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The Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and other International Organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference to the joint communication [OL CHN 17/2020] dated 1 September 2020, has the honor to transmit herewith the reply by the Chinese Government.

The Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and other International Organizations in Switzerland avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 30 October 2020



Office of the High Commissioner for Human Rights
GENEVA

(Translated from Chinese)

Receipt is hereby acknowledged of communication No. OL CHN 17/2020, dated 1 September 2020, from the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on minority issues, of the United Nations Human Rights Council. The Chinese Government wishes to respond as follows:

The establishment and improvement by China, at the national level, of the legal system and enforcement mechanism for national security in the Hong Kong Special Administrative Region is a necessary and legitimate step to fill gaps in the national security legislation of Hong Kong, to practically safeguard national sovereignty and security and to protect the prosperity and stability of Hong Kong, and a necessary and practical move to ensure the long-term stability of the One Country, Two Systems structure. The Law on Safeguarding National Security in the Hong Kong Special Administrative Region (the National Security Law) explicitly provides for the respect and protection of human rights and, in accordance with the law, protects the rights and freedoms of Hong Kong residents, including freedom of speech, of the press, of assembly and of procession, in accordance with the Basic Law and the relevant provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as applicable to Hong Kong.

The experts of the special procedures have turned a blind eye to serious negative trends in recent times, such as the “Hong Kong independence” movement and a constant escalation of rampant, violent terrorist activities, and the naked intervention of external forces in the affairs of Hong Kong. They have not shown due respect for the legitimate measures taken by China to safeguard national sovereignty, unity and territorial integrity, prevent and control national security risks, ensure the long-term prosperity, stability and peace in Hong Kong and ensure that the human rights of Hong Kong residents are given the protection and respect that they deserve. Instead, they have made unwarranted accusations against Chinese laws, based on false information and speculation, seriously distorted the facts and gravely interfered in the sovereignty and internal affairs of China. China strongly objects to this. China urges the relevant experts of the special procedures to scrupulously respect the purposes and principles of the United Nations Charter, comply with the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council, perform their duties fairly and objectively, carefully consider the Chinese reply, respect the legislative and judicial sovereignty of China and refrain from interfering in the country’s internal affairs. With respect to the specific questions concerning the Hong Kong National Security Law, we would like to reply with the following:

1. The Hong Kong National Security Law stipulates that the law enforcement and judicial bodies in Hong Kong, including the Office for Safeguarding National Security in Hong Kong, have jurisdiction over specific crimes against national security, in accordance with article 55 of the Law. There is absolutely no such problem as a violation of the right to a fair trial, which is established in article 14 of the International Covenant on Civil and Political Rights.

1.1 The Chinese Constitution provides constitutional guarantees for fair trial and for the protection of human rights. A large number of constitutional provisions relate to fair trial guarantees. Article 125 establishes the principle that trials must be public and that defendants have the right to a defence; article 126 sets out that the people’s courts exercise judicial power independently, in accordance with the law; article 33 establishes that the State must respect and guarantee human rights, and articles 35 and 41 respectively establish that citizens have the freedom to speak out, publish, assemble and hold processions and demonstrations and have the right to criticize and make suggestions to any State organ or State official.

1.2 The relevant principles and regulations of the country's Criminal Procedure Law and litigation mechanisms further provide a legal basis for fair trials and the protection of human rights. In the General Provisions of the Criminal Procedure Law, article 2 clearly sets out that the main task of the Law is "to respect and protect human rights, safeguard citizens' personal rights, property rights, democratic rights and other rights". Factors influencing the right to a fair trial are clearly set out in many parts of the Criminal Procedure Law. Among these, article 201 establishes that the people's courts should generally adopt the charges and sentencing suggested by the people's procuratorates in the public prosecution of cases where the defendant pleads guilty and accepts the penalty, except in cases where doing so may affect the fairness of the trial. Article 238 establishes that in cases where public trial regulations have been violated, or the recusal system has been violated, or parties to a case have been deprived of their legal litigation rights or have had them restricted in such a way that it may affect the fairness of the trial, the people's court of second instance must revoke the original judgment and send it back to the people's court of the original trial for retrial. Article 253 (4) establishes that if there is any violation of the law in the judicial procedure that may affect the fairness of a trial, the parties or their legal representatives or close relatives can appeal to the people's court or the people's procuratorate, and the people's court must hold a new trial. These provisions are a strong guarantee of the right to a fair trial.

1.3 The Hong Kong National Security Law also has clear provisions guaranteeing the right to a fair trial and human rights. When exercising their jurisdiction, national law enforcement and judicial bodies in Hong Kong, including the Office for Safeguarding National Security of the Central People's Government of the People's Republic of China in the Hong Kong Special Administrative Region, strictly abide by the relevant provisions of the Hong Kong National Security Law and the Criminal Procedure Law of the mainland of China. During the adoption of the Hong Kong National Security Law, the relevant contents of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were fully taken into consideration in the legislative process, with an emphasis placed on the fact that principles of human rights protection must be observed when safeguarding national security. Article 4 clearly establishes that the rights and freedoms enjoyed by residents of the Hong Kong Special Administrative Region under the Basic Law and the relevant provisions of the two international human rights conventions applicable to Hong Kong, including freedom of speech, press and publication, freedom of association, assembly, procession and demonstration, must be protected under the law; article 5 establishes rules calling for adherence to the principles of the rule of law (including the principle of legality, the presumption of innocence, guarantees of procedural rights and the non bis in idem principle); and article 39 establishes that the law is not retroactive. Such provisions are consistent with the spirit of the two human rights conventions, and the national law enforcement and judicial bodies in Hong Kong, when exercising their jurisdiction, will strictly abide by these provisions to ensure a fair trial.

