

Mandates of the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to education; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 44/3, 43/4 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the erosion of the right to freedom of speech, education and academic freedom in the Hong Kong Special Administrative Region (HKSAR) since the enactment of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, also known as the National Security Law (NSL), on 30 June 2020. Issues of concern include the disciplining of educators for their social activism and for exploring political issues in class, particularly in the university context, textbook censorship, the removal of educational components aimed at fostering critical thinking from a core secondary school curriculum, and an announced plan to insert national security components into almost all subjects in primary and secondary curricula. Also of concern is the possible chilling effect of the NSL on the freedom of expression of journalists and teachers due to increased self-censorship.

In June 2020, the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (HKSAR) was passed by the National People's Congress Standing Committee (NPCSC) and entered into force. The law regulates four distinct categories of offences: secession, subversion, terrorism and collusion with a foreign country or with external elements to endanger national security. The NSL criminalizes protest activity and has led to a rapid succession of government actions, including those below. The law's adoption followed a formal decision by National People's Congress (NPC) on 28 May 2020 authorizing the NPCSC to draft a National Security Law for the Hong Kong Special Administrative Region. This decision was the subject of a prior communication by Special Procedures (CHN 13/2020). In this communication, the Special Procedures expressed some concerns relating to the compatibility of the Decision of the NPC with international human rights law including the conformity of the NSL to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Furthermore, they expressed concern that a lack of a precise definition in the Decision of the NPC regarding what types of conduct qualify as seriously endangering national security may result in the limiting or infringement of fundamental freedoms. With respect to academic freedom, they expressed "...[concern] that subversion's application may not be limited to a narrow purpose but may instead be used to detain, try and criminalise persons engaged in political activities, as well as social and educational targets." They recommended review and reconsideration of this draft legislation to ensure that the law is in compliance with

China's international human rights obligations with respect to the Hong Kong SAR. Similar concerns and recommendations regarding the human rights challenges of previously issued anti-terrorism and national security legislation related to the HKSAR were the subject of a previous communication sent by Special Procedures dated 23 April 2020 (CHN 7/2020) and 1 September 2020 (CHN 17/2020). We thank your Excellency's Government for the replies received to CHN 7/2020 and CHN 17/2020, and for the ongoing and sustained dialogue on security and counter-terrorism regulation more broadly, however we regret not yet having received a response to the UA CHN 13/2020 communication.

According to the information received:

Administrative control over schools and universities by the Government

Article 9 of the National Security Law empowers the HKSAR Government to carry out the "supervision and regulation over matters concerning national security, including, those relating to schools, [and] universities." The broad authorization implied by the term "necessary measures", complemented by the equally broad definitions of "secession, subversion, organization and preparation of terrorist activities" found in Articles 20-30 of the National Security Law, allows the government a wide field of action concerning the measures protecting national security.

Academic freedom and freedom of opinion and expression of teachers

In July 2020, an associate professor of law at the University of Hong Kong was fired by the University's governing council for his participation in the 2014 pro-democracy civil disobedience Occupy Central Movement, despite the ruling by the University Senate that the teacher's actions amounted to "misconduct" but did not constitute grounds for dismissal. A day before this dismissal, a former lawmaker and lecturer at the Baptist University of Hong Kong, who was active in the Umbrella Movement, was told that his contract would not be renewed at expiration at the end of August. The University did not provide any reason for the termination.

A year before, a legal scholar was convicted of public nuisance charges for his role in the 2014 protest movement and sentenced to 16 months in prison. The Court of Appeal rejected his appeal against the conviction in April 2021.

On 5 October 2020, the Hong Kong Education Bureau permanently revoked the license of a teacher at the Alliance Primary School, for "spreading the idea of Hong Kong independence" in violation of the *Basic Law*. In a life education class that took place in March 2019, the teacher had shown a documentary featuring pro-independence activist Andy Chan Ho-tin and had students fill out an in-class worksheet containing questions such as "What is freedom of speech?" and "What is the reason for advocating Hong Kong independence?" It is reported that this was the first time the Hong Kong government had revoked a teaching licence on grounds other than sexual or other criminal offences. Hong Kong chief executive, Carrie Lam, criticized teachers using their teaching position "to smear the country and the Hong Kong SAR Government without basis".

