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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 latter's communication [AL CHN 1/2023] dated 17 March 2023, has the honour to transmit herewith the reply of 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.



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

**Response to the letter from the Working Group on Arbitrary Detention, 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 independence of judges and lawyers, and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism  
on matters concerning Hong Kong Special Administrative Region of the People's Republic of China(AL CHN 1/2023)**

1. As the legal proceedings involving LAI Chee-ying (LAI) are still ongoing, no one should, and it is inappropriate for any person to, comment on or even attempt to interfere with such cases as it is a matter of *sub-judice*. Under the common law, publishing statements which are intended to interfere with or obstruct the due administration of justice, or performing acts of the same intention, may constitute “criminal contempt of court”. Whether the criminal charges against LAI are established would be decided by the judiciary of the Hong Kong Special Administrative Region (HKSAR) upon independent and fair adjudication. As a matter of fact, fundamental rights and freedoms are fully protected in the HKSAR by the Basic Law of the HKSAR of the People’s Republic of China (Basic Law). The Working Group on Arbitrary Detention, 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 independence of judges and lawyers and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (the Working Group and the Special Rapporteurs) should fairly and objectively perform their duties, respect the independent judicial power enjoyed by the HKSAR, and prevent anyone from exploiting the mechanism of the United Nations to interfere with the ongoing legal proceedings in the HKSAR of China, which is contrary to the spirit of the Charter of the United Nations that is based on the principles of sovereign equality of States and non-intervention. The ensuing paragraphs aim to provide correct information, with a view to avoiding the Working Group and the Special Rapporteurs being misled into making wrongful comments. The references to the cases involving LAI are merely for this purpose. As for the various allegations by the so-called “information” quoted in the incoming letter,

even if certain allegations have not been touched on in the following paragraphs, the HKSAR should not be regarded as accepting such allegations.

### Background of the enactment of the National Security Law

2. The Working Group and the Special Rapporteurs should view any allegation made against the Law of the People's Republic of China on Safeguarding National Security in the HKSAR (the National Security Law) in the proper context with due regard to the background of the violent social unrests preceding its enactment, and the actual operation and effect of the National Security Law. It is stated in the incoming letter that according to the "information", in 2019, demonstrators gathered, "the vast majority of them peacefully". That is not true. Rather, they were marred by serious violence which had exceeded the boundaries of the relevant human rights protection. This also shows that the "information" is biased. The Working Group and the Special Rapporteurs should seriously consider the veracity of the allegations made by the "information".

3. In fact, there was a spate of violence and riots perpetrated by rioters<sup>1</sup> since June 2019, which lasted for more than ten months. During the period, rioters wantonly blocked roads, seriously vandalised shops, the Mass Transit Railway (MTR) and other public facilities, hurled a large number of petrol bombs, set fires, violently stormed and trashed the Legislative Council, and damaged government office buildings. The rioters even savagely assaulted, tied up and falsely imprisoned people holding different views from theirs. A member of the public suffered serious bodily injury after he was set ablaze by rioters; a 70 year-old

<sup>1</sup> From June 2019 to March 2021, the rioters hurled over 5 000 petrol bombs, and the Police also seized over 10 000 petrol bombs. Pavement blocks covering an area of 22 000 square metres were dug up, which were enough to fill 48 basketball courts. About 60 kilometres of railings were removed, which were equivalent to 136 times the height of Two International Finance Centre. A total of 740 traffic lights, 1 521 traffic bollards and 87 traffic signs were damaged. 85 out of 93 MTR stations, and 62 out of 68 light rail stations were vandalised, with numerous facilities repeatedly damaged.



cleaning worker was hit in the head by a brick hurled by rioters and subsequently died. Moreover, local terrorism started to breed, as marked by seizure of large quantities of explosives, firearms and bullets.

4. The National Security Law was enacted to restore the enjoyment of rights and freedoms which Hong Kong residents had been unable to enjoy during the period of serious violence between June 2019 and early 2020. The National Security Law has indeed achieved the intended effect, and has swiftly and effectively restored stability and security. These are incontrovertible facts shared by the personal experiences of people living and businesses operating here in Hong Kong, who are relieved and happy to see Hong Kong now continues to be an open, safe, vibrant and business-friendly metropolis.

#### Protection of fundamental freedoms and rights

5. With regard to the concerns raised in the incoming letter on freedoms such as freedoms of expression, of the press, of assembly and of association, we must point out that fundamental rights and freedoms are well protected in the HKSAR by the Basic Law. At the constitutional level, the freedoms of expression, of the press, of assembly and of association are protected under Article 27 of the Basic Law. Article 39 of the Basic Law provides, amongst others, that the provisions of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR.

6. At the local law level, the provisions of the ICCPR as applied to Hong Kong have been implemented by way of the Hong Kong Bill of Rights Ordinance (Cap. 383), which binds the Government. The relevant rights and freedoms mentioned in the incoming letter are protected under the Hong Kong Bill of Rights set out in section 8 of the Hong Kong Bill of Rights Ordinance.

7. During the adoption of the National Security Law (and the enactment of the Implementation Rules for Article 43 of the National

Security Law (Implementation Rules)), the relevant provisions of the ICCPR and the ICESCR as applied to the HKSAR were fully taken into consideration.

8. It must be emphasised that Hong Kong residents continue to enjoy all fundamental rights and freedoms guaranteed under the Basic Law and the Hong Kong Bill of Rights Ordinance after the implementation of the National Security Law. As a matter of fact, Article 4 of the 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 residents of the HKSAR enjoy under the Basic Law and the provisions of the ICCPR and the ICESCR as applied to Hong Kong, shall be protected in accordance with the law.

9. Article 5 of the National Security Law affirms adherence to the principle of the rule of law when law enforcement agencies enforce the law against offences endangering national security. It states that the principle of the rule of law shall be adhered to in preventing, suppressing, and imposing punishment for offences endangering national security. A person who commits an act which constitutes an offence under the law shall be convicted and punished in accordance with the law. No one shall be convicted and punished for an act which does not constitute an offence under the law. Furthermore, a person is presumed innocent until convicted by a judicial body. The right to defend himself or herself and other rights in judicial proceedings that criminal suspects, defendants, and other parties in judicial proceedings are entitled to under the law shall be protected. No one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in judicial proceedings.

10. Any measures or enforcement actions taken under the National Security Law must observe the above principle. As pointed out by the Hong Kong Court of Final Appeal in the case of *HKSAR v Lai Chee Ying* (2021) 24 HKCFAR 67, Articles 4 and 5 of the National Security Law, which emphasise protection of and respect for human rights and adherence to rule of law values while safeguarding national security, are centrally important to the interpretation of the National Security Law generally.

11. In addition, we must point out that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. We strive to protect the personal safety of all people in Hong Kong, including journalists, media workers, civil society actors, human rights defenders and legal practitioners.

12. As far as legal practitioners are concerned, Article 35 of the Basic Law stipulates that Hong Kong residents shall have the right to confidential legal advice, access to the courts, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies. Lawyers acting professionally are pivotal to HKSAR's legal system and they shoulder the primary responsibility for upholding the rule of law. In carrying out their duties, the fundamental rights and freedoms (including personal safety) of legal practitioners, like those of all other individuals, are well protected by law. This fundamental safeguard ensures that they should act professionally without fear or favour.

#### Freedoms not absolute

13. 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.

14. Article 6(1) of the National Security Law states that it is the common responsibility of all the people of China, including the people of Hong Kong, to safeguard the sovereignty, unification and territorial integrity of the People's Republic of China. Article 6(2) further states that any institution, organisation or individual in the HKSAR shall abide by the National Security Law and the laws of the HKSAR in relation to the safeguarding of national security.

15. 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 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.

16. Hong Kong residents enjoy freedoms of expression, of the press, of assembly and of association, etc. These freedoms, however, are not absolute. The ICCPR and ICESCR both permit restrictions on non-absolute human rights if they are prescribed by law and for the protection of national security. In order to protect national security or public safety, public order (*ordre public*), the rights and freedoms of others, etc., reasonable and necessary restrictions may be imposed on the exercise of such rights in the form of laws (including the National Security Law). This is a common practice in all countries and is also allowed under the ICCPR and ICESCR.

17. The wording of Articles 16, 17 and 18 of the Hong Kong Bill of Rights is the same as Articles 19, 21 and 22 of the ICCPR respectively. These provisions stipulate respectively that freedoms of expression (including the freedom of the press), of assembly and of association may be subject to restrictions provided by law and are necessary for the protection of national security or of public order (*ordre public*), etc.

18. The Working Group and the Special Rapporteurs have specifically mentioned journalism. The HKSAR Government fully respects and protects the freedom of the press. Indeed, since the implementation of the National Security Law, the media landscape in Hong Kong has been as vibrant as ever. As always, the media can exercise their right to monitor the HKSAR Government's work. Their freedom of commenting on and criticising government policies, which take place as a matter of routine, remains uninhibited as long as they are not in violation of the law. At the same time, the concept of "responsible journalism" is well-established in international jurisprudence on human rights: journalists, like everyone else, have an obligation to abide by all the laws, including criminal law. Journalists are entitled to the protection of the freedom of speech and freedom of the press on the premises that they act in good faith and on an accurate factual basis in providing accurate and reliable information in accordance with the tenets of "responsible journalism". Publishers and editors of newspapers are likewise obliged to observe the special duties and responsibilities in journalistic activities. The boundary between

protected genuine journalistic activities and criminal conduct is thus very clear, and the two should not be conflated.

