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CHN/HR/2023/83

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.

Geneva, 1 November 2023



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

## Translation

1. Before responding to the specific concerns raised in the joint communication, it is necessary to firstly point out that as the legal proceedings in respect of the case in which 47 individuals were charged with “conspiracy to commit subversion” mentioned in the joint communication (of which 16 of the defendants will be tried, case number HCCC 69/2022, hereinafter referred to as HCCC 69/2022) are still ongoing, no one should, and it is inappropriate for any person to, comment on or even attempt to interfere with the case as it is a matter of *sub judice*. Whether the criminal charge against the individuals involved in the case HCCC 69/2022 is 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 Hong Kong Special Administrative Region of the People's Republic of China (Basic Law). The joint communication repeatedly emphasised that the right to a fair trial has to be safeguarded, but a fair trial can only take place when the Judiciary is able to exercise judicial power independently, free from any interference. The Special Rapporteur on the independence of judges and lawyers, 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, and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (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.

2. The ensuing paragraphs aim to provide correct information on the various concerns raised in the joint communication, with a view to avoiding the Special Rapporteurs being misled into making wrongful comments. The references to the case HCCC 69/2022 below are also merely for this purpose. Even if certain concerns raised in the joint communication have not been touched on in the following paragraphs, the HKSAR should not be regarded as accepting the negative views on the relevant issues presented in the joint communication either.

## **The National Security Law**

### **Protection of fundamental rights and freedoms**

3. With regard to the concerns on rights and freedoms raised in the joint communication, as pointed out repeatedly by the HKSAR Government, fundamental rights and freedoms are well protected in the HKSAR by the Basic Law at the constitutional level. Such fundamental rights and freedoms include the freedoms of speech, of the press, of publication, of association, of assembly, of procession and of demonstration; the right and freedom to form and join trade unions, and to strike<sup>1</sup>; the right to a fair trial<sup>2</sup>; the freedom of the person and the relevant rights regarding the protection of privacy from arbitrary interference<sup>3</sup>. Article 39 of the Basic Law provides that the provisions of, amongst others, 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.

4. 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. As such, the relevant rights and freedoms enumerated in the ICCPR cited in the joint communication are protected under the Hong Kong Bill of Rights set out in

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<sup>1</sup> Article 27 of the Basic Law.

<sup>2</sup> Article 85 of the Basic Law.

<sup>3</sup> Articles 28, 29 and 30 of the Basic Law.

section 8 of the Hong Kong Bill of Rights Ordinance<sup>4</sup>.

5. During the process of formulating the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (National Security Law), the relevant provisions of the ICCPR and the ICESCR as applied to the HKSAR were fully taken into consideration.

6. 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 the 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.

7. Article 5 of the National Security Law clearly provides 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. 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.

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<sup>4</sup> The Universal Declaration of Human Rights (UDHR) mentioned in the Annex to the joint communication is not legally binding on the HKSAR. Nevertheless, as the contents of the relevant rights and freedoms protected under the UDHR are largely the same as those in the ICCPR, those rights and freedoms are hence indirectly protected under the Hong Kong Bill of Rights.

8. Any measures or law enforcement actions taken under the National Security Law, irrespective of whether they target acts and activities endangering national security that take place in or outside the territory, must observe the above principle. As pointed out by the Hong Kong Court of Final Appeal in the case of [REDACTED] [REDACTED] 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.

9. 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. Like all other individuals, legal practitioners, civil society actors and human rights defenders may exercise their fundamental rights and freedoms in accordance with the law in carrying out their duties.

#### Freedom not absolute

10. 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 laws in force in the HKSAR.

11. 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, and shall not engage in any act or activity which endangers national security.

12. 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 (CPG). 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.

13. Hong Kong residents enjoy freedoms of speech, of the press, of publication, of association, of assembly, of procession and of demonstration, 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.

14. 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, 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.

### **Enforcement and prosecution actions**

15. As the HKSAR Government has reiterated time and again, all law enforcement actions taken by Hong Kong law enforcement agencies are based on evidence and strictly according to the law in respect of the acts of the persons or entities concerned, and have nothing to do with their political stance, background or occupation. As such, the statement of “ongoing use of the [National Security Law] against pro-democracy leaders” in the joint communication is completely incorrect factually and must be refuted. 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. No

country will watch with folded arms acts and activities that endanger national security.

