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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 16/2023], has the honor 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

[Translated from Chinese]

Receipt is hereby acknowledged of the letter dated 31 August 2023 addressed jointly by the special mechanisms of the United Nations Human Rights Council (ref. AL CHN 16/2023). The Chinese Government wishes to make the following reply:

1. Before responding to the present communication, China needs to point out that the legal proceedings involved in the cases against the 47 persons cited in the joint communication as having been charged with “conspiracy to subvert State power” (16 of whom are subject to trial in Criminal Case No. 69/2022 in the High Court of the Hong Kong Special Administrative Region (HKSAR), hereinafter referred to as HCCC 69/2022) are still ongoing. Based on the legal principle of refraining from comment on pending (*sub judice*) cases, no person shall or should comment on, let alone attempt to interfere in, the cases concerned. The judicial authorities of the HKSAR will establish whether or not the criminal charges against the persons implicated in HCCC 69/2022 are valid following an independent and impartial trial. In actuality, fundamental rights and freedoms are fully protected in the HKSAR by the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (the Basic Law). The joint communication repeatedly stresses the need to guarantee the right to a fair trial, but a fair trial can only take place if the judicial authorities are able to conduct trials independently and without any interference. The Special Rapporteurs on the independence of judges and lawyers, on the promotion and protection of the right to freedom of opinion and expression, on the rights to freedom of peaceful assembly and of association, and on the promotion and protection of human rights and fundamental freedoms while countering terrorism (the Special Rapporteurs) should perform their duties impartially and objectively, while respecting the independent judicial power enjoyed by the HKSAR, so as to prevent any misuse of United Nations mechanisms to interfere in the judicial proceedings under way in the Hong Kong Special Administrative Region of China in contravention of the spirit of the Charter of the United Nations, which is based on the principles of sovereign equality of States and of non-interference.
2. The following is intended to provide correct information on the concerns raised in the joint communication so as to avoid the Special Rapporteurs being misled into making erroneous comments thereon. Elaboration on the HCCC 69/2022 case is also provided below for this purpose only. Even if specific individual concerns raised in the joint communication are not addressed below, the HKSAR should not be seen as acknowledging the negative views expressed in the joint communication with regard to the matters at issue.

The Hong Kong National Security Law

Protecting basic rights and freedoms

3. With regard to the concerns expressed in the joint communication in connection with the protection of fundamental rights and freedoms, China has repeatedly pointed out that in the HKSAR, the Basic Law fully protects fundamental rights and freedoms at the constitutional level, including the freedoms of speech, press, publication, association, assembly, procession and demonstration, as well as the right and freedom to form and participate in trade unions and to strike¹; the right to a fair trial²; and freedom of the person and rights related to protection against arbitrary violations of privacy³. Article 39 of the Basic Law provides that the provisions as applied to Hong Kong of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) shall remain in force and shall be implemented through the laws of the HKSAR.
4. At the level of local law, the provisions of the ICCPR as applied to Hong Kong are implemented through the Hong Kong Bill of Rights Ordinance (Cap. 383), which is binding on the Government. Accordingly, the rights and freedoms under the International Covenant on Civil and Political Rights as

¹ HKSAR Basic Law, article 27

² HKSAR Basic Law, article 85

³ HKSAR Basic Law, articles 28, 29 and 30

cited in the joint communication are protected by the Hong Kong Bill of Rights as set out in article 8 of the Hong Kong Bill of Rights Ordinance⁴.

5. The relevant provisions of the ICCPR and the ICESCR as applied to the HKSAR were fully considered in the formulation of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative region (the Hong Kong National Security Law).

6. It is important to emphasize that since the implementation of the Hong Kong National Security Law, Hong Kong residents continue to enjoy all the fundamental rights and freedoms protected by the Basic Law and the Hong Kong Bill of Rights Ordinance. In fact, 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; and that 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.

7. Article 5 of the Hong Kong National Security Law clearly stipulates that the principle of the rule of law shall be adhered to in enforcement actions against offences endangering national security. That article stipulates adherence to the principle of the rule of law in preventing, suppressing and punishing crimes 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 a criminal suspect, defendant, 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.