Enforcement and prosecution actions, fair trials and independent adjudication

19. All law enforcement actions taken by Hong Kong law enforcement agencies are based on evidence, strictly according to the law and for the acts of the persons or entities concerned, and have nothing to do with their political stance, background or occupation. We must also point out that it is the legitimate right and duty of every state to safeguard its national security. In particular, acts and activities that endanger national security could bring very serious consequences. Actions must be taken to prevent and suppress such acts and activities.

20. The Department of Justice (DoJ) of the HKSAR, by virtue of Article 63 of the Basic Law, controls criminal prosecutions, free from any interference. Independent prosecutorial decisions for each case are made in a rigorous and objective manner, strictly based on evidence and applicable laws and in accordance with the Prosecution Code. Prosecutions would be instituted by the DoJ only if there is sufficient admissible evidence to support a reasonable prospect of conviction, and if it is in the public interest to do so.



21. As guaranteed by the Basic Law and the Hong Kong Bill of Rights, all persons will undergo a fair trial by the judiciary exercising independent judicial power. Articles 10 and 11 of the Hong Kong Bill of Rights, which correspond to Article 14 of the ICCPR, guarantee the right to a fair trial. All defendants charged with a criminal offence also have the right to appeal against their conviction or sentence. Article 2 of the Basic Law provides that the HKSAR enjoys independent judicial power, including that of final adjudication, and Article 85 of the Basic Law clearly stipulates that the courts of the HKSAR shall exercise judicial power independently, free from any interference. Article 92 of the Basic Law explicitly stipulates that judges and other members of the judiciary of the HKSAR shall be chosen on the basis of their judicial and professional qualities. All judges and judicial officers are appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors. All judges and judicial officers so appointed will continue to abide by the Judicial Oath and administer justice in full accordance with the law, without fear or favour, self-interest or deceit. Our judicial system has all along been protected by the Basic Law. Regardless of whether the courts of the HKSAR are adjudicating cases concerning offences endangering national security or cases of other natures, they remain independent and impartial in performing their judicial duties, free from any interference.

22. Same as other defendants charged with a criminal offence, all previous and pending court cases involving LAI, be they cases concerning offences endangering national security or not, were and will be adjudicated by the courts independently and impartially on the basis of the constitutional guarantees as mentioned above. We should not neglect the fact that in the various cases involving LAI, he was represented by a legal team of his own choice, which comprises at least one local Senior Counsel, to institute legal actions against government authorities or defend the charges made against him, and he had exercised his right to appeal. Upon thorough deliberation of the submissions from all parties concerned including LAI, evidence of the cases, and the relevant legal principles, the courts made their judgments and elaborated on the reasons. The court's reasons have been and will be uploaded to the website of the Judiciary for public inspection (see the websites provided in this Response). The Working Group and the Special Rapporteurs should carefully read the

court's reasons to understand the truth.

23. The suggestion that persons or organisations with certain backgrounds should be immune from legal sanctions for their illegal acts and activities is tantamount to granting such persons or organisations privileges to break the law and is totally contrary to the spirit of the rule of law.

#### *Prosecution related to unauthorized assembly*

24. LAI was arrested on 28 February and 18 April 2020 for offences related to unauthorized assembly. Subsequently, he was convicted by the court of two counts of “taking part in an unauthorized assembly”, two counts of “holding/assisting in holding/organizing an unauthorized assembly”<sup>2</sup> and one count of “incitement to knowingly take part in an unauthorized assembly”<sup>3</sup>. He was sentenced to a total of 20 months’ imprisonment. The verdict was delivered by a court with independent judicial power in strict accordance with the law and evidence. This proves that the prosecution action was fully justified.

25. LAI has lodged an appeal in relation to one of the cases. As the legal proceedings involved are still ongoing, we will not make any comments.

#### *Fraud*

26. As for the case in which LAI was prosecuted for fraud, he was

<sup>3</sup> The Reasons for Sentence (in English only) is available at:

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=141599&QS=%2B%7C%28DCCC%2C872%2F2020%29&TP=RS](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=141599&QS=%2B%7C%28DCCC%2C872%2F2020%29&TP=RS)

<sup>2</sup> The court's reasons (in English only) are available at:

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=135000&QS=%2B%7C%28DCCC%2C537%2F2020%29&TP=RS;](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=135000&QS=%2B%7C%28DCCC%2C537%2F2020%29&TP=RS;)

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=135155&QS=%2B%7C%28DCCC%2C536%2F2020%29&TP=RS;](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=135155&QS=%2B%7C%28DCCC%2C536%2F2020%29&TP=RS;)

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=136087&QS=%2B%7C%28DCCC%2C534%2F2020%29&TP=RS](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=136087&QS=%2B%7C%28DCCC%2C534%2F2020%29&TP=RS)

convicted by the District Court of two counts of “fraud” on 25 October 2022 and was sentenced on 10 December. LAI was sentenced to an imprisonment term of 5 years and 9 months, disqualified from being a company director, liquidator, etc. for 8 years, and fined a total of HK\$2 million, to be paid in 3 months and if in default, to serve an additional term of 12 months’ imprisonment. For the judge’s analysis of the evidence of the case and the legal principles, and the factual and legal basis for the verdict and sentence, please refer to the Reasons for Verdict<sup>4</sup> and Reasons for Sentence<sup>5</sup> respectively.

27. In the Reasons for Sentence, the judge highlighted that [with the following being a direct translation of the relevant part in the Reasons for Sentence handed down in Chinese] “everyone is equal before the law, which is generally recognised as the spirit of the rule of law. Everyone, regardless of whether he or she is a senior official, a tycoon, a politician or in a position of authority, is subject to the same standards and constraints under the rule of law. An extremely rich person may steal properties of other people or companies, or commit money laundering. It cannot be said that he definitely will not break the law because he is a tycoon. Similarly, in the case of a media mogul controlling a sizable media network and a printed newspaper, it does not mean that he cannot break the law by virtue of being a member of the fourth estate, much less that prosecuting this media mogul by the law enforcement agencies is tantamount to

<sup>5</sup> The Reasons for Sentence (in Chinese only) is available at:

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=149288&QS=%2B%7C%28DCCC%2C349%2F2021%29&TP=RS](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=149288&QS=%2B%7C%28DCCC%2C349%2F2021%29&TP=RS)

The court’s press summary of the Reasons for Sentence is available at:

[https://legalref.judiciary.hk/doc/judg/html/vetted/other/ch/2021/DCCC000349A\\_2021\\_files/DCCC000349A\\_2021ES.htm](https://legalref.judiciary.hk/doc/judg/html/vetted/other/ch/2021/DCCC000349A_2021_files/DCCC000349A_2021ES.htm)

<sup>4</sup> The Reasons for Verdict (in Chinese only) is available at:

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=148220&QS=%2B%7C%28DCCC%2C349%2F2021%29&TP=RV](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=148220&QS=%2B%7C%28DCCC%2C349%2F2021%29&TP=RV)

The court’s press summary of the Reasons for Verdict is available at:

[https://legalref.judiciary.hk/doc/judg/html/vetted/other/ch/2021/DCCC000349\\_2021\\_files/DCCC000349\\_2021ES.htm](https://legalref.judiciary.hk/doc/judg/html/vetted/other/ch/2021/DCCC000349_2021_files/DCCC000349_2021ES.htm)

suppressing freedom of the press. This Court has absolutely no intention to and should not make any comments on the political front. [LAI] also claimed that he was not a political figure and did not join any political groups. But this Court reiterates that the nature of this case purely concerns a simple fraud case, and the trial of this case should not be made into a political issue. This would be unfair to the prosecution and defence as well as the whole community.”

28. LAI made an application to the Court of Appeal for leave to appeal against his conviction and sentence on 6 January 2023. The hearing date is to be fixed. As the legal proceedings involved are still ongoing, we will not make any comments.

*Conspiracy to commit collusion with a foreign country or with external elements to endanger national security and conspiracy to publish seditious publication*

29. LAI’s case in which he is charged with conspiracy to commit collusion with a foreign country or with external elements to endanger national security and conspiracy to publish seditious publication will be heard in the Court of First Instance of the High Court on 25 September 2023. Before that, the court will handle LAI’s application for permanent stay of the proceedings on 2 May 2023. As the legal proceedings are still ongoing, we will not comment on matters relating to the case as inquired by the Working Group and the Special Rapporteurs. The references to LAI’s case in the ensuing paragraphs are only for the purpose of pointing out the legal provisions based on which the enforcement and prosecution actions are taken.

30. According to Article 29 of the National Security Law, a person who steals, spies, obtains with payment, or unlawfully provides State secrets or intelligence concerning national security for a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People’s Republic of China shall be guilty of an offence; a person who requests a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People’s Republic of China, or conspires with a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People’s Republic of China, or directly or indirectly receives

instructions, control, funding or other kinds of support from a foreign country or an institution, organisation or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China, to commit any of the following acts shall be guilty of an offence:

- (1) waging a war against the People's Republic of China, or using or threatening to use force to seriously undermine the sovereignty, unification and territorial integrity of the People's Republic of China;
- (2) seriously disrupting the formulation and implementation of laws or policies by the Government of the HKSAR or by the Central People's Government, which is likely to cause serious consequences;
- (3) rigging or undermining an election in the HKSAR, which is likely to cause serious consequences;
- (4) imposing sanctions or blockade, or engaging in other hostile activities against the HKSAR or the People's Republic of China;  
or
- (5) provoking by unlawful means hatred among Hong Kong residents towards the Central People's Government or the Government of the Region, which is likely to cause serious consequences.