Lawful actions taken by the National Security Department of the Hong Kong Police Force to list persons at large as wanted persons

16. Having obtained the court's authorisation for the issue of arrest warrants regarding eight persons at large<sup>5</sup>, the National Security Department (NSD) put the eight persons on the wanted list. The persons concerned in respect of the NSD's actions, after having fled overseas, are suspected of having continued to commit offences under the National Security Law, including "incitement to secession" under Article 21, "subversion" under Article 22, "incitement to subversion" under Article 23, and "collusion with a foreign country or with external elements to endanger national security" under Article 29, thereby seriously endangering national security. The abovementioned provisions of the National Security Law are set out at Annex for your reference.

17. We note that the joint communication has set out the contents of the Police Force's Wanted Persons and Reward Notices of National Security Cases. In this regard, the Special Rapporteur should objectively take note of the acts and activities endangering national security engaged by the persons concerned. They include:

- (a) urging foreign countries to impose "sanctions" against Government officials, personnel of the Judiciary and prosecutors of the HKSAR;
- (b) meeting foreign politicians and government officials to call for "sanctions" or blockade to be imposed, and other hostile activities to be engaged in against the People's Republic of China and the HKSAR; and
- (c) advocating "Taiwan independence", "Hong Kong independence" and the overthrow of the basic system of the People's Republic of China established by the Constitution of the People's Republic of China.

18. It is a total ignorance of facts to say the acts and activities of the persons concerned

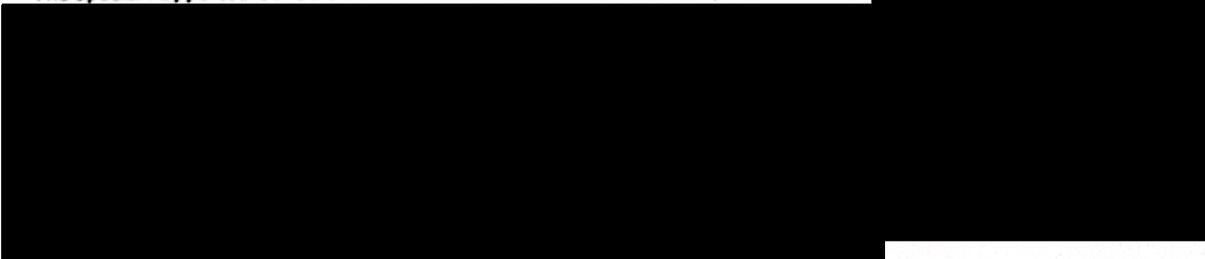
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<sup>5</sup> In respect of the offences against the eight persons, in June 2023 the Police applied for and the magistrate issued warrants for the arrest of these eight persons under section 9(1) of the Magistrates Ordinance (Cap. 227)

are simply “criticizing the Chinese government's policies in [the HKSAR]” and “speech and actions advocating for human rights and democracy”. The Special Rapporteurs' claim that the persons at large are “self-exiled” is also obviously a wrongful glorification of the despicable acts of these persons<sup>6</sup>. The above are obviously outright serious illegal acts that blatantly endanger national security. The HKSAR Police have the responsibility to take all necessary measures in accordance with the law so that the persons concerned can be brought to justice. The Special Rapporteurs should not view the acts and activities engaged by the persons concerned at a superficial level and allege that the HKSAR Government abused laws relating to national security to interfere with an individual's exercise of freedoms of expression, of association and of peaceful assembly. Instead, in order to avoid drawing a wrong conclusion, the Special Rapporteurs should duly recognise the purposes and nature of those malicious acts and activities, viz. to seriously endanger national security, as well as the extremely severe consequences that they may bring.