8. Any measures or enforcement actions taken under the Hong Kong National Security Law, whether directed at acts or activities that endanger national security within or outside the territory of Hong Kong, shall comply with the above-mentioned policy. As the Hong Kong Court of Final Appeal noted in the case of HKSAR v. [REDACTED] articles 4 and 5 of the Hong Kong National Security Law emphasize that while maintaining national security, human rights shall also be protected and respected, and the values of the rule of law shall be upheld. This is of great importance for an overall understanding of the Hong Kong National Security Law.

9. Moreover, China must point out that everyone is equal before the law, and should be protected equally by the law without discrimination. Like others, legal practitioners, civil society actors and human rights defenders may exercise their fundamental rights and freedoms in the exercise of their duties in accordance with the law.

Freedoms are not absolute

10. Article 42 of the Basic Law provides that Hong Kong residents and other persons in Hong Kong shall have the obligation to abide by the laws in force in the HKSAR.

11. Article 6, paragraph 1, of the Hong Kong National Security Law stipulates 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, paragraph 2, further stipulates that any institution, organization or individual in the HKSAR shall comply with the Hong Kong National Security Law and other laws of the HKSAR relating to the maintenance of national security.

12. Article 1 of the Basic Law stipulates that the HKSAR is an inalienable part of the People's Republic of China. According to article 12 of the Basic Law, 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. According to article 2 of the Hong Kong National Security Law, articles 1 and 12 of the Basic Law on the legal status of the HKSAR are fundamental provisions of the Basic Law. The exercise of rights and freedoms by any institution, organization or individual in the HKSAR shall not contravene the provisions of articles 1 and 12 of the Basic Law.

⁴ The Universal Declaration of Human Rights (UDHR) referred to in the annex to the joint communication is not legally binding on the HKSAR, but since the relevant rights and freedoms protected by the UDHR and by the ICCPR are substantially the same, such rights and freedoms are also subject to the protection of the Hong Kong Bill of Rights.

13. Hong Kong residents enjoy the freedoms of speech, press, publication, association, assembly, procession, and demonstration. However, these freedoms are not absolute. Both the ICCPR and the ICESCR allow for legal restrictions on non-absolute human rights for the defence of national security. Reasonable and necessary restrictions on the exercise of these rights, for purposes of national security or public tranquillity, public order and the rights and freedoms of others, can be imposed in the form of legislation (including the Hong Kong National Security Law); this is indeed a common practice in all countries and is permitted under the ICCPR and the ICESCR.

14. Articles 16, 17 and 18 of the Hong Kong Bill of Rights are the same as articles 19, 21 and 22 of the ICCPR. These provisions, which are clearly necessary to safeguard national security or public order, may respectively restrict the freedoms of publication, assembly and association by means of legislative regulations.

Law enforcement and prosecutorial operations

15. As the government of the HKSAR has repeatedly reiterated, all enforcement actions by law enforcement agencies in Hong Kong are carried out on the basis of evidence, in strict accordance with the law; and are taken based on the actions of the persons or units concerned, unrelated to their political position, background or occupation. As a result, the allegation in the joint communication that the Hong Kong National Security Law has been continuously used to target pro-democracy leaders (“*on-going use of the NSL against pro-democracy leaders*”) is completely inconsistent with the facts and must be corrected. We must also note that every State has the right and the duty to maintain its national security. Actions and activities that endanger national security can have particularly serious consequences; measures must be taken to prevent and suppress such actions and activities, and no State can stand idly by in the face of actions and activities that endanger national security.

Listing by the National Security Department of the Hong Kong Police Force of fugitives as wanted in accordance with the law

16. The Hong Kong Police National Security Department obtained prior court approval to issue arrest warrants for eight fugitives⁵ and listed them as wanted. After the persons involved as suspects in this National Security Department operation absconded overseas, they continued to commit offences under the Hong Kong National Security Law, including those of “incitement to secession” under article 21, “subversion of State power” under article 22, “incitement of subversion of State power” under article 23, and “collusion with a foreign country or with external elements to endanger national security” under article 29, seriously endangering national security. The aforementioned provisions of the Hong Kong National Security Law are set out in the Annex for reference.

