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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 [AL CHN 9/ 2021] dated 13 August 2021, has the honour 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, 11 November 2021



Office of the High Commissioner for Human Rights  
**GENEVA**

The Chinese Government received the joint communication [AL CHN 9/2021] dated 13 August, 2021 by the Special Rapporteur on the right to education, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the rights to freedom of peaceful assembly and of association. The reply to the joint communication is as follows,

**(A) Background leading to the enactment of the Hong Kong National Security Law**

- Hong Kong has long been “defenseless” when it comes to safeguarding national security. Firstly, there were loopholes in its legal system. Despite reunification, not only has Hong Kong yet to discharge its constitutional duty to enact laws to safeguard national security in accordance with Article 23 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (the Basic Law), its existing legal provisions related to safeguarding national security also long remained dormant. Secondly, there were deficiencies in the enforcement mechanisms. As there were no specialised law enforcement or judicial institution designated for safeguarding national security, many deficiencies existed in the institutional setup, enforcement capacity and power allocation in the Hong Kong Special Administrative Region (HKSAR) for safeguarding national security. Such “defenseless” status had led to frequent occurrence of various acts and activities endangering national security in Hong Kong, which were getting more and more rampant.
- During the outbreak of anti-government riots with extensive escalating violence in 2019 and 2020, the HKSAR faced an increasing threat to national security.
- In the midst of the violent riots, rioters wantonly blocked roads, intruded, occupied and wrecked university campuses, severely vandalised shops, MTR and other public facilities, hurled a huge number of petrol bombs, set fires, violently stormed and trashed the Legislative Council building, damaged Government premises, as well as wilfully assaulted people holding different views.
- Opposition forces and organisations advocating “Hong Kong independence”, “self-determination” and “referendum” blatantly challenged the foundation of the “One Country, Two Systems”

principle, posed a serious threat to the national sovereignty, security and development interests of China, and brought 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, radical separatist forces advocating “Hong Kong independence” have used schools, organisations, 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 thus can be seen that following the onset of the disturbances arising from the opposition to the proposed legislative amendments to the Fugitive Offenders Ordinance, Hong Kong experienced the most severe challenges since reunification. The HKSAR did not have the right conditions to enact laws on its own pursuant to Article 23 of the Basic Law over a long period of time. Under such circumstances, if the Central People's Government did not step in and take action, not only would Hong Kong be unable to restore public peace, but it would also become a major gaping hole in and a risk factor to our country's national security.
- National security is a matter that concerns the survival, development and core interests of a country. National security affairs fall within the purview of the Central Authorities. Having an overarching responsibility for national security affairs, the Central People's Government should possess and exercise all necessary power, including executive, legislative, enforcement and judicial power. The requirement under Article 23 of the Basic Law is a special arrangement made under the principle of “One Country, Two Systems” based on the high degree of trust in Hong Kong and full respect for the legal system in Hong Kong. It does not change the fact that national security affairs, which include making legislation on national security, are within the purview of the Central Authorities.

- The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (Hong Kong National Security Law) is enacted to ensure the resolute, full and faithful implementation of the policy of “One Country, Two Systems”; to safeguard national security; to prevent, suppress and impose punishment for offences endangering national security; to maintain prosperity and stability of the HKSAR; and to protect the lawful rights and interests of HKSAR residents.

***Response to Question 2 – Please provide information on consultative processes established or envisaged to ensure the participation of the academic community in the drafting of new legislation and regulations relating to freedom of opinion and speech, and especially on its impact on education at all levels.***

**(B) Participation of the Academic Community in the legislative process**

- Suffice to say, the Hong Kong community has widely shown support to the Hong Kong National Security Law. In particular, over 2.9 million of people signed a petition in May 2020 in support of the Hong Kong National Security Law.
- The education sector was duly consulted during the legislative process of the Hong Kong National Security Law. Before the enactment of the Hong Kong National Security Law by the Standing Committee of the National People’s Congress (NPCSC), the Legislative Affairs Commission of the Standing Committee of the National People’s Congress, together with the Hong Kong and Macao Affairs Office of the State Council and the Liaison Office of the Central People’s Government in the HKSAR, organised a series of symposiums to gauge the views of the Hong Kong community, including the education sector, on the draft Hong Kong National Security Law.
- During the symposiums, members from different sectors of the Hong Kong community (including the education sector) expressed their support to and exchanged their views on the Hong Kong National Security Law. In particular, they considered that the Hong Kong National Security Law would plug the legal loophole and deficiencies in the enforcement mechanisms in safeguarding national security, and

would ensure the smooth and continuous implementation of the “One Country, Two Systems” principle and the long-term prosperity and stability of Hong Kong. They also expressed their hope for an early promulgation of the Hong Kong National Security Law.

- The education sector has also voiced support to the Hong Kong National Security Law. For example, the Chairmen of the Councils of the University Grants Committee Funded Universities jointly issued a statement to show their support to the legislative process of the Hong Kong National Security Law, stating that “as residents of Hong Kong, we enjoy the protection provided by the state, and in turn have a reciprocal obligation to protect the state by supporting the introduction of legislation which prohibits criminal acts that threaten the existence of the state. We therefore support the national security laws which will operate under the principle of ‘One Country, Two Systems’, to better ensure universities can continue to create knowledge through research and learning”. Support to the Hong Kong National Security Law has also been echoed by different organisations in the education sector, including associations of school heads/education workers.

***Response to Question 3 – Please define the term “necessary measure” and clarify how individual freedoms of academic community members will be safeguarded in light of NSL 9.***

**(C) Protection of fundamental freedoms, including academic freedom**

- During the adoption of the Hong Kong National Security Law, the relevant contents of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 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 of the Hong Kong National Security Law provides that human rights shall be respected and protected in safeguarding national security in the HKSAR. The rights and freedoms, including the freedoms of speech, of the press, of publication, of association, of assembly, of procession and of demonstration, which the residents of the Region

enjoy under the Basic Law of the HKSAR and the provisions of the ICCPR and the ICESCR as applied to Hong Kong, shall be protected in accordance with the law.

- In particular, in relation to the academic field, Article 34 of the Basic Law protects the freedom of Hong Kong residents to engage in academic research, literary and artistic creation, and other cultural activities. Moreover, Article 137 of the Basic Law provides that educational institutions of all kinds may retain their autonomy and enjoy academic freedom.
- Academic freedom is an important social value treasured by Hong Kong and a cornerstone of our higher education sector's success and renown in the world. Moreover, the HKSAR Government has all along upheld academic freedom and institutional autonomy, which are protected by the Basic Law. All post-secondary institutions in Hong Kong are independent and autonomous bodies that enjoy autonomy in managing their institutional affairs. As a matter of course, the institutions are responsible for ensuring that their operations are in compliance with the law and in the interests of their students and the community as a whole. The HKSAR Government does not interfere with academic exchanges between the institutions and local or overseas academic organisations.

### ***Freedoms not absolute***

- The Government of the HKSAR respects academic freedom and freedom of the press. On the other hand, as stated in Article 42 of the Basic Law, Hong Kong residents and other persons in Hong Kong have the obligation to abide by the law in force in the HKSAR.
- Article 1 of the Basic Law states that the HKSAR is an inalienable part of the People's Republic of China. Article 12 of the Basic Law provides that the HKSAR shall be a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People's Government. Article 2 of the Hong Kong National Security Law provides that the provisions in Articles 1 and 12 of the Basic Law on the legal status of the HKSAR are the fundamental provisions in the Basic Law. No institution, organisation or individual in the HKSAR shall contravene these provisions in exercising their rights and freedoms.

- Academic freedom and freedom of the press are not absolute. In order to protect national security or public safety, public order (*ordre public*) and the rights and freedoms of others, reasonable and necessary restrictions may be imposed on the exercise of such rights in the form of laws (including the Hong Kong National Security Law). This is common practice in all countries and is also allowed under the ICCPR and ICESCR. The ICCPR and ICESCR both permit restrictions on non-absolute human rights if they are prescribed by law and necessary for the protection of national security.<sup>1</sup>
- The wording of Article 16 of the Hong Kong Bill of Rights is the same as Article 19 of the ICCPR. Both stipulate that the freedom of expression may be subject to restrictions provided by law and are necessary for the protection of national security or of public order (*ordre public*). It can thus be seen that the freedom of expression is not absolute and may be restricted to avoid conflict with national security, public interests and the rights and interests of others. Those who choose to turn a blind eye to such well-established legal principle out of their own political motives are clearly adopting double standard.