19. It must be reiterated that endangering national security is a serious offence and no country will watch with folded arms acts and activities that endanger national security. As mentioned above, the acts of the persons at large in advocating “Hong Kong independence” and “Taiwan independence” and urging foreign countries to impose “sanctions”, etc. as mentioned in paragraph [17] above clearly undermine/endanger national security and sovereignty. The Police have the duty to take all necessary measures in accordance with the law, to prevent and detect offences endangering national security and to arrest the persons

<sup>6</sup> The Special Rapporteurs should at the same time note that one of the persons at large,



[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=144674&QS=%2B%7C%28HCMP%2C830%2F2021%29&TP=JU](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=144674&QS=%2B%7C%28HCMP%2C830%2F2021%29&TP=JU)

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=147592&QS=%2B%7C%28HCMP%2C830%2F2021%29&TP=JU](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=147592&QS=%2B%7C%28HCMP%2C830%2F2021%29&TP=JU)

concerned and bring them to justice. The NSD's actions to list persons at large as wanted persons in accordance with the law are not only lawful, but also in compliance with the principles of necessity and proportionality.

20. It is a common practice of the Police and other law enforcement agencies to release information about fugitive offenders who are suspected to have committed serious offences and are wanted, and appeal to members of the public to assist in bringing fugitive offenders to justice. This is also squarely in line with the international practice.

21. In the joint communication, the Special Rapporteurs also mentioned the extraterritorial application of the National Security Law. To have a proper understanding of this, the Special Rapporteurs must give due consideration to the purposes of the National Security Law, which are to safeguard national security as well as preventing, suppressing and imposing punishment for acts and activities endangering national security. A lack of extraterritorial effect in the relevant law is tantamount to condoning activities such as secession and subversion carried out by ill-intentioned people overseas. Therefore, extraterritorial jurisdiction is an essential component of the National Security Law.

22. In general, the criminal law of the HKSAR only regulates acts that take place in the HKSAR, which is known as the “territorial principle” in international law and international practice. At the same time, international law and relevant practice have also established exceptions to the “territorial principle”, including the “personality principle”<sup>7</sup> and the “protective jurisdiction principle”<sup>8</sup>. Any State has the right to formulate laws based on these principles to exercise jurisdiction over criminal acts committed outside its territory. Articles 37 and 38 of the National Security Law (see Annex) are formulated according to the principles of “personality” and “protective jurisdiction”. The national security laws of

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<sup>7</sup> Under this principle, a State may exercise jurisdiction over criminal acts committed by its citizens outside its territory. As a matter of fact, as a citizen or permanent resident of a country or region, it is incumbent on him or her to abide by the laws of the country or region he or she belongs to, regardless of where he or she is.

<sup>8</sup> Under this principle, if foreigners commit criminal acts abroad against a sovereign State that endanger its security or its vital interests (such as government systems or functions), the sovereign State can adopt laws with extraterritorial effect to exercise prescriptive criminal jurisdiction.

various countries, including the United States (US), the United Kingdom (UK), Australia, Canada and the Member States of the European Union, also have extraterritorial effect under the "personality principle"<sup>9</sup> and "protective jurisdiction principle"<sup>10</sup>. Therefore, in terms of the scope of application, the National Security Law fully aligns with the principles of international law, international practice and common practice adopted in various countries and regions. Such practice is both necessary and legitimate, and is also in line with those of other countries and regions around the world.

### Lodging complaints with legal professional bodies against professional misconduct of barrister and solicitor

23. 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 of legal practitioners, like those of all other individuals, are protected by law. This fundamental safeguard ensures that they should act professionally without fear or favour.

24. Meanwhile, members of the legal profession must perform their duty professionally and observe the Code of Conduct and the Guide to Professional Conduct of their respective professional legal body. The Hong Kong Bar Association and the Law Society of Hong Kong are the respective regulatory bodies of the barristers' and solicitors' branches under the Legal Practitioners Ordinance and its subsidiary legislation. The Bar Association and the

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<sup>9</sup> There are also numerous examples of national security laws of other countries that tackle criminal acts committed outside the sovereign territory in accordance with the "personality principle", such as the offences of treason, unlawful disclosure of classified information and the Logan Act which targets activities of collusion with a foreign country or with external elements in the US; the offence of treason and the Terrorism Act 2000 in the UK; the foreign interference offence in Australia; the offence of treason in Canada and the offence of dissemination of propaganda material of unconstitutional and terrorist organisations in Germany, etc.

<sup>10</sup> The national security laws of other countries in which the "protective principle" is applied include the terrorism offences in the US, the National Security Act recently enacted in the UK, the espionage offence in Australia, the espionage offence in Canada and the offence of theft of state secrets in Germany.