1.4 There is essentially no difference between the standards followed by the national law enforcement and judicial bodies in Hong Kong, such as the Office for Safeguarding National Security, when they exercise jurisdiction over crimes endangering national security in three specific cases, and the human rights protection standards followed by the relevant bodies in the Hong Kong Special Administrative Region when they exercise jurisdiction. The rules in the relevant laws of the mainland of China and those in the laws of the Hong Kong Special Administrative Region on the protection of human rights in criminal justice have a large number of similarities, including: the prohibition of torture or other cruel or inhuman treatment; the prohibition against depriving anyone of his or her freedom except in accordance with the law and legal procedures; the fact that persons charged with a criminal offence are presumed innocent until found guilty, in accordance with the law; prompt notification of charges brought against a defendant; the provision of sufficient time and opportunity for defendants to prepare their defence and choose counsel; access to legal aid; the right to question witnesses; the provision of free translation services; the right not to incriminate oneself; the use of special proceedings for cases involving youth offenders; and the right to appeal. It can be said that the principles of the law of the mainland of China and the law of the Hong Kong Special Administrative Region are both in line with the United Nations standards for the protection of human rights in criminal justice. There is essentially no difference between the standards followed by the national law enforcement and judicial

bodies in Hong Kong, such as the Office for Safeguarding National Security, in exercising jurisdiction over crimes endangering national security under article 55 of the Hong Kong National Security Law, and the human rights protection standards of the relevant law enforcement and judicial bodies of the Hong Kong Special Administrative Region.

2. Article 62 of the Hong Kong National Security Law provides that “This Law shall prevail where provisions of the local laws of the Hong Kong Special Administrative Region are inconsistent with this Law”. As a national law that has been adopted and implemented in the Hong Kong Special Administrative Region, the rank and effect of the Hong Kong National Security Law take precedence over those of the Hong Kong Special Administrative Region. Regardless of whether the law in question is the original Hong Kong law set out in article 8 of the Hong Kong Basic Law or laws enacted by the legislature of the Hong Kong Special Administrative Region, if they are inconsistent with the provisions of the Hong Kong National Security Law, the provisions of the latter take precedence. This has nothing to do with the independence of judicial trial procedures, and the independence of the trial procedures of the judicial bodies of the Hong Kong Special Administrative Region is not affected in any way.

Article 65 of the Hong Kong National Security Law establishes that “The power of interpretation of this Law shall be vested in the Standing Committee of the National People’s Congress.” In China, it is the Standing Committee of the National People’s Congress that has the right to interpret laws; the Chinese Constitution establishes that the Standing Committee of the National People’s Congress is responsible for the interpretation of legislation. This provision of the Hong Kong National Security Law is in conformity with the Chinese system for legal interpretation. The right of the Standing Committee of the National People’s Congress to interpret legislation in no way affects the application of the law by the courts, in line with the facts of the case. Even if the Standing Committee of the National People’s Congress interprets legislation, it does so to explain the content of the law, not to directly make a judicial ruling on a certain case. Specific cases are still independently adjudicated by the courts and judges, and they are tried and finally decided according to legal procedures. The right of the Standing Committee of the National People’s Congress to interpret legislation also does not affect the independence of the judiciary.

3. Under article 44 (1) of the Hong Kong National Security Law, the Chief Executive appoints judges to try crimes against national security. This is because crimes against national security are more complex and sensitive than other cases, and among judges, it is the ones with more experience and stronger qualifications that must be selected to try such cases. Once they are appointed as judges to hear such cases, they do in-depth research on the nature and characteristics of crimes against national security and the applicable penalties, which is more conducive to maintaining the professionalism and consistency of trials and judgments and ensuring that such cases are handled fairly, justly and effectively. In the local judicial practice in Hong Kong, there are precedents for appointing judges to try certain types of cases. For example, the District Court has set up a family court, which specializes in family law proceedings, and has appointed judges from the District Court to hear cases. For another example, in accordance with the Interception of Communications and Surveillance Ordinance, the Chief Executive may appoint three to six judges as panel judges to handle applications for interception or related surveillance. There are similar practices in foreign judicial practice. For example, the Chief Justice of Canada selects a group of special judges to rule whether the relevant cases should be considered under the category of national security.

It is especially important to emphasize that the so-called appointment of judges means that the Chief Executive designates a list of judges suitable for hearing crimes against national security after comprehensively considering factors such as trial expertise, professional ability and experience, and it does not involve selecting a presiding judge for a specific case. Before appointing judges, the Chief Executive may consult the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region and the Chief Justice of the Court of Final Appeal so as to ensure that the appointed judges are competent to hear cases involving crimes against national security. In the trial of a specific case, the Chief Justice still determines the presiding judge for the case, from the above-mentioned list of designated judges. Therefore, there is no contradiction between the appointment of judges

and the independence of trials; it will not have any impact on the freedom of speech of legal persons.

4. Article 24 of the Hong Kong National Security Law does not list mere “damage to property” as a terrorist act. The provisions of this article on terrorism mainly include two aspects: first, the pursuit of a political agenda, and second, the performance of terrorist acts endangering public health and safety. Particularly of note is the fact that the provisions of article 24 (3) and (4) of the Hong Kong National Security Law do not address general property damage, but damage to specific public infrastructure and equipment that affect public safety, and there are strict limits on the types of public infrastructure and equipment in question. Damage to such public infrastructure and equipment is quite likely to lead to serious consequences that endanger public safety. In addition, the second paragraph of this article establishes that causing serious damage to public and private property is a factor to be taken into account in sentencing after conviction, and not in the conviction itself. The Hong Kong National Security Law thus does not list mere “damage to property” as a terrorist act or go beyond the definition of terrorism of the United Nations Security Council.

At the same time, the United Nations Security Council’s definition in no way influences or restricts countries from making regulations on the specific manifestations of terrorist acts, so as to keep pace with the times and actual conditions. From the perspective of the risk today faced by society, manifestations of terrorism are becoming more and more diverse, and many terrorist acts are aimed both at attacking the lives of the public and also at causing serious property damage. A consultation shows that, in the criminal law of many countries, it is emphasized that property damage, when it is “for political purposes”, is a terrorist act. For example, article 421-1 of the French Criminal Code has many provisions on property damage (addressing theft, destruction, extortion and damage to ships and aircraft, etc., for political purposes), and article 83.01 of the Canadian Criminal Code establishes that terrorism includes conduct that causes substantial property damage, whether to public or private property, if causing such damage is likely to result in death, endanger a person’s life, or cause serious risk to the health or safety of the public. The provisions of article 24 (3) and (4) of the Hong Kong National Security Law are similar to those mentioned above.