Fears have been expressed that the new laws and guidelines would likely lead to anxiety and self-censorship from everyone, from the school administration to the teachers, as they could be held accountable for what is happening in schools and classrooms and face consequences if what they say is considered to be wrong by the authorities. It is reported that concerned stakeholders of the education sector have called upon the Government to hold a consultation period for parents and teachers and to involve decision makers and practitioners in the review of the laws and guidelines as they apply in the education system, to assess if they uphold the principles of education, respect academic freedoms and aim at developing students' potential to raise questions and their critical and independent thinking.

Freedom of opinion, expression and peaceful assembly of students in Hong Kong

On 8 July 2020, Hong Kong's Education Secretary, Kevin Yeung, stated that students "should not participate in class boycotts, or take part in activities such as chanting slogans, forming human chains and postings slogans or singing songs which contain political messages at schools for expressing political stance"; that "schools are obliged to stop" these acts; but also that "Under no circumstances should students or other persons be incited to indicate their stance on controversial and evolving political issues"; and urged educators to "remain steadfast in safeguarding the well-being of our students and upholding the goals of education in Hong Kong by cultivating their positive values."

On 19 November 2020, students marched peacefully after the Chinese University of Hong Kong shifted its graduation ceremony online. During the march, some protesters held up banners and signs with slogans including "This revolution was ultimately won by no one, but please stay with us to witness it", "Liberate Hong Kong, Revolution of Our Times", as well as others calling for Hong Kong independence. The University called the police and condemned the "illegal acts and irresponsible behaviour," prompting the force's national security department to take over the investigation. Officers from Hong Kong's national security police department took photos along the route of the march whilst some of them visited residential halls. The Government released a statement later that same day alleging that graduates were violating the NSL. Officers entered the Chinese University campus the day after. They obtained CCTV footage from the university security office. The police's national security department arrested eight people on 7 December over their alleged participation in an anti-government protest held on the campus.

Hong Kong students and teachers in foreign countries

Article 38 of the National Security Law asserts that the law applies to conduct that takes place outside of Hong Kong, to persons from outside the HKSAR and/or China, granting China extraterritorial jurisdiction. Therefore according to some legal interpretations, any individual in the world who criticizes the Hong Kong or Chinese governments may be charged with violating the law and could face extradition, depending on the government policies of the place where the alleged crime would have taken place.

As a result, students traveling through Hong Kong and China could face long prison terms for academic work. Hong-Kong students outside Hong-Kong have dropped China-related modules from their studies and are self-censoring their writings for fear of reprisals.

Furthermore, the legal uncertainty around the scope and application of the NSL has led universities outside of HK and China to adapt their teaching methods, including, for example, by allowing students to submit their work anonymously if they fear that they might be prosecuted under the NSL if they submit them with their own names.

In October 2020, a group of over 100 academics from around the world expressed deep concern over the implications of article 38 of the NSL, in particular, how it can interfere with academic research. The academics express concern that further clarification on the application of article 38 is necessary to prevent repression and restriction of international scientific and academic co-operation.

Changes in academic content

Liberal studies, a mandatory subject introduced in 2009 for senior secondary students, aims to enhance critical thinking, social awareness and creativity by turning pupils into “informed and responsible citizens with a sense of global and national identity”. The subject’s six modules include modern China, globalisation and Hong Kong today, covering concepts such as the rule of law and political participation.