31. The concerns about legal certainty in the incoming letter are completely groundless. The National Security Law has clearly stipulated four categories of offences that endanger national security, namely secession, subversion of state power, terrorist activities, and collusion with a foreign country or with external elements to endanger national security. Such offences are clearly defined in the National Security Law and are similar to those in the national security laws of other jurisdictions. The elements, penalties, mitigation factors and other consequences of the offences are clearly prescribed in Chapter III of the National Security Law. The prosecution has the burden to prove beyond reasonable doubt that the defendant had the *actus reus* and *mens rea* of the offence before the defendant may be convicted by the court. Law-abiding people will not

unwittingly violate the law.

32. In addition, in handling cases concerning the National Security Law under the jurisdiction of the HKSAR, the Hong Kong courts may further clarify the elements of an offence in adjudicating cases, which is the usual practice in a common law system. For instance, in the case of *HKSAR v Tong Ying Kit* [2021] HKCFI 2200, the Court of First Instance of the High Court of the HKSAR has elaborated on the elements of the offences of incitement to secession and terrorist activities under Article 21 and Article 24 of the National Security Law respectively. The Reasons for Verdict is available for public inspection on the website of the Judiciary<sup>6</sup>.

33. Moreover, under sections 9 and 10 of the Crimes Ordinance (Cap. 200), any person who:

- (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention; or
- (b) utters any seditious words; or
- (c) prints, publishes, sells, offers for sale, distributes, displays or reproduces any seditious publication; or
- (d) imports any seditious publication, unless he has no reason to believe that it is seditious; or
- (e) without lawful excuse has in his possession any seditious publication,

shall be guilty of an offence. A seditious intention is an intention:

- (a) to bring into hatred or contempt or to excite disaffection against the Central Authorities, or against the Government of the

<sup>6</sup> The Reasons for Verdict (in English only) is available at:  
[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=137456&QS=%2B&TP=RV](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=137456&QS=%2B&TP=RV)



HKSAR<sup>7</sup>; or

- (b) to excite inhabitants of Hong Kong to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Hong Kong as by law established; or
- (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Hong Kong; or
- (d) to raise discontent or disaffection amongst inhabitants of Hong Kong; or
- (e) to promote feelings of ill-will and enmity between different classes of the population of Hong Kong; or
- (f) to incite persons to violence; or
- (g) to counsel disobedience to law or to any lawful order.

34. However, the provision also points out that an act, speech or publication is not seditious by reason only that it intends:

- (a) to show that the Central Authorities have been misled or mistaken in any of their measures; or
- (b) to point out errors or defects in the government or constitution of Hong Kong as by law established or in legislation or in the administration of justice with a view to the remedying of such

<sup>7</sup> The references to words such as “Her Majesty” in the original text of the legislation are construed having regard to the relevant principles set out in the Decision of the Standing Committee of the National People’s Congress Concerning the Handling of the Laws Previously in Force in Hong Kong in Accordance with Article 160 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, the Hong Kong Reunification Ordinance and the Interpretation and General Clauses Ordinance, so as to conform with the status of the HKSAR and the relevant provisions of the Basic Law (see Reasons for Verdict in *HKSAR v LAI Man-ling* [2022] HKDC 981).

errors or defects; or

- (c) to persuade Chinese citizens or inhabitants of Hong Kong to attempt to procure by lawful means the alteration of any matter in Hong Kong as by law established; or
- (d) to point out, with a view to their removal, any matters that are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of Hong Kong.

35. The courts of the HKSAR have ruled in different cases that the provisions relating to sedition under the Crimes Ordinance are consistent with the relevant provisions of the Basic Law and the Hong Kong Bill of Rights on the protection of human rights, and that a proportionate and reasonable balance has been struck between safeguarding national security and protection of the freedom of speech. Among others, the courts pointed out that the sedition offence was sufficiently certain to satisfy the requirement of “prescribed by law”. The restrictions imposed by the sedition offence on the right to freedoms of expression and publication are no more than necessary for the protection of national security and protection of public order (*ordre public*).

36. If LAI submits in the trial that the provisions relating to the sedition offence are inconsistent with the relevant provisions of the Basic Law and the Hong Kong Bill of Rights on the protection of human rights, the Court of First Instance will make an independent ruling after objectively and impartially examining the submissions of his legal representative and the response of the prosecution.

#### *Search of premises*

37. In August 2020 and June 2021, the Police conducted searches at various locations under court warrants in relation to the case.

38. Section 2 of Schedule 1 to the Implementation Rules provides that a police officer may, for investigation of an offence endangering national security, apply to a magistrate by information on oath for a warrant under that section in relation to the place specified in the information. Under

the relevant mechanism, the judiciary will thus safeguard against any arbitrary or unlawful interference with the right to privacy. A warrantless search may be conducted only if it would not be reasonably practicable to obtain a warrant, and if there is reasonable ground for believing that the evidence is necessary for investigation of an offence endangering national security; procurement and preservation of evidence; or protection of the safety of any person.

39. LAI and the companies concerned filed a case with the Court of First Instance of the High Court against the search operation of the Police, demanding a court order for the Police's return of the seized items, which include materials claimed to be subject to legal professional privilege ("LPP") and journalistic materials ("JM"). Subsequently, the companies concerned requested to discontinue all the claims. All the claims relating to materials subject to LPP and JM were handled in accordance with the legal procedures. For example, regarding some of the claims relating to LPP and JM brought by LAI, the Court of First Instance handed down a judgment on 30 September 2022, ruling that 6 out of the 49 items under LAI's LPP claims (which were undisputed by the DoJ) were allowed while the remaining claims were dismissed. Regarding LAI's JM claims over 8 098 items, it was ruled that LAI had not provided sufficient evidence to support his claims and therefore all such claims were dismissed<sup>8</sup>. LAI did not appeal against the decision.

### *Freezing of property*

40. The Secretary for Security issued notices for freezing of property in writing pursuant to the relevant provisions of Schedule 3 to the Implementation Rules, respectively freezing in May 2021 the shares of Next Digital Limited held by LAI and the property in the local bank accounts of three overseas companies owned by LAI, and freezing in June 2021 the property in the local bank accounts (amounting to around HK\$18 million) of three subsidiaries related to the publication and online businesses of the Apple Daily under Next Digital (i.e. Apple Daily Limited,

<sup>8</sup> The decision (in English only) is available at:

[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=148577&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=148577&currpage=T)

Apple Daily Printing Limited and AD Internet Limited).

41. According to section 3(1) of Schedule 3 to the Implementation Rules, where the Secretary for Security has reasonable grounds to suspect that any property held by any person is offence related property, the Secretary may, by notice in writing specifying the property, direct that a person must not, directly or indirectly, deal with the property except under the authority of a licence granted by the Secretary. Any person who plans to deal with or assist in dealing with property that has been frozen may make an application to the Secretary for a licence. Whether the relevant application will be approved would depend on the reasonableness of the application, taking into account the overall circumstances of the case. Any person affected also has the right to make an application to the Court of First Instance for the notice to be revoked or for the grant of a licence pursuant to section 4 of Schedule 3 to the Implementation Rules.

42. It should be emphasised that financial or other kinds of assistance play an important role in facilitating offences endangering national security. The property freezing regime serves the important purpose of safeguarding national security – including preventing relevant property from being transferred or dissipated thereby affecting any confiscation order or forfeiture order that may be made in the future; preventing the use of the property in financing or assisting the commission of offences endangering national security; and preventing any dealing of property in a manner which may prejudice ongoing investigation or proceedings concerning offences endangering national security. The property freezing regime is also very common in national security, anti-terrorism and anti-money laundering laws around the world.

43. In the judgment<sup>9</sup> of *Lai Chee Ying v Secretary for Security* [2021] HKCFI 2804 handed down on 17 September 2021, the Court of First Instance had considered the freezing regime under Schedule 3 to the Implementation Rules and observed that the possibility for affected persons to obtain a licence to deal with the property in question pursuant to the provisions already provides a balance between the purposes of the preventing, suppressing and punishing offences endangering national security, and the protection of property rights. Having considered the

legislative intent of the freezing regime, the court held that the notice prohibited “dealing with” property, including the direct or indirect exercise of voting rights in company shares, in accordance with the law.

44. In addition, we strongly object to the allegation in the incoming letter that Apple Daily was forced to shut down as a result of the continuing freeze of its assets. In fact, in its announcement in May 2021, Next Digital Limited (i.e. the parent company of Apple Daily) stated that the group had sufficient liquidity, and as at 31 March 2021, the group had a working capital of approximately HK\$520 million, which would be sufficient for the operation of Next Digital Limited for 18 months from April 2021 onwards. Next Digital Limited subsequently made an announcement in July 2021, disclosing that it had made an early loan repayment of HK\$150 million to its former chairman and major shareholder in April 2021. The previous annual reports of Next Digital Limited showed that there was still considerable time to go before the loan concerned was due. The above situation shows that it is not the case that law enforcement actions led to the listed company concerned lacking funds for continued operation which thereby forced it into liquidation. Anyone who takes Apple Daily’s operational decision and blames it on law enforcement actions is trying to shift responsibility, making law enforcement authorities acting in accordance with the law a scapegoat, and maliciously smearing the National Security Law and the Implementation Rules.