Law Society are empowered under the Legal Practitioners Ordinance to refer a matter on a barrister's or a solicitor's conduct respectively to a Barristers Disciplinary Tribunal or a Solicitors Disciplinary Tribunal, which is independent and composed of members within and outside the profession appointed by the Chief Justice of the Court of Final Appeal.

25. Legal practitioners are not treated any differently should they be brought before the law. Article 25 of the Basic Law provides that all persons shall be equal before the law. If a lawyer violates the law, he or she would face legal consequence like all others.

26. Principles 16 and 23 of the Basic Principles on the Role of Lawyers quoted in the joint communication ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and like other citizens are entitled to freedom of expression, association and assembly, etc. Meanwhile, the principles also provide that lawyers shall act "in accordance with recognized professional duties, standards and ethics" and shall "always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession".

27. Kwok Wing-hang and Yam Kevin were mentioned in the joint communication. They made use of their professional capacity as a Hong Kong barrister and a Hong Kong solicitor to lend perceived credibility and authority to their smearing of Hong Kong's judicial system and rule of law, and made slanderous remarks against Hong Kong judges and prosecutors. They advocated and supported foreign "sanctions" against China and the HKSAR, in particular judicial officers and prosecutors of the HKSAR. Their acts have undermined the judicial system and overall interests of the HKSAR, and are suspected of seriously violating cardinal professional rules and ethics of a legal practitioner, in particular the duty to maintain the honour and dignity of their profession. Their acts bring the profession into disrepute and undermine public confidence in the HKSAR's judicial system and rule of law. As the guardian of public interest in the proper administration of justice and upholding the rule of law, the Secretary for Justice is duty-bound to lodge formal complaints

to the Hong Kong Bar Association and the Law Society of Hong Kong, so that the two professional bodies can independently handle these complaints and follow up in accordance with the law and the established disciplinary procedures. This is absolutely not aimed at preventing legal practitioners from exercising their profession without intimidation, hindrance, harassment, or improper interference as claimed in the joint communication, and there has been no contravention of principles 16 and 23 of the Basic Principles on the Role of Lawyers.

28. The HKSAR Government has pointed out to the Special Rapporteurs on more than one occasion<sup>5</sup> that there have been blatant threats from foreign entities and politicians 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. On the one hand, the Special Rapporteurs have written to us time and again to claim that some lawyers were subject to “intimidation” and “harassment” by the HKSAR Government. But on the other hand, the Special Rapporteurs have neglected and remained silent about the threats posed to law enforcement officers, prosecutors and judicial officers of the HKSAR by the entities and individuals concerned (including some of the persons at large mentioned in the joint communication). We express our regret on such application of double standards.

### HCCC 69/2022

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<sup>5</sup> For instance, in paragraph 59 of the Response to AL CHN 1/2023 on 1 May 2023 and paragraph 17 of the Response to OL CHN 2/2023 on 23 June 2023 (Chinese version).

29. As stated in paragraph [1] above, since the legal proceedings are still ongoing, we will not comment on matters relating to the case as mentioned by the Special Rapporteurs. The information relating to the case in the ensuing paragraphs is only for the purpose of pointing out the legal provisions based on which the enforcement and prosecution actions are taken. The 47 defendants in the case were arrested on 6 January 2021 and were charged with one count of "conspiracy to commit subversion" on 28 February of the same year on suspicion that they had contravened Article 22 of the National Security Law and sections 159A and 159C of the Crimes Ordinance (Cap. 200).

30. Before commencement of the trial, 31 defendants have pleaded guilty and 16 defendants have pleaded not guilty. Among them, 13 defendants were granted bail by the Court pursuant to Article 42 of the National Security Law.

31. The trial of the case formally commenced on 6 February 2023. The prosecution case was closed on 9 June of the same year. Upon deliberation, the Court determined that there was a prima facie case against all the defendants being tried. On 28 August of the same year, the defence case was closed and the Court adjourned the trial to 27 November of the same year for the prosecution and the defence to make oral closing submissions.

32. Regarding the Special Rapporteurs' concern about the trial process of the case HCCC 69/2022, it must firstly be pointed out that 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.