### ***“Necessary measures”***

- Against the background of serious violence and riots disrupting Hong Kong’s law and order in 2019 and 2020, it is thus important, without delay, to strengthen public communication, guidance, supervision and regulation over matters concerning 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. 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. The HKSAR Government should take all practical measures which are conducive to achieving the above aims.
- Even though the phrase “necessary measures” is not defined under the Hong Kong National Security Law, it is clear that necessary measures

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<sup>1</sup> See, for example, Articles 12-14, 19 and 21 of the ICCPR and Article 8 of the ICESCR.

under Article 9 of the Hong Kong National Security Law are measures which are conducive to the aims discussed above.

- As also discussed in 《香港特別行政區維護國家安全法讀本》(王振民、黃風、畢雁英等專家學者合著)(at page 108): “***strengthen public communication, guidance, supervision and regulation over matters concerning national security*** – Article 9 of the Hong Kong National Security Law stipulates that ‘[t]he Government of the Hong Kong Special Administrative Region shall take necessary measures to strengthen public communication, guidance, supervision and regulation over matters concerning national security, including those relating to schools and universities, social organisations, the media, and the internet’. This requirement emphasises on the responsibility of the HKSAR Government to supervise and regulate schools and universities, social organisations, the media and the internet. Schools and universities, social organisations, the media and the internet are ***not above the law***. ***The occurrence of speeches and acts endangering national security cannot be left unattended***. The Government should proactively take up its responsibility in guidance and supervision, ***establish correct orientation, and set things right in various areas***.”

***Response to Question 5 – Please clarify how the application of NSL 38 complies with the obligations that the PRC/Hong Kong has to foster and develop international contacts and cooperation in the scientific field under Articles 15(1)(b) and (4) of ICESCR.***

#### **(D) Academic freedom**

- Safeguarding national sovereignty, security and development interests is an indisputable duty of a responsible national in all countries and places around the world. The HKSAR is no exception. Whilst targeting an extremely small minority of illegal and criminal acts and activities with an intent to seriously endanger national security in relation to Hong Kong, the Hong Kong National Security Law protects the lawful rights and interests of the residents of the HKSAR as well as maintains prosperity and stability of the HKSAR. According to Article 4 of the Hong Kong National Security Law, “human rights shall be respected and protected in safeguarding national security in the HKSAR. The



rights and freedoms...which the residents of the Region enjoy under the Basic Law of the HKSAR and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong, shall be protected in accordance with the law.”

- Our education institutions continue to enjoy academic freedom, which is an important value treasured by Hong Kong and a cornerstone of our higher education sector. Article 34 of the Basic Law states that “Hong Kong residents shall have freedom to engage in academic research, literary and artistic creation, and other cultural activities”, and Article 137 states that “educational institutions of all kinds may retain their autonomy and enjoy academic freedom. They may continue to recruit staff and use teaching materials from outside the HKSAR.” The safeguards of academic freedom and institutional autonomy enshrined in the Basic Law remain in full force.
- All along, the HKSAR Government respects institutional autonomy and academic freedom, and requires the institutions to uphold good governance and accountability to the public, and their operations have to comply with the law and meet the interests of students and the community at large. As repeatedly stressed by the HKSAR Government, the institutions are not above the law. Students and staff shall abide by the law, including the Hong Kong National Security Law. At the same time, campus management and human resources management are matters under institutional autonomy to be so handled by the institutions in accordance with the established mechanisms. The HKSAR Government does not intervene in or comment on individual cases.
- With the restoration of law and order and a stable environment in Hong Kong since the implementation of the Hong Kong National Security Law, our institutions can refocus on research and academic development, strive for academic excellence, and seize the unprecedented opportunities presented by the technological advancement and development of our country and the region. As always, the HKSAR Government will liaise with the institutions to ensure that their operations continue to meet the interests of the community at large.

### ***[Background***

- *Article 9 of the Hong Kong National Security Law stipulates, among other things, that the HKSAR Government shall take necessary measures to strengthen guidance, supervision and regulation over matters concerning national security relating to schools and universities (i.e. including post-secondary education institutions). Article 10 stipulates, among other things, that national security education should be promoted in schools and universities (i.e. including post-secondary education institutions) with a view to raising awareness of national security and of the obligation to abide by the law.*

**(E) Rights to Freedom of Opinion, Expression, Association and Peaceful Assembly of Everyone, including Students and Academics**

- Article 27 of the Basic Law provides that Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration. The HKSAR Government stresses that while ensuring students' free expression of opinions, we should also cultivate their positive values and moral character to abide by the law and respect others, so that they can learn to express their opinions rationally, peacefully and lawfully, and facilitate their mutual understanding. The Education Bureau (EDB) officers will, during school visits, exchange views with school personnel and students on various education issues.

**(F) Extra-territorial effect of the Hong Kong National Security Law**

- Article 38 of the Hong Kong National Security Law provides that the Hong Kong National Security Law shall apply to offences under the Hong Kong National Security Law committed against the HKSAR from outside the HKSAR by a person who is not a permanent resident of the HKSAR. Article 38 of the Hong Kong National Security Law deals with the extra-territorial application of Hong Kong National Security Law offences which are clearly set out under the Hong Kong National Security Law.
- Criminal offences under the Hong Kong National Security Law which are concerned with endangering national sovereignty, unity and territorial integrity, are different from general criminal offences.

Regardless of whether the criminal acts are committed within the HKSAR or in foreign jurisdictions, or whether the offender is a resident of the HKSAR or not, where the relevant criminal acts threaten the national security, unity and territorial integrity of China, such acts or conducts must be prevented, suppressed and punished. Hong Kong National Security Law therefore has to provide for extraterritorial application.

- Such extraterritorial application of the Hong Kong National Security Law is in line with the well-recognised international law principle of “protective jurisdiction”. Under the principle of “protective jurisdiction”, if foreigners commit crimes abroad against a sovereign State that endanger its security or its vital interests (such as government systems or functions), the sovereign State can adopt laws with extraterritorial effects to exercise prescriptive criminal jurisdiction. The principle of “protective jurisdiction” is followed in several international conventions against terrorism, such as the International Convention against the Taking of Hostages (1979),<sup>2</sup> the International Convention for the Suppression of Terrorist Bombings (1997),<sup>3</sup> and the International Convention on the Suppression of the Financing of Terrorism (1999).<sup>4</sup>

#### ***Articles 15(1)(b) and (4) of ICESCR***

- Article 15(1)(b) of ICESCR stipulates that the States Parties should recognize the right of everyone to “enjoy the benefits of scientific progress and its applications”. Article 15(4) provides that the States Parties should “recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields”.
- There is no reason to suggest that Article 38 of the Hong Kong National Security Law imposes any restriction on the right to enjoy the benefits of scientific progress and its application under Article 15(1)(b) of and/or the recognition of the benefits to be derived from the encouragement

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<sup>2</sup> See Article 5(1)(c) of the International Convention against the Taking of Hostages (1979).

<sup>3</sup> See Article 6(2)(d) of the International Convention for the Suppression of Terrorist Bombings (1997).

<sup>4</sup> See Article 7(2)(c) of the International Convention on the Suppression of the Financing of Terrorism (1999).

and development of international contacts and co-operation in the scientific and cultural fields under Article 15(4) of ICESCR.