5. The National Security Law of the People’s Republic of China clearly defines the concept of national security. National security means that the power, sovereignty, unity and territorial integrity of the State, the people’s well-being, sustainable economic and social development and other important interests of the country are in a state with relatively little danger, where they do not face internal or external threats and where it is possible to ensure lasting security. The Hong Kong Special Administrative Region is an administrative region of the People’s Republic of China with a high degree of autonomy; it is under the direct authority of the central people’s Government. Within a given country, the concept of national security is the same; the definition of national security in the Hong Kong National Security Law must be the same as the one in the National Security Law of the People’s Republic of China.

The Hong Kong National Security Law punishes four kinds of crimes that seriously endanger national security, namely, secession; subversion; terrorist activities; and collusion with a foreign country or with external elements to endanger national security. Taking into account actual risks in safeguarding national security in Hong Kong and the specific characteristics of Hong Kong’s common law, the specific manifestations of the relevant crimes are clearly defined and the boundaries between what constitutes a crime and what does not are very clear. At the same time, the Hong Kong National Security Law points out at the outset, in article 1, that the legislative purpose of enacting the Hong Kong National Security Law is to ensure the resolute, faithful and full implementation of the policy of One Country, Two Systems, under which the people of Hong Kong administer Hong Kong with a high degree of autonomy; to maintain the prosperity and stability of the Hong Kong Special Administrative Region and to protect the legitimate rights and interests of Hong Kong residents. The Hong Kong National Security Law is a supplement and improvement to the Basic Law on the maintenance of the national security system in the Hong Kong Special Administrative Region. The high degree of autonomy enjoyed by the Hong Kong Special Administrative Region will not be affected, the original capitalist system and way of life in

Hong Kong will not be changed, and the rights and freedoms enjoyed by Hong Kong residents according to law will not be impaired.

6. On the specific question of the crime of secession in the Hong Kong National Security Law

6.1 Regarding several expressions: “undermining national unity” is an expression in Chinese criminal law; for specific historical reasons, the Chinese people have a profound and clear understanding of “national unity”; “illegally changing the legal status of the Hong Kong Special Administrative Region or any other part of the People’s Republic of China” refers to violating the provisions of the Chinese Constitution and laws and changing the Region’s status under the Chinese Constitution and laws; and “transferring the Hong Kong Special Administrative Region or any other part of the People’s Republic of China to foreign rule” is aimed against elements pushing for Hong Kong independence and other futile attempts to transfer Hong Kong or any other part of China to foreign rule. It should be noted that the Hong Kong National Security Law, while safeguarding national sovereignty and security, clearly defines the specific forms of the related crimes in terms of the actual risks posed to national security and the characteristics of Hong Kong’s common law. Its meaning is very clear and its specific provisions reflect the special characteristics of the Anglo-American common law system and the civil law system of the mainland of China.

6.2 Regarding the question of “participation”. The word “participation” refers to the provisions of article 103 of the Criminal Law of China, and at the same time, it also takes into consideration the characteristics of Hong Kong’s common law. Since the crime of splitting the country is often committed by more than one perpetrator, apart from the principal offenders who organize, plan and carry out the crime, there are also perpetrators, or accomplices, against whom action must be taken. Thus, when “participation” is in relation to organizing, planning and carrying out a crime, both are party to the crime, with different criminal roles. This provision is in accordance with the legislative characteristics of the civil law system of the mainland of China.

6.3 Regarding the question of the crime of secession when the use of force or violence is not a constituent element. Crimes of endangering national security may take the form of violence or the use of force, or may take a non-violent form. Dividing the country is a very serious crime. The crime of secession and colluding with foreign countries or foreign forces to endanger national security may be carried out as non-violent acts, including organizing, planning, inciting or abetting actions, or collusion or entering into agreements. Such acts pose a danger to the country’s sovereignty, security and territorial integrity.

We have noted that crimes of insurrection in the United Kingdom and the United States all include force or violence as constituent elements, because when these countries enacted criminal laws, it was common to split countries using violence or force. With the development of science and technology, in today’s world it is very rare to split countries with the use of violence or force, and secessionist activities that do not use force have gradually become the main form of this crime. At present, in the criminal law of many countries in the world, violence and force are no longer constituent elements of the crime of secession. For example, in article 308 of the Portuguese Criminal Code, on treason, secession is described as “a means of usurping or abusing the sovereign functions of the State” and article 92 of the Netherlands Criminal Code describes the crime of secession as attempting to “surrender the Kingdom, in whole or in part, to a foreign power, or of separating a part thereof”. In the criminal law of these countries, a perpetrator who uses violence or force can incur heavier penalties. Considering the extreme seriousness of the crime of secession, an increasing number of countries need to regulate separatist activities not involving violence or force when they formulate their national security legislation. In this context, the insistence by some countries that others must apply a standard of the use of violence and force is obviously a pretext to use human rights to interfere in the sovereignty of other countries.

7. There is absolutely no basis for the accusations made by the experts of the special procedures that the crime of subversion of State power is used to control political activities in China and that the crime of subversion is a “political crime”. Some politicians and the media have distorted the facts, attacked the leadership of the Communist Party of China and the country’s socialist system and slandered China, saying that it has cracked down on so-

called political dissidents by invoking the crime of subversion of State power. This is a smear against China. In view of the real dangers currently faced in safeguarding national security in Hong Kong, we must guard against, stop and repress the criminal acts in question; we are forced to do so, not only by the actual need to act, but also by law.

The crime of subverting State power established in article 22 of the Hong Kong National Security Law has clear and definite criminal constituent elements. In order for it to constitute a crime, there must be the aim of “subverting State power” and the action in question must involve organizing, planning, carrying out or participating in one of the four acts set out in the Hong Kong National Security Law. There is a clear boundary between what is a crime and what is not, and it is in no way “ill-defined”. In addition, there is a clear boundary between subversion of State power and freedom of speech. The crime of subversion of State power is a dangerous crime, but it is still one for which there is a requirement of certain behaviour. Simple verbal expression cannot constitute the crime. However, if a private individual with the specific intention of bringing harm to society encourages others to carry out criminal acts, thus going beyond the bounds of freedom of speech, such action may constitute the crime of inciting subversion of State power.