In September 2019, the Education Bureau initiated what it called a “professional consultancy service” and invited Liberal Studies publishers to submit their Liberal studies textbooks for review and vetting. Although the process was supposed to be voluntary, available information suggests that publishers were subjected to political pressure. As a consequence, six major publishers of Liberal studies textbooks entered the voluntary process. The revisions, reported in the press in August 2020, included the deletion from at least two textbooks of the phrases “separation of power,” of contents on human rights, policing abuses, rule of law, press freedom and civil disobedience, of the names of political groups advocating self-determination and/or independence, of a description of Chinese troops clearing Tiananmen Square of protesters in the June Fourth crackdown on the 1989 Democracy Movement, as well as of an illustration of the famous scene of the “Tank Man” standing before a column of tanks. Concerns have been expressed that the changes make it more difficult for educators to discuss controversial topics with students, that the criteria and the reasons for the changes were not transparent, and that it was unclear whether some of the changes were made by the publishers or requested by the Education Bureau.

In 2020, the Education Bureau announced a reform on Liberal Studies. According to information received, the reform, which overturned the objectives of the Liberal Studies, was motivated by a desire to restrict critical thinking and social consciousness and promote political correctness, and was the result of political considerations rather than professional education opinions. In a series of Statements made in May 2020 that lent credence to this

perspective, Hong Kong Chief Executive Carrie Lam had underlined that some aspects of the education system had helped fuel pro-democracy mass protests.

A survey released by the Professional Teachers Union in December 2020 showed that more than 90 percent of the 500 Hong Kong teachers polled believed that Liberal Studies reform was politically motivated. 80 percent of respondents strongly disagreed that the subject had radicalised students to join anti-government protests. Some 92 per cent of teachers polled, however, said they believed that the reform was a form of suppression with “politics overriding educational interests”, while 91 per cent disagreed with the Chief Executive’s remark that the teaching of the subject had deviated from its objectives. More than 88 per cent of teachers were concerned the reform would have a negative impact on cultivating pupils’ critical thinking skills, while only 10 per cent believed the changes would have a positive effect in enhancing knowledge of national development. Nearly 83 per cent of respondents urged education officials to withdraw the proposals which they said lacked thorough consultation with the sector.

In March 2021, the Curriculum Development Council and the Public Examinations Board of the Hong Kong Examinations and Assessment Authority endorsed changes proposed by the Education Bureau on Liberal Studies. Those changes include modifications in the grading system, more content about mainland China and less on current affairs, the addition of new themes such as national security issues and the removal of the Independent Enquiry Study project. The changes also include renaming Liberal Studies “Citizenship and social development” as of September 2021, as part of actions to strengthen “patriotic education”.

Regarding the impact of the NSL on the press

The NSL has also had a chilling effect on the freedom of opinion and expression of the press, as local journalists report increased self-censorship.

On July 6 2020, a journalist ended his politically engaged column in the Apple Daily, a Hong Kong independent Chinese language newspaper in print since 1995, after more than 30 years. Similarly, on July 22 2020, a popular cartoonist announced that his column in Ming Pao had been cancelled over its explicit political content, following warnings from the newspaper that his work could be considered as violating the new security law.

On August 13 2020, the newspaper Ming Pao reported that public broadcaster Radio Television Hong Kong (RTHK) had removed from their website an interview with an activist, after charges were levelled against him for violations of the national security legislation. The criminal prosecution led the activist to seek self-imposed exile in London.

There are also reports that prominent academics, who used to write opinion columns in the press, have stopped doing so for fear of clashing with the NSL.

In addition to censorship and self-censorship, implementation of the NSL has also had direct impacts on media freedom. In June 2021, Apple Daily’s offices

were raided over allegations that several reports had breached the NSL. The police detained the six executives and company-linked assets were frozen. Apple Daily's founder had already been arrested under the NSL in December 2020 and remains in jail.

Insertion of national security components in primary and secondary curricula

As stipulated in Article 10 of the NSL, "The Hong Kong Special Administrative Region shall promote national security education in schools and universities and through social organisations, the media, the internet and other means to raise the awareness of Hong Kong residents of national security and of the obligation to abide by the law".

The Hong Kong Government also asked schools in February to start using a more patriotic curriculum and advised teachers to report breaches of the NSL. As a result, children starting from around kindergarten age are told to memorize offenses under the law, including subversion, secession, terrorism and collusion with foreign powers.