17. We note that the contents of the Police Department’s “Wanted Persons and Reward Notices of National Security Cases” were cited in the joint communication. It thus behoves the Special Rapporteurs to take objective note of the actions and activities endangering national security committed by the persons concerned, including:

(a) Requesting foreign “sanctions” against government officials, judicial officers and prosecutors of the HKSAR;

(b) Meeting with foreign politicians and government officials to request “sanctions”, blockades and other hostile actions against the People’s Republic of China and the HKSAR;

(c) Advocating “Taiwan independence”, “Hong Kong independence” and the overthrow of the basic system of the People’s Republic of China as established by the Constitution of the People’s Republic of China.

18. Any claim that the actions and activities of those involved were simply “criticism of the policies of the Chinese Government in the HKSAR” (“*criticizing the Chinese Government’s policies in Hong Kong SAR*”) and “discourse and activities in the pursuit of human rights and democracy” (“*speech and actions advocating for human rights and democracy*”) is in complete disregard of the facts. It is also manifestly erroneous for the Special Rapporteurs to refer to the fugitives as “self-exiled” (“*self-exiled*”), as so doing

⁵ In view of the offences committed by these eight individuals, the Police, in accordance with section 9 (1) of the Magistrates Ordinance (Cap. 227), applied to a magistrate in June 2023 and obtained warrants for their arrest.

glorifies the misdeeds of these individuals⁶. It is clearly and easily seen that all of the foregoing are serious violations that flagrantly endanger the security of the State. In accordance with the law, the HKSAR Police are responsible for taking all necessary measures to apprehend the persons involved. The Special Rapporteurs should not simply look at the superficial appearance of the actions and activities carried out by the persons involved, and then accuse the SAR government of abusing national security laws to interfere with the exercise by individuals of their freedoms of publication, association and peaceful assembly; instead, they should come to a realistic recognition of the purposes and nature of those malicious actions and activities that seriously endanger national security, as well as of their potentially extremely grave consequences, and avoid drawing false conclusions.

19. We reaffirm here that endangering national security is a serious crime. No State can stand idly by in the face of actions and activities that endanger national security. As mentioned in paragraph 17 above, the advocacy of “Hong Kong independence” and “Taiwan independence” by the fugitives, and such other actions on their part as requesting foreign countries to levy “sanctions”, manifestly endanger and are detrimental to national security and sovereignty. Taking the measures necessary, in accordance with the law, to prevent and investigate crimes endangering national security, and apprehending the persons involved, are the responsibility of the police. In lawfully listing the fugitives as wanted in accordance with the law, the National Security Department is operating within the law and complying with the principles of necessity and proportionality.

20. Disclosing information on fugitives wanted on suspicion of committing serious crimes, and requesting public assistance in bringing fugitives to justice, are common practices of police departments and other law enforcement agencies and are consistent with international practice.

21. In their joint communication, the Special Rapporteurs also referred to the extraterritorial effect of the Hong Kong National Security Law. In order for the Special Rapporteurs to have a correct understanding of this, full consideration must be given to the purpose of the Hong Kong National Security Law, namely to safeguard national security and to prevent, suppress and punish acts and activities that endanger national security. For the relevant law to lack extraterritorial jurisdiction would amount to condoning the engagement abroad of persons with ulterior motives in such activities as abetting secession and subversion of State power, so extraterritorial jurisdiction is an essential element of the Hong Kong National Security Law for this reason.

22. In general, the criminal law of the HKSAR only regulates acts committed within the territory of the HKSAR, which is called the “territorial jurisdiction” principle in international law and practice. At the same time, international law and related practice establish exceptions to “territorial jurisdiction,” including the principles of “*ratione personae*”⁷ and “*protective jurisdiction*,”⁸ according to which any State has the right to enact legislation to exercise jurisdiction over criminal acts outside its domain. Articles 37 and 38 of the Hong Kong National Security Law (see annex) are formulated in accordance with the principles of

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⁷ Based on the relevant principles, a State may exercise jurisdiction over crimes committed by its citizens outside its territory. In fact, citizens or permanent residents of a country or territory, regardless of their physical location, are justifiably obliged to comply with the laws of that country or territory.

⁸ Based on the relevant principles, a sovereign State may exercise criminal jurisdiction through laws with extraterritorial effect if an alien outside its territory commits an offence against its security or its core interests, such as Governmental institutions or functions.