It should be pointed out that safeguarding national security has a direct bearing on the core interests of a country. The two crimes of secession and subversion of State power share a specificity, in that there is no question of waiting for them to achieve a final result. The State power of the People’s Republic of China, be it in the central Government or in local bodies of political power at all levels, including the Hong Kong Special Administrative Region, cannot tolerate acts of secession or subversion of State power. Such acts must be severely punished.

8. The Hong Kong National Security Law clearly sets out the constituent elements applicable to the crimes of secession and subversion of State power and defines the elements of the related charges. The prohibited behaviour and activity are clearly defined and there is no problem of misuse for other purposes. Objectively, there is no room for confusion. Anyone who commits any crime can be prosecuted and tried on charges for that crime, without further ado. If a person commits multiple crimes, the criminal legislation also has clear regulations on how to apply the law.

The Chinese Constitution and legislation protect human rights, in accordance with the law, as does the Hong Kong National Security Law. For a number of years, some anti-China forces have constantly used Hong Kong as a cover to infiltrate and cause harm to the mainland of China in a futile attempt to overthrow the leadership of the Communist Party of China, undermine the socialist system and even attempt in vain to achieve “independence” for Hong Kong, Taiwan, Tibet, Xinjiang and Inner Mongolia. This is obviously a crime of secession and subversion of State power. These so-called “human rights defenders”, journalists and social activists engage in activities endangering national security under the guise of so-called “human rights”. We will resolutely crack down on them. The criminals who endanger national security denounce the Hong Kong National Security Law for being stringent, which merely demonstrates that it serves as a properly sufficient deterrent.

It should be pointed out that both the crime of secession and the crime of subversion of State power are crimes endangering State security. Any arrest and prosecution will arouse widespread concern. Facts speak louder than words. In the approximately three months since the promulgation and implementation of the Hong Kong National Security Law, so-called “human rights defenders”, journalists and social activists in Hong Kong have continued working as usual, and no one has been arrested for simply speaking out or engaging in normal political activities.

9.1 Regarding measures taken to strengthen dissemination, guidance, supervision and management of national security in schools, organizations, the media and the web, etc. The strengthening of the national security awareness and responsibility of Hong Kong residents is a solid, long-term policy to resolutely safeguard national security and maintain Hong Kong’s lasting prosperity and long-term peace and stability. Since the unrest concerning the amendment of the law last year, various activities endangering national security have intensified in Hong Kong, seriously challenging the foundation of the One Country, Two Systems principle, posing a serious threat to the national sovereignty, security and

development interests of China and bringing about serious harm to the rule of law and social order in Hong Kong. This not only highlights the institutional loopholes in Hong Kong's national security, but also exposes longstanding and serious shortcomings in Hong Kong's national security education and management. Furthermore, "Hong Kong independence" and radical separatist forces have used schools, organizations, the media and the Internet to instigate, incite, lure and coerce a large number of young students to participate in illegal and criminal activities that endanger national security and to use them as "political fuel"; they have seriously trampled on the rule of law in Hong Kong, undermined social stability, shredded the social fabric and incited confrontation, seriously poisoning the younger generation and causing far-reaching harm. It is thus just as important, without delay, to strengthen dissemination, guidance, supervision and management of national security in Hong Kong society, especially among young people, to carry out national security education and to improve Hong Kong residents' awareness of national security and consciousness of the need to abide by the law, as well as to remove legal loopholes so as to safeguard national security.

9.2 Regarding the relationship between the crime of subversion of State power in the Hong Kong National Security Law and freedom of speech. Any rights and freedoms are not absolute and must be exercised within the scope prescribed by law. Based on the need to protect national security or public safety, public order and the rights and freedoms of others, reasonable and necessary restrictions may be imposed on the exercise of rights, in the form of laws. This is common practice in all countries and is also allowed under the international human rights conventions. Article 16 of the Hong Kong Bill of Rights Ordinance stipulates that freedom of opinion and expression may be subject to restrictions, by law, for the protection of national security or of public order. Article 19 of the International Covenant on Civil and Political Rights establishes that citizens enjoy the right to hold opinions, freedom of expression and freedom of information, but that they may be subject to restrictions for the protection of national security or of public order. It can thus be seen that freedom of speech and the related rights are not absolute rights and must be restricted to avoid infringing upon national interests, public interests and the rights and interests of others.

Crimes of incitement are of a type mainly carried out using language or words, etc., to convey a meaning to others, and through this expression, to encourage, incite and urge them to commit criminal acts. The definition of the crime of incitement in the Hong Kong National Security Law was drawn up in strict accordance with the law and takes into account the specific form of incitement and the specific content of the incitement carried out by the perpetrator. The provisions of the Hong Kong National Security Law relating to the crime of incitement fully take into consideration the balance between safeguarding national security and the protection of human rights. The crime of incitement and the normal expression of opinions are two entirely different things. Expression by an instigator of a crime is not a simple expression of personal opinions; it actively encourages others to carry out criminal acts desired by the instigator, with the specific intention of endangering society. This is completely different from normal expression of opinions whereby personal political or ideological opinions are put forward, and it goes completely beyond the boundary of freedom of speech. Looking at the provisions of criminal law in other countries in the world, we can see that they too all have legal provisions on incitement to crime. For example, the United States Code includes a crime of incitement to overthrow the government. The Crimes Ordinance of the Hong Kong Special Administrative Region also establishes such crimes as "incitement to mutiny", "excitement of disaffection" and "incitement of persons to violence".

9.3 Regarding the question of whether to apply the principle of the right to a public trial. Criminal case proceedings are based on the principle of a public trial, which is one of the important manifestations and guarantees of judicial openness and transparency. However, there are numerous exceptions to this principle in the laws of many countries, where proceedings are not public, for example in cases relating to public order or national security, or in order to protect the privacy of the parties, or to protect minors.