On 15 April 2021, Hong Kong schools dedicated a day to China's National security. Students as young as three were given national-security themed puzzles as part of activities to mark the city's "celebrations" of the NSL, while other young students took part in poster and slogan-designing competitions or had smiling photos taken to create national security "community mosaics".

While we do not wish to prejudge the accuracy of these allegations, we express our grave concern over the measures adopted by Your Excellency's government, in particular the NSL. We are concerned that this law has already led to content removal and self-censorship of media professionals, limiting access to critical ideas and opinions in public debates and having a chilling effect on freedom of opinion and expression, including on political matters. Furthermore, we fear that the excessive discipline of students and teachers for their activism, the insertion and removal of educational components including the various changes made to the Liberal Studies curriculum, the politicization of children from secondary school, undermine the right to education, to freedom of opinion and expression and academic freedom. We are further concerned that, in the context of Hong Kong, the requirement to embrace Chinese identity as well as the implicit requirement to support the CPG, may hinder the development of personal beliefs, ideologies and opinions of students through the education system.

In view of the aforementioned observations, we respectfully urge Your Excellency's Government to take the necessary action to withdraw or amend the National Security Law so as to ensure the autonomy of universities and the full respect of academic freedom.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be

grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on consultative processes established or envisaged to ensure the participation of the academic community in the drafting of new legislation and regulations relating to freedom of opinion and speech, and especially on its impact on education at all levels.
3. Please define the term “necessary measure” and clarify how individual freedoms of academic community members will be safeguarded in light of article 9 of the NSL.
4. Please explain how the institutional autonomy of higher education institutions in Hong Kong is protected, in light of the dual responsibilities of the Chief Executive as Chancellor of Hong Kong publicly funded universities, and as the person responsible for appointing the head of the Department for Safeguarding National Security with Law Enforcement Capacity, pursuant to article 16 of the NSL. Please also clarify whether any framework is provided to balance the protection of academic freedom and institutional autonomy against matters of national security.
5. Please clarify how the application of article 38 of the NSL complies with the obligations the PRC/Hong Kong has to foster and develop international contacts and co-operation in the scientific field under articles 15 (1)(b) and (4) of the International Covenant on Economic, Social and Cultural Rights.
6. Please indicate what measures have been taken to ensure that everyone, including students, academics, media professionals and other critical voices, is able to exercise their rights to freedom of opinion, expression, association and peaceful assembly in a safe and enabling environment, without fear of harassment, criminalisation, threats or acts of intimidation of any kind towards them and their families.
7. Please provide information on the legal basis of the dispersal of the march of student on 19 November 2020 and how this is in line with the principle of proportionality and necessity under the international human rights norms.
8. Please provide information on any oversight mechanism that is empowered to review executive decisions to limit fundamental rights and freedoms, including academic and press freedom, in the context of the NSL.
9. Please provide a complete list of appeal and remedy mechanisms available in this context.

10. Please provide detailed information on the reasons that led to the arrest of the eight persons involved in the November 2020 student march.
11. Please provide clarification on criteria and reasons for the recent revisions made to Liberal Studies textbooks and curriculum.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

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Special Rapporteur on the right to education

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
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Special Rapporteur on the rights to freedom of peaceful assembly and of association

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw Your Excellency's attention to the following human rights standards:

First, we would like to draw the attention of your Excellency's Government to article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by China in 2001, according to which "education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms".

We would like to bring to the attention of your Excellency's Government article 29 of the Convention on the Rights of the Child which provides that "the education of the child shall be directed to [. . . t]he development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations [and] preparation of the child for responsible life in a free society [. . .]."

Concerning article 13 of the ICESCR and as noted by the Committee on Economic, Social and Cultural Rights, education is both a human right in itself and an indispensable means of realizing other human rights" (General Comment 13, para.1), and the right to education can only be enjoyed if accompanied by the academic freedom of staff and students" (para. 38). Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognized human rights applicable to other individuals in the same jurisdiction. The enjoyment of academic freedom carries with it obligations, such as the duty to respect the academic freedom of others, to ensure the fair discussion of contrary views, and to treat all without discrimination on any of the prohibited grounds. Members of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing (para. 39).

