

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the right to privacy

Ref.: OL CHN 12/2023
(Please use this reference in your reply)

25 July 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolutions 49/10, 52/9, 50/17, 52/4 and 46/16.

In this connection, we offer the following comments on the Public Consultation Document and Specific Proposals on the Regulation of Crowdfunding Activities (“Proposal”) issued in December 2022 by the Financial Services and the Treasury Bureau of the Hong Kong Special Administrative Region (“HKSAR”). We bring your Excellency’s Government attention to the fact that the adoption of the Proposal, in its current form, may result in the violation of certain fundamental rights and freedoms under international law, including the International Covenant on Civil and Political Rights (“ICCPR”). Specifically, we observe that the proposed crowdfunding application and registration procedures—if not subject to further delimiting measures including judicial oversight and due process safeguards—may not meet the required thresholds of necessity, proportionality, and non-discrimination under international law.

We note in particular the national security and counter-terrorism grounds, *inter alia*, stipulated in the Proposal. In this regard, we would like to remind your Excellency’s Government of the international human rights law assessment of the National Security Law (NSL) previously communicated by Special Procedures mandate-holders, including with regard to its implementation against individuals detained in the HKSAR (OL CHN 13/2020; OL CHN 3/2022). We note your Excellency’s Government previous replies to these communications and welcome the ongoing dialogue on the potential human rights consequences of the broader security and counter-terrorism apparatus applicable to the HKSAR.

We emphasize that respect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing with effective counter-terrorism measures and are an essential part of a successful counter-terrorism effort. In this connection, we recommend further review and reconsideration of the concerned Proposal to ensure compliance with your Excellency’s Government’s international human rights obligations with respect to the HKSAR.

Applicable International and Human Rights Law Standards

International human rights law and standards remain in force in the HKSAR in accordance with Section XI of Annex I to the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong ("Joint Declaration"), article 39 of the Basic Law of the Hong Kong Special Administrative Region of People's Republic of China ("Basic Law"), and the unilateral declaration of the People's Republic of China ("PRC") to the UN Secretary-General (see OL CHN 13/2020).

We remind your Excellency's Government that under article 2 of the ICCPR, the HKSAR is under a duty to ensure that individuals under its jurisdiction enjoy the rights in the Covenant and adopt laws as necessary to ensure that the domestic legal system is compatible with the Covenant. Moreover, the Covenant compels states to take active and specific administrative, judicial and legislative measures to ensure that all the rights enshrined in the Covenant are protected and that effective remedies are provided if they are breached by states.

We further refer to the rights enshrined in articles 17, 19, 21, 22, and 26 of the ICCPR which guarantee the right of every person to be protected against arbitrary or unlawful interference with her privacy, family, home and correspondence or reputation; the right to freedom of expression; the rights to freedom of peaceful assembly and association; and the right to equality and non-discrimination before the law. We recall that any restrictions on these rights on counter-terrorism grounds must comply with the objective criteria of legality, proportionality, necessity, and non-discrimination under international law, including by being the least intrusive means capable to achieve a legitimate aim (ICCPR, arts. 17, 19, 21, 22; A/69/397, para. 30).

In addition, we refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the United Nations Declaration on Human Rights Defenders. In particular, the Declaration reaffirms each State's responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, including every person's right, individually and in association with others, "at the national and international levels [...] to form, join and participate in non-governmental organizations, associations or groups" and "to solicit, receive and utilise resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means"¹.

We would also like to remind your Excellency's Government that your human rights obligations apply in full force in the context of counter-terrorism, including when enacting countering the financing of terrorism measures. The financing of terrorism has long been a concern for States, as evidenced by the negotiation and agreement on the 1999 International Convention for the Suppression of the Financing of Terrorism, which was designed to criminalize acts of financing terrorism, and which was ratified by China on 19 April 2006. Since then, a number of Security Council resolutions have expressly called for the criminalization of terrorism financing, including the landmark Security Council resolution 1373 and Security Council resolution 2462, the first comprehensive resolution addressing the prevention

¹ (A/RES/53/144, art. 5).

and suppression of terrorism financing. The latter resolution “[d]emands that Member States ensure that all measures taken to counter terrorism, including measures taken to counter the financing of terrorism [...] comply with their obligations under international law, including international humanitarian law, international human rights law and international refugee law.”

In parallel, the Financial Action Task Force (FATF) has set forth international practices and guidelines aimed at preventing global money laundering and terrorist financing. The FATF recommendations, while non-binding, provide recognized international guidance for the countering of money laundering and terrorism financing. Recommendation 1 states that “countries should apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified.”