Cases that, according to the Hong Kong National Security Law, are not to be heard in public, such as those involving State secrets and public order, all correspond with cases whose proceedings are not public in the law of the mainland of China and in Hong Kong law. According to the Criminal Law of the People's Republic of China, proceedings for cases

involving State secrets or personal privacy are not to be held in public. The Hong Kong Bill of Rights Ordinance establishes that “The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society”. The Criminal Procedure Ordinance of the Hong Kong Special Administrative Region further establishes that, in order to ensure that judicial procedure is just and to meet the needs of public security and safety, criminal proceedings in certain cases may be conducted in private and the identity of witnesses may remain undisclosed.

When there are exceptional circumstances such as cases involving State secrets or public order, the conduct of an in camera proceeding for a criminal case in which State security has been jeopardized is not the same as a secret trial; it only involves prohibition of attendance by the press and the public. The cases are still heard in court, and the parties, their defenders and litigators still participate in the court proceedings. They can exercise the right of defence and other litigation rights granted by law, and the outcome of the proceeding must be made public.

10. The relevant provisions of the Hong Kong National Security Law establish that the police and prosecution departments of the Hong Kong Special Administrative Region must respect confidentiality, which is fully in keeping with the requirement to respect and protect human rights. The purpose of the relevant regulations is not only to ensure that investigations and prosecutions can proceed smoothly, but also to protect the interests of national sovereignty, security and development. In modern society, secrecy relates not only to the success or failure of a specific work, but also to the interests of national sovereignty, security and development. Therefore, confidential matters cannot be subject to outside interference. The experts of the special procedures have no right to ask China to appoint an independent reviewer and China does not need them to provide their so-called technical advice and assistance.

The requirement to maintain confidentiality is not the same as secret investigation or secret prosecution; there is no effect on the rights of criminal suspects and defendants. The requirement to maintain confidentiality is only for the sake of secrecy itself, which is a specific matter. As for the investigation and prosecution, they still must be carried out in accordance with the Hong Kong National Security Law and Hong Kong’s local legislation. The Hong Kong National Security Law emphasizes that human rights must be respected and protected, a principle that is designed into the actual system. Articles 4 and 5 of the Law clearly establish the principles of protecting human rights and the rule of law. There is no conflict between maintaining confidentiality and protecting human rights; and the Hong Kong National Security Law organically brings the two together as inseparable elements.

联合国人权理事会在反恐中促进和保护人权问题特别报告员、任意拘留问题工作组、法外处决问题特别报告员、言论自由问题特别报告员、和平集会与结社自由问题特别报告员、“人权卫士”问题特别报告员和少数群体问题特别报告员2020年9月1日来函[OL CHN 17/2020]收悉。中国政府对来函答复如下：

中国从国家层面建立健全香港特区维护国家安全的法律制度和执行机制，是堵塞香港国家安全法律漏洞、切实维护国家主权安全、维护香港繁荣稳定、确保“一国两制”行稳致远的必要和正当之举。香港特区维护国家安全法明确规定尊重和保护人权，依法保护香港居民根据基本法和《公民权利和政治权利国际公约》、《经济、社会与文化权利国际公约》适用于香港的有关规定享有的包括言论、新闻、集会、游行等自由在内的权利和自由。

有关特别机制专家对一段时间以来中国香港特区“港独”和本土激进势力猖獗、暴力恐怖活动不断升级、外部势力赤裸裸插手香港事务等严重消极事态视而不见，对中国维护国家主权、统一和领土完整、防控国家安全风险、确保香港长期繁荣稳定和长治久安、维护香港居民人权的正当举措未给予应有尊重，反而根据虚假信息 and 揣测，对中国法律进行无端指责，严重歪曲事实，严重干涉中国主权和内政，中国坚决反对。中方

敦促有关特别机制专家恪守《联合国宪章》宗旨和原则，遵守《特别机制行为准则》，公正、客观履职，认真研究中方答复材料，尊重中国立法和司法主权，停止干涉中国内政。关于香港国安法有关具体问题的答复如下：

一、香港国安法规定驻港国安公署等国家执法、司法机关根据该法第 55 条享有对特定危害国家安全犯罪案件的管辖权，并不存在所谓“违反《公民权利和政治权利国际公约》第 14 条规定的公正审判权”的问题。

（一）中国宪法为公正审判和人权保障提供了宪制保障。中国宪法多处规定涉及公正审判，第 125 条规定了审判以公开为原则，被告人有权获得辩护；第 126 条规定了人民法院依照法律规定独立行使审判权；第 33 条规定了国家尊重和保障人权，第 35 条、第 41 条还分别规定公民有言论、出版、集会、游行、示威的自由，对于任何国家机关和国家工作人员，有提出批评和建议的权利。

（二）中国刑事诉讼法有关原则规定和诉讼执行机制安排进一步为公正审判和人权保障提供了法律依据。刑事诉讼法在总则第 2 条中明确规定，刑事诉讼法的主要任务是：“尊重和保障人权，保护公民的人身权利、财产权利、民主权利和其他权利”。刑事诉讼法中多处明确规定了影响公正审判的后果。其中，第 201 条规定，对于认罪认罚的公诉案件，人民法院一般应当采纳人民检察院指控的罪名和量刑建议，但可能影响公正审判的情形除外。第 238 条规定，如果出现违反公开审判规

定、违反回避制度、剥夺或者限制了当事人的法定诉讼权利而可能影响公正审判等相关情形，二审人民法院应当撤销原判，发回原审人民法院重审。第 253 条第（四）项规定，如果存在违反法律规定的诉讼程序可能影响公正审判情形的，当事人及其法定代理人、近亲属向人民法院或人民检察院申诉，人民法院应当重新审判。上述条文是对公正审判的有力保障。