<sup>9</sup> The judgment (in English only) is available at:

[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=138813&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=138813&currpage=T)

## Bail arrangements for cases concerning offences endangering national security

45. As regards the appeal against the bail arrangements as mentioned in the “information”, the Hong Kong Court of Final Appeal has made clear in an appeal case concerning Article 42(2) of the National Security Law<sup>10</sup> that the cardinal importance of safeguarding national security and preventing and suppressing acts endangering national security explains why more stringent conditions to the grant of bail in relation to offences endangering national security have been introduced under the National Security Law. In that case, the court also elaborated that in applying Article 42(2) of the National Security Law when dealing with bail applications in cases involving offences endangering national security, the judge must first decide whether there are “sufficient grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security”. If, having taken into account all relevant materials, the judge concludes that there are no sufficient grounds for believing that the accused will not continue to commit acts endangering national security, bail application must be refused. If, on the other hand, having taken into account all relevant materials, the judge concludes that there are sufficient grounds, the judge shall then consider all matters relating to the granting or refusal of bail.

46. Applications for bail will be handled by the court in strict accordance with the National Security Law and relevant local laws. In deciding whether to grant bail, the court will consider all relevant factors, including the positions and arguments of the prosecution and the defence, as well as all the relevant information presented in court. The court will consider whether to grant bail based on individual merits of each case; and if so, on what conditions. The grant of bail and the imposition of any bail conditions are judicial decisions made based on the individual circumstances of each case. If the defendant is dissatisfied with the magistrate’s decision on bail (including the decision on bail conditions or revocation of bail), he or she may apply to the Court of First Instance of

<sup>10</sup> *HKSAR v Lai Chee Ying* (2021) 24 HKCFAR 67



the High Court for review or variation<sup>11</sup>. The Court of First Instance will similarly consider and decide on the application in strict accordance with the National Security Law and relevant local laws.

A United Kingdom King's Counsel intending to represent LAI

47. Article 35 of the Basic Law and Article 11 of the Hong Kong Bill of Rights protect a defendant's right to choice of lawyers in criminal cases. However, it is made clear in court cases<sup>12</sup> that such right only refers to the right to choose solicitors or barristers who are qualified to practise generally in Hong Kong as legal representatives, but not overseas lawyers who are not qualified to practise generally in Hong Kong. There are currently over 100 Senior Counsel, over 1 500 barristers and around 13 000 solicitors in Hong Kong for clients to choose from. On the other hand, an overseas lawyer, of course, also never has any right to request that a court in Hong Kong must permit him to practise in Hong Kong, nor does a client have the right to request that a court must admit an overseas lawyer as his legal representative<sup>13</sup>.

48. Under section 27(4) of the Legal Practitioners Ordinance (Cap. 159), notwithstanding that a person is not qualified to practise generally in the HKSAR, the Court has the power to admit or approve such person, on an *ad hoc* basis, as a barrister for the purpose of any particular case or cases, if the Court considers that he is a fit and proper person to be a barrister and is satisfied that he meets certain qualifications and it is in the public interest of Hong Kong to admit such person as a barrister.

49. In fact, most other jurisdictions do not have similar *ad hoc* admission regime, not to mention *ad hoc* admission of lawyers from other places who are not qualified to practise in the jurisdictions to participate in cases concerning national security. Relatively speaking, the current *ad*

<sup>11</sup> See section 9J of the Criminal Procedure Ordinance

<sup>13</sup> We note that footnote 5 of the incoming letter has cited the views of the Human Rights Committee concerning *Esergepov v. Kazakhstan* (Comm. no. 2129/2012). The facts of *Esergepov v. Kazakhstan* are not similar to LAI's case as LAI has not been assigned a publicly appointed lawyer to represent his interests.

<sup>12</sup> *Re Coles QC* (HCMP 2762/1984); *Re Simpson QC* [2021] 1 HKLRD 715

*hoc* admission regime in Hong Kong is very open.

50. In September 2022, a United Kingdom King’s Counsel filed an application for *ad hoc* admission with the Court of First Instance to represent LAI in court to defend against the charges of conspiracy to collude with a foreign country or with external elements to endanger national security and conspiracy to publish seditious publication. At that time, there were significant differences among members of the Hong Kong community over issues such as whether overseas lawyers who are not qualified to practise generally in the HKSAR may participate in cases concerning national security, and how the National Security Law should apply in such circumstances. To timely and properly resolve the practical problems encountered in implementing the National Security Law and ensure proper and effective implementation of the National Security Law, the Standing Committee of the National People’s Congress (NPCSC) gave an interpretation of Article 14 and Article 47 of the National Security Law in accordance with the provisions of subparagraph (4) of Article 67 of the Constitution of the People’s Republic of China and Article 65 of the National Security Law.

51. The NPCSC exercises the power of interpretation in accordance with the relevant provisions of the Constitution of the People’s Republic of China and the National Security Law, which is a fundamental aspect of the “one country, two systems” principle, and a manifestation of the principle of the rule of law. The legislative interpretation given by the NPCSC did not directly deal with specific judicial proceedings. Rather, it clarified the meaning of the relevant legal provisions and the basis for application of the law. It does not in any way impair the independent judicial power and the power of final adjudication of the Hong Kong courts as guaranteed by the Basic Law. The interpretation stemmed from the controversial question of whether overseas lawyers who are not qualified to practise generally in Hong Kong may be admitted on an *ad hoc* basis to participate in cases concerning national security. Through the interpretation of Articles 14 and 47 of the National Security Law, the NPCSC provided clear guidance for the HKSAR to resolve the issue by itself.

52. The NPCSC’s interpretation pointed out that whether an overseas lawyer who is not qualified to practise generally in the HKSAR may act as defence counsel or litigation agent in a case concerning national security is

a question that requires certification from the Chief Executive under Article 47 of the National Security Law. According to this provision, the courts shall request and obtain a certificate from the Chief Executive to certify whether an act involves national security or whether the relevant evidence involves State secrets when such questions arise in the adjudication of a case. The certificate shall be binding on the courts. The interpretation did not confer additional power on the Chief Executive in this respect, and only clarified that the provision is applicable in handling the controversy concerning overseas lawyers. The certification system is fair and reasonable, with a solid legal basis. National defence, foreign affairs, and national security are matters within the purview of the Central Authorities. In fact, owing to the inherent nature of matters concerning national security, the executive authority is in a far better position than the courts to make appropriate judgements. Hence, the courts will afford deference to the judgement of the executive authority regarding national security matters. This principle is also a general rule for safeguarding national security practised by different places in the world. It must be stressed that the certificate issued by the Chief Executive only provides binding certification to the court on the questions stipulated in Article 47 of the National Security Law. It does not usurp the function of the court in deciding on other issues of the legal proceedings or the adjudication of the case.

53. It is stated in the incoming letter that the so-called “information” alleged that the HKSAR authorities had withheld the British lawyer’s application for an extension of his work visa, “effectively forcing the lawyer to leave Hong Kong SAR”. We totally disagree with that. The Immigration Department has all along been assessing visa applications in accordance with established legislation and procedures.

54. The Immigration Department applies immigration controls according to Article 154 of the Basic Law and the Immigration Ordinance (Cap. 115). Applicants who possess special skills, knowledge or experience of value to and not readily available in the HKSAR may apply to come to Hong Kong under the General Employment Policy<sup>14</sup>. Security consideration is one of the factors that the Immigration Department will consider when processing an application for coming to Hong Kong to work under the General Employment Policy. As a part of the executive authorities of the HKSAR, the Immigration Department shall

effectively prevent, suppress and impose punishment for any act or activity endangering national security<sup>15</sup>. Thus, security concern naturally includes national security considerations.

55. Besides, we must point out that the United Kingdom King's Counsel mentioned in the incoming letter withdrew his employment application in respect of LAI's case at his own instance in early January 2023. The Working Group and the Special Rapporteurs should also note that as widely reported by the media, that United Kingdom King's Counsel was granted a work visa to appear in the HKSAR's court to handle a costs dispute arising out of another criminal case not concerning national security in mid-January 2023. Thus, the allegation that the HKSAR Government "forc[ed] the lawyer to leave Hong Kong SAR" is simply untenable.

Whether having contact with United Nations bodies constitute an offence of collusion with a foreign country or with external elements to endanger national security

56. Whether a particular act constitutes an offence would depend on the facts and circumstances of each case, and hence over-generalisation is neither possible nor appropriate.

57. Articles 29 and 30 of the National Security Law<sup>16</sup> stipulate the offence of collusion with a foreign country or with external elements to endanger national security. The elements of the offence are clearly set out in these two articles.

<sup>15</sup> According to Article 3 of the National Security Law, it is the duty of the HKSAR under the Constitution to safeguard national security and the HKSAR shall perform the duty accordingly. The executive authorities, legislature and judiciary of the HKSAR shall effectively prevent, suppress and impose punishment for any act or activity endangering national security in accordance with this Law and other relevant laws.