“ratione personae” and “protective jurisdiction”. National security laws in a wide range of countries, including the United States, the United Kingdom, Australia, Canada and Member States of the European Union, also have extraterritorial effect based on the principles of “ratione personae”⁹ and “protective jurisdiction.”¹⁰ The scope of the National Security Law is thus in full conformity with the principles of international law, international practice and regional practices of each country, is genuinely necessary and lawful, and is consistent with other countries and regions of the world.

Complaints to legal professional bodies against barristers and solicitors for professional misconduct

23. With regard to legal practitioners, article 35 of the Basic Law provides 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. Professional lawyers play a key role in the legal system of the HKSAR and have the primary responsibility for upholding the rule of law. In the process of performing their duties, the fundamental rights and freedoms of legal practitioners are protected by law in the same way as are those of others. This basic guarantee ensures that they should act without fear or favour and with professionalism.

24. At the same time, legal practitioners must perform their duties professionally and adhere to the codes of conduct and professional integrity established by the professional bodies to which they belong. The Legal Practitioners Ordinance (Cap. 159) and its subsidiary provisions stipulate that the Hong Kong Bar Association and the Law Society of Hong Kong shall be the respective regulatory bodies for the professional branches of barristers and solicitors. The Bar Association and the Law Society are empowered by the Legal Practitioners Ordinance and may refer matters of professional conduct to the Barristers Disciplinary Tribunal or Solicitors Disciplinary Tribunal, which are independent and composed of persons from within and outside the profession appointed by the Chief Justice.

25. Legal practitioners do not receive different treatment before the law. Article 25 of the Basic Law provides that all persons shall be equal before the law. If lawyers break the law, they shall bear the legal consequences just like everyone else.

26. As cited in the joint communication, Principles 16 and 23 of the Basic Principles on the Role of Lawyers ensure that lawyers are able to perform all their duties without intimidation, hindrance or improper interference, and enjoy the same freedoms of expression, association, and assembly as do others. At the same time, it is also noted that lawyers should “always conduct themselves in accordance with the recognized standards and ethics of the legal profession”, and “always follow the law and generally accepted norms and act in accordance with the professional ethics of lawyers.”

27. The joint communication refers to Dennis Kwok (KWOK Wing-hang) and Kevin Yam (YAM Kevin). In an attempt to increase their credibility and authority, they used their status as a Hong Kong barrister and a Hong Kong solicitor to smear the judicial system and the rule of law in Hong Kong, to slander Hong Kong judges and prosecutors, and to advocate and support foreign “sanctions” on judicial and prosecutorial personnel in China, and particularly in the HKSAR. Their actions were damaging to the judicial system and the interests of the HKSAR as a whole, and they are suspected of having committed serious breaches of important professional codes and ethics as legal practitioners, in particular, their duty to preserve the honour and dignity of the profession to which they belong. Their actions damaged the reputation of the profession and undermined public confidence in the judicial system and the rule of law in the HKSAR. As a guardian of the public interest in the proper implementation of justice and the maintenance of the rule of law, the Secretary for Justice is duty-bound to bring formal complaints to the Hong Kong Bar Association and the Law Society of Hong Kong, so as to allow the two professional bodies to handle the complaints independently and follow up with established disciplinary procedures in accordance with the law. In no way has this been used to intimidate, hinder, harass or improperly interfere to prevent lawyers from

⁹ There are also numerous examples of foreign national security laws that combat crimes committed abroad under the principle of “ratione personae,” such as the Logan Act (in the United States) on treason, unlawful disclosure of classified information, and collusion with foreign countries and external forces; the Terrorism Act 2000 (in the United Kingdom) on treason; foreign interference offences (in Australia); treason (in Canada); and dissemination of unconstitutional or terrorist propaganda materials (in Germany).

¹⁰ Foreign national security laws citing the “protective [jurisdiction] principle” include those criminalizing terrorism in the United States, espionage in Australia, espionage activities in Canada and theft of State secrets in Germany, along with the newly enacted National Security Act of the United Kingdom.

performing their functions, as alleged in the joint communication, nor has there been any violation of principles 16 and 23 of the Basic Principles on the Role of Lawyers.