33. As guaranteed by the Basic Law and the National Security Law, as well as the Hong Kong Bill of Rights, all defendants charged with a criminal offence have the right to and will

undergo a fair trial by the judiciary exercising judicial power independently. 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. Articles 2 and 19 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.

34. It must be emphasised that the courts decide cases strictly in accordance with the evidence and all applicable laws. Cases will not be handled differently owing to the occupation, political belief or background of the persons involved. The prosecution has the burden to prove beyond reasonable doubt the commission of an offence by a defendant before that defendant may be convicted by the court. Article 5 of the National Security Law not only stipulates as a matter of principle that the principle of the rule of law shall be adhered to in preventing, suppressing, and imposing punishment for offences endangering national security, but also stipulates certain specific principles in criminal justice, such as the principle of legality, the presumption of innocence, the protection of rights in judicial

proceedings, and the prohibition of double jeopardy. Besides, Article 35 of the Basic Law stipulates that Hong Kong residents shall have the right to confidential legal advice, and choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts. Articles 10 and 11 of the Hong Kong Bill of Rights guarantee the right to a fair trial, and also provide that in the determination of any criminal charge against him, everyone shall be entitled to a number of minimum guarantees, in full equality, including: to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; and to examine, or have examined, the witnesses against him. Same as other defendants charged with a criminal offence, the case of each defendant in the case HCCC 69/2022 has been and will be adjudicated by the court independently and impartially on the basis of the constitutional guarantees and the right to a fair trial as mentioned above.

35. As regards the Special Rapporteurs' concern that the so-called "mass trial" will jeopardise the defendants' right to a fair trial, we urge the Special Rapporteurs to recognise the following facts. The defendants in the case were arrested and prosecuted in accordance with the law for their acts that are suspected to have violated Article 22 of the National Security Law and sections 159A and 159C of the Crimes Ordinance referred to above. Generally speaking, if the alleged criminal acts of the defendant stem from the same incident and they are jointly charged with one offence, arranging them to be tried together will be in the interest of justice and will not jeopardise their right to a fair trial. Apart from the above in-principle safeguards to a fair trial, the laws of the HKSAR also offer institutional safeguards to ensure that it is fair for a number of defendants to be tried together. These include: the court has to direct the jury (or to self-direct if the trial is conducted without a jury) to consider the circumstances against and in favour of each defendant individually; and the court may order a separate trial if, before trial or at any stage of a trial, it is of the opinion

that a defendant should be tried separately<sup>6</sup>. The 16 defendants tried in the case HCCC 69/2022 have never applied to the court for separate trial on the ground that they may be prejudiced by being tried together. In fact, all the defendants in the case are represented by teams of barristers and solicitors including Senior Counsel, and legal aid is also available to eligible defendants. There is nothing at all showing that they have suffered injustice because of being tried together as claimed by the Special Rapporteurs.

### **Legal certainty**

36. The concerns about legal certainty in the joint communication 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 provisions relevant to the cases mentioned in the joint communication are at Annex). 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. As for the issue about the use of alternative offences mentioned in communication no. CHN17/2020 by the Special Rapporteurs, our response was given in the relevant reply letter and will not be repeated here. To supplement, if a person's act constitutes more than one offence at the same time, according to paragraph 8.1 of the Prosecution Code, the prosecutor when choosing charges to be prosecuted should reflect adequately the criminality of the conduct alleged. The number of charges should be kept as low as reasonably possible. Furthermore, generally

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<sup>6</sup> Section 23(3) of the Criminal Procedure Ordinance (Cap, 221).

speaking, if a person has been convicted of more than one offence, the court should consider the totality principle<sup>7</sup> when imposing sentence. Thus, there is no issue of so-called misuse of alternative offences and no injustice will be caused to any defendant whatsoever.

37. 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 [REDACTED] 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>8</sup>.

<sup>7</sup> For instance, in the case [REDACTED]

[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=137543](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=137543) (see paragraph 43).

<sup>8</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)

**Provisions of the National Security Law  
relevant to the offences endangering national security  
suspected to be committed by wanted persons at large**

Secession

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 offence 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.

### Subversion

#### 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 offence 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.

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.