<sup>14</sup> As to the General Employment Policy, please refer to the following link (paragraphs 7-9): [https://www.immd.gov.hk/pdforms/ID\(E\)991.pdf](https://www.immd.gov.hk/pdforms/ID(E)991.pdf)

58. Hong Kong is an international city having close contact and communication with other countries, regions and relevant international organisations. These normal interactions are protected by the Basic Law and the local laws of the HKSAR. What Articles 29 and 30 of the National Security Law seek to prevent, suppress and punish are distinctly different from normal interactions.

59. The Working Group and the Special Rapporteurs should instead note that there have been reports of LAI's "international legal team" writing to the Prime Minister of the United Kingdom earlier, requesting an urgent meeting to discuss potential ways to secure LAI's release. On the other hand, since the implementation of the National Security Law, certain countries and their politicians have repeatedly and blatantly threatened to impose unilateral "sanctions" on law enforcement officers, prosecutors and judicial officers implementing the National Security Law. This is in defiance of the principles of sovereign equality of States and non-intervention as established by the Charter of the United Nations. Such threats to prosecutors and judicial officers are also clearly in breach of internationally recognised guidelines/principles, such as the Basic Principles on the Independence of the Judiciary as adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1985 and the Guidelines on the Role of Prosecutors as adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990. We believe that the Working Group and the Special Rapporteurs will condemn the coercive acts of those countries.

60. All these indicate that some are attempting to interfere with ongoing judicial proceedings in the HKSAR of China by exploiting the mechanism of the United Nations. We urge the Working Group and the

<sup>16</sup> For the text of Article 29 of the National Security Law, please refer to paragraph 30 above. Article 30 of the National Security Law stipulates that a person who conspires with or directly or indirectly receives instructions, control, funding or other kinds of support from a foreign country or an institution, organisation, or individual outside the mainland, Hong Kong, and Macao of the People's Republic of China to commit the offences under Article 20 (secession) or Article 22 (subversion) of the National Security Law shall be liable to a more severe penalty in accordance with the provisions therein respectively.

Special Rapporteurs to prevent people from making use of their working mechanism to achieve political objectives that are contrary to the spirit of the Charter of the United Nations.

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**对任意拘留问题工作组、促进和保护意见和表达自由权问题特别报告员、和平集会自由权和结社自由权特别报告员、法官和律师独立性特别报告员、反恐中注意促进与保护人权和基本自由特别报告员**

**就涉港问题来函(AL CHN 1/2023)  
的回应**

1. 黎智英所涉的法律程序尚在进行，基于回避待决案件(sub judice)的法律原则，任何人均不应及不宜评论甚至尝试干涉有关案件。在普通法下，发表有意图干扰或妨碍司法公正的陈述，或作出有同样意图的行为，可能构成「刑事藐视法庭」。黎智英面对的刑事指控是否成立，会由香港特别行政区(香港特区)司法机关经独立和公正的审判后作出裁决。事实上，在香港特区，基本权利和自由受《中华人民共和国香港特别行政区基本法》(《基本法》)充分保障。任意拘留问题工作组、促进和保护意见和表达自由权问题特别报告员、和平集会自由权和结社自由权特别报告员、法官和律师独立性特别报告员、反恐中注意促进与保护人权和基本自由特别报告员(工作组和特别报告员)应公正、客观履职，并尊重香港特区享有的独立司法权，防止有人滥用联合国机制干预正在中国香港特区进行的司法程序，违背建基于国家主权平等和不干涉原则的《联合国宪章》的精神。下文旨在提供正确的资讯，以免工作组和特别报告员受其误导，而就此作出错误的评论。有关黎智英案件的提述仅为此目的。对于来函引述的所谓「信息」所作的各项指控，即使下文没有触及个别指控，香港特区不应被视为承认有关指控。

《香港国安法》的制定背景

2. 工作组和特别报告员考虑任何针对《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》）所作的指控时，应適切考虑该法订立前社会暴力动乱的背景，以及《香港国安法》的实际操作和成效。2019 年的示威活动并非如来函引述的所谓「信息」所指「大部分属于和平」，而是带有严重暴力并已经超出了有关人权保障的范围。这也显示该「信息」的偏颇，工作组和特别报告员应慎重考虑该「信息」所作指控的真实性。

3. 事实上，在 2019 年 6 月起持续十个月一连串的黑暴和暴乱<sup>1</sup>，期间暴徒大肆堵路、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；暴徒更将持不同意见的市民野蛮殴打、绑起，甚至非法禁锢：暴徒向一名市民放火燃烧，造成其身体严重受伤；更有一名 70 岁的清洁工人遭暴徒用砖掷中头部而死亡；更有本土恐怖主义滋生，大批爆炸品、枪械及子弹被搜获。

4. 制定《香港国安法》是为了让香港居民重新享有于 2019 年 6 月至 2020 年年初的黑暴期间不能享有的权利和自由。《香港国安法》确实达到预定效果，并迅速和有效地恢复稳定和安全。这是于香港生活的人和于香港经营的商户的亲身经历，无可争议。他们对香港继续作为开放、安全、有活力而友善营商的都会感到释怀和高兴。

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<sup>1</sup> 在 2019 年 6 月至 2021 年 3 月间，暴徒投掷超过 5 000 枚汽油弹，而警方搜获的，亦超过 10 000 枚汽油弹。有 22 000 平方米的行人路砖头被掘起，足以铺满 48 个篮球场，被拆的马路栏杆长约 60 公里，等于 136 幢国金二期的高度。共 740 组交通灯、1 521 个安全岛标柱和 87 个交通标志被损毁。93 个港铁车站中的 85 个，以及 68 个轻铁车站中的 62 个遭到破坏，大量设施一再被损毁。

## 保障基本自由和权利

5. 就来文对发表、新闻、集会和结社等自由的关注，必须指出，在香港特区，基本权利和自由受《基本法》充分保障。在宪制层面，发表、新闻、集会和结社自由受《基本法》第二十七条保障。《基本法》第三十九条订明，《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》等适用于香港的有关规定继续有效，通过香港特区的法律予以实施。

6. 在本地法律层面，适用于香港的《公民权利和政治权利国际公约》条文已透过《香港人权法案条例》(第 383 章)实施，《香港人权法案条例》对政府具有约束力。来文提及的相关权利和自由都受《香港人权法案条例》第 8 条载列的《香港人权法案》所保障。

7. 在制定《香港国安法》(及《中华人民共和国香港特别行政区维护国家安全法第四十三条实施细则》(《实施细则》))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》适用于香港特区的相关规定。

8. 必须强调，《香港国安法》实施后，香港居民继续享有《基本法》及《香港人权法案条例》所保障的所有基本权利和自由。事实上，《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《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。

9. 《香港国安法》第五条明确订明执法机关就危害国家安全犯

罪采取执法行动时，必须坚持法治原则。该条文订明防范、制止和惩治危害国家安全犯罪，应当坚持法治原则。如某人的行为构成法律规定的犯罪行为，依照法律定罪处刑；如某行为不构成法律规定的犯罪行为，不得定罪处刑。此外，任何人未经司法机关判罪之前均假定无罪。犯罪嫌疑人、被告人和其他诉讼参与人依法享有的辩护权和其他诉讼权利得到保障。任何人已经司法程序被最终确定有罪或者宣告无罪的，不得就同一行为再予审判或者惩罚。

10. 任何根据《香港国安法》所采取的措施或执法行动均须符合上述方针。正如香港终审法院于*香港特别行政区诉黎智英*(2021) 24 HKCFAR 67 一案中提及，《香港国安法》第四和五条强调在维护国家安全的同时，亦保障和尊重人权并坚守法治价值，而这对于《香港国安法》的整体理解，至为重要。

11. 此外，我们必须指出，人人在法律面前一律平等，且应受法律平等保护，无所歧视。我们致力保障所有在香港的人(包括记者、传媒工作者、民间社会行为者、人权维护者及法律执业者)的人身安全。

12. 就法律执业者而言，《基本法》第三十五条订明香港居民有权得到秘密法律咨询、向法院提起诉讼、选择律师及时保护自己的合法权益或在法庭上为其代理和获得司法补救。行事专业的律师对香港特区法律制度起关键作用，肩负维护法治的主要责任。在履行职责的过程中，法律执业者的基本权利和自由(包括人身安全)与其他人一样受法律保障。这个基本保障确保他们应当无惧无偏，专业地行事。

### 自由并非绝对

13. 《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。

14. 《香港国安法》第六条第一款订明维护国家主权、统一和领土完整是包括香港同胞在内的全中国人民的共同义务。第六条第二款进一步订明在香港特区的任何机构、组织和个人都应当遵守《香港国安法》和香港特区有关维护国家安全的其他法律。

15. 《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。

16. 香港居民享有发表、新闻、集会和结社等的自由。然而，这些自由并非绝对。《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》均容许为维护国家安全以法律对非绝对的人权予以限制。为维护国家安全或公共安宁、公共秩序及他人权利和自由等理由，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。

17. 《香港人权法案》第十六条、第十七条和第十八条的表述分别与《公民权利和政治权利国际公约》第十九条、第二十一条和第二十二条相同。这些条文皆订明为了保障国家安全或公共秩序等理由所必要者，可分别对发表(包括新闻自由)、集会和结社的自由以法律规定予以限制。