Background

The issue of the NSL and its impact on the right to freedom of association has been addressed by both the Human Rights Committee (HRC)² and the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR).³ The CEACR has urged the Government of Hong Kong to “take all necessary measures to ensure in law and in practice the full enjoyment of trade union rights in a climate free of violence, threats and pressure in the HKSAR and to provide detailed information on all steps taken to that end”.⁴ The CEACR also requested the Government, in consultation with the social partners, “to monitor and provide information on the impact that the NSL has already had and may continue to have on the exercise of freedom of association rights [...]”.⁵ We emphasize that respect for human rights, fundamental freedoms, and the rule of law are complementary and mutually reinforcing with effective counter-terrorism measures and are an essential part of a successful counter-terrorism effort. In this connection, we respectfully encourage your Excellency's Government to review and reconsider certain key aspects of the concerned Proposal to ensure compliance with your international human rights obligations with respect to the HKSAR.

In December 2022, the Financial Services and the Treasury Bureau of the HKSAR issued the Proposal with the aim to developing “a modern and clear regulatory framework for crowdfunding activities, with a view to enabling participants of crowdfunding activities to obtain reasonable protection, and increasing the transparency and accountability of such activities, thereby preventing unlawful acts and safeguarding public interests” (para. 1.2). The public consultation period for the Proposal ended on 20 March 2023. No definite timetable of the legislative process has yet been announced.

² CCPR/C/CHN-HKG/CO4, para 49.

³ Interim Report - Report No 401, March 2023, Case No 3406 (China - Hong Kong Special Administrative Region) - Complaint date: 17-MAR-21, para. 322

⁴ Interim Report - Report No 401, March 2023, Case No 3406 (China - Hong Kong Special Administrative Region) - Complaint date: 17-MAR-21, para. 322.

⁵ Interim Report - Report No 401, March 2023, Case No 3406 (China - Hong Kong Special Administrative Region) - Complaint date: 17-MAR-21, para. 322.

Content of the proposed legislation and human rights implications

We welcome the three-month public consultation period launched for the Proposal and reaffirm the importance of ensuring full compliance with ICCPR article 25, which guarantees the right of every citizen to take part in the conduct of public affairs. In this regard, we remind your Excellency's Government that this right to participate in decision-making processes includes the ability to participate before, during, and after the implementation of regulatory measures, including "from an early stage, when all options are still open"⁶. In this manner, the participatory process must be iterative, such that any further versions of the Proposal, including specific legislative draft text be made publicly available as soon as possible, granting sufficient time for further public review and consultation⁷.

We note that the Proposal indicates national security and counter-terrorism as one of the main risks being mitigated and one of the primary criteria to assess the nature of the purpose of crowdfunding activities. We would like to remind your Excellency's Government that, in its resolutions, the Human Rights Council has stated that "in some instances, national security and counter-terrorism legislation and other measures [...] have been misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law."⁸ We further echo the observations previously set out by multiple Special Procedures mandate-holders regarding the use of national security language in a broad and imprecise manner that diminishes and impinges in absolute ways on the rights and freedoms of individuals (CHN 17/2020), including freedoms of association, of peaceful assembly, and of expression. The right of associations to freely access human, material, and financial resources is inherent in the right to freedom of association, and states must ensure civil society organisations can seek, secure, and use resources from domestic, foreign and international sources without prior authorisation or other undue impediments.⁹

Risk assessment

The Proposal stipulates that the existing regulatory framework does not cover all aspects of online crowdfunding activities, and cautions that crowdfunding activities "without registration or adequate supervision are more prone to various kinds of risks" – citing FATF studies reportedly finding that "while there are legitimate crowdfunding activities, globally there have been incidents showing that crowdfunding activities have also been exploited for different types of illegal activities" (para. 1.17, n.2). The Proposal notes in this regard the FATF's forthcoming study on crowdfunding for terrorism financing. We note that the HKSAR has been a member of the FATF since 1991.

The Proposal delineates four categories of risk in particular, stemming from inadequately regulated crowdfunding activities: (i) risks of crowdfunding platforms, whereby platforms may, *inter alia*, misuse personal and financial data; (ii) risks of information asymmetry, where funders may not be contractually protected where information or descriptions provided by fundraisers are inaccurate; (iii) risks of

⁶ A/HRC/39/28, para. 70.

⁷ A/HRC/39/28, paras. 71-72.