***Response to Question 8 – Please provide information on any oversight mechanism that is empowered to review executive decisions to limit fundamental rights and freedoms, including academic and press freedom, in the context of NSL***

***Question 9 - Please provide a complete list of appeal and remedy mechanisms available in this context.***

**(G) “Appeal and remedy mechanisms”**

***Judicial review***

- Article 35 of the Basic Law guarantees, amongst others, the right of access to the courts and to judicial remedies, and the right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel. Any person who believes that his rights under the Basic Law have been contravened may bring legal proceedings against the HKSAR Government. The safeguard under Article 35 of the Basic Law also applies to executive decisions made by the executive authorities and executive personnel in the course of performing their duty that may have the effect of limiting fundamental rights and freedoms to safeguard the legitimate interests of national security, i.e. such decisions may be challenged by way of judicial review.
- The applicants in judicial review applications may rely on the provisions of the Basic Law and the Hong Kong Bill of Rights Ordinance (Cap. 383) to challenge an executive act. When the constitutional challenge is directed against a law or an act of the executive authorities restricting constitutionally guaranteed rights or freedoms, the Court adopts the four-step proportionality test as an analytical tool to examine whether the law is constitutionally compliant:
  - (1) The restriction must pursue a legitimate aim;
  - (2) The restriction must be rationally connected to that legitimate aim;

- (3) The restriction must be no more than is necessary to accomplish that legitimate aim; and
- (4) A reasonable balance has to be struck between the societal benefits of the encroachment and the inroads made into the constitutionally guaranteed rights of the individual, asking in particular whether pursuit of the societal interest results in an unacceptably harsh burden on the individual.
- Article 16 of the Hong Kong Bill of Rights (which is in the same terms as Article 19 of ICCPR) states that the right to freedom of expression is subject to restrictions provided by law which are necessary for the protection of national security or public order (*ordre public*) (the latter concept has been held by our Court of Final Appeal<sup>5</sup> as including the HKSAR's protection of the constitutional order as an inalienable part of the People's Republic of China). In conducting the proportionality analysis, it is clear that safeguarding the interests of a state is a permissible and legitimate aim to restrict the right to freedom of expression.
  - A wider margin of discretion would be allowed in respect of an executive decision relating to national security. The Court of Final Appeal in *Hysan Development Co Ltd and Town Planning Board (2016) 19 HKCFAR 372* explained that a decision-maker's views resulting in the promulgation of the impugned measure may be given much weight and thus afforded a wide margin of discretion where the decision-maker is likely to be better placed than the Court to assess what is needed in the public interest, such as when the matter relates to national security:

*"[116.] ..., a decision-maker's views resulting in the promulgation of the impugned measure may be given much weight and thus afforded a wide margin of discretion reflected by use of a 'manifest' standard where the decision-maker is likely to be better placed than the Court to assess what is needed in the public interest. The Court may for instance, be satisfied that he had special access to information; special expertise in its assessment; or an overview enabling him to assess competing and possibly prior claims for scarce resources. The Court might also refrain from intervening because the measure reflects a predictive or judgmental decision*

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<sup>5</sup> *HKSAR v Ng Kung Siu* (1999) 2 HKCFAR 442, paragraph 55.

*which it was the institutional role of the decision-maker to take and as to which no single ‘right answer’ exists.*

*[117.] The Court is likely to take such an approach, for instance, in relation to matters touching on **national security**. In Hong Kong there are, additionally, limitations placed on the Court's role on questions touching on defence and foreign policy.” [emphasis added]*

### ***Regimes under specific legislation***

- Individual statutes under Hong Kong law may also provide for appeal/review mechanisms in respect of executive decisions made under a particular statutory context. The operation of such mechanisms will depend on the relevant provisions of the legislation. For instance, an Appeal Board is appointed under the Education Ordinance (Cap. 279) to hear appeals from certain decisions of the Permanent Secretary for Education made under the Ordinance.<sup>6</sup> The Permanent Secretary or the appellant may further appeal the decision of the Appeal Board by way of petition to the Chief Executive in Council.<sup>7</sup>

***Response to Question 7 – Please provide information on the legal basis of the dispersal of the march of student on 19 November 2020 and how this is in line with the principle of proportionality and necessity under the international human rights norms.***

***Question 10 - Please provide detailed information on the reasons that led to the arrest of the eight persons involved in the November 2020 student march.***

### **(H) Enforcement actions taken in respect of an unlawful procession in November 2020**

- Any law enforcement actions taken by Hong Kong law enforcement agencies are based on evidence, strictly according to the law, for the acts of the persons or entities concerned, and have nothing to do with their political stance, background or occupation.

### ***Unlawful procession in the Chinese University of Hong Kong***

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<sup>6</sup> Sections 59 to 61 of Cap. 279 of the Laws of Hong Kong.

<sup>7</sup> Section 64 of Cap. 279 of the Laws of Hong Kong.

- To describe the unlawful procession in the Chinese University of Hong Kong (CUHK) in November 2020 as “students march[ing] peacefully” could not be a further understatement. We deeply regret that the UN Special Rapporteurs should have been misled in believing so and have grossly underestimated the serious harm that the incident caused to national security as well as law and order.
- As a factual account, on 19 November 2020, Police received a report from the CUHK that over 90 persons, including outsiders who were not CUHK students, took part in an unlawful procession inside the campus earlier that day. During the procession, the slogans and materials in relation to “Hong Kong Independence”, including “Liberate Hong Kong, Revolution of Our Times” were chanted and displayed. CUHK deployed its security guards to maintain order and the group later dispersed.
- In addition, in the early morning prior to the unlawful procession, security guards of CUHK found 30 different locations inside the campus having been criminally damaged with wordings of “Hong Kong Independence” sprayed.
- Officers of the National Security Department of the Hong Kong Police (NSD) took over the case on 19 November 2020 and entered the campus for evidence gathering in the afternoon of the next day under the strength of a search warrant issued by the Magistrate. Upon investigation, officers of NSD arrested nine persons for “Incitement to Secession” and “Taking Part in Unauthorised Assembly”. Among those arrested are persons who were not students of the CUHK.
- According to section 10 of Police Force Ordinance (Cap. 232), the duties of the police force shall be to take lawful measures for, among others –
  - (a) preserving the public peace;
  - (b) preventing and detecting crimes and offences;
  - (c) apprehending all persons whom it is lawful to apprehend and for whose apprehension sufficient grounds exists;

- (d) regulating processions and assemblies in public places or places of public resort.
- According to Article 8 of Hong Kong National Security Law, in order to safeguard national security effectively, the law enforcement and judicial authorities of the HKSAR shall fully enforce the Hong Kong National Security Law and the laws in force in the HKSAR concerning the prevention of, suppression of, and imposition of punishment for acts and activities endangering national security.
  - It was ruled by the Hong Kong Court in July 2021<sup>8</sup> that the slogan “Liberate Hong Kong, Revolution of Our Times” was capable of carrying the meaning of separating the HKSAR from the People’s Republic of China and was capable of inciting others to commit secession.
  - Article 20 of the Hong Kong National Security Law stipulates that any person who organises, plans, commits or participates in any of the following acts, whether or not by force or threat of force, with a view to committing secession or undermining national unification shall be guilty of an offence:
    - (a) separating the HKSAR or any other part of the People’s Republic of China from the People’s Republic of China;
    - (b) altering by unlawful means the legal status of the HKSAR or of any other part of the People’s Republic of China; or
    - (c) surrendering the HKSAR or any other part of the People’s Republic of China to a foreign country.
  - Having regard to the legal analysis on the proportionality test above, it is clear that safeguarding national security is a legitimate aim to restrict fundamental rights. The arrested persons advocated Hong Kong Independence may commit the offence of “secession”, undermining/endangering national security and sovereignty. The Police have the duty to prevent and detect offences endangering national security, and such enforcement action is no more than is necessary to

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<sup>8</sup> *HKSAR v Tong Ying Kit [2021] HKCFI 2200* (Date of Verdict: 27 July 2021).



accomplish that legitimate aim. Therefore, the law enforcement action concerned satisfies the necessity and proportionality requirement to achieve the legitimate aim of protection of national security.

***Response to Question 11 – Please provide clarification on criteria and reasons for the recent revisions made to Liberal Studies textbooks and curriculum.***

### **(I) Reform of Senior Secondary Liberal Studies**

#### ***Professional consultancy service for senior secondary Liberal Studies “textbooks”***

- Senior secondary Liberal Studies (LS) has been a core subject for more than 10 years. As the design of the curriculum is different from that of the other subjects, there is no mechanism for submitting LS “textbooks” for review; nor is there any Recommended Textbook List for this subject. The “textbooks” available on the market have never been reviewed by the EDB. They were entirely written according to the authors’ own interpretation of the curriculum. The degree of rigor of content and expression is different from that of the textbooks formally reviewed by the EDB. Therefore, members of the public clamoured for submitting the “textbooks” for review in order to refine the content of the textbooks for safeguarding the learning interests of students.
- In addition, prompted by the social unrest and violent incidents in 2019, the public has been very concerned about the hate speech on the Internet and suspected bullying cases as well as the biased teaching materials, including the learning materials of LS. The public is worried that the improper contents of the teaching materials would mislead students who are cognitively and psychologically immature, or even spread hatred and prejudice. Both the EDB and publishers have received a considerable number of complaints. The public showed concern that the learning materials and teaching materials of LS were not comprehensive, objective and impartial, and in turn had adverse impact on students. As the EDB has the responsibility to safeguard the well-being of students, a special measure was introduced in September 2019 to provide a one-off professional consultancy service for LS

“textbooks” so as to improve the quality of the “textbooks” that had been published on the market and to allay public concerns. The professional consultancy service was provided by a professional team, who gave feedback professionally after reviewing relevant “textbooks” in accordance with the curriculum aims, objectives and learning focuses, with a view to enhancing the accuracy and quality of the content without any political consideration.