18. 工作组和特别报告员特别提及新闻工作。香港特区政府完全尊重并保障新闻自由。事实上，自《香港国安法》实施以来，本港的传媒环境蓬勃依然。一如既往，传媒可行使监督特区政府的权利；只要不违法，传媒评论和批评政府施政，不但自由无受到限制，而且正在惯常发生。与此同时，「负责任新闻作业」这个概念，在有关人权的国际法理学上已清楚确立：新闻从业员与其他人一样都有义务遵守所有法律，包括刑事法律，新闻从业员必须按「负责任新闻作业」原则真诚地行事，以准确事实为基础，并提供准确可靠的资讯，方可获言论和新闻自由权利保障。报章出版人和编辑亦同样须遵从新闻活动中的特别责任及义务。由此可见，受保障的正当新闻活动及犯罪行为之间，界线非常清晰，两者不应被混为一谈。

#### 执法和检控行动、公平审讯和独立审判

19. 所有香港执法部门的执法行动，均是根据证据、严格依照法律，以及按有关的人士或单位的行为而采取的，与其政治立场、背景或职业无关。我们亦须指出，每个国家都有权利和义务维护其国家安全。特别是危害国家安全的行为和活动可造成非常严重的后果，必须采取措施以防范和制止有关行为和活动。

20. 香港特区律政司在《基本法》第六十三条的保障下主管刑事检控工作，不受任何干涉；并严谨和客观地按照《检控守则》以证据和适用法律就每宗案件作出独立的检控决定。律政司在有充分证据令案件有合理机会达致定罪，以及在合乎公众利益的情况下，才会提出起诉。

21. 在《基本法》和《香港人权法案》的保障下，所有人均会接受



享有独立审判权的司法机关进行的公平审讯。与《公民权利和政治权利国际公约》第十四条相对应的《香港人权法案》第十及十一条保障公平审讯的权利。刑事案件的被告人亦享有针对定罪和刑罚提出上诉的权利。《基本法》第二条指出香港特区享有独立的司法权和终审权，而第八十五条清楚订明，香港特区法院独立进行审判，不受任何干涉。

《基本法》第九十二条明文规定香港特区的法官和其他司法人员，应根据其本人的司法和专业才能选用。所有法官和司法人员须得到由本地法官和法律界人士及其他方面的知名人士组成的独立委员会推荐，并由行政长官任命。所有获任命的法官和司法人员会继续紧守司法誓言，奉公守法，以无惧、无偏、无私、无欺之精神，严格根据法律原则，维持司法公义。香港的司法制度一直受《基本法》保障，香港特区法院无论是处理危害国家安全犯罪案件还是其他性质的案件，都是独立公正地履行司法职责，不受任何干涉。

22. 与任何面对刑事指控的被告人一样，黎智英所涉的过往案件和待审案件，不论是否属危害国家安全犯罪案件，都是及会在上述的宪制保障的基础下，由法院独立公正审理。不容忽视的是，在黎智英所涉的各类案件中，他都选择了自己的法律团队代表，当中包括不乏多于一名的本地资深大律师，对政府机关提出诉讼或为黎智英面对的指控进行抗辩，也有行使上诉权利。法院是经详细考虑包括黎智英在内的与讼各方的陈词、案中证据和相关法律原则后，作出判决并说明理由，而判决理由皆会上载至司法机构网站供公众查阅(见本回应所载的网址)，工作组和特别报告员应详阅有关判决理由，了解事实。

23. 倡议某种背景的人或组织不应就其违法行为和活动受到法律制裁，等同给予其犯法特权，完全违反法治精神。

## 与未经批准集结相关的检控

24. 黎智英因与未经批准集结有关的罪名于 2020 年 2 月 28 日及 4 月 18 日被捕。他随后被法庭裁定两项「参与未经批准集结」、两项「举行/协助举行/组织未经批准集结」<sup>2</sup>和一项「煽惑他人明知而参与未经批准集结」罪<sup>3</sup>罪成，被判入狱共 20 个月。有关判决由享有独立司法权的法庭严格按照法律和证据而作出，证明检控行动有充分理据支持。

25. 黎智英正就其中一宗案件提出上诉。由于所涉的法律程序尚在进行，我们不会作出评论。

## 欺诈

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<sup>2</sup> 裁决及判刑理由书(只有英文)见以下链接：

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=135000&QS=%2B%7C%28DCCC%2C537%2F2020%29&TP=RS;](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=135000&QS=%2B%7C%28DCCC%2C537%2F2020%29&TP=RS;)  
[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=135155&QS=%2B%7C%28DCCC%2C536%2F2020%29&TP=RS;](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=135155&QS=%2B%7C%28DCCC%2C536%2F2020%29&TP=RS;)  
[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=136087&QS=%2B%7C%28DCCC%2C534%2F2020%29&TP=RS](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=136087&QS=%2B%7C%28DCCC%2C534%2F2020%29&TP=RS)

<sup>3</sup> 判刑理由书(只有英文)见以下链接：

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=141599&QS=%2B%7C%28DCCC%2C872%2F2020%29&TP=RS](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=141599&QS=%2B%7C%28DCCC%2C872%2F2020%29&TP=RS)

26. 有关黎智英被控欺诈罪的案件，黎智英于 2022 年 10 月 25 日被区域法院裁定两项「欺诈」罪罪成，并于 12 月 10 日判刑，黎被判监 5 年 9 个月，取消出任公司董事及清盘人等资格 8 年，及罚款 200 万港元，须在 3 个月内缴付罚款，否则加监 12 个月。法官对案中证据和法律原则的分析、裁决和判刑的事实和法律基础，见相关的裁决理由书<sup>4</sup>和判刑理由书<sup>5</sup>。

27. 法官在判刑理由书特别指出，「法律面前，人人平等，这是一般人所公认的法治精神。无论是高官，无论是首富，无论是政治高人或权贵，都要面对相同的法治标准及约束。一个富甲一方的人可以盗取他人或公司财产，亦可洗黑钱，不能说因为他是首富，便一定不会犯法。同样地一个传媒大亨，管控一个颇具规模的传媒网络及实体报刊，并不表示他因有第四权而不会犯法，更不能说执法机构检控这传媒大亨便等同攻击新闻自由。本席绝对无意，亦不应在政治层面有任何评语。[黎智英]亦声称他不是政治人物，亦没有参加政治团体。但本席重申本案的性质纯然是一宗简单的欺诈案，不应把案件的审讯扣

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<sup>4</sup> 裁决理由书(只有中文)见以下链结：

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=148220&QS=%2B%7C%28DCCC%2C349%2F2021%29&TP=RV](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=148220&QS=%2B%7C%28DCCC%2C349%2F2021%29&TP=RV)

法庭就裁决理由书的新闻摘要见以下链结：

[https://legalref.judiciary.hk/doc/judg/html/vetted/other/ch/2021/DCCC000349\\_2021\\_files/DCCC000349\\_2021CS.htm](https://legalref.judiciary.hk/doc/judg/html/vetted/other/ch/2021/DCCC000349_2021_files/DCCC000349_2021CS.htm)

<sup>5</sup> 判刑理由书(只有中文)见以下链结：

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=149288&QS=%2B%7C%28DCCC%2C349%2F2021%29&TP=RS](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=149288&QS=%2B%7C%28DCCC%2C349%2F2021%29&TP=RS)

法庭就判刑理由书的新闻摘要见以下链结：

[https://legalref.judiciary.hk/doc/judg/html/vetted/other/ch/2021/DCCC000349A\\_2021\\_files/DCCC000349A\\_2021CS.htm](https://legalref.judiciary.hk/doc/judg/html/vetted/other/ch/2021/DCCC000349A_2021_files/DCCC000349A_2021CS.htm)

上任何政治帽子。这对控辩双方以及整个社会都是不公平的。」

28. 黎智英于 2023 年 1 月 6 日就其定罪和刑罚向上诉法庭提出上诉许可申请，聆讯日期待定。由于所涉的法律程序尚在进行，我们不会作出评论。

### *串谋勾结外国或者境外势力危害国家安全与串谋发布煽动刊物*

29. 有关黎智英被控串谋勾结外国或者境外势力危害国家安全与串谋发布煽动刊物的案件，将于 2023 年 9 月 25 日在高等法院原讼法庭开审，法庭亦会于 5 月 2 日先处理黎智英提出的永久终止聆讯申请。由于所涉的法律程序尚在进行，我们不会就工作组和特别报告员查询与本案有关的事宜作出评论。下文提述有关黎智英的案件，只为点出采取该等执法及检控行动所依据的相关法律条文。

30. 根据《香港国安法》第二十九条，为外国或者境外机构、组织、人员窃取、刺探、收买、非法提供涉及国家安全的国家秘密或者情报的；请求外国或者境外机构、组织、人员实施，与外国或者境外机构、组织、人员串谋实施，或者直接或者间接接受外国或者境外机构、组织、人员的指使、控制、资助或者其他形式的支援实施以下行为之一的，均属犯罪：

- (一) 对中华人民共和国发动战争，或者以武力或者武力相威胁，对中华人民共和国主权、统一和领土完整造成严重危害；

- (二) 对香港特别行政区政府或者中央人民政府制定和执行法律、政策进行严重阻挠并可能造成严重后果；
- (三) 对香港特别行政区选举进行操控、破坏并可能造成严重后果；
- (四) 对香港特别行政区或者中华人民共和国进行制裁、封锁或者采取其他敌对行动；
- (五) 通过各种非法方式引发香港特别行政区居民对中央人民政府或者香港特别行政区政府的憎恨并可能造成严重后果。