28. On more than one occasion¹¹, the HKSAR Government has pointed out to the Special Rapporteurs that there have been flagrant threats by foreign institutions and politicians to impose unilateral “sanctions” on law enforcement, prosecutorial and judicial personnel implementing the Hong Kong National Security Law, in disregard of the principle of the sovereign equality of States and non-interference established in the Charter of the United Nations. Threats against prosecutorial and judicial personnel are even more clearly contrary to such internationally recognized norms as the Basic Principles on the Independence of the Judiciary adopted at 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 adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990. We deplore the fact that on the one hand, the Special Rapporteurs have repeatedly alleged in their communications that some lawyers have been subjected to “threats” and “harassment” by the HKSAR government, while on the other, ignoring and silencing threats directed at law-enforcement, prosecutorial and judicial personnel in the HKSAR by the institutions and persons concerned (including by several of the fugitives mentioned in the present joint communication) .

High Court Criminal Case HCCC 69/2022

29. As noted in paragraph 1 above, we will not comment on any reference by the Special Rapporteurs to matters relating to the present case, because the legal proceedings involved are still ongoing. The following references to information on the case are provided only for the purpose of identifying the relevant legal provisions on which such enforcement and prosecutorial actions are based. In the case, 47 defendants were arrested on 6 January 2021 and charged on 28 February of the same year with one count of “conspiracy to subvert State power” on suspicion of violating Article 22 of the Hong Kong National Security Law and Sections 159A and 159C of the Crimes Ordinance (Cap. 200).

30. Prior to the trial, 31 people pleaded guilty; 16 pleaded not guilty, of whom 13 were released on bail under article 42 of the Hong Kong National Security Law.

31. The trial officially opened on 6 February 2023. On June 9 of that year, the prosecution completed argument of its case. After discussion, the Tribunal ruled admissible all prima facie evidence against the accused on trial. On 28 August of the same year, the Court also completed the hearing of all defence arguments and adjourned its hearing until 27 November of the same year for the oral closing arguments of the prosecution and defence.

32. In response to the Special Rapporteurs’ concerns regarding the proceedings in the case of HCCC 69/2022, we first note that the Department of Justice of the HKSAR, as guaranteed under article 63 of the Basic Law, shall control criminal prosecution, free from any interference; and shall rigorously and objectively make independent prosecutorial decisions in each case in accordance with the Prosecution Code on the basis of evidence and applicable law. The Department of Justice will only prosecute if there is sufficient evidence to give the case a reasonable opportunity to reach a conviction and if it is in the public interest.

33. As guaranteed under the Basic Law and the Hong Kong Bill of Rights, all persons facing criminal charges have the right to and will be given a fair trial by a judicial authority with the right to independent jurisdiction, as protected under articles 10 and 11 of the Hong Kong Bill of Rights, corresponding to article 14 of the ICCPR. Defendants in criminal cases also have the right to appeal against conviction and punishment. Articles 2 and 19 of the Basic Law state that the HKSAR has independent judicial power and the right of final adjudication, while Article 85 expressly stipulates that the courts of the HKSAR shall conduct trials independently and without any interference. Article 92 of the Basic Law expressly provides that judges and other judicial officers of the HKSAR shall be selected on the basis of their judicial and professional competence. All judges and judicial officers shall be recommended by an independent commission, composed of local judges and prominent members of the legal profession and others, and appointed by the Chief Executive. All appointed judges and members of the judiciary shall continue to abide by the Judicial Oath and uphold justice in a spirit of freedom from fear, impartiality, selflessness and honesty, in strict accordance with the principles of the law. The judicial system in Hong Kong has always

¹¹ Example: Reply of 1 May 2023 to AL CHN 1/2023, para. 59; and reply of 23 June 2023 to OL CHN 2/2023, para. 17 (Chinese versions).

been protected by the Basic Law, and the courts of the HKSAR, whether dealing with cases of crimes endangering national security or of a different nature, perform their judicial duties independently, impartially and without interference.