⁸ A/HRC/RES/25/18, A/HRC/RES/27/31, A/HRC/RES/32/31 and A/HRC/RES/34/5.

HRC/53/38/Add.4 General principles and guidelines on ensuring the right of civil society organisations to have access to resources, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletossi Voule.

fundraising outcomes not in line with the fundraising purpose, where funds “may eventually be used for purposes other than those committed by the fundraisers, and the fund contributors may not be able to hold anyone accountable”; and (iv) risks of breaching the law, where funds may be used for illegal activities including “unlawful acts endangering national security or supporting terrorist activities” (para. 1.17).

Based on these risks, the Proposal concludes that a “regulatory framework should be established that can sufficiently address online and offline fundraising activities” with the stated aim “to increase the transparency and accountability of these activities, so as to prevent unlawful acts and safeguard the interests of all those involved” (para. 1.18).

We observe that the Proposal may introduce restrictive measures preemptively, absent adequate and empirical assessment of the identified risks being mitigated, including the potentially variable risk based on sector and category of fundraising activity and funder. In this regard, we underscore the importance of meaningful public and civil society participation in the very assessment of risk in order to protect civic space.

We note that the risks of money laundering and terrorist financing are part of the risk categorization referenced in paragraph 1.17 of the Proposal. We echo in this context the observation of the Special Rapporteur on the promotion and protection of human rights while countering terrorism that there is alignment between the proportionality requirement under international law and the risk-based approach promulgated by the FATF—i.e., disproportionate, over-regulatory administrative measures risk to violate both international human rights law and the FATF Standards.¹⁰ The Special Rapporteur on the rights to freedom of peaceful assembly and of association has also repeatedly raised concerns about overregulation in the guise of fighting terrorism and countering money laundering, and called on States to ensure restrictions are based on individualised and identifiable suspicion, not upon pre-emptive suspicion of the entire civil society organisation sector.¹¹

Application procedure

The Proposal suggests the establishment of a “one-stop crowdfunding approval, registration and administrative framework,” including through the establishment of a Crowdfunding Affairs Office (“CAO”) to “centrally process and coordinate regulatory and administrative matters related to crowdfunding activities and monitor the conduct of such activities” (para. 2.1). Pursuant to paragraph 2.2 of the Proposal, all crowdfunding activities, online or offline, that “appeal [...] publicly”—with respect to the “publicity used or the actual operation”—for funds from individuals or entities of Hong Kong, or individuals or entities located in Hong Kong, including entities registered in Hong Kong or having place of business in Hong Kong regardless of their place of incorporation or registration, would be required to apply to the CAO before conducting the concerned activities, “whether or not the crowdfunding activity is conducted in Hong Kong” (sec. 2.2).

¹⁰ See SRCT&HR Position Paper, p. 11, <https://www.ohchr.org/sites/default/files/2022-06/2022-06-13-SRCT-HR-CFT-Position-Paper.pdf>.

¹¹ A/HRC/50/23 Access to resources: Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletossi Voule, Paras 37 – 38.

Paragraph 2.5 of the Proposal indicates that the application should contain the personal information of the applicant and background information of the fundraising organization, including registration records, as applicable; a description of the crowdfunding plan and purpose, including the fundraising timeline, target fund size, target beneficiaries, crowdfunding platform, local bank account designated for the purpose, and affirmation that “the crowdfunding activities will not involve any activities that would jeopardise national security or any unlawful activities.” The CAO is also empowered to request any “other information as required by the CAO having regard to the cases.”

Paragraphs 2.11 to 2.14 propose criteria for the CAO to consider when evaluating and approving a crowdfunding application, animated by principles of proportionality and risk management. When processing applications, the CAO would be required to assess the honesty, reputation and reliability of the applicant; the proportionality of the purpose of the activity to the fundraising scale; and whether the nature of the activity and the use of funds would jeopardise public interests and public safety and would be contrary to national security. The CAO may impose additional conditions where the fundraiser previously committed offences like money laundering or jeopardising public safety and national security (para. 2.12). Moreover, fundraisers for funds above a certain threshold may be required to use only “real name” donations from contributors and may be subject to auditing of financial documents by accounting professionals, “in order to mitigate the risk of money laundering” (para. 2.14).

The Proposal further stipulates that successful applicants may be subject to certain ongoing reporting requirements, including “the obligation to obtain information on the identities of persons donating funds from any crowdfunding platforms, financial institutions or payment service providers they cooperate with” and to make such information available to the CAO or law enforcement agencies “where there is a need to do so” (para. 2.14).