（三）香港国安法对公正审判和人权保障亦有明确规定，驻港国安公署等国家执法、司法机关行使管辖权时，将严格遵守香港国安法和内地刑事诉讼法的相关规定。香港国安法在立法的过程中充分考虑了《公民权利和政治权利国际公约》、《经济、社会与文化权利国际公约》的相关内容，强调在维护国家安全的同时应遵循人权保障原则。其中第 4 条明确规定，依法保护香港特别行政区居民根据基本法和两个国际人权公约适用于香港的有关规定享有的包括言论、新闻、出版的自由，结社、集会、游行、示威的自由在内的权利和自由；第 5 条就坚持法治原则（包括罪刑法定、无罪推定、诉讼权利保障、一事不再理原则）做出规定，第 39 条规定了法不溯及既往。这些规定与两个人权公约的精神是一致的，驻港国安公署等国家执法、司法机关行使管辖权时将严格遵守这些规定，确保公正审判。

（四）驻港国安公署等国家执法、司法机关在三种特定情形下就危害国家安全犯罪案件行使管辖与香港特别行政区有关机关行使管辖时所遵循的人权保障标准并无本质差异。内地相

关法律和香港特别行政区法律关于刑事司法人权保障的规定有诸多相同之处，包括禁止酷刑或者其他残忍、不人道的待遇；非因法定理由及程序，不得剥夺任何人的自由；受刑事控告之人，未经依法确定有罪之前，应假定其无罪；迅速告知指控；给予被告充分的时间和便利，准备答辩并与其选任的辩护人联络；获得法律援助；询问证人；免费获得翻译；不得被迫自证其罪；对少年犯罪案件使用特殊的诉讼程序；保障上诉权等。可以说，内地法律和香港特别行政区法律原则上均符合联合国刑事司法人权保障标准。香港国安公署等国家执法、司法机关根据香港国安法第 55 条的规定对危害国家安全犯罪案件行使管辖时，与香港特别行政区有关执法、司法机关所遵循的人权保障标准并无本质差异。

二、香港国安法第 62 条规定，“香港特别行政区本地法律规定与本法不一致的，使用本法规定”。作为在香港特别行政区公布实施的全国性法律，香港国安法的位阶和效力均高于香港特别行政区法律，无论是香港基本法第 8 条规定的香港原有法律，还是香港特别行政区立法机关制定的法律，如果与香港国安法规定不一致的，都应当优先适用香港国安法的规定。这与独立审判没有任何关系，香港特别行政区司法机构的独立审判不因此而受任何影响。

香港国安法第 65 条规定，“本法的解释权属于全国人民代表大会常务委员会”。在中国，法律的解释权属于全国人大常委会，中国宪法规定全国人大常委会负责解释法律。香港国

安法的这一规定符合中国法律解释体制。解释权在全国人大常委会并不影响司法机关根据案件事实适用法律。即使全国人大常委会释法，也是解释法律的含义而非直接就某一案件做出司法裁决，具体案件仍由法院、法官独立适用法律并依据法定程序进行审理并做出最终裁决，全国人大常委会的释法权同样不影响司法机关的独立审判权。

三、香港国安法第 44 条第一款规定由行政长官指定的法官审理危害国家安全犯罪案件，是因为危害国家安全犯罪案件较其他案件更为复杂、敏感，必须从法官中选择业务能力更强、经验更丰富的法官来审理；且当被指定为审理这类案件的法官后，他们会对危害国家安全犯罪案件的性质、特点、处罚等做深入研究，从而更有利于保持案件审理和判决的专业性和一致性，确保此类案件得到公平、公正、有效的处理。在香港本地司法实践中，指定法官审理某类案件有先例可循。比如，区域法院设立专门处理家庭法律诉讼的家事法庭，从区域法院法官中指定法官审理案件。再如，根据《截取通讯及监察条例》规定，行政长官可委任 3 至 6 名法官为小组法官，处理有关截取或相关监察的申请。在外国司法实践中也有类似做法，比如，加拿大首席法官会挑选一组特派法官负责判定相关案件是否属于国家安全范畴。

需要特别强调的是，所谓指定法官，是指行政长官在综合考量审案专长、业务能力和经验等因素后，指定一些适合审理危害国家安全犯罪案件的法官名单，而非就一个具体案件选择

主审法官。行政长官在指定之前，可征询香港特别行政区维护国家安全委员会和终审法院首席法官的意见，以保证被指定的法官能够胜任审理危害国家安全犯罪案件的工作。在审理具体案件时，仍由首席法官从上述指定法官名单中确定某个具体案件的主审法官。因此，指定法官和独立审判没有任何矛盾，也不会对法律人士言论自由产生任何影响。

四、香港国安法第 24 条并没有将单纯“损坏财物”列为恐怖主义行为，该条对“恐怖主义”的规定主要包括两个方面：一是意图实现政治主张；二是采取危害公众身体健康、危害公共安全的恐怖行为。尤其需要注意的是，香港国安法第 24 条中第（三）（四）项规定的并非一般性地“损坏财物”，而是破坏影响公众安全的公共基础设施和设备，且对公共基础设施和设备的种类有严格的限定，这些公共基础设施和设备的损坏很有可能导致危害公共安全的严重后果，此外，该条第二款规定的“使公私财产遭受重大损失”是量刑情节，而非定罪情节，需要在定罪之后、在量刑时考虑。因此，香港国安法并没有将单纯“损坏财物”列为恐怖主义行为，进而超出联合国安理会对恐怖主义的定义。

同时，联合国安理会的定义并不影响或限制各国根据实际情况对恐怖主义行为的具体表现形式做出与时俱进的规定。从现代风险社会的角度来说，恐怖主义表现形式越来越多样化，很多恐怖活动既针对公众的生命安全，同时也会造成严重财产损失。经查，目前已有多国刑法将损坏财物作为恐怖主义行

为，并强调是“为了实现政治目的”而损坏财物，例如《法国刑法典》第 421-1 条恐怖主义罪行中有多项关于损坏财物的规定（为实现政治目的盗窃、毁坏、勒索、破坏船舶和航空器等），《加拿大刑事法典》第 83.01 条规定恐怖主义包括“对公共或者私人财产造成重大损害可能导致他人死亡、危及他人生命、危害公众健康和安全”等。香港国安法第 24 条第（三）（四）项的规定与上述规定相接近。