34. It is important to emphasize that the courts judge cases in strict accordance with the evidence and all applicable laws. Cases are not handled differently depending on the profession, political philosophy or background of the persons involved. It is the responsibility of the prosecution to prove, without reasonable doubt, that an accused person has committed an offence and only then may the accused person be convicted by the court. In addition, Article 35 of the Basic Law provides that Hong Kong residents shall have the right to confidential legal advice and to choice of lawyers for timely protection of their lawful rights and interests or for representation in court. Articles 10 and 11 of the Hong Kong Bill of Rights guarantee the right to a fair trial and provide for equal access to a number of minimum guarantees for the accused in the trial of a criminal offence, including adequate time and facilities for the preparation of a defence and communication with their chosen defence counsel; to be tried and to defend themselves in person or be defended by a counsel of their choice; and to cross-examine witnesses against them in person or indirectly. Like any defendant facing criminal charges, each of the defendants in HCCC 69/2022 is and will be heard independently and impartially by the court on the basis of the constitutional guarantees and fair trial rights laid out above.

35. As to the concern expressed by the Special Rapporteurs that so-called “mass trials” would undermine the right of the accused to a fair trial, we urge the Special Rapporteurs to recognize the following realities: generally speaking, if the accused are charged with a crime stemming from the same incident and are jointly charged under a single count, it would be consistent with the interests of justice to arrange for them to be tried together, without prejudice to their right to a fair trial. In addition to the aforementioned principled guarantees of a fair trial, the laws of the HKSAR also have systemic safeguards to ensure that multiple defendants are tried fairly together, including requiring the court to direct the jury (if the trial is conducted without a jury, to exercise self-guidance) to consider the circumstances which are detrimental and beneficial to each defendant separately; and prior to or at any stage of the trial, if the court considers that an accused person should be tried separately, it may so order¹². The 16 accused persons on trial in HCCC 69/2022 never applied to the court for separate trials on the grounds that they would suffer an injustice by being tried together. In fact, all defendants in the case were represented by a team of barristers and solicitors, many of whom were senior counsel, and qualified defendants received legal aid. There is nothing at all to suggest that they had suffered the injustice alleged by the Special Rapporteurs as a result of their being tried together.

Legal certainty

36. The concern expressed in the joint communication with respect to legal certainty is entirely baseless. The Hong Kong National Security Law clearly lists four categories of crimes endangering national security, namely secession, subversion of State power, terrorist activities, and collusion with a foreign country or with external elements to endanger national security. These offences are clearly defined in the Hong Kong National Security Law and are similar to those under national security laws in other jurisdictions. The elements constituting the offences, along with their penalties, commutation factors and other consequences are clearly provided for in Chapter III of the Law (see annex below for the provisions relating to the cases referred to in the joint communication). The accused may be convicted by the court only if the prosecution fulfils its duty to prove without reasonable doubt that the accused committed the criminal acts concerned and had the intent to do so. People who abide by the law will not fall afoul of the law. We have already responded to the reference made by the Special Rapporteurs in CHN17/2020 to the issue of the use of representative charges, and will not dwell on it here except to add that if the conduct of a person simultaneously constitutes more than one offence, under paragraph 8.1 of the Prosecution Code, the prosecutorial officer shall adequately reflect the criminality of the conduct alleged when selecting a charge. The number of charges should be kept as low as reasonably possible. Moreover, generally speaking, if a person is convicted by a court of more than one count, the court must also take into consideration the “principle that sentencing for aggregate crimes may not be excessive”¹³; therefore, the alleged problem of representative charges does not exist, nor has any accused person been subjected to injustice of any kind.

¹² Criminal Procedure Ordinance (Cap. 221), article 23 (3).

¹³ For example, in the case of ██████████, the accused was convicted of one count of incitement to secession and one count of terrorist activities. When sentenced, the court took into account the “principle

37. Moreover, in cases tried under the Hong Kong National Security Law within the jurisdiction of the HKSAR, the Hong Kong courts can further clarify the meaning of the elements of offences through the cases themselves, which is a consistent practice in the common law system. For example, [REDACTED], [REDACTED], the Court of First Instance of the High Court of Hong Kong provided detailed analyses of the elements of the offence of incitement to secession and the offence of terrorist activities under articles 21 and 24 respectively of the Hong Kong National Security Law. The reasons for the sentence are provided on the judiciary's website¹⁴ and are available to anyone.

