

**Amnesty International calls on the Hong Kong government to:**

- **take concrete and immediate actions to repeal or amend laws and regulations that foster abuse and exploitation of migrant domestic workers, including legislation which forces migrant workers to live with their employers and excludes them from the Minimum Wage Ordinance, and the Two-Week Rule.**
- **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.**
- **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.**
- **pursue with the Central Government in Beijing the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Upon ratification, Hong Kong authorities should incorporate these treaties into Hong Kong law.**

## **7. SEX WORKERS (ARTICLES 2, 7 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, prohibiting them from working with others for their own safety, and places sex workers in a vulnerable situation at risk of robbery and rape. In some cases, sex workers have been physically assaulted by clients and even killed.

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<sup>39</sup> CEDAW Committee Concluding Observations: China, UN Doc. CEDAW/C/CHN/7-8, 2014 para. 57(d).

Not only do sex workers in Hong Kong receive little protection from the police but they are sometimes deliberately targeted by them. Amnesty International reported in 2016 that police in Hong Kong engage in questionable tactics to arrest sex workers, including the receipt of sexual services as an investigatory technique; entrapment; and obtaining confessions through coercion or deception.<sup>40</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 engaging in sex work, they would always be in breach of their conditions of stay and could be arrested. The vulnerability to 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 urges all governments to repeal existing laws and refrain from introducing new laws that criminalize or penalize directly or in practice the consensual exchange of sexual services between adults for remuneration and refrain from the discriminatory enforcement against sex workers of other laws, such as those on vagrancy, loitering, and immigration requirements.

**Amnesty International calls on the government of Hong Kong to take the following steps to end violence and discrimination against sex workers:**

- **Laws related to sex work should target the exploitation and abuse that sex workers face rather than criminalizing aspects of sex work. The Legislative Council should repeal criminal laws which are used to prosecute and punish sex workers, or criminalize related aspects of sex work.**
- **The Hong Kong Police Force should ensure that coercive police conduct, rape, sexual abuse, extortion, as well as receiving sexual favours or any other inappropriate benefit from sex workers, including as a part of undercover operations, be expressly prohibited in all circumstances and be independently investigated by the authorities.**
- **The authorities must address the institutional discrimination which makes migrant sex workers particularly vulnerable to human rights abuses.**

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<sup>40</sup> Amnesty International, *Harmfully isolated: Criminalizing sex work in Hong Kong* (Index: ASA 17/4032/2016).