Lastly, the Proposal also contemplates a registration procedure for crowdfunding platforms, potentially requiring at minimum an individual with a physical address in Hong Kong to be designated as the platform’s representative (para. 2.19). The Proposal suggests that the CAO consider the registration status of the crowdfunding platform when considering an individual crowdfunding application.

Although we positively acknowledge the stated aim of enhancing the transparency and accountability of crowdfunding activities, and preventing against misuse of such platforms, we kindly remind your Excellency’s Government that any restrictions to the rights to freedom of opinion and expression, freedom of peaceful assembly and association, and privacy—as guaranteed under the ICCPR—must comply with the objective criteria of legality, proportionality, necessity and non-discrimination, including by being the least intrusive means capable to achieve a legitimate aim (see *supra*).

We observe that the proposed requirement to apply to the CAO prior to performing crowdfunding activities may be overly burdensome and disproportionate to the stated objectives with potentially detrimental impacts on civic space. We remind your Excellency’s Government that registration and ongoing reporting requirements should not be such as to prevent or severely restrict associations from

operating, should be simple and proportionate to the size of the organization, and should be aimed at ensuring the financial propriety of associations. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has called on States to ensure that their counter-terrorism and national security legislation in particular, is sufficiently precise in order to comply with the principle of legal certainty, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds (see A/HRC/40/52). In addition, the Special Rapporteur on the rights to freedom of peaceful assembly and of association recommended in his report on access to resources that states should “ensure that associations – registered and unregistered – can fully enjoy their right to seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments – including from individuals, associations, foundations and other civil society organizations, foreign Governments and aid agencies, the private sector, the United Nations and other entities” (A/HRC/50/23). The Special Rapporteur also called on States to create and maintain an enabling environment for the enjoyment of civil society organisations’ right to seek, receive and use resources, to ensure any restrictions are in line with international law, and to repeal laws and regulations that impose restrictions that are contrary to human rights law.

We note that the CAO application process may inhibit associations’ functional autonomy and operation. We observe that the criteria for granting an application—including the proportionality principle, the “honesty, reputation and reliability of the applicant” and “whether the nature of the activity and the use of funds would jeopardise public interests and public safety and would be contrary to national security”—leaves expansive discretion to the CAO without any clear limiting safeguards. We caution that funding restrictions, particularly on foreign funding, may discriminately and disproportionately target certain associations with critical or diverse views. Undue limitations on foreign funding may disproportionately impact human rights and women’s organizations in particular. (A/HRC/40/52, para. 42). Moreover, the applicability of the proposed CAO application process to all crowdfunding activities by individuals or entities in Hong Kong, regardless of whether the actual activity is conducted there, may raise extraterritorial jurisdictional issues.

We note that the requirement to submit the crowdfunding purpose, registration records, beneficiaries, fund size, fund movements and “other information as required by the CAO” (para. 2.5)—absent adequate safeguards or limitations—may be particularly burdensome and ripe for abuse in enforcement by governmental authorities. In particular, such administrative requirements may deplete already-limited budgets, detract from the ability of the targeted NPOs to carry out their legitimate activities, and deter individuals from joining or leading associations altogether, all in potential violation of the rights to freedom of opinion and expression and freedom of peaceful assembly and association as guaranteed by the ICCPR. We observe that burdensome reporting requirements can be particularly consequential for smaller community-based organisations and private individuals that may not have the established financial or administrative capacities and resources for such compliance measures. The additional requirement for fundraising activities over a certain monetary threshold to be limited to “real name” contributors and to be subject to auditing by accounting professionals may have further chilling effects.

Lastly, we note that the Proposal contemplates an additional application procedure for crowdfunding platforms, including the requirement to designate a local representative in the HKSAR (para. 2.19). We observe that this may significantly limit the availability of crowdfunding platforms, as many providers without an existing physical presence in the HKSAR may simply opt out of registering with the CAO in the first place. In recently published guidelines, the Special Rapporteur on the rights to freedom of peaceful assembly and of association recommends states ensure laws and regulations do not unfairly target or restrict the international flow of donations, and that states adopt positive measures to enable and promote cross-border giving.¹²

Exempted activities

Paragraph 2.10 of the Proposal exempts from the application procedure, *inter alia*, donations on religious grounds to religious bodies, membership donations to recognized trade associations, and certain commercial activities. However, the CAO would still reserve the right to require application procedures, including where “the responsible person(s) or the executive(s) of the organization have committed any offence jeopardising public safety or national security before. In addition, the provision recalls the Trade Unions Ordinance (Cap. 332), stating that the funds collected from the exempted activities cannot be employed for “any Hong Kong’s political purpose.” Paragraph 2.10 further clarifies that where “the content of the activities would jeopardise public safety and order and national security, the law enforcement agencies will follow up on the matter under other applicable legislation in force.”