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that sentencing for aggregate crimes may not be excessive". The "reasons for sentence" (in English only) can be found at the following link:

<https://legalref.judiciary.hk/lrs/common/ju/ju-frame.jsp?DIS=137543> (see paragraph 43)

¹⁴ See the following link for the reasoning for the decision (English only)

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=137456&QS=%2B&TP=RV

Provisions of the Hong Kong National Security Law relating to suspected national security offences committed by wanted fugitives

Secession offences

Article 20

A 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:

- (1) separating the Hong Kong Special Administrative Region or any other part of the People's Republic of China from the People's Republic of China;
- (2) altering by unlawful means the legal status of the Hong Kong Special Administrative Region or of any other part of the People's Republic of China; or
- (3) surrendering the Hong Kong Special Administrative Region or any other part of the People's Republic of China to a foreign country.

A person who is a principal offender or a person who commits an offence of a grave nature shall be sentenced to life imprisonment or fixed-term imprisonment of not less than ten years; a person who actively participates in the offence shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years; and other participants shall be sentenced to fixed-term imprisonment of not more than three years, short-term detention or restriction.

Article 21

A person who incites, assists in, abets or provides pecuniary or other financial assistance or property for the commission by other persons of the offences under Article 20 of this Law shall be guilty of an offence. If the circumstances of the offence committed by a person are of a serious nature, the person shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years; if the circumstances of the offence committed by a person are of a minor nature, the person shall be sentenced to fixed-term imprisonment of not more than five years, short-term detention or restriction.

Offences of subversion of State power

Article 22

A person who organises, plans, commits or participates in any of the following acts by force or threat of force or other unlawful means with a view to subverting the State power shall be guilty of an offence:

- (1) overthrowing or undermining the basic system of the People's Republic of China established by the Constitution of the People's Republic of China;
- (2) overthrowing the body of central power of the People's Republic of China or the body of power of the Hong Kong Special Administrative Region;
- (3) seriously interfering in, disrupting, or undermining the performance of duties and functions in accordance with the law by the body of central power of the People's Republic of China or the body of power of the Hong Kong Special Administrative Region; or
- (4) attacking or damaging the premises and facilities used by the body of power of the Hong Kong Special Administrative Region to perform its duties and functions, rendering it incapable of performing its normal duties and functions.

A person who is a principal offender or a person who commits an offence of a grave nature shall be sentenced to life imprisonment or fixed-term imprisonment of not less than ten years; a person who actively participates in the offence shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years; and other participants shall be sentenced to fixed-term imprisonment of not more than three years, short-term detention or restriction.

Article 23

A person who incites, assists in, abets or provides pecuniary or other financial assistance or property for the commission by other persons of the offences under Article 22 of this Law shall be guilty of an offence. If the circumstances of the offence committed by a person are of a serious nature, the person shall be sentenced to fixed-term imprisonment of not less than five years but not more than ten years; if the circumstances of the offence committed by a person are of a minor nature, the person shall be sentenced to fixed-term imprisonment of not more than five years, short-term detention or restriction.

Offences of collusion with a foreign country or with external elements to endanger national security*Article 29*

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 Hong Kong Special Administrative Region or by the Central People's Government, which is likely to cause serious consequences;
- (3) rigging or undermining an election in the Hong Kong Special Administrative Region, which is likely to cause serious consequences;
- (4) imposing sanctions or blockade, or engaging in other hostile activities against the Hong Kong Special Administrative Region 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.

A person who commits the offence shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years; a person who commits an offence of a grave nature shall be sentenced to life imprisonment or fixed-term imprisonment of not less than ten years.

The institution, organisation and individual outside the mainland, Hong Kong and Macao of the People's Republic of China referred to in the first paragraph of this Article shall be convicted and punished for the same offence.

Scope of application*Article 36*

This Law shall apply to offences under this Law which are committed in the Hong Kong Special Administrative Region by any person. An offence shall be deemed to have been committed in the Region if an act constituting the offence or the consequence of the offence occurs in the Region.

This Law shall also apply to offences under this Law committed on board a vessel or aircraft registered in the Region.

Article 37

This Law shall apply to a person who is a permanent resident of the Hong Kong Special Administrative Region or an incorporated or unincorporated body such as a company or an organisation

which is set up in the Region if the person or the body commits an offence under this Law outside the Region.

Article 38

This Law shall apply to offences under this Law committed against the Hong Kong Special Administrative Region from outside the Region by a person who is not a permanent resident of the Region.
