中华人民共和国常驻联合国日内瓦办事处和瑞士其他国际组织代表团

PERMANENT MISSION OF THE PEOPLE'S REPUBLIC OF CHINA

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CHN/HR/2024/48

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 [OL/CHN/5/2024], 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, 8 July 2024

Office of the High Commissioner for Human Rights
GENEVA

促进和保护意见和表达自由权特别报告员、受教育权特别报告员、和平集会自由权和结社自由权特别报告员、人权维护者处境特别报告员、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(OL CHN 5/2024)的回应

1. 促进和保护意见和表达自由权特别报告员、受教育权特别报告员、和平集会自由权和结社自由权特别报告员、人权维护者处境特别报告员、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(特别报告员)来文对香港特别行政区(香港特区)维护国家安全相关法律，包括《维护国家安全条例》(《条例》)的诸多不实看法，乃是源于对相关法律的错误理解。

2. 下文就来文中提及的各项关注提供正确的资讯，以免特别报告员作出错误的评论。即使下文没有触及来文的个别关注，中国政府亦不应被视为承认来文就有关事宜提到的负面及失实看法。

保障基本自由和权利

3. 正如中国政府曾多番指出，在香港特区，《中华人民共和国香港特别行政区基本法》(《基本法》)在宪制层面充分保障基本权利和自由，包括言论、新闻、出版、结社、集会、游行、示威自由，以及组织和参加工会、罢工的权利和自由[1]；公平审讯的权利[2]；人身自由及保障私生活免受任意侵犯的相关权利[3]；迁徙自由[4]；学术自由[5]。《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。

4. 《基本法》第十一条订明，香港特区立法机关制定的任何法律，均不得同《基本法》相抵触。事实上，制定任何本地法例(包括《条例》)都必须符合《基本法》，包括上述有关人权的《基本法》条文。

5. 在本地法律层面，《公民权利和政治权利国际公约》适用于香港的

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1 《基本法》第二十七条
2 《基本法》第八十七条
3 《基本法》第二十八条、第二十九条及第三十条
4 《基本法》第三十一条
5 《基本法》第三十四条及第一百三十七条

有关规定已透过《香港人权法案条例》实施，《香港人权法案条例》对政府具有约束力。因此，来文所引述的《公民权利和政治权利国际公约》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[6]。

6. 在制定《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》)和《条例》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。

7. 事实上，《香港国安法》第四条明确订明，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包括言论、新闻、出版的自由，结社、集会、游行、示威的自由在内的权利和自由。

8. 《香港国安法》第五条亦明确订明防范、制止和惩治危害国家安全犯罪，应当坚持法治原则。法律规定为犯罪行为的，依照法律定罪处刑；法律没有规定为犯罪行为的，不得定罪处刑。任何人未经司法机关判罪之前均假定无罪。保障犯罪嫌疑人、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。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。

9. 香港终审法院[7]已指出这两条条文，对于《香港国安法》的整体诠释至为重要。任何为维护国家安全所采取的措施或执法行动，包括《香港国安法》和《条例》底下的措施和行动，均须符合上述方针。

10. 除此之外，《条例》更开宗明义将尊重和保障人权以及坚持法治原则确立为《条例》其中两项基本原则，明确规定依法保护根据《基本法》和两条国际人权公约适用于香港特区的有关规定享有的权利和自由。

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[6] 来文提及的《世界人权宣言》(《宣言》)对香港特区并无法律约束力，但由于《宣言》与《公民权利和政治权利国际公约》所保障的相关权利和自由的内容大致相同，因此该等权利和自由亦间接受《香港人权法案》所保障。

[7] *香港特别行政区 诉 黎智英*(2021)24 HKCFAR 33。判决(中文版本)见以下链结：https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=133490&QS=%2B%7C%28facc%2C1%2F2021%29&TP=JU。

11. 就此，《条例》第 2 条清楚订明以下原则：

(a) 「一国两制」方针的最高原则，是维护国家主权、安全、发展利益；

(b) 尊重和保障人权，依法保护根据《基本法》、《公民权利和政治权利国际公约》、《经济、社会与文化权利的国际公约》适用于香港特区的有关规定享有的包括言论、新闻、出版的自由，结社、集会、游行、示威的自由在内的权利和自由；及

(c) 对于危害国家安全的行为和活动，应当按法治原则坚持积极防范，依法制止和惩治，据此：

(i) 法律规定为犯罪行为的，依照法律定罪处罚；法律没有规定为犯罪行为的，不得定罪处罚；

(ii) 任何人未经司法机关判罪之前，均假定无罪；

(iii) 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，予以保障；及

(iv) 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。

12. 按上所述，在香港特区，基本权利和自由在宪制和本地法律层面受到保护。法律条文和法院的判决都明确规定，在维护国家安全的同时需保护人权，并必须以该基础来诠释及应用维护国家安全的相关法律。因此，特别报告员指《香港国安法》和《条例》的诠释，会凌驾《公民权利和政治权利国际公约》、《经济、社会与文化权利的国际公约》和相关人权规定的说法站不住脚。

<u>自由并非绝对</u>

13. 每个国家都会制定维护国家安全法律，这既是主权国家的固有权利，也是国际惯例。制定维护国家安全的法律，是全球各国的基本治国方略。鉴于维护国家安全的重要性，很多国家都会根据自身需要，针对其面对的国家安全风险，订立全面和有效的法律，采取必需的措施维护国家安全。香港特区维护国家安全相关法律正正就是要令国家主权、统一和领土完整得以维护；「一国两制」、「港人治港」、高度自

治的方针得以全面准确贯彻；以及更好地保障香港居民和在香港的其他人，包括在港营商的人的基本权利和自由。

14. 《基本法》第四条订明，香港特区依法保障香港居民和其他人的权利和自由。与此同时，《基本法》第四十二条规定香港居民和在香港的其他人都有遵守香港特区实行的法律的义务。

15. 《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，不得从事危害国家安全的行为和活动。

16. 《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。

17. 上文提及香港居民享有言论、新闻、出版、结社、集会、游行、示威等的自由。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》和《条例》)对这些权利的行使予以合理和必要的限制，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。

18. 《香港人权法案》第八条、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》第十二条、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，可分别对迁徙往来、发表、集会和结社的自由以法律规定予以限制。

19. 在制定《条例》下的各项罪行和措施的具体条文时，我们已经充分顾及了相关的权利和自由。此外，香港特区借鉴了其他普通法国家立法经验、与国际接轨。无论在新增的罪名、执法权以至域外效力等，《条例》均参考了其他普通法国家相关法律。《条例》完全符合保障

人权自由的国际标准。《条例》禁止的危害国家安全的行为和活动，超越了正当行使基本权利和自由的范围。即使基本权利和自由可能受到限制，该限制也是合理、必须和相称的，已在维护国家安全与限制基本权利和自由两者之间取得合理平衡，并已审慎确保措施不会对个人造成难以接受的严苛负担。《条例》亦就相关执法权力清晰订明行使权力的条件及限制，并订明给予批准的机关和程序，确保有关权力不超过维护国家安全所需。

20. 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》和《条例》实施以来，本港的传媒环境蓬勃依然。一如既往，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：从事传媒工作的人与其他人一样都有义务遵守所有法律，包括刑事法律，传媒工作者必须按「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。

<u>维护国家安全法律定义和条文清晰</u>

21. 《条例》已清楚界定各项罪行，确保针对各式各样的危害国家安全行为和活动，而且订有适当的例外情况和免责辩护，有助确保正当的日常活动不会构成罪行。此外，依据刑事法的一般原则，控方有责任证明被告是在具指定的犯罪意图(例如意图、认知或罔顾等)的情况下进行有关的犯罪行为。这样能确保只打击罪有应得的危害国家安全分子，无辜者不会误堕法网。同时，香港特区执法部门根据证据、严格依照法律，以及按有关个人或单位的行为采取所有执法行动，与政治立场、背景或职业无关。

22. 值得注意，正如香港特区上诉法庭指出，「法律确定性」原则主要规定一项刑事罪行必须具有充分清楚表述的核心，使任何人能够自行或(如有必要)在获取意见下规范本身的行为，以期避免承担干犯该项罪行的刑责。与此同时，相关原则亦认可法律必须灵活运用及与时并进。这种发展过程在宪法学上无可异议，但不能导致藉司法判决伸展刑责范围。假如某项罪行基于其性质而须以宽广及具有弹性的方式界定，使之能涵盖各种干犯该罪行的形式，则该罪行在法律上并非不明确。此外，在普通法体系中，法院亦藉判决发展、厘清及调修法律，

以配合新环境和状况[8]。

23. 《条例》沿用香港特区普通法制度下一贯常用的法律草拟方式、技巧和习惯，其中之一是会在合理可行范围内确保法律条文仔细清晰，包括就一些较为关键和重要的特别用语和概念作出详细定义。举例而言，「国家安全」、「境外势力」和「勾结境外势力」等主要用词和概念已在《条例》中作详细界定，下文将会提及。

「国家安全」

24. 我们强烈反对特别报告员对「国家安全」乱扣所谓「模糊」的帽子。《条例》第 4 条订明「国家安全」的涵义[9]。在一个国家之内的任何地方，必须适用同一套国家安全标准。香港特区作为中华人民共和国不可分离的部分，应同样适用国家的国家安全标准；而香港特区本地法例中就「国家安全」的定义，应与国家法律中「国家安全」的定义一致。

25. 随着情况的转变，对国家安全的威胁也会不断变化。为了确保国家安全法律有足够和合理的弹性，以有效应对将来出现的各种威胁，我们注意到很多普通法司法管辖区都没有在其国家安全法律对「国家安全」作出定义，并在应用国家安全概念时，采用一个宽广的理解。

26. 各国对国家安全概念不尽相同，但随着时代及社会的演变、经济科技的发展，加上在国际形势日益复杂的环境下，现今国家安全的概念已不只局限于例如国土安全、主权安全、军事安全等传统安全领域，而是涵盖其他非传统安全领域，这是世界各国共通的发展。

27. 以英国为例，英国政府一贯立场是不在成文法中界定「国家安全」的涵义，以保持弹性应对任何新出现的国家安全威胁。在早前通过的英国《2023 年国家安全法》中，尽管英国国会的相关委员会认为有必要对法例中多次出现的「英国的安全或利益」作出定义，英国政府维持其一贯立场，拒绝有关建议，并表示对该语句所涵盖的行为或门

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[8] *香港特别行政区 诉 谭得志* [2024] HKCA 231, 判决(只有英文)见以下链结：https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=158600&QS=%2B&TP=JU。

[9] 根据《条例》第 4 条，在《条例》或任何其他条例中，提述国家安全，即提述国家政权、主权、统一和领土完整、人民福祉、经济社会可持续发展和国家其他重大利益相对处于没有危险和不受内外威胁的状态，以及保障持续安全状态的能力。有关定义与《中华人民共和国国家安全法》第二条对「国家安全」的定义相同。

槛作出限定，将会造成漏洞及让敌对势力有机可乘。

28. 除此之外，我们必须强调，在理解《条例》的任何条文时，任何人(包括特别报告员)都不应错误地聚焦个别的罪行元素 便妄下结论，批评《条例》所订罪行范围过于广泛或缺乏法律确定性。任何人(包括特别报告员)都必须一并考虑相关罪行的所有元素，并适切考虑到上下文意，正确诠释相关条文。我们特别需要指出，就《条例》所订的相关罪行而言，「国家安全」仅是其中一个罪行元素，而其他罪行元素必须同时存在，才会构成罪行。

「境外势力」

29. 「境外势力」本身是中性字眼，不带任何负面意思[10]。作为「境外势力」，甚至「配合境外势力」，本身并不构成罪行。特别报告员不宜以有色眼镜看待有关字眼。此外，特别报告员指称《条例》没有定义何谓「国际组织」与事实不符。《条例》第 3 条已作出定义[11]。

30. 至于「境外势力」的定义中「追求政治目的」一词，澳洲和新加坡维护国家安全的相关法律亦未有就类似概念 ("pursue political objectives")作出定义。我们留意到，澳洲相关立法的说明文件指出，除了政党和政府外，其他的外国政治实体亦可以从事间谍行为，而外国政治实体的确切性质和形式可随时间而变化；因此，必须就「外国政治性组织」保持一个宽阔的表述，以在必要时可以将相关活动界定为间谍行为；相反，如果对「外国政治性组织」采用一个狭窄和穷尽式的定义，则会妨碍将这些活动正确地界定为间谍或相关行为。

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[10] 根据《条例》第 6 条，境外势力(external force)指：
(a) 外国政府；
(b) 境外当局；
(c) 在境外的政党；
(d) 在境外的其他追求政治目的之组织；
(e) 国际组织；
(f) 任何(a)、(b)、(c)、(d)或(e)段所述政府、当局、政党或组织的关联实体；或
(g) 任何(a)、(b)、(c)、(d)、(e)或(f)段所述政府、当局、政党、组织或实体的关联个人。
该条亦有就(f)和(g)段中，何谓关联实体/个人，作出定义。

[11] 根据《条例》第 3 条，国际组织 (international organization)指：
(a) 某组织，其成员包括 2 个或多于 2 个国家、地区、地方或受任何国家、地区或地方委以职能的实体；或
(b) 藉(或基于)2 个或多于 2 个国家、地区或地方之间订立的条约、公约、协议或协定而设立的组织，
并包括上述组织辖下的机构(不论如何描述)。

31. 至于特别报告员对「勾结境外势力」定义(《条例》第 5 条)的关注，必须指出，「勾结境外势力」是《条例》所订某些罪行的其中一个行为元素，有关条文旨在说明何种作为会构成上述情况。事实上，某些国家(例如英国《2023 年国家安全法》)更规定只要某人意图透过其行为令外国势力得益，便满足有关罪行的涉及外国势力的条件(即使该人实际上与外国势力之间并没有合作关系，甚至不曾作出任何沟通)。

32. 「勾结境外势力」仅为其中一项构罪元素。《条例》下有关罪行的其他元素必须同时存在，勾结境外势力的人才会干犯有关罪行。特别报告员特别关注到，《条例》没有订明「勾结境外势力」所需的犯罪意图。就此，我们需要澄清在相关罪行的检控中，控方需要证明被告人知悉「勾结」的对象属境外势力。

罪行

危害国家安全的境外干预罪

33. 我们绝不同意特别报告员声称「危害国家安全的境外干预」罪(《条例》第 52 条)对发表的自由作出不需要和不相称的限制，以及入罪门槛低。我们必须指出，使用不当手段作出境外干预行为已超出了一般国际惯例可接受的范围(例如正当批评政府施政、正当游说工作、一般政策研究、与海外组织正常交流或日常商业活动)，违反国际法下的不干预原则，损害国家的主权和政治独立，并构成国家安全风险。