We would also like to refer to paragraph 26 of the UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel (para.26), which states that: "[h]igher-education teaching personnel, like all other groups and individuals, should enjoy those internationally recognized civil, political, social and cultural rights applicable to all citizens. Therefore, all higher-education teaching personnel should enjoy freedom of thought, conscience, religion, expression, assembly and association as well as the right to liberty and security of the person and liberty of movement. They should not be hindered or impeded in exercising their civil rights as citizens, including the right to contribute to social change through freely expressing their opinion of state policies and of policies affecting higher education. They should not suffer any penalties simply because of the exercise of such rights. Higher-education teaching personnel should not be subject to arbitrary arrest or detention, nor to torture, nor to cruel, inhuman or degrading treatment."

We would also like to recall article 19 of both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR), signed by China in 1998, which states that “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” As interpreted by the Human Rights Committee in General Comment No. 34 (CCPR/C/GC/34), such information and ideas include, *inter alia*, political discourse, commentary on one’s own and on public affairs, cultural and artistic expression, and discussion of human rights (Paragraph 11).

We would also like to recall articles 21 and 22 of the ICCPR, which recognize to everyone the rights to peaceful assembly and association. Under these dispositions, States have an obligation to respect and fully protect the rights to freedom of expression and opinion and to assemble peacefully and associate freely, online as well as offline, including for persons espousing minority or dissenting views or beliefs. As the Human Rights Council recalled, respect for all such rights “contributes to addressing and resolving challenges and issues that are important to society”, such as, amongst others, promoting the rule of law and accountability, realizing the right to development, supporting crime prevention, empowering women and youth, advancing social justice and the realization of all human rights (A/68/53).

We would like to refer to General Comment 37 of the Human Rights Committee which states that “[o]nly in exceptional cases may an assembly be dispersed. Dispersal may be resorted to if the assembly as such is no longer peaceful, or if there is clear evidence of an imminent threat of serious violence that cannot be reasonably addressed by more proportionate measures, such as targeted arrests. In all cases, the law enforcement rules on use of force must be strictly followed. Conditions for ordering the dispersal of an assembly should be set out in domestic law, and only a duly authorized official may order the dispersal of a peaceful assembly. An assembly that remains peaceful while nevertheless causing a high level of disruption, such as the extended blocking of traffic, may be dispersed, as a rule, only if the disruption is “serious and sustained” (CCPR/C/GC/37, para.85).

We would also like to refer to the 2020 report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/75/261, stresses that that the freedom to form an opinion and to develop this by way of reasoning is held to be absolute (paras. 16 and 17). According to the report, States are under a positive obligation to create an institutional protection and autonomy environment for individuals to seek, receive and impart information and ideas (paras. 10 and 56 (3)). To that end, States should not retain excessive powers over the hiring of personnel of the institutional leadership, which also applies to the dismissal of teachers; otherwise, it would be inconsistent with academic criteria and reflect political control rather than the advancement of learning (paras. 12 and 34). Academic institutions should retain autonomy in their administrative, financial, pedagogical and disciplinary functions, but they should also be able to enforce policies that ensure the protection of the freedom of expression of the members of their communities, resisting official or social pressure and promising human rights compliance institutionally (para. 13).

We would also like to highlight the 2016 report (A/71/373) by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, explaining that national security considerations should be “limited in

application to situations in which the interest of the whole nation is at stake, which would thereby exclude restrictions in the sole interest of a Government, regime, or power group” (para. 18).

Finally, we refer to the Basic Law of the Hong Kong Special Administrative Region Article 4 of the NSL in which it is stated that “Human rights shall be respected and protected in safeguarding national security in the Hong Kong Special Administrative Region [...] including the freedoms of speech, of the press, of publication, of association, of assembly, of procession and of demonstration”.