We note that the exempted activities—including donations on religious grounds to religious bodies, membership donations to recognized trade associations, and certain commercial activities—specifically prohibit the collection of funds to be employed for any “political purpose” (para. 2.10). We observe that the absence of a precise and clear definition of the term “political purpose” risks misinterpretation and misapplication by the competent authorities, based on their own political views and ideologies. Furthermore, noting that paragraph 2.10 makes reference to section 34 of the Trade Unions Ordinance, we note that several concerns have been raised by the Committee on Freedom of Association on this legislation.¹³

We bring to the attention of your Excellency’s Government the finding of the Human Rights Committee that any law restricting freedom of expression “must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and [...] may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution”. Moreover, we remind your Excellency’s Government that States have the obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, “including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to

¹² HRC/53/38/Add.4 General principles and guidelines on ensuring the right of civil society organisations to have access to resources, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletossi Voule, para 50.
Committee on Freedom of Association, Interim Report - Report No 397, March 2022, Case No 3406 (China - Hong Kong Special Administrative Region),
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:4141472.

promote these rights”¹⁴. Echoing the observations of the Human Rights Committee, “political speech enjoys particular protection as a form of expression, it follows that assemblies with a political message should enjoy a heightened level of accommodation and protection” (CCPR/C/GC/37, para. 32).

Unlawful crowdfunding activities and enforcement

Paragraph 2.22 of the Proposal defines an “unlawful crowdfunding activity” as, *inter alia*, an activity that is conducted before making an application to the CAO or without the requisite consent notice; that continues despite either rejection by the CAO or a prohibition order; or that is:

- (e) *conducted in Hong Kong that the CAO and relevant law enforcement agencies have reasons to believe that the continued conduct of the activity will jeopardise public interests, public safety or national security, regardless of whether a consent notice has been issued by the CAO, or whether an application to the CAO has been made;*
- (f) *conducted outside Hong Kong that the relevant law enforcement agencies have reasons to believe that it would jeopardise public interests, public safety or national security in Hong Kong[.]*

With regard to such unlawful and non-compliant activities, the Proposal provides that the CAO have monitoring powers and where non-compliance is identified, refer the matter to the relevant law enforcement agencies for prosecution. The Proposal provides that law enforcement agencies may: a) issue a prohibition order to stop the crowdfunding activity, also specifying how the funds raised should be handled; b) suspend the CAO’s processing of the relevant application; c) investigate and prosecute offenders, with penalties ranging from a fine to imprisonment depending on the severity of the offence; d) direct the removal of the relevant crowdfunding message from the crowdfunding platform, social media or elsewhere; e) direct financial institutions to discontinue fund movements and conduct investigation against the person involved; f) specify by notice that an activity is unlawful and that the persons involved may be prosecuted (para. 2.23); confiscate funds related to unlawful crowdfunding activities (para. 2.30); and take restrictive actions against the platform in question (para. 2.30). The Proposal also provides that the Police enjoy further investigative, search and seizure, and content moderation powers (para. 2.29). The Proposal additionally considers granting the CAO direct prosecutorial powers for non-compliance (paras. 2.6, 2.23).

In relation to those activities jeopardising national security, the Proposal refers to the applicability of UN (Anti-Terrorism Measures) Ordinance (Cap. 575) and the Implementation Rules for article 43 of the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (“the Implementation Rules”), which stipulate the applicable enforcement powers and disclosure obligations. Among other relevant provisions, section 5 of schedule 3 of the Implementation Rules provides that “any person who knows or suspects that any property is offence related property, must disclose to a police officer information or other matters on which the knowledge or suspicion is based and, as soon as is reasonably practicable after that, information or other matters that come to their attention” (paras. 2.25, n.8, 2.27); and schedule 4 establishes that a police officer may

¹⁴ A/HRC/26/29, para. 22; A/HRC/RES/24/5.

require a provider to remove electronic messages “likely to cause the occurrence of an offence endangering national security” and restrict or cease access to the concerned message or to the relevant part of the platform (para. 2.28).