34. 就此，一些国家在近年已实施了针对境外干预的法律，例如英国、澳洲和新加坡。

35. 正如上文所述，「危害国家安全的境外干预」罪禁止的行为，与一般国际惯例可接受的正常国际交流，有明显分别。为突出「境外干预罪」的危害国家安全性质，于法例审议期间，香港特区政府经检视后修订建议，把有关罪行的罪名改称为「危害国家安全的境外干预罪」。

36. 《条例》就「危害国家安全的境外干预」罪订定了三项重要条件，即除意图带来干预效果外，亦须配合境外势力作出某项作为，而且当中使用了「不当手段」。《条例》就「不当手段」有严格的定义[12]。有关的人或组织必须同时符合三个条件才会干犯有关罪行。正当对外交

[12] 见《条例》第 55 条。

流活动不会符合上述三项条件，市民不会误坠法网。

37. 政府决策、立法程序和司法皆有可能影响香港居民的福祉、权利和自由。此罪行不但对保护国家安全是必须的，而且也可确保香港居民的基本权利和自由(例如选举权和被选举权)和上述机关执行职能的程序不会受到不当的境外干预，从而促进香港居民的基本权利和自由。

38. 特别报告员关注与非政府机构合作或交流，包括参与相关的会议等，会否犯「危害国家安全的境外干预」罪。严格来说，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。

39. 特别报告员关注到，针对当局、立法机构或司法机关进行人权相关的倡议工作，可能「被视为使任何人的名誉受损或失实地叙述资料」，而被诠释为使用「不当手段」。我们必须强调，香港特区作为国际都会及国际金融中心，欢迎世界各地和本地的机构、组织和人员互相交流。我们完全理解境外机构、组织和人员有正当需要就香港特区政府的政策和措施提出合理意见，包括透过本地组织或个人进行游说工作等。因此，《条例》的「危害国家安全的境外干预」罪旨在禁止的，是采用不正当的手段进行、并构成国家安全风险的境外势力干预行为。综观其他普通法国家立法经验，英国和澳洲的境外干预罪，对「不当手段」的涵盖范围十分广泛。例如，英国的外国干预罪的不当手段，包括(但不限于)涉及任何形式的胁迫(例如损害或威胁损害他人的声誉[13])或涉及失实陈述。澳洲的外国干预罪的不当手段包括(但不限于)隐蔽、欺骗及以恫吓的方式作出要求[14]。相较之下，《条例》第55条对「不当手段」采用了严格的定义，包括对「关键失实陈述」作出明确定义[15]。我们看不到与非政府机构正当合作或交流，以及正当的人权倡议工作，为何会涉及使用「不当手段」。

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[13] 根据英国相关立法的说明文件，英国的外国干预罪涵盖的情境包括(但不限于)：威胁伤害某个积极发表意见的人(或其家人)，使他宣布摒弃其观点；利用某名国会议员的敏感资料作胁迫，确保他以特定方式投票和发言；威胁选民，要求他们投票给特定候选人；恐吓陪审员，以影响法院判决。

[14] 根据澳洲相关立法的说明文件，澳洲的外国干预罪涵盖的情境包括(但不限于)：在向某人索取某些资讯时，威胁会披露涉及该人婚姻问题、并会损害该人家庭的私隐资料。

[15] 《条例》第55(3)条清晰订明，在该条中，提述对任何人作出关键失实陈述，即提述对该人作出虚假或具误导性的陈述，而该项陈述具有防止该人洞悉任何以下事实的效果：
(a) 当事者意图带来干预效果而作出有关作为此一事实；或
(b) 当事者配合境外势力而作出有关作为此一事实。

40. 同时，与其他国家、地区或相关国际组织的正常交流，受《基本法》和香港法律保障，任何与联合国辖下组织正当合作或交流的人和组织都不应该有这方面的担心。我们强烈反对任何有关香港特区政府对正当参与联合国机制的人士进行恐吓或报复行动的无理指控。

煽惑离叛

41. 就「煽惑离叛」罪(见《条例》第 3 部第 3 分部)而言，鉴于负责制订及执行政策、维持公共秩序、管理公共财政、维护司法公正，以及具有针对政府部门的法定调查权力的公职人员等，以及除香港驻军以外的中央驻港机构的人员与香港特区政权机关依法履行职能有密切关系，他们如被煽惑离叛，有可能会严重影响或干扰政府的运作及相关机构履行其职能，很有可能会危害国家安全。就特别报告员指有关条文「模糊」，在理解「放弃拥护《基本法》」和「放弃向特区效忠」的意思时，应参考《释义及通则条例》(第 1 章)第 3AA 条，当中列明任何人作出或意图作出某些行为时，不属拥护《基本法》、效忠香港特区，例如：作出或进行危害国家安全的行为或活动(包括犯危害国家安全的罪行)、拒绝承认中华人民共和国对香港特区拥有并行使主权、拒绝承认香港特区作为中华人民共和国一个地方行政区域的宪制地位、宣扬或支持「港独」主张等。由此可见，「煽惑离叛」罪的罪行元素和范围清晰，精准针对相关危害国家安全的行为和活动。我们难以理解为何特别报告员会指有关条文可能被滥用于「与官员在政治问题上有不同意见的人」，尤其为何特别报告员认为受《基本法》保障的正当意见交流会构成放弃拥护《基本法》及放弃向香港特区效忠。

「煽动意图」相关罪行

42. 特别报告员对「煽动意图」相关罪行的看法亦完全错误。《条例》中的「煽动意图」相关罪行(见第 3 部第 4 分部)是以原有《刑事罪行条例》第 9 条和第 10 条下的罪行作为蓝本[16]。香港特区法院于不同案件皆确认原有的「煽动意图」相关罪行符合《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。

[16] 有关罪行经适应化的修订及适当完善后现已保留及纳入《条例》，原有的《刑事罪行条例》第 9 条及第 10 条现已被废除。

43. 上诉法庭最近在*香港特别行政区 诉 谭得志* [2024] HKCA 231 一案[17]中亦指出，原有《刑事罪行条例》第 9 条和第 10 条下的「煽动意图」相关罪行符合「依法规定」和「相称性」的验证标准。

44. 就「依法规定」的要求，法庭提到有关控罪必须有足够的灵活适应性，才能有效应对社会当下面临的国家安全风险或威胁，应对社会转变或政治气候的变化，以及配合科技的急速发展和通信的多样性和便利性。为达至其目的，并使其能够及时有效地应对煽动行为或危害国家安全的行为，煽动意图的用词必须足以涵盖在不同时间、不同境况和不断变化的情况下可能出现的种种状况。相关条文关于煽动意图的定义具有充分清楚表述的核心，使任何人能够自行或(如有必要)在获取意见下规范本身的行为，从而避免承担刑责。至于特别报告员关注的个别罪行元素，包括「憎恨」、「藐视」和「离叛」，法院指出这些词语都是普通用语。简而言之，根据上下文意解读，并对其意思加以客观理解，可见此等用语的目的，乃禁止使用带有某些严重犯罪意图的文字，例如严重削弱政府机关的合法性或权威、严重破坏香港特区的宪制秩序、严重损害香港居民之间的关系。法庭判决的相关案例亦为公众人士提供了司法指引，以助他们了解及避免作出可能被裁定为煽动性的行为。

45. 除此之外，律政司拟备了一个专属网页[18]，把关于《香港国安法》和当时《刑事罪行条例》第 9 条及第 10 条的法庭案例撮要及统整，旨在加强公众的国家安全意识，及加深社会各界对《香港国安法》和煽动罪的认识。

46. 就「相称性」的验证标准，法庭提到煽动性文字可能导致危害国家安全、公共秩序或社会安宁的行为。煽动罪的目的，乃避免产生这种潜在的恶果，这对维护国家安全至关重要。相关条文进一步明确区分何谓合法言论和非法言论，列出了不带煽动意图的情况。只要将条文与言论自由权一併正确解读，可见条文明确指出，批评政府、司法，或就政府政策或决定进行辩论，甚至提出反对意见，无论是如何强烈、激昂或尖锐，都不构成煽动意图。而条文对何谓煽动及何谓非煽动的划分，并不会抑制任何为促进社会发展及解决冲突、紧张形势和问题而进行的公开坦诚对话及积极辩论。在公共领域及以公开讨论为目的

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[17] 判决(只有英文)见以下链结：
https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=158600&QS=%2B%7C%28CACC62%2F2022%29&TP=JU

[18] 《香港国安法》及《刑事罪行条例》煽动罪释义(目前只有英文版，中文版在拟备中)，见以下链结 https://www.doj.gov.hk/en/publications/national_security/hknslannot.html

的范畴，行使及体现言论自由权利的核心并没有削弱。再者，根据相关条文，凡未经律政司司长书面同意者，不得就所订罪行提出检控。这项程序上的保障，可避免执法机关使用主观道德或价值判断作为执法基础。此举亦可确保，在任何据称涉及言论自由的个案，律政司司长会按照证据充分与否或整体公众利益的准则，作恰当评定后才准予提出检控。条文在社会的利益与个人言论自由的权利之间已取得平衡。维护国家安全及公共秩序对于社会安定、繁荣及发展是不可或缺的，亦确保公众可在安全和平的环境下行使他们的基本权利及各自追求理想，可对社会带来莫大裨益。

47. 法庭亦指出，相关条文不会因为没有以煽动暴力的意图为有关罪行的必要元素，而在法律上不确定及不相称。确定性及相称性的议题须通过多个因素评估。是否具有相关意图虽是其中一个因素，但不具决定性。若只集中于该意图，而忽略其他因素，则过于狭隘。可相比的欧洲人权法院法学亦没有定下任何原则指，除非只对涉及煽动暴力的言词作限制，否则相关的限制便不符合确定性和相称性。煽动及危害国家安全的行为和活动现今以各种形式出现，部分虽然不涉及暴力手段，但做成的破坏与涉及暴力者无异，没有理由只制裁涉及暴力的行为。

48. 除此之外，特别报告员提及「于任何社会中，在政治和政府领域中对个别政策和国家整体宪制秩序的挑战和异议，是正当政治讨论、争论、改革或发展的必然部份」。特别报告员必定注意到，《条例》第23条订明不构成「煽动意图」的情况，包括(但不限于)：意图就相关《中华人民共和国宪法》确定的国家根本制度或香港特区的宪制秩序提出意见而目的是完善该制度或宪制秩序；意图就相关机构或机关的事宜指出问题而目的是就该事宜提出改善意见；意图劝说任何人尝试循合法途径改变中央就香港特区依法制定的事项或在香港特区依法制定的事项。因此，就政府施政作出基于客观事实、合理和正当批评、指出问题、提出改善意见等的言论根本不会触犯「煽动意图」相关罪行。

49. 特别报告员关注到《条例》下移走或清除具煽动意图的刊物的权力(第27条)，可能会构成对私生活、住宅或通信的无理或非法侵扰。必须指出，根据《条例》第27条，如具煽动意图的刊物并非从公众地方可见，则执法人员在进入处所或地方前，必须事先取得占用人的准许或裁判官的手令。而如果具煽动意图的刊物是从公众地方可见的，则无需事先取得相关准许或手令。这是因为具煽动意图的刊物具有煽动效果，如果有关刊物从公众地方可见，会构成国家安全风险，

例如煽动公众人士作出暴力行为、不遵守香港特区法律等，因此有需要授权执法人员可以尽快进入有关处所移走或清除煽动刊物，而不需要事先取得手令。但必须强调，这里赋予执法人员的权力极为有限：其目的并非作出刑事调查，也不是进入处所大肆搜查，主要是让执法人员针对性地移走、清除从公众地方可见的煽动刊物。因此，第 27 条对维护国家安全而言是必须的，对相关权利的限制是相称的，符合《公民权利和政治权利国际公约》第十七条的规定。

与国家秘密相关的罪行

50. 我们不同意特别报告员所指，有关罪行会带来「寒蝉效应」。首先，香港特区有责任保护国家秘密，免其被窃取或非法披露。《条例》第 29 条已清晰定义「国家秘密」，即有关资料属 7 个特定领域的秘密之一，而且在没有合法权限下披露，便相当可能会危害国家安全。

51. 从各国的通行做法看来，在涉及国家安全的重要领域的敏感资料，只要是不当披露后相当可能会损害国家安全或利益的资料，可能会被视为「国家秘密」。欧洲人权法院察悉欧洲各国在如何界定须保密事项方面采用了不同的规则，而且在控告某人非法披露资料时所依据的条件亦各异。欧洲人权法院认为，各国在制订该等规则时有相当程度的酌情余地。

52. 举例而言，英国《2023 年国家安全法》第 1 条的「获取或披露受保护资料」罪中，将「受保护资料」界定为「任何为保护英国的安全或利益的目的而被以任何方式限制取览的资料、文件或物品，或可合理地期望会被以任何方式限制取览的资料、文件或物品」。加拿大的《资讯安全法》第 16 条的「传达受保护的资料」罪禁止将政府正在采取措施保护的资料传达予外国实体或恐怖组织，并意图(或罔顾是否会)藉该传达行为增加外国实体或恐怖组织损害加拿大的利益的能力。该法第 19 条更禁止「经济间谍」行为：任何人受外国经济实体的指示或为其利益，透过欺诈手段，向其他人或组织传达商业秘密，损害加拿大的经济利益，便属犯罪。美国总统发出关于国家安全资料的保密级别的行政命令 13526 号也规定涉及科学、科技或经济而关乎国家安全的事项，如果未经授权披露可能对国家安全造成损害，可以给予保密级别。

53. 就《条例》而言，与国家秘密相关的罪行订有严格的罪行元素，即有关罪行只针对某人在没有合法权限下获取、管有或披露有关资料，而有关资料属「国家秘密」，而且该人怀有所需的犯罪意图。3 个

条件要同时符合，达到「3 连中」，才可能干犯有关罪行。市民如非明知自己正在处理国家秘密，而且没有所需的意图，便不会触犯该等罪行。

54. 此外，《条例》订有适当的免责辩护，包括就为与国家秘密相关的罪行设立基于公众利益而作出「指明披露」的免责辩护。香港特区政府经审慎考虑有关问题(包括在公众咨询期间收到就有关议题的意见)，就明知某资料、文件或其他物品属或载有国家秘密，而在没有合法权限下，获取/管有/披露该资料、文件或物品的罪行，加入「指明披露」的免责辩护(《条例》第 30 条)。《条例》容许在符合严格条件的情况下作出披露，此举能在保护国家秘密的重大公众利益和发表自由之间，取得平衡。