- The related service was well received by the publishers and they voluntarily participated in the professional consultancy service, with a view to sieving out the inaccurate parts from the rest. This is to ensure that the information is correct, based on facts, keeping abreast of the times, as well as clear and easy to understand, while avoiding exaggeration, inaccuracy or misleading information. This would help students construct knowledge and develop positive values. The feedback and justifications were made after interactions and discussions between the team and the publishers. The revisions, ranging from “textbook” content, the use of words and sentences, pictures and cartoons to the arrangement of layout, were made entirely by the publishers themselves.

### ***[Background***

- *Initially, 7 publishers with 10 sets of “textbooks” participated in the professional consultancy service for LS “textbooks”. Subsequently, individual publishers withdrew from the service due to commercial reasons. Eventually, 6 publishers with 8 sets of “textbooks” underwent the whole professional consultancy procedure. The EDB has uploaded and published the list of LS “textbooks” and the relevant volumes which have undergone the professional consultancy service on the EDB’s webpage for schools’ and public’s information. The publishers also appropriately uploaded the revised contents on their webpages for informing teachers and students who were using the “textbooks”.]*

### ***Reform of senior secondary Liberal Studies***

- The public has expressed increasing concern that the implementation of the senior secondary LS has gradually deviated from the original aim of the LS curriculum.

- Experience shows that the LS curriculum, which is open and flexible, is prone to misinterpretation by a minority of people, resulting in deviations in its implementation. Criticisms include: too much emphasis on discussion of current affairs; such discussions being too general and unsubstantiated due to students' lack of systematic knowledge; being polarised instead of thinking from multiple perspectives, and overly focused on political issues as a result of the backwash effect of the direction of question setting in the public examination; and misinterpretation of “critical thinking”<sup>9</sup> as a readiness to challenge authority and the tendency to raise criticism and objection indiscriminately with little regard to an evidence-based approach founded on careful analysis and judgement. After the curriculum has been implemented for more than a decade, the problems about its content, teaching strategies and even assessment are getting worse. There is an urgent need to reform the subject.
- The four senior secondary core subjects occupying more than half or even more of the lesson time in many schools take up too much time of the students. Therefore, the implementation of the four core subjects needs to be optimised to varying degrees. The Task Force on Review of School Curriculum (Task Force) was set up by the HKSAR Government in 2017 to holistically review the primary and secondary curricula, covering the arrangements of the four senior secondary core subjects (including LS). After nearly 3 years of consultation and deliberation of the Task Force, one of the recommendations in its review report proposed optimising the four senior secondary core subjects, thereby creating space for students and catering for learner diversity. The EDB has thoroughly considered the Task Force's recommendations and responded to the views of the community. The relevant committees under the Curriculum Development Council (CDC) and the Hong Kong Examination and Assessment Authority (HKEAA) followed up and put forward the optimising proposals. Upon discussion and endorsement of the CDC and HKEAA, the optimising proposals were accepted by the EDB.
- There are established mechanism and procedures for curriculum development and revision. The Task Force worked for nearly 3 years and consulted stakeholders and the public extensively, receiving

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<sup>9</sup> The Chinese translation of critical thinking skills was updated as “慎思明辨能力”.

112,000 written submissions in addition to a number of exchange meetings with different stakeholders. The HKSAR Government announced the main direction of the reform of LS at the end of November 2020. The CDC and the HKEAA immediately set up the “CDC-HKEAA Committee on the Renamed Subject” which was responsible for curriculum design, assessment and implementation strategies. The committee members were either education professionals or representative figures from various sectors of society. With the interests of students as their prime concern, they set about revising the curriculum, following the prescribed procedures, drawing reference from the recommendations of the report of the Task Force, and adopting the opinions of professionals, in keeping with the professional-led principle.

- The EDB conducted a school questionnaire survey on “*Optimising the Senior Secondary Core Subjects to Create Space for Students and Cater for Learner Diversity*” from 2 February to 2 March 2021, while concurrently collecting suggestions and views on the optimising proposals of the four senior secondary core subjects (including LS) through different channels, including school briefing sessions, teacher focus group meetings, etc.
- The EDB issued the Education Bureau Circular Memorandum on 1 April 2021 to announce the optimising proposals of the four senior secondary core subjects (i.e. Chinese Language, English Language, Mathematics, and Citizenship and Social Development in lieu of LS). The arrangements of the four senior secondary subjects are effective at Secondary 4 from the 2021/22 school year. LS is renamed Citizenship and Social Development (CS), and its curriculum adheres to the curriculum rationale and aims of LS, including building up a solid knowledge base through emphasis on understanding and studying different topics from multiple perspectives, enabling students to make law-abiding, rational and affective judgements based on facts and evidence, as well as cultivating their high-order thinking skills, such as critical thinking, rational analysis and problem solving skills, etc. In the learning process, it also emphasises nurturing students to become informed and responsible citizens with a sense of national identity and global perspectives.

- One of the learning focuses of the CS curriculum requires students to understand the latest situation of our country and traditional Chinese culture, so as to enable them to gain a comprehensive understanding of the latest developments of the country. The curriculum also attaches importance to cultivating students' sense of national identity and their understanding about the country, which is in line with the current LS curriculum. Hong Kong is an inalienable part of our country. The school curriculum aims to cultivate in students the attributes of nationals and a sense of national identity and, through guiding students to learn different topics, enable them to gain a foothold in Hong Kong, understand the national development and develop a global perspective. All along, the learning elements of national education have been embedded in various subjects of primary and secondary education, and are contents which students should learn.
- The implementation of LS has always aroused the concerns of different sectors of society, and even generated politicised controversy. As the department responsible for education affairs in Hong Kong, the role of the EDB is not only to provide resources, but also to formulate and implement education policies, to lead the curriculum and the education profession, and at the same time play a monitoring role. When deviations are identified in the implementation of LS, it is incumbent upon the EDB to safeguard the education profession to protect the interests of students.
- Since there are misunderstandings on the reform of LS and CS, even deliberate smears, the EDB has issued "Clear the Air" for clarification. (Reform of Liberal Studies (Part 1) <https://www.edb.gov.hk/en/about-edb/press/cleartheair/20210209.html> and Reform of Liberal Studies (Part 2) <https://www.edb.gov.hk/en/about-edb/press/cleartheair/20210210.html>). The EDB has rectified the problems and restored the original intention of the curriculum, requiring students to strengthen their basic knowledge and critical thinking skills, but being misinterpreted as forbidding students from conducting multiple-perspective enquiry. This is a misunderstanding of the intention of the curriculum reform. Some parties (for example, the Hong Kong Professional Teachers' Union) and individuals have ignored the deviations of LS over the years, and interpreted the curriculum from their political standpoints and prescribed views, and purposely confused the public. The curriculum reform in the best interests of students has been politicised and the EDB

has been smeared with emotive language. Some people even alleged that the revised curriculum was political indoctrination. This not only disregards the justifiability and necessity of cultivating students' sense of national identity in the education systems around the world, but also destroys the trust between teachers and the EDB, which reflects that the reform of LS is a matter of urgency.

### **[Background**

- *The Task Force, after the holistic review of the primary and secondary curricula, submitted its review report entitled “Optimise the curriculum for the future, Foster whole-person development and diverse talents” to the EDB on 22 September 2020, putting forward six directional recommendations. Having thoroughly considered the review report, the EDB announced the direction of reform on Liberal Studies in November 2020 and further announced in December 2020 its acceptance of the six directional recommendations<sup>10</sup> set out in the Task Force’s review report, and now implementing some of the recommendations.*
- *The EDB conducted a school questionnaire survey on “Optimising the Senior Secondary Core Subjects to Create Space for Students and Cater for Learner Diversity” from 2 February to 2 March 2021, while concurrently collecting suggestions and views on the optimising proposals of the four senior secondary core subjects through different channels, including school briefing sessions, teacher focus group meetings, etc. The response rate of the survey from secondary schools was over 95%, and over 1 190 teachers attended the briefing sessions on the Renamed Subject in lieu of LS.*
- *Under the principle of “Led by Professionals”, the relevant committees under the CDC and the HKEAA followed up and put forward the optimising proposals. After thorough examination and deliberation, the CDC and HKEAA Public Examinations Board endorsed on 31 March 2021 the proposals to optimise the four senior secondary core subjects and made suggestions to the EDB.*

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<sup>10</sup> The six directional recommendations are: (i) Reinforcing the importance of whole-person development; (ii) According higher priority to values education; (iii) Creating space and catering for learner diversity; (iv) Further promoting Applied Learning; (v) Enhancing the flexibility in university admissions; and (vi) Strengthening STEM (i.e. Science, Technology, Engineering and Mathematics) education.