五、《中华人民共和国国家安全法》对“国家安全”概念作出明确界定。国家安全是指国家政权、主权、统一和领土完整、人民福祉、经济社会可持续发展和国家其他重大利益相对处于没有危险和不受内外威胁的状态，以及保障持续安全状态的能力。香港特别行政区是中华人民共和国的一个享有高度自治权的地方行政区域，直辖于中央人民政府。在一国之内，国家安全的概念是统一的，即香港国安法关于“国家安全”的定义应与《中华人民共和国国家安全法》保持一致。

香港国安法所惩治的是分裂国家、颠覆国家政权、恐怖活动和勾结外国或者境外势力危害国家安全四类严重危害国家安全犯罪行为，并根据香港在维护国家安全方面的现实风险和香港普通法的特点，对有关罪行的具体表现形式做出明确限定，罪与非罪的界限划分十分清晰。同时，香港国安法第 1 条也开宗明义指出，制定香港国安法的立法目的是为了坚定不移并全面准确贯彻“一国两制”、“港人治港”、高度自治的方针，保持香港特别行政区的繁荣和稳定，保障香港特别行政区居民

的合法权益。香港国安法是对基本法有关香港特别行政区维护国家安全制度规定的补充和完善，香港特别行政区享有的高度自治权不会受到影响，香港原有的资本主义制度和生活方式不会改变，香港居民依法享有的权利自由不会受到减损。

六、关于香港国安法所适用的“分裂国家罪”具体问题：

（一）关于几个表述。“破坏国家统一”是中国刑法中的表述，由于特殊的历史原因，中国人民对“国家统一”有深刻、清晰的认知；“非法改变香港特别行政区或者中华人民共和国其他任何部分的法律地位”是指违反中国宪法和法律的规定，改变其在中国宪法和法律之下的地位；“将香港特别行政区或者中华人民共和国其他任何部分转归外国统治”是针对“港独”分子等妄图将香港或中国其他任何部分转归外国统治。需要说明的是，香港国安法在维护国家主权、安全的同时，根据香港在维护国家安全方面的现实风险和香港普通法的特点，对有关罪行的具体表现形式做出明确限定，其含义是十分明确的，其具体规定体现了英美法系和大陆法系的特点。

（二）关于“参加”的问题。“参加”一词参考了中国刑法第103条的规定，同时，也照顾了香港普通法的特点。由于分裂国家犯罪在很多情况下均属共同犯罪，除组织、策划、实施的主犯外，还有“参加”的从犯，对这些从犯也必须进行打击。因此，“参加”是相对于组织、策划、实施而言的，二者是“共犯”关系下的不同犯罪角色。这一规定符合大陆法系立法特点。

（三）关于分裂国家罪不以武力或暴力为构成要件的问题。实施危害国家安全的犯罪可能表现为采取暴力或者武力的方式，也可能表现为采用非暴力的方式。分裂国家是性质极为严重的犯罪，分裂国家罪和勾结外国或者境外势力危害国家安全罪可表现为组织、策划、煽动、教唆、串通、协议等非暴力行为，其行为对国家主权、安全或领土完整构成危险。

我们注意到，英美等国家的叛乱罪行都规定了以武力或暴力作为构成要素，因为这些国家制定刑法的年代，分裂国家以暴力或者武力活动比较普遍，随着科技发展，当今世界，以暴力或者武力分裂国家的情况已非常少见，非暴力、非武力的分裂活动已逐渐成为主要的犯罪形式。目前，在世界上很多国家的刑法中，都不再以暴力和武力作为分裂国家犯罪的构成要素。比如，葡萄牙《刑法典》第 308 条叛国罪将分裂行为表述为“以篡夺或者滥用国家主权职能的手段”；荷兰《刑法典》第 92 条将分裂国家罪的罪状表述为“企图使国家全部或部分屈服于外国政权，或者企图分裂国家的”等。在这些国家刑法中，如果行为人采取了暴力和武力手段，则可将此手段作为从重处罚的量刑情节，考虑到分裂国家罪行的极端严重性，越来越多的国家需要在制定国家安全法时对非暴力、非武力的分裂活动进行规管。在这种背景下，一些国家反而以“暴力和武力”标准来要求其他国家，明显是借口人权干涉别国主权。

七、有关特别机制专家关于颠覆国家政权罪在中国国内被用于政治活动的管制、颠覆国家政权罪是“政治犯罪”的指责

是没有任何依据的。一些政客和媒体歪曲事实，攻击中国共产党的领导和中国社会主义制度，诬蔑称中国以颠覆国家政权罪打击所谓政治异见人士，这是对中国抹黑。针对当前香港在维护国家安全方面的现实风险，我们切实防范、制止和打击相关犯罪行为，既是迫于现实需要，也于法有据。

香港国安法第 22 条规定的颠覆国家政权罪有明确、清晰的犯罪构成，即必须要有“颠覆国家政权”的目的，并组织、策划、实施或参与实施了香港国安法规定的四种行为之一，才构成犯罪，罪与非罪之间界限清晰，完全不存在所谓“定义不清”的情况。此外，颠覆国家政权罪与言论自由之间也有明确的界限。颠覆国家政权罪虽然是危险犯，但仍需要采取一定的行为，单纯口头上的言论行为不会构成犯罪，但如抱着特定危害社会的意图，积极鼓动他人实施煽动人所希望的犯罪活动，超出了言论自由的边界，就有可能构成煽动颠覆国家政权罪。

需要指出的是，维护国家安全，关系到一个国家核心利益。分裂国家罪和颠覆国家政权罪不可能等到发生既遂后果，这是该两种罪行的一个特点。中华人民共和国的国家政权，无论中央政府，还是包括香港特别行政区在内的各级地方政权机关，都不能容忍分裂国家或颠覆国家政权的行为，必须严加惩治。