与间谍活动相关的罪行

55. 就特别报告员对间谍活动相关的罪行的关注，近年，不少国家(包括澳洲[19]和英国[20])已完善其与间谍行为相关的罪行的法律，以应对现今复杂的国际形势及现代的间谍行为。

56. 我们不同意特别报告员指，「间谍活动」罪「相当可能会打击和真正国家安全威胁之间没有可信或合理关联的正当发表」。「间谍活动」(第 43 条)罪特别针对意图危害国家安全或罔顾是否会危害国家安全而作出相关危害国家安全作为的人。罪行门槛高，只会打击怀有所需犯罪意图的人，而非进行正当活动的人。除此之外，间谍活动罪明确订明了构成罪行必须满足的其他条件，进一步收窄罪行的适用范围。

危害国家安全的破坏活动

57. 破坏或削弱公共基础设施的行为，会对国家安全构成高度风险。其中历历在目的例子，包括 2019 年港版「颜色革命」期间，暴徒于全港大范围破坏和损坏交通设施、港铁站和其他公共设施，目的是透过瘫痪交通、铁路系统及公共服务，达到瘫痪社会的正常运作，从而迫使香港特区政府向暴徒及其背后的政治势力屈服妥协，最终目的是

[19] 澳洲在 2018 年通过的《国家安全立法修正案(间谍活动及外国干预)法》。该法大幅提高从事间谍活动、泄露国家机密的刑罚，若勾结外国势力干犯部分相关罪行更会适用较高刑罚；该法亦订立支援外国情报组织的罪行及提供或接受外国情报组织资金的罪行。

[20] 英国最近通过的《2023 年国家安全法》包括一系列涵盖范围极广的新罪行，当中包括改革有关「间谍」行为的法律、有关获取或披露「受保护资料」的罪行、新增旨在保护商业秘密的新罪行，以及针对协助外国情报组织的行为的新罪行。此外，该法把「具境外势力的状况」套用到所有刑事罪行中，使法庭在量刑时，若犯罪行为涉及境外势力，则法庭必须把此事实作为加重刑罚的考虑。

要损害香港特区政府的有效管治甚至推翻政权。如关键通讯设施受破坏，便会削弱国家及香港特区有效应对内乱或武装冲突的能力；如关键的电子系统(例如中央结算及交收系统)遭受网络攻击或黑客入侵，更会瘫痪或严重窒碍香港特区的正常运作(例如严重危害金融市场的稳定)，或者导致国家秘密被非法获取。摧毁或损毁公共财产的行为，明显超越了正当行使基本权利。

58. 不少外国国家(例如澳洲和英国)均有立法应对上述情况。其中，澳洲通过《2018 年国家安全立法修正案(间谍活动及外国干预)法》引入破坏活动罪，禁止意图(或罔顾是否会)损害国家安全而进行各种形式针对公共基础设施的破坏活动或植入弱点的行为。英国在《2023 年国家安全法》中也引入同类罪行，禁止任何人为其明知或理应知道是有损英国安全或利益的目的，并在涉及外国势力的情况下损坏任何资产(不论是否位于英国境内)。

59. 必须指出，有关罪行元素清晰。特别报告员应该留意到，《条例》第 49 条的「危害国家安全的破坏活动」罪涵盖怀有危害国家安全的犯罪意图而「损坏或削弱公共基础设施」。「削弱」[21]和「公共基础设施」[22]均有清晰的定义。纵观 2019 年港版「颜色革命」的经验，有关损坏或削弱行为对相关公共基础设施，及国家安全所造成的危害对国家安全构成高风险，亦应予以禁止。我们留意到，澳洲相关立法的说明文件指出，不能容忍任何人促使公共基础设施被滥用、损坏或被在没有授权下接达或改动，而在最坏的情况下，如果某人意图(或罔顾

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[21] 见 49(3)条：凡任何作为对公共基础设施(包括组成该设施的东西或软件)造成任何以下效果(不论在何时造成)——
(a) 使该设施变得容易遭滥用或损坏；
(b) 使无权接达或改动该设施的人，变得容易接达或改动该设施；
(c) 导致该设施无法发挥其完整或部分应有功能；
(d) 导致该设施并非如其拥有人(或该拥有人的代表)对其所设定的运作方式运作(即使该项作为不会令该设施的操作、组成该设施的东西或软件或在该设施内储存的资料的可靠性或损亦然)，
该项作为即属削弱该设施。

[22] 见 49(4)条：公共基础设施 (public infrastructure)指 ——
(a) 属于中央或特区政府的，或由或代表中央或特区政府占用的以下各项(不论其是否位于特区)——
(i)基础设施；
(ii)设施或设备；
(iii)网络或电脑或电子系统；
(iv)办公处所；或
(v)军事或国防的设施或设备；
(b) 位于特区的公共交通工具、公共交通基础设施或公共交通设施(包括机场及相关设施)；或
(c) 位于特区的 ——
(i)提供或维持公共服务(例如金融、物流、水、电力、能源、燃料、排污、通讯、互联网)的
(A)基础设施；或
(B)设施；或
(ii)提供或管理第(i)节所述服务的电脑或电子系统。

是否会)损害国家安全而改动或损坏公共基础设施，可能令市民被杀害或受严重伤害。

60. 我们不同意特别报告员指「罔顾是否会危害国家安全」的罪行元素是一个「大幅调低的标准」。「罔顾」是香港特区的刑事罪行中常见的犯罪意图，涉及被告人的主观心态，并非一个低的门槛。就「罔顾是否会危害国家安全」而言，参考香港特区终审法院案例，控方需要证明被告人知悉其行为会产生危害国家安全的风险下，罔顾后果地行事；而在该人所知的情况下，承担该风险乃属不合理。反之，假如被告人因年龄或个人特征等理由，而实在不能预感或预视其行为所涉及的风险，则该人不能被视作「罔顾」，从而不能被定罪。事实上，作出损坏或削弱公共基础设施的行为的人，无论是意图危害国家安全或罔顾其行为是否会危害国家安全，两者皆可对国家安全构成高风险。我们留意到，外国的法律亦有涵盖相关的元素，例如澳洲的「破坏罪」覆盖「罔顾」会否损害澳洲的国家安全而损坏或削弱公共基础设施的行为。

从事危害国家安全活动的组织

61. 就特别报告员对禁止从事危害国家安全活动的组织在香港特区运作的看法，《条例》所订明的可禁止组织运作的理由并非新设，在修订前的《社团条例》的机制下也有相同的理由。保安局局长禁止某组织运作的权力属酌情性质，而行使这项权力需符合的相关门槛并不是来文中所说的那么低。事实上，保安局局长必须合理地相信(即包含一项客观因素)是维护国家安全「所需」，亦必须根据每宗个案的情况充份顾及维护国家安全和相关的人权保障(包括结社自由的权利)，合理和相称地行使其酌情决定权。《条例》订明程序上的适当保障，以确保符合程序公义原则，包括《条例》第 60 条订明，保安局局长如事先没有给予该组织机会，就为何不应作出该项命令而作出陈词或书面申述，则不得作出该项命令(除非保安局局长合理地相信给予该组织机会作出陈词或书面申述，在该个案的情况下并不切实可行)。除此之外，即使《条例》本身没有就此作出明文规定，根据普通法的一般原则，被禁止运作的组织可就有关决定提出司法复核。

<u>与维护国家安全相关的执法权力及诉讼程序</u>

为调查危害国家安全罪行可向法院申请延长羁留期

62. 《条例》第 7 部第 1 分部第 1 次分部订明，在符合严格条件的情

况下，可延长被捕人在没有被起诉下的羁留期。

63. 必须强调，《公民权利和政治权利国际公约》第九条提述有关人身自由的权利受《基本法》、《香港国安法》及《香港人权法案》第五条所保障。《条例》的相关条文丝毫不会损害这些权利。

64. 如有需要延长被捕人的羁留期，总警司级或以上的警务人员(或获其授权的警务人员)必须向法院提出有关申请。特别报告员指相关条文与《公民权利和政治权利国际公约》第九(二)条的规定不相符，而且被告人应迅即被落案起诉，否则应被释放。根据联合国人权事务委员会第 35 号一般性意见，《公民权利和政治权利国际公约》第九(二)条的一个重要目的，是使被捕人在认为逮捕理由不对或无根据的情况下能争取被释放。事实上，在警务人员向法院申请延长羁留期的过程中，被捕人会被带到裁判官席前(《条例》第 77(1)条)并有充分机会提出申述、亦有充分机会获得律师或大律师代表(《条例》第 77(2)条)。

65. 根据《条例》，法院只有在信纳(一)警方正努力并迅速地进行该罪行的调查，而调查按理不能在有关申请日期前完成，及(二)有关羁留对保障或保存该罪行的证据，属于必要等的情况下，才可批准延长羁留期。法院可批准最初延长一段不超逾 7 日的期间，而在任何情况下延长期总计不得超逾 14 日。此外，如警务人员不再有合理理由相信申请延长羁留的指明理由仍然存在，则除非被捕人被落案起诉，否则须立即释放该人。这些多重保障可确保有关的人不会受任意拘留、其人身自由及安全的权利不会受侵犯，完全符合《公民权利和政治权利国际公约》第九条的规定。

66. 我们亦需要指出，其他普通法司法管辖区，亦有类似的条文。英国《2023 年国家安全法》附表 6 中的第 6 部赋予警方向司法机关申请延长羁留的途径外，现有其他英国法律亦赋予英国警方权力向司法机关申请延长羁留因涉及严重罪行被捕人(尤其涉及恐怖活动罪)至高达 14 日。

为防范或调查危害国家安全罪行可向法院申请就获保释人施加适当限制

67. 至于有关向获释放候查的嫌疑人发出行动限制令，向该人施加某些规定方面(《条例》第 7 部第 1 分部第 3 次分部)，我们不同意该些规定会损害《香港人权法案》第八条(或透过该条而落实的《公民权利和政治权利国际公约》第十二条)所保障的迁徙往来的自由。该等规定

性质类似香港特区法院根据现行法律可以向刑事案件被告人施加的保释条件。总警司级或以上的警务人员(或获其授权的警务人员)需向裁判官提出申请，裁判官必须有合理理由相信有其中一项指明的情况，例如该嫌疑人将不会按照指明的条件向警方报到或是会有破坏或妨碍司法公正的情况，才可批准有关申请。裁判官可根据有关个案的个别情况，适当指明任何一项或多项规定。行动限制令的有效期为3个月，可获延长，每段延长期为1个月，确保警方迅速调查案件，不会不合理地拖延。

68. 此外，该嫌疑人可向裁判官申请更改或解除行动限制令，而如裁判官拒绝申请，该人可向原讼法庭申请复核，要求撤销或更改裁判官的决定 法院会确保所作任何限制(例如对行动自由的限制) 均是相称的，不会使该人承受不可接受的严苛负担。

因应危害国家安全情况可向法院申请就咨询法律代表施加适当限制

69. 至于限制咨询法律代表的相关条文方面(《条例》第7部第1分部第2次分部)，与特别报告员所指相反，限制咨询律师的权力具备足够的保障，确保与得到秘密法律咨询和选择律师的权利相符，也丝毫不会影响被告人依法享有的法律专业保密权。

70. 根据欧洲人权法院的判决，政府如有相当有力理据，可在特殊情况下，暂时限制被捕人咨询律师的权利。英国、欧盟、美国和加拿大等的法律均允许此类限制。

71. 相对英国《2023年国家安全法》就限制咨询律师的权力，容许警务人员可无须事先取得司法授权而自行决定阻延咨询律师，在香港特区，《条例》要求由警务人员(须为总警司级或以上的警务人员，或获其授权的警务人员)向法院提出有关申请，做法不但较为合理，更为被捕人提供更大的保障。

72. 法院必须有合理理由相信有其中一项指明的情况，例如有关咨询将导致任何人身体受伤或是破坏或妨碍司法公正，才可批准有关申请。

73. 如该人根据《条例》第79条被限制咨询某名法律代表，该人可咨询该人选择的其他法律代表。此外，值得留意，该限制只适用于被捕人在被警方羁留期间，并不影响该人自由选择律师代表其出庭的权利。另一方面，如该人根据《条例》第80条被限制咨询法律代表，

最长限制期只为 48 小时。相比之下，部分其他司法管辖区并未明确订明施加类似限制的时间上限，而《条例》指明时间的上限，为被捕人提供更大的保障。尽管被捕人咨询法律代表的权利受到局部限制，但调查人员仍然必须尊重被捕人依法享有的其他权利，包括保持缄默的权利。如警务人员不再有合理理由相信申请就咨询法律代表施加限制的指明理由仍然存在，则警务人员须立即停止向该人施加该限制。

74. 特别报告员指《条例》对咨询法律代表的限制「适用于某人因被合理地怀疑干犯危害国家安全的罪行而受调查，不论该人是否已被拘捕」，似乎是对《条例》怀有错误的理解。《条例》第 80 条的原意是容许警务人员，在作出拘捕行动前，可预先向裁判官申请手令，于该人在被捕后立即限制该人咨询律师，而对咨询法律代表的限制只适用于该人被拘捕后的 48 小时期间内被警方羁留的期间。该条文不会限制该人在拘捕前咨询法律代表。

75. 整体而言，我们相信有关限制不会对被捕人的权益造成不能逆转的损害，而无论如何，有关刑事诉讼程序将会确保被告人享有接受公平审讯的权利。

76. 我们不同意特别报告员所指，限制咨询法律代表的权力会因为律师「可能希望避免在国家安全案件中作代表律师而招致的审查和名誉损害」而为律师带来「寒蝉效应」。事实上，根据《条例》第 87 条，有关限制咨询律师的申请，一般会在非公开法庭进行的聆讯处理，故有关限制不会影响相关律师的名誉，亦与该律师的专业操守没有必然关系。

<u>可针对有关潜逃者施行的措施</u>

77. 就《条例》第 7 部第 2 分部针对潜逃者的措施而言，打击潜逃行为，促使涉及危害国家安全罪行的潜逃者回港接受执法和司法程序，既属正当的公众利益，亦符合法治精神。在指明某人为潜逃者后，保安局局长经考虑该案的所有相关情况下，可酌情决定采取他合理地认为适当的一项或多项措施。这容许保安局局长在作出命令前，评估任何特定措施对潜逃者及第三者可能造成的影响。

78. 就特别报告员指暂时吊销执业资格(第 93 条)和撤销特区护照(第 96 条)，可能会「剥夺律师在香港特区执业的权利」或「威胁到香港律师在免受不当干扰的情况下执业的能力」，乃是源于对相关条文的错误理解。上述都属于针对潜逃者的措施之一。