- *The EDB accepted the optimising proposals of the four senior secondary core subjects (including Citizenship and Social Development in lieu of LS), and issued a circular memorandum to schools on 1 April 2021 to indicate the implementation of optimising measures of the respective subjects in the 2021/22 school year.*
- *LS is renamed **Citizenship and Social Development** and the reform focuses include:*
  - *keeping the subject compulsory for public assessment*
  - *adhering to the curriculum rationale and aims of the existing Liberal Studies*
  - *covering the themes of the curriculum including “Hong Kong under ‘One Country, Two Systems’”, “Our Country since Reform and Opening-up” and “Interconnectedness and Interdependence of the Contemporary World”*
  - *attaching importance to cultivating students’ positive values and attitudes, sense of national identity, their learning about national development, the Constitution, the Basic Law and the rule of law*
  - *broadening students’ international perspectives, helping them connect knowledge across different subjects, developing their critical thinking skills and teaching them to analyse contemporary topics in a rational manner through studying important topics related to Hong Kong, the nation and global developments*
  - *providing Mainland study opportunities for students (not involving public examination)*
  - *reducing the curriculum content and lesson time to about half of those of the original*
  - *providing only one paper for the public examination*
  - *reporting the results of public examination as “Attained” and “Unattained” to release examination pressure*
  - *putting in place a Recommended Textbook List for the subject (i.e. the textbooks would be submitted for review)]*

联合国人权理事会教育权问题特别报告员、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 2021 年 8 月 13 日联合来函【AL CHN 9/2021】收悉，中国政府对来函答复如下：

### (一) 制订《香港国安法》的背景

- 香港在维护国家安全领域长期处于“不设防”状态。首先是法律制度存在漏洞。不仅《中华人民共和国香港特别行政区基本法》（《基本法》）第二十三条规定的有关维护国家安全立法的宪制责任在香港回归以来迟迟未能完成，而且香港原有法律中有关维护国家安全的规定也长期处于“休眠”状态。其次是执行机制方面存在缺失。香港特别行政区（香港特区）没有专门维护国家安全的执法、司法机构，在维护国家安全的机构设置、权力配置和力量配备等方面存在诸多不足之处。这种“不设防”状态导致香港危害国家安全的各种行为和活动经常发生，且愈来愈烈。
- 2019 至 2020 年充斥广泛而暴力不断升级的反政府示威期间，香港特区面对的国家安全威胁日趋严重。
- 黑暴期间，暴徒大肆堵路、入侵、霸占和摧毁大学校园、严重破坏商铺、港铁和其他公共设施、投掷大量汽油弹、纵火、暴力强闯及大肆破坏立法会，破坏政府办公大楼，以及肆意殴打持不同意见的人。
- 反对势力及鼓吹“港独”、“自决”和“公投”的组织公然挑战「一国两制」原则的基础，对国家主权、安全和发展利益构成严重威胁，严重损害香港的法治和社会秩序。这不仅凸显香港在国家安全制度上的漏洞，也揭露了香港在国家安全教育和管理工作方面长期存在的严重弊端。
- 此外，鼓吹“港独”的激进分离势力利用学校、团体、媒体和网络去鼓动、煽惑、引诱和胁迫大量年青学生参与危害国家安全的违法犯罪活动，并利用他们作为“政治燃料”。这些势力严重践踏香港的法治、破坏社会稳定、撕裂社会结构和煽动对抗、严重荼毒年轻一代，以及造成深远伤害。



- 可见“修例风波”爆发后，香港面临回归以来最严峻的局面，香港特区在一段时间内已不具备条件自行完成《基本法》第二十三条立法。在这种情况下，如果中央人民政府再不出手，香港不仅无法恢复宁日，而且将成为我国国家安全的重大缺口和风险点。
- 国家安全关乎一国的生存和发展，关乎国家核心利益。国家安全事务属于中央事权，中央人民政府负有根本责任，拥有并行使一切必要的权力，包括行政管理、立法、执法、司法方面的权力。《基本法》第二十三条规定是在“一国两制”下基于对香港的高度信任和对香港法律制度的充分尊重作出的特殊安排，不改变包括国家安全立法在内的国家安全事务属于中央事权的属性。
- 《中华人民共和国香港特别行政区维护国家安全法》(《香港国安法》)的制定，是为了坚定不移并全面准确贯彻「一国两制」的方针；维护国家安全；防范、制止和惩治危害国家安全的犯罪；保持香港特区繁荣稳定；及保障香港特区居民合法权益。

***对问题 (2) 的回应 – Please provide information on consultative processes established or envisaged to ensure the participation of the academic community in the drafting of new legislation and regulations relating to freedom of opinion and speech, and especially on its impact on education at all levels.***

## **(二) 学术界在立法过程的参与**

- 毋庸置疑，香港社会广泛支持《香港国安法》。特别是在2020年5月，有超过290万人联署支持《香港国安法》。
- 于《香港国安法》的制定过程中，教育界有被充分咨询。在全国人民代表大会常务委员会制定《香港国安法》前，全国人民代表大会常委会法制工作委员会会同国务院港澳事务办公室和中央人民政府驻香港特别行政区联络办公室，举办了一系列座谈会，就《香港国安法》草案收集包括教育界在内的香港社会的意见。

- 于座谈会上，香港社会不同界别(包括教育界)的代表表示支持《香港国安法》，并就《香港国安法》交换意见。他们尤其认为《香港国安法》将堵塞香港特区在维护国家安全方面的法律漏洞和执行制度的不足之处，有利于确保「一国两制」行稳致远，保持香港长期繁荣稳定。与会人士亦希望尽快颁布《香港国安法》。
- 教育界亦对《香港国安法》订立表示支持。举例而言，大学教育资助委员会资助大学的校董会主席发表联合声明支持订立《香港国安法》，表示“作为香港市民，我们得到国家给予我们的保障。与此同时，我们亦有责任保护国家的安全。我们除了支持《基本法》外，也支持建立健全香港特别行政区维护国家安全的法律制度和执行机制，借以防止危害国家安全的行为和活动。国家安全法有利于维护香港繁荣稳定；有利于香港「一国两制」行稳致远；有利于为大学教育与科研提供安宁的环境”。不同的教育界团体，包括校长会／教育工作者团体，亦对《香港国安法》表示支持。

***对问题(3)的回应 – Please define the term “necessary measure” and clarify how individual freedoms of academic community members will be safeguarded in light of NSL 9.***

### **(三) 保障基本自由，包括学术自由**

- 在制定《香港国安法》的过程中，已全面考虑《公民权利和政治权利国际公约》和《经济、社会与文化权利的国际公约》的相关内容，并强调维护国家安全时亦须遵守各项人权保障原则。
- 《香港国安法》第四条订明，香港特区维护国家安全应当尊重和保障人权，依法保护香港特区居民根据香港特区《基本法》和《公民权利和政治权利国际公约》及《经济、社会与文化权利的国际公约》适用于香港的有关规定享有的权利和自由，包括言论、新闻、出版、结社、集会、游行及示威的自由。
- 特别在学术范畴方面，《基本法》第三十四条保障香港居民进行学术研究、文学艺术创作和其他文化活动的自由。此外，

《基本法》第一百三十七条订明各类院校均可保留其自主性并享有学术自由。

- 学术自由是香港向来推崇的重要社会价值，亦是香港高等教育界赖以成功及享誉全球的基石。此外，香港特区政府一直致力维护受《基本法》保障的学术自由及院校自主。香港各专上院校均是独立自主的机构，在管理校政上享有自主权。当然，院校有责任确保其运作遵从法律要求，以及其学生和社会整体的利益。香港特区政府不会干预院校与本地或境外学术机构的学术交流。