八、香港国安法对所适用的分裂国家罪、颠覆国家政权罪的犯罪构成清楚，控罪元素明确，对所禁止的行为和活动均有清晰的界定，不存在交替使用问题。客观上也没有混同的必

要，任何人的行为触犯任何犯罪，以其触犯的罪名检控、审判即可，如触犯多个罪名，刑法对如何适用法律也有明确的规定。

中国宪法和法律依法保障人权，香港国安法也是如此。多年来，一些反华势力以人权为幌子，不断利用香港对内地进行渗透、破坏活动，妄图推翻中国共产党的领导，破坏社会主义制度，甚至妄图实现“港独”“台独”“藏独”“疆独”“蒙独”，这是明显的分裂国家、颠覆国家政权罪行。这些所谓“人权卫士”、记者和社会活动人士，借所谓“人权”从事危害国家安全的活动，我们将坚决予以打击。危害国家安全的犯罪分子指责香港国安法严苛，恰恰说明香港国安法具有应有的足够威慑力。

需要指出的是，分裂国家罪、颠覆国家政权罪都属于危害国家安全犯罪，任何拘捕、检控活动，都会引起广泛关注。事实胜于雄辩，在香港国安法公布施行以来三个月左右的时间，香港所谓的“人权卫士”、记者和社会活动人士照常活动，并没有人因为单纯发表言论或从事正常的政治活动被捕。

九、（一）关于对学校、社会团体、媒体、网络等涉及国家安全的事宜采取必要措施加强宣传、指导、监督和管理问题。强化香港居民的国家安全意识和责任，是切实维护国家安全、保持香港繁荣稳定和长治久安的固本之策和长久之策。去年修例风波以来，危害国家安全的各种活动在香港愈演愈烈，严重挑战“一国两制”的原则底线，对中国国家主权、安全、

发展利益构成严重威胁，对香港的法治和社会秩序造成严重危害，这既凸显了香港在国家安全方面存在的制度漏洞，也暴露出长期以来香港在国家安全教育、管理等方面存在的严重不足。更有甚者，“港独”和激进分离势力利用学校、社会团体、媒体、网络，教唆、煽惑、引诱裹挟大批青年学生参与到危害国家安全的违法犯罪活动中去，充当他们的“政治燃料”，严重践踏香港法治，破坏社会稳定，制造社会撕裂和对立，严重荼毒青少年一代，贻害深远。因此，加强对香港社会尤其是青少年的国家安全的宣传、指导、监督和管理，开展国家安全教育，提高香港居民的国家安全意识和守法意识，与堵塞维护国家安全的法律漏洞同样刻不容缓。

（二）关于香港国安法规定的煽动罪行与言论自由的关系。任何权利和自由都不是绝对的，必须在法律规定的范围内行使。基于维护国家安全或公共安全、公共秩序、保护他人权利和自由等需要，可以法律形式对权利的行使施加合理的、必要的限制。这是各国的普遍实践，也为国际人权公约所允许。

《香港人权法案条例》第16条规定“意见和发表自由”可以为了保障国家安全或公共秩序依法作出限制。《公民权利与政治权利国际公约》第19条规定公民享有持有意见、表达自由和信息自由，但应受保障国家安全或公共秩序的限制。可见，言论自由及相关权利并非决定性权利，需以不侵犯国家利益、公共利益及他人权益为限。

煽动类型的犯罪行为主要表现为利用语言、文字等形式，向他人传达一种意思，通过这种意思的表达，达到鼓动、怂恿、促使他们实施犯罪行为的目的。香港国安法对于煽动犯罪的界定，是严格依照法律规定，结合行为人所实施的煽动行为的具体形式和煽动的具体内容进行认定。香港国安法对于煽动类罪行的规定充分考虑了维护国家安全和保障人权之间的平衡。煽动罪行与正常的意见表达完全是两码事。煽动犯罪的行为人所发表的言论并非单纯的个人意见表达，而是抱着特定危害社会的意图，积极鼓动他人实施煽动人所希望的犯罪活动，完全不同于表达、陈述个人政治见解或意识形态主张的正常的意见表达行为，完全超出了言论自由的边界。从世界其他国家刑法的规定看，法律中也都有关于煽动犯罪的规定。比如，《美国法典》中规定“煽动推翻政府罪”。香港特别行政区《刑事罪行条例》中也规定了“煽惑叛变”“煽惑离叛”“煽惑他人使用暴力”等罪行。

（三）关于是否适用公开审判原则。审理犯罪案件以公开审判为原则，这是司法公开透明的重要体现和保障之一。但各国法律对此原则也多作出例外规定，如基于公共秩序、国家安全、保护当事人隐私、保护未成年人等原因不公开审理。

香港国安法规定的国家秘密、公共秩序等不宜公开审理的情形，均属内地和香港法律有关不公开审理的法定情形。《中华人民共和国刑法》规定有关国家秘密和个人隐私的案件不公开审理。《香港人权法案条例》规定，“法院因民主社会之风

化、公共秩序或国家安全关系，……，禁止新闻界及公众旁听审判程序之全部或一部分”。香港特别行政区《刑事诉讼程序条例》进一步规定，为了司法公正、公安或安全需要，某些案件中刑事法律程序可藉非公开进行和不披露证人的身份。

在涉及国家秘密、公共秩序等例外情形下，不公开审理危害国家安全犯罪案件并不等于秘密审判，只是禁止媒体和公众旁听，案件仍然开庭审理，当事人及其辩护人、诉讼代理人仍然参与法庭审判，他们可以行使法律赋予的辩护权和其他诉讼权利，并且判决结果必须公开。

十、香港国安法相关条文规定香港特别行政区维护国家安全的警务和检控部门应保守秘密，完全符合尊重和保护人权的要求。有关规定既是为了确保案件侦查、检控顺利进行，也是为了维护国家主权、安全、发展利益。现代社会，保密工作不仅事关某项具体工作的成败，更事关国家主权、安全、发展利益。因此，保密相关事项不容外来干涉，特别机制专家无权要求中国就此任命独立审查员，中国也不需要其提供所谓的技术咨询和援助。

保密要求不等同于秘密侦查、秘密检控，犯罪嫌疑人、被告人的权利不因此而受影响。保密要求只是针对秘密本身，属于特定事项。对于侦查、检控过程，还是应当根据香港国安法和香港本地法律依法进行。香港国安法强调应尊重和保障人权，并在具体制度设计中体现了这一原则，该法第4、5条明

确规定了保障人权和刑事法治原则，保守秘密和保障人权之间没有任何冲突，二者有机统一于香港国安法之中。