79. 《条例》第 89 条订明，指明有关潜逃者的条件，包括(a)法院已就危害国家安全的罪行，发出手令将某人拘捕；(b)已采取合理步骤将发出该手令一事通知该人，或保安局局长合理地相信该人已知悉该手令已发出；(c)该人仍未被带到法官或裁判官(视属何情况而定)席前；及(d)保安局局长合理地相信该人并非身处香港特区。因此，相关措施适用的人，不但涉嫌干犯危害国家安全的罪行，并已潜逃离开香港特区，完全不存在潜逃者以律师身份在香港特区执业的问题。我们看不到，相关措施如何影响律师正当在香港特区执业。

公平审讯与指定法官

80. 首先，我们必须强调，《条例》明文保障法院独立审判不受干涉。《条例》第 116(1)条订明，法院依照《基本法》及《香港国安法》的有关规定，独立审理涉及国家安全的案件，不受任何干涉。任何人须尊重和维护法院依法审理涉及国家安全的案件。

81. 就特别报告员对指定法官的关注，我们必须强调有关程序均不会损害司法机关的独立审判权或《公民权利和政治权利国际公约》第十四条下被告人获公平审讯的权利。行政长官只是从现有法官中指定若干名法官纳入一份名单，以处理危害国家安全的犯罪案件，而不是就某宗具体案件选择某位主审法官；委派某指定法官审理个别案件，仍属于司法机构(而非行政长官)的独立决定。

82. 事实上，指定专责法官处理特定法律范畴的情况并不罕见。在香港，有专责处理建筑和仲裁案件、商业和海事案件的法官。透过安排熟悉特定法律范畴的专门法官，有助提高达致法律的可预测性和确定性的机会，同时减低错误应用法律的风险。总括而言，这种安排有利于法治。

83. 同时，法官在处理相关案件时，不论案件是否涉及国家安全，仍然是独立地履行司法职务，不受任何干预，这点在《基本法》第八十五条[23]已充分订明。正如法院在*唐英杰 诉 香港特别行政区*[24]一案所述：「就《香港国安法》规定的罪行而言，辩方并无适当或充分理据指出行政长官或政府得以『干涉与审判职能有直接或紧密关系的事宜(例如指派法官的工作、开庭的安排和审讯案件列表)』，或行政长官得以或将可通过行使《香港国安法》第四十四条赋予的权力干涉『审判案件和维护法律及宪制价值』的香港司法人员的自由」。

84. 法院不会仅因为某宗危害国家安全案件由根据第四十四条指定的法官处理而失去独立性。《公民权利和政治权利国际公约》第十四条规定的人人均受独立无私之法定管辖法庭公正审问的权利，依然受到妥善保障。因此《香港国安法》及《条例》就指定法官的安排，绝无损害香港特区司法机关一直备受尊崇的独立审判权。

85. 香港特区终审法院时任首席法官在 2020 年 7 月 2 日的声明[25](即《香港国安法》刚实施时)亦已清楚指出，「指定法官跟所有法官一样，其任命必须根据其本人的司法及专业才能。这是任命法官时须考虑的唯一准则。这亦表示法官的指定不应根据任何其他因素，例如政治上的考虑因素。这个做法巩固了一个原则，就是法庭在处理或裁断任何法律纠纷时，只会考虑法律和法律原则」。

86. 香港特区终审法院现任首席法官于 2022 年法律年度开启典礼中亦表示[26]，「指定法官与其他所有的法官一样，必须恪守根据《基本法》第一百零四条的规定所作出的司法誓言。根据司法誓言，法官宣誓尽忠职守、奉公守法、公正廉洁，以无惧、无偏、无私、无欺之精神，维护法制，主持正义，为香港特别行政区服务。这意味法官在作出司法决定的过程中，不容有任何政治或其个人因素的考虑。司法誓言在指定法官审理国家安全案件时具约束力，与他们审理其他类别案件并无二致。」

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[23] 根据《基本法》第八十五条，香港特区法院独立进行审判，不受任何干涉，司法人员履行审判职责的行为不受法律追究。

[24] 见 *唐英杰 诉 香港特别行政区* [2020] HKCFI 2133(判决(只有英文)见以下链结)：https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=130336&QS=%2B&TP=JU

[25] 见 https://sc.isd.gov.hk/TuniS/www.info.gov.hk/gia/general/202007/02/P2020070200412.htm?fontSize=3

[26] 见 https://sc.isd.gov.hk/TuniS//www.info.gov.hk/gia/general/202201/24/P2022012400366.htm?fontSize=3

87. 于*香港特别行政区 诉 黎智英*[2023] HKCFI 1440 一案中，高等法院原讼法庭重申法官由行政机关任命本身无损法官的独立性。香港所有司法人员(不论是否《香港国安法》第四十四条下的指定法官)均按照《基本法》第八十八条由行政长官任命。虽然行政长官在依据《香港国安法》第四十四条指定法官方面有广泛酌情权，但他并非完全不受约束，因为法官的任命受《基本法》第八十五条及第八十八条至第九十二条和相关本地法例(包括《司法人员推荐委员会条例》(第 92 章))规范，而分配案件的工作也全然由司法机构处理[27]。

88. 至于《香港国安法》第四十四条当中规定，凡有危害国家安全言行的，不得被指定为审理危害国家安全犯罪案件的法官，原讼法庭已清楚指出这项规定属合法、合理和必要。法庭并强调所有法官均须按照《基本法》第一百零四条的规定宣誓，指定法官亦受此司法誓言规限，而且所有法官(不论是否获指定的法官)都必须严守司法誓言和《法官行为指引》[28]。如法官有危害国家安全的言行，这显然并不符合法官必须严守法律、刚正不阿及言行得当的基本要求，亦会令人质疑其审理涉及危害国家安全的案件是否公正无私。《香港国安法》禁止任何有危害国家安全言行的人担任指定法官，正正是对维护特区法治及确保司法机构秉行公义的重要保障。

<u>有关刑期</u>

89. 而特别报告员提到有关刑期方面，危害国家安全的行为和活动可造成非常严重的后果，有关刑罚必须具有阻吓性；这与其他司法管辖区的做法相似。就罪行订明具有足够阻吓力度的最高罚则，符合普通法制度下的法律草拟方式、技巧和习惯。必须强调，法院会依据个别案件的情况去判定适当的刑罚。而在现行的普通法制度下，法院会持续应用及发展相关量刑原则，并在合适的情况下订立量刑指引。

90. 至于特别报告员特别提到的「煽动意图」相关罪行的刑期，从香港特区 2019 年港版「颜色革命」的经验，反中乱港分子透过各种手段，激起对国家根本制度、中央和香港特区政权机关的仇恨；又藉扭曲的法律观点美化暴力，潜移默化地削弱市民的法治观念和守法意识，为港版「颜色革命」提供了萌芽的土壤。这些具煽动意图的作为、文字及刊物，虽然未必每一次都涉及直接煽惑使用暴力或煽惑他人扰

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[27] 见判词第 44 至 48 段。

[28] *香港特别行政区 诉 黎智英*[2023] HKCFI 1440，第 50 至 53 段。裁决(只有英文)见以下链结：https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=152847&QS=%2B%7C%28HCCC%2C51%2F2022%29&TP=JU

亂公共秩序，但放任这些煽动行为不理，日积月累的后果便会令社会上暴力及违法行为泛滥，令社会经歷长时间的动荡和不稳。「煽动意图」相关罪行有效防范和制止以煽动手段引起对国家根本制度、中央及香港特区行政、立法或司法机关等机构的憎恨的行为，该等行为长远而言对国家安全造成严重危害，因此需要订定具阻吓力的罚则。

执行法庭就囚犯所判处的监禁刑罚

91. 来文关注到，根据《条例》的相关条文，国家安全囚犯可能丧失申请复核其刑罚的权利。恰恰相反，根据香港特区的刑事诉讼程序，任何被定罪的人(包括因干犯危害国家安全罪行而被定罪的人)都有权按照既定的法律程序，针对其刑罚提出上诉。

92. 就执行法庭就囚犯所判处的监禁刑罚方面，我们必须强调，无论是在《条例》生效前或后，囚犯从来都没有必然权利获得提早释放。惩教署署长的职责是严格执行法庭就每一个囚犯所判处的监禁刑罚，任何准予囚犯提早释放的酌情权，必须根据法律的规定行使。

93. 事实上，过去曾发生因犯危害国家安全罪行而被定罪的囚犯在提早获释的监管期间潜逃或继续进行危害国家安全的行为和活动。为了维护国家安全和保障公众，有必要就涉及危害国家安全罪行的囚犯是否能够提早获释，施加较为严格的限制。有关安排并没有改变法庭对干犯危害国家安全罪行的人作出的判刑。

94. 值得注意的是，英国有关恐怖主义罪犯的法律(《2020 年恐怖主义罪犯(限制提前释放)法》)亦有处理有关问题的类似规定，其方法是收紧恐怖主义案件被定罪被告人获得「假释」的门槛，确保有关当局必须信纳，不再需要为了保护公众而监禁某囚犯，方可提早释放该囚犯。

域外效力

95. 特别报告员指香港特区政府应撤销《条例》的域外效力的所谓「建议」，完全无视维护国家安全法律的性质，缺乏说服力。《条例》下的危害国家安全的罪行的域外效力，完全符合国际法原则、国际惯例和各国各地区通行做法，实属必要和正当，并与世界其他国家和地区(包括美国、英国、澳洲、加拿大和欧盟成员国)一致。美国、英国、澳洲、加拿大和欧盟成员国等在内的众多国家的国家安全法律都同样根据「属人管辖」和「保护管辖」等原则，具有域外效力。在拟订《条例》的域外效力时，我们已顾及有关国家管辖权的国际法原则和国际惯

例，以及罪行的性质。

《条例》修订/检讨

96. 来文提到《条例》的立法过程迅速，并建议应设立机制定期独立检视《条例》的执行和成效。首先，我们必须强调《条例》的所有条文均是经过审慎考虑及审议而制订。特区政府于整个立法过程充份听取市民、不同团体界别的意见，立法工作有强大的民意基础。特区政府于咨询期间共收到超过 13 000 份意见书，98.6%表示支持立法及提供正面意见。整个立法审议程序严谨有序进行，立法会(包括为《基本法》第二十三条立法事宜成立的小组委员会及法案委员会)共举行了 25 次会议，用了近 50 小时详细审议每一条文，提出超过 1 000 条问题和意见，产生了 91 个修正案，反映立法程序一丝不苟，严谨有序。

97. 就来文关注特区政府会如何监督《条例》下的权力行使，我们必须指出《条例》已清晰订明行使执法权力的条件及限制，并订明给予批准的机关和程序，确保有关权力不超过维护国家安全所需。现行《条例》下有关执法及调查相关的措施均设有由司法机关把关的审核机制，即当局拟对某人施加限制时，必须让法院信纳相关的事实基础和实际需要，有证据支持及满足《条例》所规定的条件，以确保有关限制的程度和理由既合理又客观。有关酌情权的使用亦需按每宗案件的案情而定，且必须为合理及相称。

98. 以限制咨询律师的权力为例，英国、欧盟、美国和加拿大等的法律均允许此类限制。其中，英国《2023 年国家安全法》容许警务人员可无须事先取得司法授权而自行决定阻延咨询律师，而《条例》则要求必须由警务人员(须为总警司级或以上的警务人员，或获其授权的警务人员)向法院提出有关申请，做法较为合理，为被捕人提供更充分的保障。

99. 在执行方面，一如其他本地法律要求，执法人员必须严格按照《条例》的规定行使获赋予的权力及执行有关措施，其决定可受司法复核，确保所有执法决定都合符法律规定及程序公义。特区政府认为上述的机制有效监督《条例》下的权力行使，没有需要在现有机制以外就《条例》另设一个定期独立检视的机制。

100. 维护国家安全是香港特区的宪制责任。就此，特区政府会持续检视《条例》及其他相关维护国家安全法律的实践经验及成效，不断完善特区维护国家安全的法律体系。

Response to the communication from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the right to education, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders, 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 the Hong Kong Special Administrative Region of the People's Republic of China (OL CHN 5/2024)

1. The communication by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the right to education, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders, 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 Special Rapporteurs) has raised many incorrect views in relation to the laws safeguarding national security in the Hong Kong Special Administrative Region (HKSAR), including the Safeguarding National Security Ordinance (the Ordinance), which stem from misunderstanding of the relevant laws.

2. The ensuing paragraphs provide correct information on the various concerns raised in the communication, with a view to avoiding wrongful comments from being made by the Special Rapporteurs. Even if certain concerns raised in the communication have not been touched on in the following paragraphs, the Chinese Government should not be regarded as accepting the negative and untruthful views on the issues presented in the communication.

Protection of fundamental rights and freedoms

3. As pointed out repeatedly by the Chinese Government, fundamental rights and freedoms are well-protected in the HKSAR at the constitutional level by the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Basic Law). Such fundamental rights and freedoms include the freedoms of speech, of the press, of publication, of association, of assembly, of procession and of demonstration, as well as the right and freedom to form and join trade unions, and to strike[1]; the right to a fair trial[2]; the freedom of the person and the relevant rights regarding the protection of privacy from arbitrary interference[3]; freedom of movement[4] and academic freedom[5]. 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. Article 11 of the Basic Law provides that no law enacted by the legislature of the HKSAR shall contravene the Basic Law. In fact, the enactment of any local legislation (including the Ordinance) must comply with the Basic Law, including the above provisions of the Basic Law concerning human rights.

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1 Article 27 of the Basic Law.
2 Article 87 of the Basic Law.
3 Articles 28, 29 and 30 of the Basic Law.
4 Article 31 of the Basic Law.
5 Articles 34 and 137 of the Basic Law.

5. 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, which binds the Government. As such, the relevant rights and freedoms enumerated in the ICCPR as cited in the communication are protected under the Hong Kong Bill of Rights, as set out in section 8 of the Hong Kong Bill of Rights Ordinance[6].

6. 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 (HKNSL) and the Ordinance, the relevant provisions of the ICCPR and the ICESCR as applied to the HKSAR were fully taken into consideration.

7. As a matter of fact, Article 4 of the HKNSL clearly stipulates 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.

8. Article 5 of the HKNSL also 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 of a person 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.

9. The Hong Kong Court of Final Appeal[7] has pointed out that these two Articles are centrally important to the interpretation of the HKNSL generally. Any measures or enforcement actions taken for safeguarding national security, including those taken under the HKNSL and the Ordinance, must be in line with the above principles.