### **自由并非绝对**

- 香港特区政府尊重学术自由和新闻自由。同时，《基本法》第四十二条订明，香港居民和在香港的其他人有遵守香港特区实行的法律的义务。
- 《基本法》第一条订明，香港特区是中华人民共和国不可分离的部分。根据《基本法》第十二条，香港特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。根据《香港国安法》第二条，关于香港特区法律地位的《基本法》第一条和第十二条规定是《基本法》的根本性条款。香港特区任何机构、组织和个人行使权利和自由，不得违背《基本法》第一条和第十二条的规定。
- 学术自由和新闻自由并非绝对。为维护国家安全或公共安全、公共秩序及他人权利和自由，可循法律形式(包括《香港国安法》)对这些权利的行使施加合理和必要的限制，此乃各国普遍做法，也为《公民权利和政治权利国际公约》和《经济、社会与文化权利的国际公约》所允许。《公民权利和政治权利国际公约》和《经济、社会与文化权利的国际公约》均容许以法律和维护国家安全的必要对非绝对的人权予以限制<sup>1</sup>。
- 《香港人权法案》第十六条的字眼与《公民权利和政治权利国际公约》第十九条相同，两者皆订明为了保障国家安全或公共秩序所必要者，可对发表的自由以法律规定予以限制。可见发表的自由并非绝对，可予以限制，以避免与国家安全、公共利

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<sup>1</sup> 例子见《公民权利和政治权利国际公约》第十二条至第十四条、第十九条和第二十一条，以及《经济、社会与文化权利的国际公约》第八条。

益及他人权益相悖。基于自身政治动机的人，漠视上述已充分建立的法律原则，明显是采取双重标准。

### “必要措施”

- 鉴于 2019 和 2020 年破坏香港治安的黑暴和暴乱背景，至为重要且刻不容缓的是，必须加强香港社会(特别是青少年群体)涉及国家安全事宜的宣传、指导、监督和管理；推行国家安全教育，并提高香港市民的国家安全意识和守法意识；以及消除法律漏洞以维护国家安全。加强香港市民的国家安全意识和责任是坚实的长远政策，旨在坚定不移维护国家安全，以及确保香港持续繁荣和长治久安。香港特区政府应采取一切有助实现上述目标的实际措施。
- 即使《香港国安法》没有界定“必要措施”一词，但《香港国安法》第九条所述的必要措施显然是指有助实现上述目标的措施。
- 正如《香港特别行政区维护国家安全法读本》(王振民、黄风、毕雁英等专家学者著)所论述(第 108 页)：“**加强对国家安全的宣传、指导、监督和管理。**《香港国安法》第 9 条规定‘对学校、社会团体、媒体、网络等涉及国家安全的事宜，香港特别行政区政府应当采取必要措施，加强宣传、指导、监督和管理。’这一规定强调了特区政府对学校、社团、媒体、网络的监督管理职能，学校、社会团体、媒体和网络不是法外之地，不能任由危害国家安全的言论和行为的发生，政府应当积极履行指导、监管职责，树立正确导向，实现各个领域的拨乱反正。”

*对问题(5)的回应 – Please clarify how the application of NSL 38 complies with the obligations that the PRC/Hong Kong has to foster and develop international contacts and cooperation in the scientific field under Articles 15(1)(b) and (4) of ICESCR.*

### (四) 学术自由

- 维护国家主权、安全及以发展利益是全世界国家和地区的负责任公民毋庸置疑的义务，香港特区亦不例外。《香港国安法》

针对极少数与香港相关而意图严重危害国家安全的违法及刑事的行为和活动，并保护香港特区居民的合法权利和利益，以及维护香港的繁荣和稳定。根据《香港国安法》第四条，「香港特别行政区维护国家安全应当尊重和保障人权，依法保护香港特别行政区居民根据《基本法》和《公民权利和政治权利国际公约》以及《经济、社会与文化权利的国际公约》适用于香港的有关规定享有的...权利和自由」。

- 作为香港一直推崇的重要社会价值及高等教育界的基石，我们的院校继续享有学术自由。《基本法》第三十四条订明「香港居民有进行学术研究、文学艺术创作和其他文化活动的自由」，第一百三十七条亦订明「各类院校均可保留其自主性并享有学术自由，可继续从香港特别行政区以外招聘教职员和选用教材」。《基本法》对学术自由及院校自主的保障仍然全面生效。
- 香港特区政府一向尊重院校自主和学术自由，同时亦要求院校确保良好管治并向公众问责，其运作亦须符合法例要求及学生和社会整体的利益。正如香港特区政府多次强调，院校并非法外之地，所有师生均须遵守法例，包括《香港国安法》。与此同时，校园管理及人事管理属院校自主范畴，院校会基于院校自主原则，按既定机制处理。香港特区政府不会干预及评论个别个案。
- 随着《香港国安法》落实，香港恢复法治和秩序，以及稳定的环境，我们的院校得以专注研究及学术发展，以追求学术上的卓越，把握国家和地区发展以及科技进步带来的空前机遇。一如既往，香港特区政府会与各院校保持联系，以确保它们的运作持续符合社会整体利益。

## **[背景资料]**

- 《香港国安法》第九条当中列明对包括学校(即包括专上院校)涉及国家安全的事宜，「香港特别行政区政府应当采取必要措施，加强宣传、指导、监督和管理」；第十条列明香港特别行政区应当通过学校(即包括专上院校)「开展国家安全教育，提高香港特别行政区居民的国家安全意识和守法意识」。

### **(五) 保障包括学生和教育人员在内的所有人的意见和发表的自由，结社、和平集会的自由**

- 《基本法》第二十七条订明，所有香港居民均享有言论、新闻、出版的自由，结社、集会、游行、示威的自由。香港特区政府强调，在保障学生自由表达意见的同时，亦需培养他们守法和尊重他人等正面价值观和品德，好使学生理性、和平及合法地表达意见，促进相互了解。教育局人员会进行访校，就不同的教育议题，与学校教职员和学生交流意见。

### **(六) 《香港国安法》的域外效力**

- 《香港国安法》第三十八条订明，《香港国安法》适用于不具有香港特区永久性居民身份的人在香港特区以外针对香港特区作出《香港国安法》规定的犯罪行为。《香港国安法》第三十八条处理《香港国安法》对《香港国安法》下清楚规定的罪行的域外适用性。
- 《香港国安法》下关乎危害国家主权、统一和领土完整的刑事罪行，有别于一般刑事罪行。无论犯罪行为是在香港特区内还是在外地司法管辖区作出，不论犯罪者是否香港特区永久性居民，若该相关犯罪行为对国家主权、统一和领土完整构成威胁，该等行为或作为便必须予以防范、制止和惩治。因此，《香港国安法》必须具有域外效力。

- 《香港国安法》的上述域外效力符合国际法下广为接纳的“保护管辖”原则。在“保护管辖”原则下，若身处境外的外国人对某主权国家进行危害其安全或其核心利益(例如政府体制或职能)的犯罪行为，该主权国家可透过有域外效力的法律行使刑事管辖权。“保护管辖”原则亦见于反恐怖主义的几部国际公约，例如《反对劫持人质国际公约》(1979年)<sup>2</sup>、《制止恐怖主义爆炸事件的国际公约》(1997年)<sup>3</sup>和《制止向恐怖主义提供资助的国际公约》(1999年)等。<sup>4</sup>

#### **《经济、社会与文化权利的国际公约》第十五(一)(丑)和(四)条**

- 《经济、社会与文化权利的国际公约》第十五(一)(丑)条订明，缔约国应确认人人有权“享受科学进步及应用之惠”；第十五(四)条则规定缔约国应“确认鼓励及发展科学文化方面国际接触与合作之利”。
- 试图指控《香港国安法》第三十八条对根据《经济、社会与文化权利的国际公约》第十五(一)(丑)条享受科学进步及应用之惠的权利及／或根据第十五(四)条确认鼓励及发展科学文化方面国际接触与合作之利施加任何限制的说法，完全缺乏理据。

***对问题 (8) 和 (9) 的回应 – Please provide information on any oversight mechanism that is empowered to review executive decisions to limit fundamental rights and freedoms, including academic and press freedom, in the context of NSL; Please provide a complete list of appeal and remedy mechanisms available in this context.***

### **(七) “上诉和补救机制”**

#### **司法复核**

- 《基本法》第三十五条保障包括向法院提起诉讼和获得司法补救，以及对行政部门和行政人员的行为向法院提起诉讼在内的权利。任何人如认为其根据《基本法》享有的权利被抵触，可

<sup>2</sup> 见《反对劫持人质国际公约》(1979年)第5(1)(c)条。

<sup>3</sup> 见《制止恐怖主义爆炸事件的国际公约》(1997年)第6(2)(d)条。

<sup>4</sup> 见《制止向恐怖主义提供资助的国际公约》(1999年)第7(2)(c)条。

对香港特区政府提起诉讼。对于行政部门和行政人员在执行职务时所作的可能具有限制基本权利和自由以保障国家安全合法利益的效力的行政决定，以上《基本法》第三十五条的保障亦同样适用，即这类决定可受司法复核的挑战。