31. 来文针对法律确定性的关注完全是无中生有。《香港国安法》清楚列出所规定的四类危害国家安全的罪行，即分裂国家、颠覆国家政权、恐怖活动、以及勾结外国或者境外势力危害国家安全。这些罪行在《香港国安法》中定义清晰，亦与其他司法管辖区的国家安全法所订罪行相似。构成有关罪行的元素、刑罚、减刑因素和犯罪的其他后果已于《香港国安法》第三章清楚订明。控方有责任在毫无合理疑点下证明被告人有相关的犯罪行为 and 犯罪意图，被告人才可被法庭定罪。奉公守法的人士不会误堕法网。

32. 此外，在香港特区管辖的《香港国安法》案件中，香港法院可透过案例进一步厘清罪行元素含义，这亦是普通法制度中的一贯做法。举例而言，香港高等法院原讼法庭在 *香港特别行政区诉唐英杰* [2021] HKCFI 2200 一案中详细分析了《香港国安法》第二十一条煽动分裂国家罪和第二十四条恐怖活动罪的罪行元素。相关裁决理由书上载于司法机构的网站<sup>6</sup>，任何人都可查阅。

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<sup>6</sup> 裁决理由书(只有英文)见以下链接：

33. 另外，根据香港法例第 200 章《刑事罪行条例》第 9、10 条，任何人：

- (a) 作出、企图作出、准备作出或与任何人串谋作出具煽动意图的作为；或
- (b) 发表煽动文字；或
- (c) 刊印、发布、出售、要约出售、分发、展示或复制煽动刊物；或
- (d) 输入煽动刊物(其本人无理由相信该刊物属煽动刊物则除外)；或
- (e) 无合法辩解而管有煽动刊物，

即属犯罪。煽动意图是指意图：

- (a) 引起憎恨或藐视中央或香港特别行政区政府，或激起对其离叛<sup>7</sup>；或

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[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=137456&QS=%2B&TP=RV](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=137456&QS=%2B&TP=RV)

<sup>7</sup> 法例原文中对「女皇陛下」等语句的提述，按《全国人民代表大会常务委员会关于根据〈中华人民共和国香港特别行政区基本法〉第一百六十条处理香港原有法律的决定》、《香港回归条例》、《释义及通则条例》的相关原则，作相应解释，以符合香港特区的地位和《基本法》的有关规定(参见 *香港特别行政区 诉 黎雯龄* [2022] HKDC 981 案的裁决理由书)。

- (b) 激起香港居民企图不循合法途径促致改变其他在香港的依法制定的事项；或
- (c) 引起对香港司法的憎恨、藐视或激起对其离叛；或
- (d) 引起香港居民间的不满或离叛；或
- (e) 引起或加深香港不同阶层居民间的恶感及敌意；或
- (f) 煽惑他人使用暴力；或
- (g) 怂使他人不守法或不服从合法命令。

34. 但有关条文同时指出，任何作为、言论或刊物，不会仅因其有下列意图而具有煽动性：

- (a) 显示中央在其任何措施上被误导或犯错误；或
- (b) 指出依法成立的香港政府或香港宪制的错误或缺点，或法例或司法的错误或缺点，而目的在于矫正该等错误或缺点；或
- (c) 怂恿中国公民或香港居民尝试循合法途径促致改变在香港的依法制定的事项；或
- (d) 指出在香港不同阶层居民间产生或有倾向产生恶感及敌意的事项，而目的在于将其消除。

35. 香港特区法院于不同案件皆确认《刑事罪行条例》有关煽动的条文符合《基本法》和《香港人权法案》中有关保障人权的条文，亦确认在维护国家安全和保障言论自由之间已取得相称而合理的平

衡。其中，法庭指出煽动罪具有足够确定性，符合「依法规定」的要求，而为达致维护国家安全及保障公共秩序的目的，煽动罪并没有对发表和出版自由的权利施加超出所需的限制。

36. 如果黎智英在审讯中提出有关煽动罪的条文不符合《基本法》和《香港人权法案》中有关保障人权的条文，原讼法庭会客观和公正地审视他的法律代表提出的论点和控方的回应，独立作出裁决。

### *搜查处所*

37. 警方曾分别于 2020 年 8 月和 2021 年 6 月，就有关案件按照法庭手令搜查多个地点。

38. 《实施细则》附表 1 第 2 条订明，为侦查危害国家安全罪行，警务人员可藉经宣誓而作的告发，向裁判官提出申请，要求裁判官就该项告发所指明的地方根据该条发出手令。因此，在有关机制下，司法机关会保障市民的私隐不受无理或非法侵扰。只有在取得手令并非合理地切实可行，而且有合理理由相信有关证据是为侦查危害国家安全罪行、获取和保存证据，又或保护任何人的人身安全所必需的情况下，方可在无手令的情况下进行搜查。

39. 针对警方的搜查行动，黎智英及相关公司入禀高等法院原讼法庭，要求命令警方归还被检取物料，包括声称涉及法律专业保密权的材料和新闻材料。其后，相关公司要求中止全部申索。任何涉及法律专业保密权的材料和新闻材料的申索，均按照法律程序处理。举例而言，就黎智英提出的部分法律专业保密权及新闻材料申索，原讼法庭于 2022 年 9 月 30 日颁下判决，就黎提出法律专业保密权申索的 49 项材料，裁定其中 6 项(在律政司不争议下)申索成立，驳回其余申



索；就黎提出新闻材料申索的 8 098 项材料，裁定黎没有提出充分证据支持其申索，因此驳回所有申索<sup>8</sup>。黎智英没有对有关判决提出上诉。

## 冻结财产

40. 保安局局长根据《实施细则》附表 3 的相关条文发出冻结财产的书面通知，分别于 2021 年 5 月冻结黎智英持有的壹传媒有限公司股份和黎智英拥有的三间海外公司于本地银行帐户内的财产，以及于 2021 年 6 月冻结壹传媒旗下与《苹果日报》出版业务和网上业务有关的三间附属公司(即苹果日报有限公司、苹果日报印刷有限公司及苹果互联网有限公司)于本地银行帐户内的财产，约 1,800 万元。

41. 根据《实施细则》附表 3 第 3(1)条，保安局局长如有合理理由怀疑某人所持有的任何财产是罪行相关财产，可藉指明该财产的书面通知，指示除根据保安局局长批予的特许的授权外，任何人不得直接或间接处理该财产。任何人如拟处理或协助处理已冻结的财产，可向保安局局长申请特许。有关申请会否获批，视乎整体案情下其合理程度而定。受影响的人亦有权根据《实施细则》附表 3 第 4 条向原讼法庭申请撤销通知或批准特许。

42. 必须强调，资金或其他形式的协助于促使危害国家安全罪行方面占有重要角色。冻结财产制度有着维护国家安全的重要目的，包括防止涉案财产被转移或耗散，而影响将来可能发出的没收令或充公令；防范涉案财产被用作资助或协助干犯危害国家安全罪行；以及防

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<sup>8</sup> 判决(只有英文)见以下链接：

[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=148577&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=148577&currpage=T)

止以任何可能不利于正在进行与危害国家安全罪行有关的侦查或程序的方式处理财产。冻结财产机制在世界各地的国家安全、反恐怖主义及反洗钱法律中亦非常普遍。

43. 原讼法庭于2021年9月17日就黎智英诉保安局局长 [2021] HKCFI 2804 一案颁布判决<sup>9</sup>，表示法庭考虑了《实施细则》附表3订定的冻结制度，认为受影响的人可按规定取得特许处理有关财产，已在防范、制止和惩治危害国家安全罪行与保障财产权之间取得平衡。法庭经考虑冻结制度的立法目的后，认为有关通知依法禁止「处理」财产，包括禁止直接或间接行使公司股份的投票权。

44. 此外，我们强烈反对来信的说法，指称《苹果日报》被迫停止营业，是由于财产被连续冻结。事实上，壹传媒有限公司(即《苹果日报》母公司)于2021年5月的公告中曾指集团流动资金充裕，截至2021年3月31日集团尚有流动资金约5亿2,000万元，并可应付壹传媒有限公司由2021年4月起18个月的运作。壹传媒有限公司其后于2021年7月作出一项公布，披露公司于2021年4月提前向其前主席及主要股东偿还一笔1亿5,000万元的贷款。根据壹传媒过往年报，有关贷款应该尚有相当长的时间才到期。上述情况显示，并不存在执法行动导致该上市公司缺乏资金继续营运而被迫清盘的情况；任何人将《苹果日报》经营决定，强行归咎执法行动，是尝试将责任转移，故意诿过于依法行事的执法部门，并对《香港国安法》和《实施细则》作出恶意抹黑。

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<sup>9</sup> 判决(只有英文)见以下链结：

[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=138813&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=138813&currpage=T)

## 有关危害国家安全案件的保释安排

45. 至于「信息」中提到有关保释安排的上诉案，香港终审法院曾就一宗有关《香港国安法》第四十二条第二款的上诉案<sup>10</sup>中清晰说明，维护国家安全，以及防范和制止危害国家安全的行为极为重要，这解释了为何《香港国安法》对涉及危害国家安全的罪行引入更严格的批准保释条件。在该案中，法庭亦说明，在引用《香港国安法》第四十二条第二款处理危害国家安全罪行案件的保释申请时，法官必须先决定有没有「充足理由相信犯罪嫌疑人或被控人不会继续实施危害国家安全行为」。如法官考虑过所有相关资料，认为没有充足理由相信被控人不会继续实施危害国家安全行为的，自当拒绝其保释申请。另一方面，经考虑过所有相关资料后，如法官认为有充足理由时，应继而考虑所有与批准或拒绝保释相关的事宜。