10. Besides, the Ordinance has clearly stipulated at the outset that two of the basic principles of the Ordinance are to respect and protect human rights, and to adhere to the principle of the rule of law. It expressly provides that the rights and freedoms enjoyed under the Basic Law and the provisions of the two international covenants on human rights as applied to the HKSAR are to be protected in accordance with the law.

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[6] The Universal Declaration of Human Rights (UDHR) mentioned in the 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.

[7] *HKSAR v Lai Chee Ying* (2021) 24 HKCFAR 33. Please refer to the link below for the judgment: https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=133491

11. In this connection, section 2 of the Ordinance clearly stipulates the following principles:

(a) the highest principle of the policy of "one country, two systems" is to safeguard national sovereignty, security and development interests;

(b) human rights are to be respected and protected, the rights and freedoms, including the freedoms of speech, of the press and of publication, the freedoms of association, of assembly, of procession and of demonstration, enjoyed under the Basic Law, the provisions of the ICCPR and the ICESCR as applied to the HKSAR, are to be protected in accordance with the law; and

(c) for acts and activities endangering national security, there must be adherence to active prevention in accordance with the principle of the rule of law, and suppression and punishment in accordance with the law, and accordingly:

(i) a person whose act constitutes an offence under the law is to be convicted and punished in accordance with the law; no one is to be convicted and punished for an act that does not constitute an offence under the law;

(ii) a person is to be presumed innocent before the person is convicted by a judicial authority;

(iii) the right to defend, and other rights in a legal action, enjoyed in accordance with the law by a criminal suspect, defendant and other participants in the action are to be protected; and

(iv) a person who has already been finally convicted or acquitted of an offence in judicial proceedings is not to be tried or punished again for the same act.

12. As stated above, fundamental rights and freedoms are protected at the constitutional and local law levels in the HKSAR. It is clearly stipulated in the legal provisions and court judgments that human rights shall be protected in safeguarding national security, and that the relevant laws on safeguarding national security shall be interpreted and applied on that basis. Therefore, the assertion of the Special Rapporteurs that the interpretation of the HKNSL and the Ordinance would override the ICCPR, the ICESCR and the relevant human rights provisions is untenable.

Freedoms are not absolute

13. Every state enacts laws on safeguarding national security. This is an inherent right of every sovereign state, and also an international practice. Enactment of legislation to safeguard national security is the basic governance strategy of countries around the world. Given the importance of safeguarding national security, many countries have put in place comprehensive and effective laws and taken necessary measures to safeguard national security in accordance with their own needs and in the light of the national security risks they are facing. The laws safeguarding national security in the HKSAR are precisely for safeguarding national sovereignty, unity and territorial integrity; ensuring the full and faithful implementation of the principle of "one country, two systems" under which the people of Hong Kong administer Hong Kong with a high degree of autonomy; and better safeguarding the fundamental rights and freedoms of the residents of the HKSAR and other people in the city, including those doing business in Hong Kong.

14. As stated in Article 4 of the Basic Law, the HKSAR shall safeguard the rights and freedoms of Hong Kong residents and of other persons in Hong Kong in accordance with law. Meanwhile, Article 42 of the Basic Law stipulates that Hong Kong residents and other persons in Hong Kong have the obligation to abide by the laws in force in the HKSAR.

15. Article 6(1) of the HKNSL 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 HKNSL 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.

16. 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 HKNSL 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.

17. It is mentioned above that 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 HKNSL and the Ordinance). This is a common practice in all countries and is also allowed under the ICCPR and ICESCR.

18. The wording of Articles 8, 16, 17 and 18 of the Hong Kong Bill of Rights is the same as Articles 12, 19, 21 and 22 of the ICCPR respectively. These provisions stipulate respectively that freedoms of movement, of expression, of assembly and of association may be subject to restrictions that are provided by law and necessary for the protection of national security or public order (*ordre public*), etc.

19. When formulating the specific provisions for the offences and measures under the Ordinance, we have fully taken into consideration the rights and freedoms concerned. In addition, the HKSAR has made reference to the legislative experience of other common law countries to align with international practices. References have been made to the relevant laws of other common law countries when providing for the newly added offences, the law enforcement powers and the extra-territorial effect in the Ordinance, which fully complies with the international standard on the protection of human rights and freedoms. Acts and activities endangering national security prohibited by the Ordinance go beyond the legitimate exercise of fundamental rights and freedoms. Even if there may be restrictions on fundamental rights and freedoms, such restrictions are reasonable, necessary and proportionate. A reasonable balance has been struck between the safeguarding of national security and the restriction of fundamental rights and freedoms, and care has been taken to ensure that the measures would not result in an unacceptably harsh burden on the individuals. The Ordinance clearly stipulated the conditions for and restrictions on the exercise of relevant law enforcement powers, and the authorities and procedures for granting such powers, so as to ensure that such powers are no more than necessary for safeguarding national security.

20. 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 HKNSL and the Ordinance, the media landscape in Hong Kong has remained vibrant. As always, the freedom of the media to comment on and criticise government policies, which takes place as a matter of routine, is uninhibited as long as there is no violation of the law. At the same time, the concept of "responsible journalism" is well-established in international jurisprudence on human rights: media practitioners, like everyone else, have an obligation to abide by the law, including criminal law. Media practitioners are entitled to the protection of the freedom of expression and freedom of the press on the premises that they act in good faith and on an accurate factual basis and provide reliable and precise 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.

Clear definitions and provisions in the laws safeguarding national security

21. The offences in the Ordinance have been clearly defined to ensure that they target the full range of acts and activities endangering national security, and the provision of appropriate exceptions and defences helps to ensure that legitimate day-to-day activities do not constitute an offence. Moreover, pursuant to the general principles of criminal law, the prosecution has the burden to prove that the defendant had the requisite mental elements (such as intention, knowledge or recklessness) when carrying out the relevant criminal acts. This would ensure that only those individuals endangering national security who are blameworthy would be caught, and ensure that an innocent person would not unwittingly violate the law. At the same time, the HKSAR law enforcement agencies have been taking law enforcement actions based on evidence and in strict compliance with 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.

22. It is noteworthy that as the Court of Appeal of the HKSAR pointed out, the main requirement of "legal certainty" is that a criminal offence must have a sufficiently clearly formulated core to enable a person, with advice if necessary, to regulate his or her conduct so as to avoid liability for that offence. At the same time, the principles recognise the necessity for flexibility and development of the law. Such a process of development is not constitutionally objectionable provided that it does not result in judicially extending the boundaries of criminal liability. If the nature of a crime is such that its definition has to be broad and flexible enough to embrace many different ways of committing that offence, it is not legally uncertain. Further, in a common law system, the courts develop the law, clarifying and modifying it to meet new circumstances and conditions[8].

23. The Ordinance has been formulated according to the established drafting approach, techniques and practice commonly adopted under the HKSAR's common law system, one of which is to ensure, as far as reasonably practicable, that the legal provisions are detailed and clear. This includes providing detailed definitions for some special terms and concepts that are relatively critical and important. For example, key terms and concepts such as "national security", "external force" and "colluding with external force", are defined in detail in the Ordinance as referred to in the following paragraphs.

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[8] The judgement of *HKSAR v Tam Tak Chi* [2024] HKCA 231 is available at: https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=158600&QS=%2B&TP=JU

"National Security"

24. We strongly object to the false assertion of so-called "vagueness" of the definition of "national security" made by the Special Rapporteurs. Article 4 of the Ordinance provides for the definition of "national security"[9]. The same set of national security standards should apply throughout the country, and the national security standards of our country should also apply to the HKSAR, which is an inalienable part of the People's Republic of China. The definition of "national security" in the HKSAR's local legislation should be consistent with that in the laws of our country.

25. Threats to national security change constantly as circumstances keep on evolving. To ensure that the national security laws are adequately and reasonably flexible to effectively deal with various threats that will emerge in the future, it is noted that many common law jurisdictions have not defined "national security" in their national security laws and have adopted a broad interpretation in applying the concept of national security.

26. The concept of national security varies among countries. That said, with the evolution of the times and society as well as economic and technological developments under an increasingly complex global situation, the concept of national security nowadays is no longer limited to traditional security fields such as homeland security, sovereignty security and military security, but also cover other non-traditional security fields. This is a common development for countries throughout the world.

27. Taking the United Kingdom (UK) as an example: it has all along been its government's stance not to define "national security" in legislation to maintain flexibility in dealing with any new and emerging national security threats. As regards the National Security Act 2023 of the UK which has been passed recently, although the relevant committee of the UK Parliament considered it necessary to define "safety or interests of the United Kingdom" which appears repeatedly in the Act, the UK Government maintained its long-standing position by rejecting the recommendation and stated that limiting this term by specifying certain conduct or including an explicit threshold would risk creating loopholes for hostile actors to exploit.

28. Besides, we must stress that when reading any provisions of the Ordinance, no one (including the Special Rapporteurs) shall wrongly focus on one particular element of the offence, and jump to the conclusion that the offences under the Ordinance are too broad in scope or lack legal certainty. In order to interpret the provisions correctly, all persons (including the Special Rapporteurs) must consider all elements of the relevant offences in a holistic manner with due regard to the context. In particular, we have to point out that in respect of the relevant offences under the Ordinance, "national security" is only one element of offence; and all the other elements of the offence must also be present, before it would constitute an offence.

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[9] In accordance with section 4 of the Ordinance, in the Ordinance or any other Ordinance, a reference to national security is a reference to the status in which the state's political regime, sovereignty, unity and territorial integrity, the welfare of the people, sustainable economic and social development, and other major interests of the state are relatively free from danger and internal or external threats, and the capability to maintain a sustained status of security. This definition is the same as the one on "national security" in Article 2 of the National Security Law of the People's Republic of China.

"External Force"

29. "External force" itself is neutral without any negative connotation[10]. Being an "external force" or even "collaborating with an external force" does not in itself constitute an offence. The Special Rapporteurs should not view these phrases through tinted glasses. Besides, the Special Rapporteurs' assertion that the Ordinance does not define "an international organization" is factually wrong. Section 3 of the Ordinance has provided the definition[11].

30. As for the phrase "pursues political ends" in the definition of "external force", a similar concept (*"pursue political objectives"*) is not defined in the relevant national security laws of Australia and Singapore. We note that the explanatory memorandum to the relevant Australian legislation states that espionage can be conducted by foreign political entities that are not political parties or governments, and the precise nature and form of these entities may change over time. It further states that it is therefore necessary to maintain a broad formulation of "foreign political organisation" that allows for such activities to be categorised as espionage where necessary; in contrast, a narrow and exhaustive definition of "foreign political organisation" would prevent these activities from being rightly considered as espionage or related activity.

31. Regarding the Special Rapporteurs' concern about the definition of "colluding with external force" (section 5 of the Ordinance), it must be pointed out that "colluding with external force" is one element of the *actus reus* for certain offences under the Ordinance. The purpose of the provision is to state what acts will constitute the above circumstances. In fact, certain countries (such as the National Security Act 2023 of the UK) even stipulate that if a person intends to benefit an external force through his/her act, he/she meets the condition in the relevant offences of involvement with an external force (even if there is no actual co-operative relationship or even communication with the external force).

32. "Colluding with external force" is only one of the elements of the offence. Other elements of the relevant offences under the Ordinance must also be present in order for those who collude with external forces to have committed the offence. The Special Rapporteurs were particularly concerned that the Ordinance does not specify the requisite mental element for "colluding with external force". In this regard, we need to clarify that in prosecuting the relevant offences, the prosecution will have to prove that the defendant knew that the party with whom he / she "colluded" was an external force.

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[10] According to section 6 of the Ordinance, external force means:
- (a) a government of a foreign country;
- (b) the authority of an external place;
- (c) a political party in an external place;
- (d) any other organization in an external place that pursues political ends;
- (e) an international organization;
- (f) a related entity of a government, authority, political party or organization mentioned in paragraph (a), (b), (c), (d) or (e); or
- (g) a related individual of a government, authority, political party, organization or entity mentioned in paragraph (a), (b), (c), (d), (e) or (f).

The provision also defines the related entity/individual in paragraph (f) and (g).

[11] According to section 3 of the Ordinance, international organization means
- (a) an organization the members of which include 2 or more countries, regions, places, or entities entrusted with functions by any country, region or place; or
- (b) an organization established by or under a treaty, convention or agreement made by 2 or more countries, regions or places,

and includes an institution (however described) under the organization.

Offences

Offence of external interference endangering national security

33. We absolutely disagree with the Special Rapporteurs' assertions that the offence of "external interference endangering national security" (section 52 of the Ordinance) imposes unnecessary and disproportionate restriction on the freedom of expression, and that it sets a low threshold for the commission of the offence. We must point out that, external interference by improper means exceeds the acceptable limit in normal international practice (e.g. genuine criticisms against government policies, legitimate lobbying work, general policy research, normal exchanges with overseas organisations or day-to-day commercial activities), contravenes the principle of non-interference under international law, undermines national sovereignty and political independence, and poses risks to national security.

34. In this regard, in recent years, some countries, such as the UK, Australia and Singapore have implemented laws that are targeted at external interference.

35. As mentioned above, the acts prohibited by the offence of "external interference endangering national security" are clearly different from normal international exchanges acceptable in normal international practice. During the legislative scrutiny, to highlight that the offence of "external interference" is of such a nature that it endangers national security, the HKSAR Government reviewed and revised the proposal and renamed the offence as the offence of "external interference endangering national security".

36. The Ordinance sets out three important conditions for the offence of "external interference endangering national security", namely in addition to the intention to bring about an interference effect, the acts must be conducted in collaboration with an external force, and there is use of "improper means" (which has been narrowly defined in the Ordinance[12]). Persons or organisations concerned must meet all three conditions at the same time to commit the offence. Legitimate external exchange activities do not meet the above three conditions and the residents will not inadvertently breach the law.

37. The government's decision-making, the legislative process and the administration of justice may affect the well-being, rights and freedoms of Hong Kong residents. This offence is not only necessary to protect national security, but also serves to promote Hong Kong residents' fundamental rights and freedoms by ensuring that these fundamental rights and freedoms (such as the right to vote and stand for election) and the processes in relation to the performance of functions by the abovementioned authorities are not subject to improper external interference.

38. The Special Rapporteurs were concerned about whether co-operation or exchanges with non-governmental organisations (NGOs), including participation in relevant meetings, would commit the offence of "external interference endangering national security". Strictly speaking, whether a particular act constitutes an offence depends on the facts and circumstances of each case, and hence over-generalisation is neither possible nor appropriate.