- 司法复核申请人可根据《基本法》和《香港人权法案条例》(第 383 章)条文，就行政行为提出挑战。当有人提出涉及限制受宪法保护的自由和权利的法律或行政机关的行为的合宪性挑战时，法庭会采纳共分四步的相称性验证作为分析工具，考虑该法律是否合宪：

- (1)限制必须为了达致某合法目的；
- (2)限制必须与该合法目的有合理关连；
- (3)限制没有超越为达致该合法目的所需的程度；以及
- (4)该项措施所达致的社会利益，与有关个别人士受宪法保护的  
权利所受到的影响之间，须取得合理平衡；特别须审视追求  
该社会利益会否导致有关个人面对无法接受地严苛的负担。

- 与《公民权利和政治权利的国际公约》第十九条相同字眼的《香港人权法案》第十六条订明，发表自由之权利，可得以经法律规定予以限制，以保障国家安全或公共秩序(后者已被我们的终审法院裁定<sup>5</sup>包括香港特区作为中华人民共和国不可分离的部分对宪制秩序的保障)所需。在进行相称性分析时，保障国家利益显然是限制表达自由的权利可被允许而合法的目的。

- 在作出有关国家安全的行政决定时，会被容许较大的酌情衡量空间。终审法院于希慎兴业有限公司对城市规划委员会(2016) 19 HKCFAR 372 一案中解释，由于决策者可能比法院更适合评估公众利益的需要(例如当有关问题涉及国家安全时)，因此，决策者因什么观点来颁布该受到质疑的措施，法院会予以重视并给予较大的酌情衡量空间：

“[116.]……，当决策者可能比法院更适合评估公众利益的需要，决策者颁布受到质疑的措施的观点可能会更被重视，因此法院透过运用一个“明显的”标准来给予决策者较大的酌情衡量的空间。例如，法院可以确信他有特别方法来获取资

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<sup>5</sup> 香港特别行政区诉 吴恭劭(1999) 2 HKCFAR 442, 第 55 段。



料；具有专业的评估知识；或在综合的观点下让他能评估就稀有资源而出现的竞争和可能出现的优先申索情况。而当该措施反映了一个预测性或判断性决定，而该决定乃决策者在制度下所担当的责任，同时不存在一个单一的“正确答案”，法院亦可能避免干预。

[117.]例如，法院可能会在有关**国家安全**的问题上采取这种做法。此外，在香港，法院在涉及国防和外交政策的问题上的角色也受限制。”

[注:判决书原文只有英文版本，上文翻译只为参考之用]

### 特定法例下的机制

- 香港法律下的个别法规亦可就特定法律背景下作出的行政决定订明上诉／复核机制。这些机制的运作取决于法例的相关规定。举例来说，根据《教育条例》(第 279 章)委任的上诉委员会，负责就教育局常任秘书长根据该条例作出的某些决定，进行上诉聆讯。<sup>6</sup> 常任秘书长或上诉人可就上诉委员会的决定，以呈请书方式进一步向行政长官会同行政会议提出上诉。<sup>7</sup>

***对问题 (7) 和 (10) 的回应 – Please provide information on the legal basis of the dispersal of the march of student on 19 November 2020 and how this is in line with the principle of proportionality and necessity under the international human rights norms; Please provide detailed information on the reasons that led to the arrest of the eight persons involved in the November 2020 student march.***

### (八) 有关就一场于 2020 年 11 月举行的非法游行所采取的执法行动

<sup>6</sup> 香港法例第 279 章第 59 至第 61 条。

<sup>7</sup> 香港法例第 279 章第 64 条。

- 香港执法部门是根据证据、严格依照法律，以及按有关的人士或单位的行为而采取其执法行动，与其政治立场、背景或职业无关。

### 于香港中文大学的非法游行

- 将 2020 年 11 月发生于香港中文大学(中文大学)的非法游行描述为“学生和平地游行”，是完全低估了事件的严重性。我们对联合国特别报告员可能被误导以致相信该等描述，并极其低估事件对国家安全以及治安所带来的严重祸害深表遗憾。
- 以下为有关事实陈述：于 2020 年 11 月 19 日，警方接获中文大学校方报案，指逾 90 人(包括非中文大学学生的校外人士)当日于中文大学校园内进行非法游行。游行期间，有人叫喊和展示包括「光复香港 时代革命」在内的「港独」口号和物品。中文大学校方调派保安人员维持秩序，游行人士其后散去。
- 此外，于该非法游行前的清晨，中文大学保安员发现校内有多达 30 处不同地方被人喷上「港独」字句的刑事毁坏。
- 香港警务处国家安全处(国安处)人员于 2020 年 11 月 19 日接手该案，并于翌日下午持裁判官签发的搜令进入中文大学校园搜证。经调查后，国安处人员以涉嫌干犯「分裂国家罪」及「参与未经批准集结罪」拘捕 9 人，当中有并非中文大学学生的人。
- 根据《警队条例》(第 232 章)第 10 条，警队的职责是采取合法措施以达致包括以下所列—
  - (a) 维持公安；
  - (b) 防止刑事罪及犯法行为的发生和侦查刑事罪及犯法行为；
  - (c) 拘捕一切可合法拘捕而又有足够理由予以拘捕的人；
  - (d) 规管在公众地方或公众休憩地方举行的游行及集会。

- 根据《香港国安法》第八条，香港特别行政区执法、司法机关应当切实执行《香港国安法》和香港特别行政区现行法律有关防范、制止和惩治危害国家安全行为和活动的规定，有效维护国家安全。
- 香港的法庭已于 2021 年 7 月<sup>8</sup>就「光复香港 时代革命」口号作判决，认为该口号可以有「将香港特区从中华人民共和国分离出去」之意，可煽动他人犯下分裂国家罪。
- 《香港国安法》第二十条订明，任何人组织、策划、实施或者参与实施以下旨在分裂国家、破坏国家统一行为之一的，不论是否使用武力或者以武力相威胁，即属犯罪：
  - (a) 将香港特区或者中华人民共和国其他任何部分从中华人民共和国分离出去；
  - (b) 非法改变香港特区或者中华人民共和国其他任何部分的法律地位；或
  - (c) 将香港特区或者中华人民共和国其他任何部分转归外国统治。
- 在考虑到上述相称性验证的法律分析后，显而易见，维护国家安全是限制基本权利的合法目的。被拘捕的人鼓吹「香港独立」，可能触犯「分裂国家罪」，损害／危害国家安全和主权。警队有责任防止、侦查有关危害国家安全之罪行，所以相关执法行动没有超越为达致该合法目的所需的程度。因此，有关执法行动符合必要及相称性要求，以达至维护国家安全的合法目的。

***对问题 (11) 的回应 – Please provide clarification on criteria and reasons for the recent revisions made to Liberal Studies textbooks and curriculum.***

<sup>8</sup> 香港特别行政区诉唐英杰 [2021] HKCFI 2200 (判决日期：2021 年 7 月 27 日)。

## (九) 改革高中通识教育科

### 高中通识教育科「教科书」专业咨询服务

- 高中通识教育科(通识科)成为核心科目逾十年以来，基于该科的课程设计与其他学科不同，故不设课本评审机制和《适用书目表》。坊间流通多套的所谓「教科书」均从未经过教育局审核，完全由编者自行解读课程而撰写，内容及表达的严谨度有别于正式经教育局审批的教科书。因此，社会人士要求将「教科书」送审，以优化教科书内容，保障学生的学习利益。
- 此外，2019年发生的社会动乱和暴力事件，引发公众对网络上的仇恨言论和怀疑欺凌个案，以及包括通识科学习材料在内的偏颇教材的关注。社会人士忧虑教材的内容误导心智未成熟的学生，甚至散播仇恨和偏见。教育局及出版社都收到不少投诉。社会人士关注通识科的学习材料，忧虑教材的内容不够全面、客观及持平，会对学生造成不良影响。教育局有责任保障学生的福祉，故于2019年9月特别为通识科「教科书」推出一次过的专业咨询服务，以改善在市面已出版的通识科「教科书」的质素，释除公众疑虑。有关专业咨询服务由专业团队负责，他们按照通识科的课程宗旨、目标和学习重点，恪守专业，阅览相关的「教科书」后给予回馈，旨在提升内容的准确度和质素，当中并不涉及任何政治考虑。
- 相关服务得到出版商的认同，他们全部自愿接受专业咨询服务，旨在去芜存菁，务求资料正确、建基于事实、与时俱进，以及条理清晰易明，同时避免夸张失实或误导，帮助学生建构知识和正面的价值观。各项回馈意见及理据均经过团队人员和出版社讨论交流，而具体的课文内容、文句、图片和漫画的处理，以至版面编排等方面的修订，完全由出版社自行作出修订。