46. 法庭会严格依据《香港国安法》和相关本地法律的规定处理保释申请。在决定是否准予保释时，法庭会考虑所有相关因素，包括控辩双方的立场和论据以及呈堂的所有相关资料，按每宗案件的个别情况考虑是否准予保释；以及若准予保释，条件为何。批准保释和施加任何保释条件都是因应每宗案件的个别情况而作出的司法决定。如被告人不满裁判官的保释决定(包括保释条件或撤销保释的决定)，可向高等法院原讼法庭申请复核或更改<sup>11</sup>。原讼法庭同样会严格依据《香港国安法》和相关本地法律的规定，考虑和决定有关申请。

## 有关英国御用大律师拟代表黎智英一事

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<sup>10</sup> 香港特别行政区 诉 黎智英 (2021) 24 HKCFAR 67。

<sup>11</sup> 见《刑事诉讼程序条例》第 9J 条

47. 《基本法》第三十五条和《香港人权法案》第十一条保障刑事案件被告人选择律师的权利。然而，法庭案例<sup>12</sup>清楚说明，该权利仅指可以有权选择在香港有全面执业资格的律师或大律师作为法律代表，但不包括在香港没有全面执业资格的海外律师。香港现时有超过 100 名资深大律师及超过 1 500 位大律师，以及约 13 000 名事务律师，供当事人选择。另一方面，海外律师亦当然也从来没有任何权利，要求香港法院一定批准他在香港执业，一名当事人也没有权要求法院必须认许一名海外律师，以作为其法律代表。<sup>13</sup>

48. 根据现行香港法例第 159 章《法律执业者条例》第 27(4)条，即使某人没有在香港特区具有全面执业的资格，但如法院认为该人是适当作为大律师的人，且信纳该人符合特定资格，而以专案方式认许该人为大律师亦符合香港公众利益，则法院有权就任何一宗或多于一宗个别案件而认许或批准该人为大律师。

49. 事实上，大部分其他司法管辖区都没有相类似的专案认许机制，更遑论准许采用专案认许方式容许没有该司法管辖区执业资格来自其他地方的律师参与涉及国家安全的案件。香港现行专案认许机制，相比之下，已经十分开放。

50. 一名英国御用大律师在 2022 年 9 月向原讼法庭提出专案认许申请，以在黎智英被控串谋勾结外国或者境外势力危害国家安全与串谋发布煽动刊物的案件中代表他。当时香港社会对于没有本地全面执

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<sup>12</sup> *Re Coles QC* (HCMP 2762/1984); *Re Simpson QC* [2021] 1 HKLRD 715

<sup>13</sup> 我们留意到，来文注脚 5 引述了人权事务委员会关于 *Esergepov v 哈萨克斯坦* (第 2129/2012 号来文)的意见。*Esergepov 诉 哈萨克斯坦*的事实与黎智英案并不类似，因为黎智英并非由任何指派的公设律师来代表他的权益。

业资格的海外律师能否参与国家安全案件。该等情形下《香港国安法》如何适用等问题产生了重大分歧。为了及时妥善解决《香港国安法》实施中遇到的实际问题，确保《香港国安法》正确有效实施，全国人民代表大会常务委员会(全国人大常委会)根据《中华人民共和国宪法》第六十七条第四项和《香港国安法》第六十五条的规定，对《香港国安法》第十四条和第四十七条作出解释。

51. 全国人大常委会根据《中华人民共和国宪法》和《香港国安法》的相关规定行使解释权，是「一国两制」原则下的重要一环，体现了法治原则。全国人大常委会是次作出的立法解释，并不直接处理具体司法案件，而是厘清有关法律规定的含义和适用法律的依据，绝不存在损害香港法院受《基本法》保障的独立审判权和终审权的问题。是次释法源自有关在香港没有全面执业资格的海外律师是否可以按专案申请方式参与涉及国安案件所引起的争议。全国人大常委会是通过解释《香港国安法》的第十四条和第四十七条，提供清晰途径让香港特区自行解决有关争议。

52. 全国人大常委会解释指出，不具有香港特区全面执业资格的海外律师是否可以担任国安案件的辩护人或者诉讼代理人的问题，属于《香港国安法》第四十七条所规定的需要由行政长官认定的问题。根据该条款，法院在审理案件中，如遇有涉及有关行为是否涉及国家安全或者有关证据材料是否涉及国家秘密的认定问题，应当向行政长官提出并取得行政长官就该等发出的证明书，而证明书对法院有约束力。是次释法并没有在这方面向行政长官授予额外的权力，只是澄清了该条款可以适用于处理有关海外律师的争议。这证明书制度不单有坚实法律基础，亦合情合理。国防、外交以及国安问题均属中央事权。而事实上，基于国安事务的本质，行政机关远比法院处于较佳位置作

出合适的判断，因此法院会对行政机关就国安事务方面的判断予以尊重，这一项原则也是世界各地维护国家安全的通则。必须指出的是，行政长官发出的证明书只是就《香港国安法》第四十七条所述的问题向法院提供一项有约束力的认定，不是取代法院处理诉讼中的其他争议，也不是代替法庭判案。

53. 至于来函引述所谓「信息」指称香港特区相关部门耽搁一名英国律师延长其工作签证的申请，「实际上是强迫有关律师离开香港特区」，我们绝不认同。入境事务处一直根据既定法例和程序，审核签证申请。

54. 入境处根据《基本法》第 154 条和香港法例第 115 章《入境条例》，实行出入境管制。具备香港特区所需而又缺乏的特别技能、知识或经验的申请人，可根据一般就业政策<sup>14</sup>申请来港。保安理由是入境事务处考虑根据一般就业政策来港就业的申请的其中一个准则。入境事务处作为香港特区行政机关的一部分，须有效防范、制止和惩治危害国家安全的行为和活动<sup>15</sup>，故此保安理由必然包括国家安全的考虑。

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<sup>14</sup> 一般就业政策可见于以下连结(第 7-9 段):  
[https://www.immd.gov.hk/pdforms/ID\(C\)991.pdf](https://www.immd.gov.hk/pdforms/ID(C)991.pdf)

<sup>15</sup> 根据《香港国安法》第三条，香港特区负有维护国家安全的宪制责任，应当履行维护国家安全的职责。香港特区行政机关、立法机关、司法机关应当依据本法和其他有关法律规定有效防范、制止和惩治危害国家安全的行为和活动。

55. 此外，必须指出，来函所指的英国御用大律师在 2023 年 1 月初已自行撤回与黎智英案件相关的就业申请。工作组和特别报告员亦应察悉，据传媒广泛报道，该名英国御用大律师获批工作签证于 2023 年 1 月中就另一宗不涉及国家安全的刑事案件讼费争议在香港特区上庭，因此，「特区政府强迫有关律师离开香港特区」一说根本站不住脚。

### 与联合国相关机构联系会否触犯勾结外国或者境外势力危害国家安全罪

56. 某行为是否构成罪行，需视乎个案的事实和情况，因此既不可能、亦不适宜作过份概括的定论。

57. 《香港国安法》第二十九及三十条<sup>16</sup>就勾结外国或者境外势力危害国家安全罪作出规定。相关罪行的元素已在两项条文中清楚列明。

58. 香港是国际化的城市，与其他国家、地区以及相关国际组织有密切的来往和联系，这些正常的交流受《基本法》和香港特区本地法律的保障。《香港国安法》第二十九条及第三十条旨在防范、制止和惩治的，与正常的交流有明显区别。

59. 工作组和特别报告员反而应该察悉，据报道，黎智英的「国际

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<sup>16</sup> 《香港国安法》第二十九条条文见上文第 30 段。而《香港国安法》第三十条订明，为实施《香港国安法》第二十条[分裂国家罪]、第二十二条[颠覆国家政权罪]规定的犯罪，与外国或者境外机构、组织、人员串谋，或者直接或者间接接受外国或者境外机构、组织、人员的指使、控制、资助或者其他形式的支援的，依照本法第二十条、第二十二条的规定从重处罚。

律师团队」较早前致函英国首相要求紧急会面，商讨寻求协助释放黎智英。另一方面，自《香港国安法》实施以来，某些国家和当地政客多次公然威胁要对执行《香港国安法》的执法、检控和司法人员实施单边「制裁」，无视《联合国宪章》确立的国家主权平等和不干涉原则，而对检控和司法人员的威胁更明显违反 1985 年联合国第七届预防犯罪和罪犯待遇大会通过的《关于司法机关独立的基本原则》及 1990 年联合国第八届预防犯罪和罪犯待遇大会通过的《关于检察官作用的准则》等受国际社会公认的准则，我们相信工作组和特别报告员会谴责有关国家的胁迫行为。

60. 种种情况显示，有人试图滥用联合国机制干预正在中国香港特区进行的司法程序。我们促请工作组和特别报告员防止其工作机制被人用于违背《联合国宪章》精神的政治目的。

\* \* \* \* \*