39. The Special Rapporteurs were concerned that human rights advocacy directed at the authorities, legislative bodies or the judiciary may be "perceived to damage a person's reputation or to misrepresent information" and thus be interpreted as using "improper means". We must stress that, as a cosmopolitan city and an international financial centre, the HKSAR welcomes exchanges between local institutions, organisations and individuals and those from all parts of the world. We completely understand that there is a legitimate need for foreign institutions, organisations and individuals to express rational views on the policies and

[12] See section 55 of the Ordinance.

measures of the HKSAR Government, including lobbying through local organisations or individuals. Therefore, the offence of "external interference endangering national security" under the Ordinance aims to prohibit acts of external interference that are conducted by improper means and pose risks to national security. An overview of the legislative experiences of other common law countries shows that the offences of foreign interference in the UK and Australia have a very wide coverage of "improper means". For example, improper conducts under the offence of foreign interference of the UK include (but not limited to) those that involve coercion of any kind (e.g. damaging or threatening to damage a person's reputation[13]) or involve making a misrepresentation. Improper conducts under the offence of foreign interference of Australia include (but not limited to) acts that are covert, involve deception, and involve the making of demands with menaces[14]. In comparison, section 55 of the Ordinance strictly defines "improper means", including the provision of a clear definition of "material misrepresentation"[15]. We do not see how legitimate co-operation or exchanges with NGOs, and legitimate human rights advocacy would involve the use of "improper means".

40. Meanwhile, normal exchanges with other countries, regions or relevant international organisations are protected by the Basic Law and the laws of Hong Kong. Any individual or organisation having legitimate co-operation or exchanges with organisations under the UN should not have any worries in this regard. We strongly oppose any groundless accusations that the HKSAR Government has carried out acts of intimidation or reprisal against those who legitimately participated in the UN mechanism.

Incitement to disaffection

41. Regarding the offences of "incitement to disaffection" (see Division 3 of Part 3 of the Ordinance), since public officers who are responsible for the formulation and implementation of policies, the maintenance of public order, the management of public finance, the upholding of due administration of justice, and those public officers with statutory powers of investigation against government departments, as well as members of the offices of the CPG in the HKSAR, except for the Hong Kong Garrison, have a close relationship with the performance of duties and functions in accordance with the law by the bodies of power of the HKSAR, if they are incited to disaffection, this will likely seriously affect or interfere with the operation of the government and the performance of duties and functions of relevant authorities, and very likely to endanger national security. Regarding the Special Rapporteurs' comment that the relevant provisions are "vague", when understanding the meanings of "abandon upholding the Basic Law" and "abandon the allegiance to the HKSAR", reference should be made to section 3AA of the Interpretation and General Clauses Ordinance (Cap. 1), which states that a person does not uphold the Basic Law and bear allegiance to the HKSAR when the person does or intends to commit certain acts, such as committing acts or carrying out activities that endanger national security (including committing an offence relating to endangering national

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[13] According to the explanatory notes to the relevant legislation of the UK, the scenarios covered by the offence of foreign interference of the UK include (but not limited to): threatening to hurt a person (or his family) who is vocal in his views so that he would have to renounce his views; using the sensitive information on a member of Parliament as leverage to ensure that he votes and speaks in a particular way; threatening voters to require them to vote for a specific candidate; intimidating a member of the jury to sway the outcome of the court case.

[14] According to the explanatory memorandum to the relevant legislation of Australia, the scenarios covered by the offence of foreign interference of Australia include (but not limited to): a demand for information accompanied by a threat to disclose private information about a person's marital affair that would jeopardise a person's family.

[15] Section 55(3) of the Ordinance clearly stipulates that, in that section, a reference to making to a person a material misrepresentation is a reference to making to the person a false or misleading representation that has the effect of preventing the person from discerning:
(a) the fact that the subject person, with intent to bring about an interference effect, does the act; or
(b) the fact that the subject person collaborates with an external force to do the act.

security), refusing to recognize the People's Republic of China's sovereignty over the HKSAR and the exercise of the sovereignty, refusing to recognize the constitutional status of the HKSAR as a local administrative region of the People's Republic of China, and advocating or supporting "Hong Kong independence". It can be seen that the elements and scope of the offences of "incitement to disaffection" are clear and precisely target at relevant acts and activities endangering national security. It is hard to understand why the Special Rapporteurs would suggest that the relevant provisions may be abused against "individuals with whom officials disagree on political matters", and in particular, why the Special Rapporteurs would consider that legitimate exchanges of views protected by the Basic Law would constitute abandonment of upholding the Basic Law and abandonment of the allegiance to the HKSAR.

Offences in connection with "seditious intention"

42. The Special Rapporteurs are also completely wrong about the offences in connection with "seditious intention". Offences in connection with "seditious intention" under the Ordinance (see Division 4 of Part 3) are modelled on those under the pre-existing sections 9 and 10 of the Crimes Ordinance[16]. The courts of the HKSAR have ruled in different cases that the pre-existing offences in connection with "seditious intention" 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.

43. The Court of Appeal recently pointed out in *HKSAR v Tam Tak Chi* [2024] HKCA 231[17] that the offences in connection with "seditious intention" under the pre-existing sections 9 and 10 of the Crimes Ordinance satisfy the "prescribed by law" requirement and the proportionality test.

44. Regarding the "prescribed by law" requirement, the court has held that a sufficient degree of adaptive flexibility is necessary for the offence to be effective and responsive to meet the risks or threats to national security that the society is facing at the time. The offence must be flexible enough to cope with societal evolution or the change in political climate, and keep pace with the rapid technological advances and diversity and ease in communications. To achieve its purpose and to enable it to timely and effectively respond to seditious acts or activities endangering national security, seditious intention has to encompass a myriad of situations that may arise in different and changing circumstances at different times. The definitions for seditious intention in the relevant provision have a sufficiently and clearly formulated core to enable a person, with advice if necessary, to regulate his or her conduct so as to avoid liability. As for certain elements of the offences, such as "hatred", "contempt" and "disaffection" that the Special Rapporteurs are concerned about, the court has pointed out that these words bear ordinary language. Put briefly, when read in context and objectively understood, they aim at prohibiting words which have certain serious criminal intent, e.g. seriously undermining the legitimacy or authority of government institutions; seriously undermining the constitutional order of the HKSAR; and seriously harming the relationship among Hong Kong residents. The relevant case law developed by the court provides the public with judicial guidance which they may consult to avoid engaging in conduct which is likely to be held to be seditious.

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[16] The offences, after adaptation and appropriate improvement, are retained and included in the Ordinance. The pre-existing sections 9 and 10 of the Crimes Ordinance were repealed.

[17] The Judgment is available at: https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=158600&QS=%2B%7C%28CACC62%2F2022%29&TP=JU

45. In addition, to raise public awareness of national security and to promote a better understanding of the HKNSL and the offence of sedition by all sectors of the community, the Department of Justice has prepared a dedicated webpage[18] to summarise and collate court cases concerning the HKNSL as well as the then sections 9 and 10 of the Crimes Ordinance.

46. As regards the proportionality test, the court has stated that seditious words may potentially lead to acts endangering national security, public order or safety. The offence of sedition aims at avoiding such potential detrimental consequences, which is imperative in safeguarding national security. The relevant provision provides further clarity in differentiating between lawful and unlawful speeches. It sets out the circumstances in which there is no seditious intention. Properly read together with the right to free expression, they make it plain that criticising the Government, the administration of justice; or engaging in debates about or even raising objections to government policy or decision, however strongly, vigorously or critically, will not constitute a seditious intention. The delineation in the provision between what is seditious and what is not does not inhibit or have the effect of inhibiting open and frank dialogue and vigorous debate to promote societal development and the resolution of conflicts, tensions and problems. The core of the right to free expression exercised and realised in the public domain and for the purposes of public discourse is not compromised. Further, under the relevant provision, no prosecution of the offence shall be instituted without the written consent of the Secretary for Justice. Such procedural safeguard avoids the risks of law enforcement agencies using subjective moral or value judgment as the basis of enforcement. It also ensures that the right to free expression said to be engaged in a case is properly evaluated by the Secretary for Justice in terms of sufficiency of evidence or general public interest before the prosecution is allowed to be brought. A fair balance has been struck under the provision between societal benefits and the individual's right to free expression. Safeguarding national security and public order is indispensable to the stability, prosperity and development of society. It ensures a safe and peaceful environment where the public can exercise their fundamental rights and pursue their goals. As such, the societal benefits involved are enormous.

47. The court has also held that the relevant provision will not be rendered legally uncertain and disproportionate because it does not contain an intention to incite violence as a required element of the offence. The questions of legality and proportionality entail a multi-factorial assessment. Presence or otherwise of such an intention is but a factor, which is not definitive. Focusing on it alone without due reference to other factors is too restrictive. The comparable jurisprudence of the European Court of Human Rights does not contain any principle that a restriction on freedom of expression could only be justified, both in terms of legality and proportionality, where the expression included an incitement to violence. Seditious acts or activities endangering national security now take many diversified forms, some of which involve non-violent means but can be as damaging as violent ones. There is no valid basis for criminalising only acts of violence.

48. In addition, the Special Rapporteurs mentioned that "[c]hallenge and disagreement in the political and governmental sphere over not just individual policies but also the whole constitutional order of a country must be accepted as necessary elements of legitimate political discussion, argument, reform, and evolution in any society." The Special Rapporteurs must have noted that section 23 of the Ordinance provides that circumstances that do not constitute "seditious intention" include, but are not limited to: an intention to give an opinion on the fundamental system of the state established by the Constitution of the People's Republic of

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[18] Annotations of the Hong Kong National Security Law and sedition offences in the Crimes Ordinance is available at:
https://www.doj.gov.hk/en/publications/national_security/hknslannot.html

China, or the constitutional order of the HKSAR, with a view to improving the system or constitutional order; an intention to point out an issue on a matter in respect of the relevant institution or authority, with a view to giving an opinion on the improvement of the matter; and an intention to persuade any person to attempt to procure the alteration, by lawful means, of any matter established in accordance with the law by the Central Authorities in relation to the HKSAR, or any matter established in accordance with the law in the HKSAR. As such, making reasonable and genuine criticism of government policies based on objective facts, pointing out issues, and offering views for improvement, etc. will not in any way constitute an offence in connection with "seditious intention."

49. The Special Rapporteurs are concerned that the power to remove or obliterate publications that have seditious intention under the Ordinance (section 27) may constitute an arbitrary or unlawful interference with privacy, the home and correspondence. We must point out that according to section 27 of the Ordinance, if the publication that has a seditious intention is not visible from a public place, law enforcement officers must obtain prior permission of the occupier or a warrant issued by a magistrate before entering the premises or place. Whereas if the publication that has a seditious intention is visible from a public place, no prior permission or warrant will be required. This is because such publication will have a seditious effect. If visible from a public place, it will constitute a national security risk, such as inciting members of the public to commit acts of violence, or not to comply with the laws of the HKSAR, etc. Therefore, it is necessary to authorise law enforcement officers to enter the relevant premises as soon as possible to remove or obliterate the seditious publication without the need to obtain a warrant in advance. However, we must emphasise that the powers conferred on law enforcement officers here is extremely confined: the purpose of which is not to carry out criminal investigations or to conduct extensive searches on the premises, but mainly to enable them to purposely remove or obliterate any seditious publication that is visible from a public place. As such, section 27 is necessary for safeguarding national security, imposes proportionate restrictions on the relevant rights and is consistent with the provisions of Article 17 of the ICCPR.

Offences in connection with state secrets

50. We disagree with the Special Rapporteurs' assertion that the offences will create "a chilling effect". First of all, the HKSAR has the duty to protect state secrets from theft or unlawful disclosure. Section 29 of the Ordinance clearly defines "state secret" as information which belongs to any of the seven specific categories of secrets, the disclosure of which, without lawful authority, would likely endanger national security.

51. In the light of the common practice of various countries, sensitive information concerning important fields of national security may be regarded as "state secrets" as long as improper disclosure of such information is likely to prejudice national security or interests. As noted by the European Court of Human Rights, European states have adopted different rules on how secrecy is defined and conditions for prosecuting persons who disclose information unlawfully. It has held that states enjoy a certain margin of appreciation in devising such rules.

52. For instance, in the offence of "obtaining or disclosing protected information" under section 1 of the National Security Act 2023 of the UK, "protected information" is defined as "any information, document or other article where, for the purpose of protecting the safety or interests of the United Kingdom, access to the information, document or other article is restricted in any way, or it is reasonable to expect that access to the information, document or other article would be restricted in any way". The offence of "communicating safeguarded information" under section 16 of the Security of Information Act of Canada prohibits the communication to a foreign entity or to a terrorist group of information that the Government is

taking measures to safeguard, where the person intends to (or is reckless as to whether such act of communication will) increase the capacity of a foreign entity or a terrorist group to harm Canadian interests. Section 19 of the Act also prohibits "economic espionage", under which any person who, at the direction or for the benefit of a foreign economic entity, fraudulently communicates a trade secret to another person or organisation to the detriment of Canada's economic interests, commits an offence. The Executive Order 13526 on Classified National Security Information issued by the President of the United States also provides that scientific, technological or economic matters relating to national security may be classified at the confidential level if the unauthorised disclosure of such matters may cause damage to national security.

53. As for the Ordinance, the offences relating to state secrets are qualified by stringent elements of the offences, namely it only catches acquisition, possession or disclosure of the information without lawful authority, where the information in question constitutes a "state secret", and where the person has the requisite mental element. The relevant offence is only committed if all the three conditions are met at the same time. A member of the public who does not know he is handling state secrets and who does not have the requisite intention will not fall foul of the offences.

54. In addition, suitable defences have been provided in the Ordinance, including providing a defence for "specified disclosure" based on public interest for offences relating to state secrets. Upon careful consideration of the issue concerned (including the views received on the issue during the public consultation), the HKSAR Government introduced a defence for "specified disclosure" for offences under which a person knowing that any information, document or other article is or contains a state secret and without lawful authority, acquires/possesses/discloses the information, document or article (section 30 of the Ordinance). Permitting disclosure under the strict conditions in the Ordinance, strikes a balance between the important public interest in protecting state secrets and the freedom of expression.

Offences in connection with Espionage

55. In response to the Special Rapporteurs' concern about offences in connection with espionage, many countries (including Australia[19] and the UK[20]) have in recent years improved their laws on offences relating to acts of espionage to deal with the current complex international landscape and modern-day acts of espionage.