### [背景资料]

- 通识科「教科书」专业咨询服务原先有七间出版社参与，包括十套「教科书」，其后个别出版社因商业理由退出，最终共有来自六间出版社的八套「教科书」完成咨询服务。教育局已把

完成了专业咨询服务的通识科「教科书」名单及相关册数上载至教育局网页，让学校及公众知悉。出版社亦于其网页内适当地上载有关的修订内容，让使用该套「教科书」的师生知悉。]

## 改革高中通识科

- 社会日渐关注高中通识科在推行时出现异化情况，偏离原先的课程理念。
- 从经验所得，通识科课程开放并富弹性，容易被少数人士自行解读演绎，使推行时出现异化，为人诟病之处包括：过多时事讨论，学生缺乏系统知识，流于泛泛而谈，游谈无根；受公开考试拟题方向的「倒流效应」影响，呈现二元对立而非多角度思考，并过份聚焦于政治议题；错误解读批判性思考<sup>9</sup>是代表敢于挑战权威，凡事倾向批评或反对，忽视须建基事实及审慎思考判断。课程推行逾十年，上述课程内容、教学策略，以至评估考核的问题，都有恶化的趋势，改革有迫切需要。
- 不少学校的高中四科核心科目占去逾半课时，耗用学生过多的时间，因此四个核心科目的实施情况都有不同程度需要优化之处。香港特区政府在 2017 年成立学校课程检讨专责小组(专责小组)，全面检讨中小学课程，其中也涉及高中四个核心科目(包括通识科)的安排。专责小组经过为时近三年的咨询及讨论，报告建议之一提出优化高中四个核心科目，为学生创造空间和照顾学生多样性。教育局充分考虑专责小组的建议，并回应社会各界的意见，由相关的课程发展议会和香港考试及评核局辖下的委员会跟进而提出优化方案，经课程发展议会和考试及评核局讨论并通过，再获教育局接纳。
- 课程发展及修订，有其既定机制及程序。专责小组工作了近三年，已广泛咨询持份者及进行公众咨询，除数十场与不同持分者的交流会外，收到的书面意见书有 112 000 份。香港特区政府于 2020 年 11 月底公布通识科改革的主要方向，课程发展议会和香港考试及评核局随即成立「重新冠名科目委员会」，负责设计课程、评估和实施策略。委员全是教育专业及社会各界具代表性的人士，他们秉持以学生的利益为依归，按既定程

<sup>9</sup> 「批判性思考」“Critical Thinking Skills”的中译更新为「慎思明辨能力」。

序、参考专责小组报告书的建议，以及采纳专业人士的意见而开展课程修订的工作，体现专业领航的原则。

- 教育局于 2021 年 2 月 2 日至 3 月 2 日期间，进行「优化高中核心科目——为学生创造空间和照顾学生多样性」学校问卷调查，并同步从不同渠道，包括学校简介会、教师焦点小组会议等，搜集学界对高中四个核心科目（包括通识科）优化方案的建议及意见。
- 教育局于 2021 年 4 月 1 日发出教育局通函，公布高中四个核心科目（即中国语文、英国语文、数学及公民与社会发展科以代替通识科）的优化措施。有关高中四个核心科目的安排，于 2021/22 学年于中四级起生效。当中通识科会改名为公民与社会发展科（「公民科」），其课程贯彻通识科的课程理念和宗旨，包括强调透过多角度理解和研习不同的课题，建立稳固的知识基础，让学生根据事实和证据，作出合乎法理情的判断，培养他们慎思明辨、理性分析和解难等高阶思维能力；在学习中，同时着重培养学生成为有识见、负责任的公民，认同国民身份，并具备世界视野。
- 公民与社会发展科课程其中一个学习重点要求学生认识国情发展与国家传统文化，让学生全面认识国家最新发展的概况，课程的理念同样重视培养学生认识及认同国家及国民身份，与现行通识科课程一脉相承。香港是国家不可分离的部分，学校课程以培养学生的国民素养及国民认同为宗旨，并透过指导学生研习不同的课题学习，让他们能够立足香港、认识国家发展，以及具备国际视野，这些都是理所当然的事。一直以来，国民教育的学习元素都蕴含于中小学课程不同学科之中，是学生应当学习的内容。
- 通识科的推行，一直备受社会不同界别关注，甚至产生流于政治化的争议。教育局身为负责全港教育事务的部门，角色不只是提供资源，更是教育政策的制订者及推行者，课程及教育专业的领导者，同时担当着监察者的角色。当发现业界在执行通识科课程出现异化问题时，自然责无旁贷，必须以维护教育专业，以保障学生利益。

- 由于外界对改革通识科及公民科存有不少误解，甚至肆意抹黑，教育局曾发表「政策正面睇」以作澄清。(通识教育科改革正面睇 (上篇) <https://www.edb.gov.hk/sc/about-edb/press/cleartheair/20210209.html> 及通识教育科改革正面睇 (下篇) <https://www.edb.gov.hk/sc/about-edb/press/cleartheair/20210210.html>)。教育局正本清源，回归课程初心，要求强化学习基础知识及慎思明辨，反而被误解为禁止学生进行多角度的探究，是对课程改草原意的错误理解。坊间有团体(如教育人员专业协会)及个别人士无视通识科多年来出现的异化问题，反而以其本身的政治立场先行，以一向既定立场诠释课程，误导视听，将为学生福祉而进行的课程改革一再政治化，以情绪化字眼一再抹黑教育局，甚至指修订课程是政治灌输，无视培养国民身分认同在世界各地教育系统的合理性与必要性，实在是挑拨教师与局方的互信，正正反映通识科的改革刻不容缓。

## **[背景资料]**

- 专责小组对中小学课程进行全面检讨后，于2020年9月22日向教育局提交了名为「优化课程迎接未来培育全人启迪多元」的检讨报告，并提出六项方向性建议。教育局全面考虑检讨报告后，于2020年11月公布了有关通识科的改革，并于2020年12月进一步公布接纳检讨报告中提出的六项方向性建议<sup>10</sup>，并正在落实当中一些建议。
- 教育局于2021年2月2日至3月2日期间，进行「优化高中核心科目——为学生创造空间和照顾学生多样性」学校问卷调查，并同步从不同渠道，包括学校简介会、教师焦点小组会议等，搜集学界对高中四个核心科目(包括通识科)优化方案的建议及意见。中学的回应率超过95%，超过1 190名教师参与高中重新冠名科目简介会。
- 根据「专业领航」的原则，相关的课程发展议会及香港考试及评核局辖下的委员会跟进及提出优化科目的方案。课程发展议

<sup>10</sup> 六个方向性建议：(一) 进一步彰显全人发展的重要性；(二) 优先推行价值观教育；(三) 创造空间和照顾学生多样性；(四) 进一步推广应用学习；(五) 提高大学收生灵活性；(六) 加强中小学的STEM（即科学、技术、工程和数学）教育。

会和香港考试及评核局公开考试委员会经详细审议后，于2021年3月31日通过高中四个核心科目的优化方案并向教育局提出建议。

- 教育局接纳了四个高中核心科目的优化方案(包括以公民与社会发展科代替通识科)，并于2021年4月1日向学校发出通函，说明在2021/22学年各个科目优化措施的实施。
- 通识科改名为公民与社会发展科，改革重点包括：
  - 维持科目为必修必考
  - 将贯彻现行通识科的课程理念和宗旨
  - 主题包括「『一国两制』下的香港」、「改革开放以来的国家」，以及「互联相依的当代世界」
  - 重视培养学生的正面价值观、积极态度及国民身份认同，学习国家发展、《宪法》、《基本法》和法治
  - 透过涉及香港、国家及全球发展的重要课题，开拓学生的国际视野，联系不同学科的知识、培养明辨慎思能力，以理性分析当代领域的课题
  - 为学生提供前往内地学习的机会(不涉及公开考试)
  - 减省课程内容及课时至大约原来的一半
  - 公开考试只设一卷
  - 成绩汇报分别为「达标」与「未达标」，释放考试压力
  - 设立「适用书目表」(即是经审批的教科书)]