Lastly, the Proposal stipulates the relevant responsibilities of financial institutions, including to discontinue fund movements and conduct investigations at the order of the relevant law enforcement agencies (para. 2.23), and to ensure through customer due diligence and record keeping measures that funds collected by the crowdfunding activities are compliant with the relevant financial regulatory framework, including the UN (Anti-Terrorism Measures) Ordinance (Cap. 575), the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) and National Security Law Implementation Rules (paras. 2.24-2.25).

We observe that the Proposal does not establish an internal administrative procedure for appealing rejections of applications, nor does it provide an independent judicial mechanism to challenge CAO’s decision. In this regard, we recall the findings of the Special Rapporteur on the rights to freedom of peaceful assembly and of association that “associations whose notification or application for authorization is denied should have the possibility to challenge such action before an independent and impartial tribunal”.¹⁵ We therefore emphasize that if an application to the CAO is not accepted, clear reasons must be provided in writing and there should be a right to appeal in line with due process safeguards under international human rights law.

We further observe that the Proposal stipulates broad, discretionary, and as yet undefined monitoring and enforcement powers, without the requisite judicial oversight and due process safeguards under international law. We caution that the term “*unlawful crowdfunding activity*” and the related grounds for sanctions may be vulnerable to abuse by the competent authorities. Indeed, we observe that paragraph 2.22 of the Proposal includes among the acts which constitute unlawful activities those carried out in and outside Hong Kong that “relevant law enforcement agencies have reasons to believe will jeopardise public interests, public safety or national security in Hong Kong (para 2.22(f))—without providing a clear and precise definition of these terms, potentially leading to overly broad or arbitrary interpretations or applications.

We observe that the stipulated power to cease or censor crowdfunding content, block crowdfunding platforms, and prosecute fundraisers on national security grounds—and the potential ramifications of such discretionary powers on the rights to freedom of opinion and expression, rights to freedom of peaceful assembly and association. We note in this context the Human Rights Committee’s previous observations regarding the impact of the National Security Law and related legislation on the exercise of freedom of expression, including through the blocking of websites, removal of online content, other modes of censorship, and the arrest and arbitrary detention of journalists, politicians, academics, students and human rights defenders who have expressed dissenting opinions (CCPR/C/CHN-HKG/CO/4, para. 41). We remind your Excellency’s Government that States shall not invoke national security as a justification for measures aimed at suppressing opposition or to justify repressive practices against its population (A/61/267, para. 20).

¹⁵ A/HRC/20/27 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para 61.

We further observe that under the Proposal law enforcement agencies would be provided with the powers to request information including financial and personal data and seize relevant documents and property. We recall in this context that the Human Rights Committee's determination that the right to privacy requires robust, independent oversight systems, both through the involvement of the judiciary and the availability of effective remedies in cases of abuse (CCPR/C/IT/CO/6, para. 36). We also stress that surveillance operations should be approved "only in accordance with international human rights law and when authorized by a competent, independent and impartial judicial body, with all appropriate limitations on time, manner, place and scope of the surveillance" (A/HRC/41/35, para. 50(c)).

Lastly, we underscore the importance of crowdfunding platform companies and other business stakeholders ensuring that their due diligence and other compliance measures adopted in line with the anti-money laundering and counter-terrorism financing regulatory framework do not impinge on the legitimate political, charitable, and other protected activities of human rights defenders, political social and political activists, humanitarians, and civil society actors. We emphasize in this context the importance of taking all necessary measures to ensure operation in compliance with the UN Guiding Principles on Business and Human Rights, including by putting international human rights standards at the centre of the management of crowdfunding platforms.

In light of the abovementioned elements, we observe that the overall prospective impact of the Proposal would be detrimental to civic space and the enjoyment of fundamental freedoms in the Hong Kong Special Administrative Region.

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 analysis.
2. Please explain how the Proposal is compatible with the obligations of Your Excellency's Government under articles 17, 19, 21, 22, and 26 of the International Covenant on Civil and Political Rights.
3. Please provide detailed information on how the definition of national security within the proposed legislation is compatible with the principle of legal certainty established under the ICCPR.
4. Please provide information on how the risk assessment underlying the Proposal was carried out, including any empirical data on the risks of funds being used for illegal activities endangering national security or supporting terrorist activities.
5. Please provide more detailed information concerning the legal framework and powers extended to the CAO and relevant law enforcement agencies provided by the Proposal. Kindly clarify whether due process safeguards and appeal mechanisms are envisaged or other independent oversight mechanisms have been put in place to ensure

that measures adopted are necessary and proportionate.

6. Please provide information about the legislative process, its expected timeline, along with efforts to ensure substantive civil society consultation and outreach.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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