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[19] Australia passed the National Security Legislation Amendment (Espionage and Foreign Interference) Act in 2018. The Act significantly increases the penalties for engaging in espionage and divulging state secrets. Even higher penalties will be applicable if a person colludes with foreign forces to commit some of the relevant offences. The Act also introduces the offence of supporting foreign intelligence agency and the offence of funding or being funded by foreign intelligence agency.

[20] The National Security Act 2023 recently passed in the UK includes an array of new offences with very wide coverage, including reform of laws relating to "espionage" and an offence relating to obtaining or disclosing "protected information", introduction of a new offence aimed at the protection of trade secrets as well as new offences targeted at acts of assisting a foreign intelligence service. In addition, the Act applies the "foreign power condition" to all criminal offences, so that if the criminal act involves a foreign power, the court must treat that fact as an aggravating factor that warrants a more severe penalty in sentencing.

56. We disagree with the Special Rapporteurs' assertion that the offence of "espionage" is "likely to capture legitimate expression which bears no plausible or reasonable relationship to any genuine national security threat". The offence of "espionage" (section 43) specifically targets persons who commit relevant acts endangering national security with an intention to endanger national security or are reckless as to whether national security would be endangered. This is a high threshold which would only catch those who have the requisite mental state, and not those engaged in legitimate activities. The offence clearly stipulates further conditions that must be met in order for the offence to be committed, thereby further limiting the scope of the offence.

Sabotage activities endangering national security

57. Acts of damaging or weakening public infrastructure will pose a high risk to national security. Flagrant examples of such acts include the extensive vandalism of and damage to transport facilities, MTR stations and other public facilities by rioters across large areas of Hong Kong during the Hong Kong version of "colour revolution" in 2019. The purpose of such acts was to paralyse the normal operation of society through paralysing the transport, railway systems and public services, thereby forcing the HKSAR Government to give in to and compromise with the rioters and the political forces behind them to achieve the ultimate goal of jeopardising the effective governance of the HKSAR Government or even subversion. Should critical telecommunications facilities be damaged, the ability of our country and the HKSAR to respond effectively to civil disturbance or armed conflicts will be undermined. Should critical electronic systems (e.g. the Central Clearing and Settlement System) come under cyber-attacks or intrusion by hackers, even the normal operation of the HKSAR will be paralysed or severely impeded (e.g. the stability of the financial market being seriously jeopardised), or state secrets will become prone to unlawful acquisition. Destruction of or damage to public property clearly exceeds the proper exercise of fundamental rights.

58. Many foreign countries (such as Australia and the UK) have enacted legislation to deal with the above situations. Among them, Australia has introduced the offence of sabotage through the National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018, which prohibits all forms of sabotage activities or acts of introducing vulnerability against public infrastructure, with intent to (or recklessness as to whether they will) prejudice national security. The UK has also introduced a similar type of offence in the National Security Act 2023, which prohibits any person from damaging any asset (whether located in the UK or not) for a purpose that they know or ought reasonably to know is prejudicial to the safety or interests of the UK with the involvement of a foreign power.

59. We must point out that the elements of the offence are clear. The Special Rapporteurs should note that the offence of "sabotage endangering national security" under section 49 of the Ordinance covers "damaging or weakening a public infrastructure" with the mental element to endanger national security. There are clear definitions of "weakening"[21]

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[21] See section 49(3): an act is weakening a public infrastructure if the act causes any of the following effects (whenever caused) on the infrastructure (including any thing or software that constitutes the infrastructure) —
(a) making the infrastructure vulnerable to abuse or damage;
(b) making the infrastructure vulnerable to be accessed or altered by persons who are not entitled to access or alter the infrastructure;
(c) causing the infrastructure not to be able to function as it should in whole or in part;
(d) causing the infrastructure not to operate in a way as set by its owner or the owner's representative (even if the act would not reduce the reliability of the operation of the infrastructure, of the thing or software constituting the infrastructure or of the information stored in the infrastructure).

and "public infrastructure"[22]. Looking at the experience of the Hong Kong version of "color revolution" in 2019, the harm to public infrastructure or national security posed by such damaging or weakening acts should be prohibited since high risks will be posed to national security. We note that the explanatory memorandum to the relevant legislation in Australia states that it is unacceptable for persons to enable the misuse, impairment or unauthorized access or modification of public infrastructure, and that in the worst case scenario, members of the public could be killed or seriously harmed as a result of the modification or impairment of public infrastructure by a person intending to (or being reckless as to) harm the national security.

60. We do not agree with the Special Rapporteurs' assertion that the element of the offence of "being reckless as to whether national security would be endangered" is a "substantially lower standard". "Recklessness" is a common mental element for criminal offences in the HKSAR; it involves the subjective state of mind of a defendant and is not a low threshold. As regards "being reckless as to whether national security would be endangered", with reference to case law of the Court of Final Appeal of the HKSAR, the prosecution need to prove that the defendant acted recklessly, knowing his act would lead to risk of endangering national security, and it was, in the circumstances known to the defendant, unreasonable to take the risk. Conversely, the defendant could not be regarded as "reckless" and be convicted if, due to the defendant's age or personal characteristics, the defendant genuinely did not appreciate or foresee the risks involved in the defendant's actions. As a matter of fact, those who commit acts of damaging or weakening public infrastructure, whether or not they do so with intent to or recklessness as to whether the acts will endanger national security, can pose a high risk to national security. We note that the laws of foreign countries also cover the relevant element. For example, the offences in relation to sabotage in Australia cover acts of damaging or weakening public infrastructure when the person was "reckless" as to whether Australia's national security will be prejudiced.

Organizations engaging in activities endangering national security

61. Regarding the Special Rapporteurs' view on the prohibition of the operation in the HKSAR of organizations engaging in activities endangering national security, the grounds for prohibiting the operation of an organization under the Ordinance are not new ones, and the same grounds can also be found under the pre-amended Societies Ordinance regime. The Secretary for Security's power to prohibit the operation of an organization is discretionary in nature, and the relevant threshold to be met for the exercise of such power is not as low as suggested in the communication. In fact, the Secretary for Security must reasonably believe (i.e. an objective condition is included) that it is "necessary" for safeguarding national security, and must exercise

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[22] See section 49(4): public infrastructure means —
(a) the following item that belongs to the Central Authorities or the Government or is occupied by or on behalf of the Central Authorities or the Government (whether it is situated in the HKSAR or not) —
(i) infrastructure;
(ii) facility or equipment;
(iii) network or computer or electronic system;
(iv) office premises; or
(v) military or national defence facility or equipment;
(b) public means of transport, public transport infrastructure or public transport facility that is situated in the HKSAR (including an airport and relevant facility); or
(c) the following item that is situated in the HKSAR—
(i) the following item providing or maintaining public services (such as finance, logistics, water, electricity, energy, fuel, drainage, communication, the Internet); or
(A) infrastructure; or
(B) facility;
(ii) computer or electronic system providing or managing the services mentioned in subparagraph (i).

this discretion in a reasonable and proportionate manner, in light of the circumstances of each case and with due regard to both the safeguarding of national security and the relevant human rights guarantees, including the right to freedom of association. Suitable procedural safeguards are provided in the Ordinance to ensure compliance with principles of procedural justice, including section 60 of the Ordinance which provides that the Secretary for Security must not make an order without first affording the organization an opportunity to be heard or to make representations in writing as to why an order should not be made (unless the Secretary for Security reasonably believes that affording the organization an opportunity to be heard or to make written representations would not be practicable in the circumstances of that case). Apart from that, even if the Ordinance itself does not expressly provide for this, under the general common law principles, prohibited organizations may apply for judicial review of the relevant decisions.

Enforcement powers and legal procedures in connection with safeguarding national security

Applications may be made to court for extension of detention period for investigation of offences endangering national security

62. Subdivision 1 of Division 1 of Part 7 of the Ordinance provides for the extension of the detention period of a person arrested without charge under strict conditions.

63. It must be emphasised that the rights relating to liberty of person referred to in Article 9 of the ICCPR are protected by the Basic Law, the HKNSL, and Article 5 of the Hong Kong Bill of Rights. These rights are not at all prejudiced by the relevant provisions of the Ordinance.

64. If it is necessary to extend the detention period of an arrested person, a police officer of the rank of Chief Superintendent or above (or a police officer authorized by that officer) must make an application to the court. The Special Rapporteurs pointed out that the relevant provision is inconsistent with the provisions of Article 9(2) of the ICCPR and that charges must be promptly laid against an arrested person or the person must be released. According to General Comment No. 35 of the United Nations Human Rights Committee, one major purpose of Article 9(2) of the ICCPR is to enable arrested persons to seek release if they believe that the reasons of the arrest given are invalid or unfounded. As a matter of fact, an arrested person will be brought before a magistrate (section 77(1) of the Ordinance) and given ample opportunities to make representations, and will also have ample opportunities to be represented by a solicitor or counsel (section 77(2) of the Ordinance) during the course of an application by a police officer to the court for an extension of the detention period.

65. Under the Ordinance, the court may only grant an extension of the detention period if it is satisfied that (a) the investigation of the offence is being diligently and expeditiously conducted by the police, and cannot reasonably be completed before the date of the application and (b) the detention is necessary for securing or preserving evidence of the offence etc. The court may grant an extension for an initial period of not more than 7 days, and in any event for a total period not exceeding 14 days in total. Besides, if a police officer no longer has reasonable grounds to believe that the specified grounds for applying for an extension of the detention period still exist, then, unless the arrested person is charged, the person must be discharged immediately. These multiple safeguards ensure that the person would not be subject to arbitrary detention in breach of his or her right to liberty and security of person, which is entirely consistent with the provisions of Article 9 of the ICCPR.

66. We also need to point out that there are similar provisions in other common law jurisdictions. In addition to Part 6 of Schedule 6 to the National Security Act 2023 of the UK, which specifies the means for the police to apply to a judicial authority for an extension of detention, other existing UK laws also give the UK police the power to apply to a judicial

authority for an extension of detention of people arrested for serious crimes (especially those involved in terrorist activities) for up to 14 days.

Applications may be made to court for imposition of appropriate restrictions in relation to persons on bail for prevention or investigation of offences endangering national security

67. As regards the issuance of movement restriction orders and imposition of certain requirements on a suspect who is released pending investigation (Subdivision 3 of Division 1 of Part 7 of the Ordinance), we do not agree that such requirements would undermine the liberty of movement guaranteed under Article 8 of the Hong Kong Bill of Rights (or Article 12 of the ICCPR as implemented through that Article). Such requirements are similar to the bail conditions that the HKSAR court may, under existing law, impose on a defendant in a criminal case. A police officer of the rank of Chief Superintendent or above (or a police officer authorized by that officer) has to make an application to a magistrate. The magistrate may only grant such application where there are reasonable grounds to believe that one of the specified circumstances exists, such as where the suspect will not report to the police in accordance with specified conditions or there will be perversion or obstruction of the course of justice. The magistrate may specify any one or more requirements as appropriate based on the individual circumstances of the case. In order to ensure that the police's investigation of the case is being expeditiously conducted without unreasonable delay, the movement restriction order is valid for 3 months, and may be extended for a further period of 1 month at a time.

68. Furthermore, the suspect may apply to a magistrate to vary or discharge the movement restriction order and, if the magistrate refuses the application, make a review application to the Court of First Instance for revoking or varying the magistrate's decision. The court will ensure that any restriction on, for instance, the freedom of movement, is proportionate without resulting in an unacceptably harsh burden on the person.

Applications may be made to court for imposition of appropriate restrictions in relation to consultation with legal representatives in view of circumstances endangering national security

69. As regards the relevant provisions concerning the restrictions in relation to consultation with legal representatives (Subdivision 2 of Division 1 of Part 7 of the Ordinance), contrary to the Special Rapporteurs' assertion, the power to restrict consultation with lawyers is attended by sufficient safeguards to ensure that it is consistent with the right to confidential legal advice and the choice of lawyers, and the legal professional privilege enjoyed by the defendant in accordance with the law is not at all prejudiced.

70. According to the judgment of the European Court of Human Rights, an arrested person's right to consult a lawyer may be temporarily restricted in exceptional circumstances where the government has compelling reasons to do so. Such restriction is permitted under the laws of, for instance, the UK, the European Union, the United States and Canada.

71. In contrast to the power to restrict consultation with a lawyer under the National Security Act 2023 of the UK which allows police officers to decide for themselves whether to delay consultation with a lawyer without prior judicial authorisation, the Ordinance of the HKSAR requires a police officer (who must be a police officer of the rank of Chief Superintendent or above, or a police officer authorized by that officer) to make an application to the court. This approach is not only more reasonable, but also provides an arrested person with more safeguards.

72. The court may only grant such application where there are reasonable grounds to believe that one of the specified circumstances exists, such as where the consultation would cause bodily harm to any person or pervert or obstruct the course of justice.

73. Where the person's consultation with a particular legal representative is restricted under section 79 of the Ordinance, the person may consult any other legal representatives of the person's choosing. It is also worth noting that the restriction only applies while the arrested person is detained in police custody and does not affect the person's right to freely choose a legal representative to represent him in court. On the other hand, where the person's consultation with a legal representative is restricted under section 80 of the Ordinance, this can only be for a maximum period of 48 hours. In contrast, in some other jurisdictions, the time limit on the imposition of similar restrictions is not explicitly stated, whereas the time limit specified under the Ordinance would provide an arrested person with more safeguards. Although the arrested person's right to consult a legal representative is restricted to some extent, the investigating officers must still respect the other rights that the arrested person is entitled to under the law (including the right to silence). If the police officer no longer has reasonable grounds to believe that the specified grounds for applying for a restriction on consultation with a legal representative remains in existence, the police officer must immediately cease to impose the restriction on the person.

74. The Special Rapporteurs appeared to have misunderstood the Ordinance in saying that the restriction on consultation with legal representatives under the Ordinance "applies if a person is investigated for being reasonably suspected of having committed an offence endangering national security, regardless of whether the person has been arrested". Section 80 of the Ordinance was intended to allow a police officer, before making an arrest, to apply to a magistrate for a warrant in advance, with a view to restricting a person from consulting a lawyer immediately after arrest. The restriction on consultation with a legal representative only applies to the period of detention in police custody within the period of 48 hours after the person's arrest. The provision does not restrict the person from consulting a legal representative before the arrest.

75. Overall, we believe that the restriction would not result in any irretrievable prejudice to an arrested person's interests, and in any event the relevant criminal procedures would ensure that the defendant enjoys the right to a fair trial.

76. We do not agree with the Special Rapporteurs' suggestion that the power to restrict consultation with legal representatives would have a "chilling effect" on lawyers as they "may wish to avoid the scrutiny and reputational harm that could accompany representation in national security cases". In fact, pursuant to section 87 of the Ordinance, applications to restrict consultation with lawyers will be normally heard in closed court. The restriction will therefore not affect the reputation of the lawyers concerned and is not necessarily related to the lawyers' professional conduct.

Measures that may apply against relevant absconders

77. As to the measures targeting absconders under Division 2, Part 7 of the Ordinance, it is a legitimate public interest, as well as consistent with the spirit of the rule of law, to combat abscondment and procure the return of absconded persons who are involved in offences endangering national security to face law enforcement and judicial proceedings. After specifying a person as an absconder, the Secretary for Security has a discretion to apply one or more measures as he reasonably considers to be suitable after considering all the relevant circumstances of the case. This would allow the Secretary for Security to assess the impact that any given measure may have on the absconder and third parties before making an order.

78. The assertions made by the Special Rapporteurs that the suspension of qualification to practise (section 93) and cancellation of HKSAR passports (section 96) may "deprive lawyers [of] the right to practice their profession in Hong Kong SAR" or "pos[e] a threat to Hong Kong lawyers' ability to exercise their profession free from undue interference"

stem from a misunderstanding of the relevant provisions. Both of the above are one of the measures targeting absconders.

79. Section 89 of the Ordinance provides for the conditions for specifying a relevant absconder, which include: (a) a Court has issued, in relation to an offence endangering national security, a warrant to arrest the person; (b) reasonable steps have been taken to inform the person of the issue of the warrant, or the Secretary for Security reasonably believes that the person knew of the issue of the warrant; (c) the person has not been brought before a judge or magistrate (as the case may be); and (d) the Secretary for Security reasonably believes that the person is not in the HKSAR. As such, where these measures apply to a person, not only is the person suspected of having committed an offence endangering national security, but he / she has also absconded from the HKSAR. There is no question of an absconder practising as a lawyer in the HKSAR. We do not see how these measures will affect lawyers carrying on a proper practice in the HKSAR.

Fair trials and designated judges

80. First of all, we must emphasize that the Ordinance expressly protects the exercise of independent judicial power free from any interference. Section 116(1) of the Ordinance provides that the courts are to adjudicate cases concerning national security independently in accordance with the relevant provisions of the Basic Law and the HKNSL, free from any interference. A person must respect and safeguard the courts' adjudication of cases concerning national security in accordance with the law.

81. Regarding the concern of the Special Rapporteurs about designated judges, we must stress that the relevant arrangements would not undermine the independent judicial power of the Judiciary or the right of a defendant to a fair trial under Article 14 of the ICCPR. The designation of judges by the Chief Executive (CE) to handle cases involving offences endangering national security only involves designating a list of judges from existing judges, rather than choosing a particular judge to preside over a specific case. The assignment of specific cases to individual designated judges remains to be the independent decisions of the Judiciary, not the CE.

82. In fact, it is not uncommon to designate specialist judges dealing with a particular area of law. In Hong Kong, there are judges who are specifically in charge of the construction and arbitration lists, as well as the commercial and admiralty lists. Through the provision of specialist judges who are familiar with a particular area of law, there is a better chance to achieve predictability and certainty of law. This will also reduce the risk of erroneous application of law. All in all, it is conducive to the rule of law.

83. Besides, when adjudicating the cases, regardless of whether they concern national security or otherwise, judges remain independent and impartial in performing their judicial duties, free from any interference. This has been adequately provided for in Article 85 of the Basic Law[23]. As decided by the court in *Tong Ying Kit v. HKSAR*[24]: "There is no proper or sufficient basis to contend that, in relation to cases concerning offences under the HKNSL, the CE or the Government is in a position 'to interfere in matters that are directly and immediately relevant to the adjudicative function, for example, assignment of judges, sittings of the court and court lists', or that the liberty of any member of the judicial authorities in Hong Kong 'in

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[23] According to Article 85 of the Basic Law, the courts of the HKSAR shall exercise judicial power independently, free from any interference. Members of the judiciary shall be immune from legal action in the performance of their judicial functions.

[24] *Tong Ying Kit v. HKSAR* [2020] HKCFI 2133. The judgement can be found at the following link: https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=130336&QS=%2B&TP=JU

adjudicating individual disputes and in upholding the law and values of the constitution' is, or will be, interfered with by the CE exercising her power under Article 44 [of the HKNSL]."

84. The court will not lose its independence merely because a case concerning offences endangering national security is handled by a judge designated under Article 44. The right of everyone to a fair hearing by a competent, independent and impartial tribunal established by law under Article 14 of ICCPR remains well protected. Therefore, the arrangement on the designation of judges under the HKNSL and the Ordinance does not undermine the highly respected independent judicial power of the HKSAR Judiciary.

85. On 2 July 2020 (i.e. soon after the implementation of the HKNSL), the then Chief Justice of the Court of Final Appeal of the HKSAR already made clear in his statement[25] that "designated judges, like all judges, are to be appointed on the basis of their judicial and professional qualities. These are the only criteria relevant to the appointment of judges. This therefore means, for example, that judges should not be designated on the basis of any political considerations. This reinforces the principle that in the handling or determination of any legal dispute, only the law and legal principle will be considered."

86. The current Chief Justice of the Court of Final Appeal of the HKSAR also remarked at the Ceremonial Opening of the Legal Year 2022[26] that "designated judges, like all other judges, are subject to the Judicial Oath which all judges are required to take under Article 104 of the Basic Law. Under the Judicial Oath, a judge swears to serve the HKSAR conscientiously, dutifully, in full accordance with the law and with integrity, and to safeguard the law and administer justice without fear or favour, self-interest or deceit. In particular, this means that no political or other personal considerations of the judge can be entertained in the judicial decision-making process. The Judicial Oath is binding on a designated judge when he or she sits on a national security case, just as it is binding on them when hearing other types of cases."

87. In the case of *HKSAR v Lai Chee-ying* [2023] HKCFI 1440, the Court of First Instance of the High Court reiterated that appointment of judges by the executive does not *per se* compromise the independence of those judges. All judicial officers in Hong Kong, whether designated under Article 44 of the HKNSL or not, are appointed by the CE in accordance with Article 88 of the Basic Law. Although the CE is given a wide discretion under Article 44 of the HKNSL as to designation of judges, he is not at all given a complete free rein in the matter because appointment of judges is governed by Articles 85, 88 to 92 of the Basic Law as well as relevant local legislation, including the Judicial Officers Recommendation Commission Ordinance (Cap. 92), and the actual assignment of judges to hear individual cases remains solely the responsibility of Judiciary[27].

88. Regarding the stipulation in Article 44 of the HKNSL that a judge is not to be designated if he or she has made any statement or behaved in any manner endangering national security, the Court of First Instance has stated clearly that this requirement is entirely legitimate, reasonable and necessary. The court has also emphasised that all judges are subject to the Judicial Oath which all judges are required to take under Article 104 of the Basic Law, and designated judges are no exception. All judges, whether designated or not, must strictly observe the Judicial Oath and the Guide to Judicial Conduct[28]. If a judge makes any statement

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[25] See https://www.info.gov.hk/gia/general/202007/02/P2020070200414.htm?

[26] See https://www.info.gov.hk/gia/general/202201/24/P2022012400378.htm?

[27] See paragraphs 44 to 48 of the judgment

[28] Paragraphs 50-53, *HKSAR v Lai Chee-ying* [2023] HKCFI 1440. See the following link for the judgment: https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=152847&QS=%2B%7C%28HCCC%2C51%2F2022%29&TP=JU

or behaves in any manner endangering national security, it is apparent that he or she does not meet the basic requirements of strict compliance with the law, integrity and propriety to qualify for a judge, and this may cast doubts on whether he or she is fair and impartial in hearing cases concerning offences endangering national security. Prohibition of persons who made any statement or behaved in any manner endangering national security from appointment as designated judges under the HKNSL does serve to provide important safeguards for safeguarding the rule of law in the HKSAR and ensuring due administration of justice by the Judiciary.

On penalties

89. As regards penalties mentioned by the Special Rapporteurs, since acts and activities that endanger national security could bring very serious consequences, the penalties must have deterrent effect. This is similar to the practice of other jurisdictions. It is in line with the drafting approach, techniques and practice under the common law system to specify the maximum penalties for the offences with sufficient deterrent effect. It must be stressed that the court will determine appropriate punishment with reference to the circumstances of individual cases. Under the existing common law system, the courts will continue to apply and develop relevant sentencing principles and lay down sentencing guidelines as and when appropriate.

90. As for the penalties for offences in connection with "seditious intention" specifically mentioned by the Special Rapporteurs, it was revealed in the Hong Kong version of "colour revolution" in the HKSAR in 2019 that anti-China destabilising elements, through various means, provoked hatred against the fundamental system of the state, the Central Authorities and the bodies of power of the HKSAR. They also glorified violence with distorted legal viewpoints, and gradually and subtly weakened the public's concept of the rule of law and their law-abiding awareness. All these provided fertile grounds for the Hong Kong version of "colour revolution" to sprout. Although these acts, words and publications with seditious intention may not always directly incite the use of violence or incite others to cause public disorder, the cumulative effect of leaving these seditious acts unchecked will lead to a proliferation of violent and illegal acts in society, and a long period of social unrest and instability. The offences in connection with "seditious intention" effectively prevent and suppress acts of inciting hatred against the fundamental system of the state, the Central Authorities and the executive, legislature or judicial authority of the HKSAR, which acts will seriously endanger national security in the long run. It is therefore necessary to formulate penalties with deterrent effect.

Enforcement of prison sentence imposed by the court on prisoners

91. The communication has expressed concerns that national security prisoners may be excluded from their right to apply for a review of their sentences under the relevant provisions of the Ordinance. On the contrary, according to the criminal procedures in the HKSAR, all convicted persons, including those convicted of offences endangering national security, have the right to lodge an appeal against their sentence in accordance with the established legal procedures.

92. As to the enforcement of prison sentence imposed by the court on prisoners, we must stress that before or after the Ordinance came into effect, the granting of early release has never been an absolute right of prisoners. It is the duty of the Commissioner of Correctional Services to strictly enforce any prison sentence imposed by the court on each prisoner. Any discretion to grant early release of prisoners must be exercised in accordance with the law.

93. In fact, there have been cases in which prisoners convicted of offences endangering national security absconded or continued to carry out acts and activities endangering national security when they were granted early release under supervision. To safeguard national security and public interest, it is essential to impose more stringent restrictions in granting early release to prisoners convicted of offences endangering national security. The arrangement concerned will not change the sentences imposed by the court on persons convicted of offences endangering national security.

94. It is worth noting that there are similar provisions in law relating to terrorist offenders in the UK (Terrorist Offenders (Restriction of Early Release) Act 2020) that address the issue concerned. The mechanism is to tighten the threshold for eligibility for parole of offenders convicted of terrorist offences such that the relevant authority must be satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined before an early release may be granted to the prisoner.

Extra-territorial application

95. The Special Rapporteurs' so-called "recommendation" that the HKSAR Government should repeal the extra-territorial application of the Ordinance, completely ignores the nature of national security legislation and is unconvincing. The extraterritorial effect of the offences endangering national security under the Ordinance fully aligns with the principles of international law, international practice and common practice adopted in various countries and regions. It is both necessary and legitimate, and is also in line with those of other countries and regions around the world (including the United States, the UK, Australia, Canada and the Member States of the European Union). It can be seen that the national security laws of various countries, including the United States, the UK, Australia, Canada and the Member States of the European Union, also have extraterritorial effect in accordance with the "personality principle" and the "protective principle". In formulating the extraterritorial application of the Ordinance, we have already taken into account the principles of international law and international practice of state jurisdiction, as well as the nature of the offences.

Revision/review of the Ordinance

96. The communication has mentioned the quick legislative process of the Ordinance and recommended the appointment of an independent mechanism to conduct regular reviews of the implementation and effectiveness of the Ordinance. First of all, we must emphasise that all the provisions of the Ordinance were formulated upon thorough consideration and scrutiny. During the entire legislative process, the HKSAR Government fully attended to the responses from residents as well as various institutions and sectors, drawing strong public support. During the consultation period, the HKSAR Government received over 13 000 submissions, of which 98.6% showed support and gave positive comments. The entire legislative process in the Legislative Council was conducted diligently and orderly. The Legislative Council, including the subcommittee set up to study matters relating to Basic Law Article 23 legislation and the Bills Committee, convened 25 meetings in total and devoted nearly 50 hours to scrutinise every clause of the Bill in detail, raising more than 1 000 questions and comments, resulting in 91 amendments. This reflects serious and thorough discussions throughout the legislative process in strict compliance with the relevant procedures.

97. As regards the concern stated in the communication about the HKSAR Government's oversight of the exercise of the powers in the Ordinance, we must point out that the Ordinance has clearly laid down the conditions and restrictions concerning the exercise of law enforcement powers and stipulated the authorities and procedures for granting such powers in a bid to ensure that the relevant powers are no more than necessary for safeguarding national security. The measures in connection with enforcement and investigation under the Ordinance

are subject to a gatekeeping mechanism administered by judicial authorities, i.e. for restrictions intended to be imposed on a person, the authorities must satisfy the court that there are relevant factual basis and practical needs with evidential support and that the conditions under the Ordinance are met, so as to ensure the reasonableness and objectivity of the extent of and grounds for the relevant restrictions. Relevant discretion must also be exercised based on the circumstances of each case and must be reasonable and proportionate.

98. Taking the power to restrict consultation with lawyers as an example, such restriction is permitted under the laws of, for instance, the UK, the European Union, the United States and Canada. Among them, the National Security Act 2023 of the UK allows police officers to decide for themselves whether to delay consultation with a lawyer without prior judicial authorisation. The Ordinance, on the other hand, requires a police officer (who must be a police officer of the rank of Chief Superintendent or above, or a police officer authorised by that officer) to make a relevant application to the court. We consider that this approach is more reasonable, and provides an arrested person with more safeguards.

99. As to implementation, just as the requirements under other local laws, law enforcement officers must exercise the power conferred to them and enforce the relevant measures in strict compliance with the Ordinance. Their decisions are subject to judicial review to ensure that all the law enforcement decisions are in compliance with legal requirements and the principles of procedural justice. The HKSAR Government considers that the above mechanism can provide effective oversight of the exercise of powers in accordance with the Ordinance, and it is not necessary to put in place an independent mechanism for conducting regular review of the Ordinance in addition to the existing mechanism.

100. It is the constitutional duty of the HKSAR to safeguard national security. In this regard, the HKSAR Government will continue to review the implementation and effectiveness of the Ordinance and other laws relevant to safeguarding national security, and continue to improve the legal system for safeguarding national security in the HKSAR.

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