

Mandates of the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Ref.: AL CHN 20/2025

(Please use this reference in your reply)

8 September 2025

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 53/12 and 52/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning that on 16 July 2025, lawyer Kevin Yam (Yam Kin Fung) was disbarred and financially penalized on the basis of complaints made in July 2023, which included one submitted by the Secretary of Justice to the Law Society of Hong Kong, in direct connection to public statements Mr. Yam made, expressing his opinion about the independence of the judges and prosecutors in the Hong Kong Special Administrative Region (HKSAR), during an intervention at a US Congressional Hearing in May 2023.

Mr. Kevin Yam (Yam Kin Fung) is a lawyer in financial regulatory and commercial litigation, and a rule of law and democracy activist. He was admitted as a solicitor of the High Court of Hong Kong under the Legal Practitioners Ordinance, Cap. 159 on 15 January 2005. He held a practising certificate from the period from 1 January 2023 to 12 December 2023.

Mr. Yam had been reportedly criminally accused of this same activity under Hong Kong's National Security Law for the crime of "Collusion with a foreign country or with external elements to endanger national security" more than two years ago. On 3 July 2023, the HKSAR National Security Department issued an arrest warrant against Mr. Yam and a few days later, the Secretary for Justice of the HKSAR lodged complaints of professional misconduct against lawyer Kevin Yam at the Law Society of Hong Kong. Special Procedures have already addressed their concerns about the case of Mr. Yam (CHN 16/2023) on 31 August 2023.

We thank you for the replies received on 6 October 2023, and 6 November 2023. However, our concerns persist.

According to the information received:

Complaint

On 6 January 2025, the Assistant Director of the Conduct Section of the Compliance Department of the Law Society of Hong Kong made an application to the Law Society that Mr. Kevin Yam (Yam Kin Fung) be required to answer the allegations against him from the Assistant In-House Prosecutor of the Conduct Section of the Compliance Department of the Law Society, who swore

an affidavit on the same day.

According to the information received on the discussions at the hearing, the complaint against Mr. Yam alleged that he had engaged in conduct unbecoming a solicitor, thereby compromising his integrity, own reputation and the reputation of the profession, contrary to common law. No breach of any provision of statute or the Code of Conduct was explicitly alleged.

According to the information, the complaint stated that on 11 May 2023, Mr. Yam engaged in unbecoming conduct when he participated in a hearing of the United States Congress Congressional-Executive Committee on China (CECC). Mr. Yam appeared via video link from abroad and provided both oral and written testimony. He identified himself as a Hong Kong legal professional who has practised law in the jurisdiction. In oral testimony, in reply to a question, he agreed that sanctions imposed by the United States Government on judges and/or prosecutors in Hong Kong for their involvement in national security and/or politically-related cases would be appropriate. In written testimony, he called for sanctions to be imposed by the United States Government on prosecutors in Hong Kong for their involvement in national security and/or politically-related cases. The application noted that when he engaged in this conduct, Mr. Yam was a solicitor and an officer of the Court within the meaning of the Legal Practitioners Ordinance (Cap. 159). The CECC Hearing was open to the public and the live recording of CECC Hearing is publicly available on the CECC's YouTube channel.

Reportedly, up to 18 July 2023, the Law Society had received 228 complaints from the public regarding Mr. Yam's testimony at the CECC Hearing. The complaints expressed disapproval about Mr. Yam's professional conduct as a Hong Kong solicitor in, *inter alia*, calling for sanctions on Hong Kong judges and/or prosecutors. A written complaint dated 10 July 2023 was also made by the Secretary of Justice. In the view of the Secretary of Justice, Mr. Yam's conduct constituted serious professional misconduct, bringing the profession into disrepute.

Brief summary of proceedings

The Solicitors Disciplinary Tribunal operates independently from The Law Society and its members are appointed by the Chief Justice¹. The Tribunal's decisions are subject to appeal to the Court of Appeal.

On 6 January 2025, the Solicitors Disciplinary Tribunal found that a *prima facie* case had been established against Mr. Yam in respect of the application in question. The Tribunal issued a notice of hearing on 13 February 2025.

In a letter dated 5 May 2025, Arnold Bloch Leibler Lawyers and Advisers, an Australian solicitors' firm acting as Mr. Yam's Australian legal representatives, informed the Tribunal that Mr. Yam would not dispute the facts set out in the affidavit; he would not provide any further feedback, information or documents

¹ <https://www.elegislation.gov.hk/hk/cap159>

in connection with the proceedings; and would not contest, participate in or attend the proceedings.

On 12 June 2025, statements of costs of the prosecutor (HK\$ 841,664.15) and of the applicant (HK\$ 98,292.09) were filed with the Tribunal. On 13 June 2025, the clerk to the Tribunal filed a statement of costs and disbursements (HK\$ 35,100.00). On the same day, the prosecutor filed submissions in support of the complaint and on the appropriate penalties to be imposed on Mr. Yam. The case was heard by the Solicitors Disciplinary Tribunal on 16 July 2025 in the absence of Mr. Yam, in accordance with rule 11 of the Solicitors Disciplinary Tribunal's Proceeding Rules.

In its analysis², the Tribunal was of the view that the legal profession is “an honourable profession which demands high ethical standards and a commitment to justice, integrity and the rule of law. Members of the profession are expected to conduct themselves in an appropriate manner to ensure respect for the profession, protect its dignity and most importantly, maintain public confidence in the profession and the administration of justice”. It was noted that some of the assertions made by Mr. Yam, that Hong Kong judges were not impartial and did not exercise their power independently, and that prosecutors were engaging in persecution, and did not discharge their duties in accordance with justice and the rule of law were: “unwarranted and seriously damaging statements which undermined public confidence in the Hong Kong judicial system and the rule of law, as indicated by the large number of public complaints received. His conduct of testifying such statements of blatant attacks on the judges and prosecutors without any factual support in his professional capacity as a lawyer of Hong Kong was appalling” and showed he “had little respect for the legal profession he is in. By identifying himself as a member of the legal profession, the damage to public confidence in the profession and the legal system of Hong Kong is aggravated, especially taking into account that his testimony (both oral and written) are widely circulated”. The Tribunal stated that Mr. Yam's calls for sanctions on judges and prosecutors were “a clear attempt to exert pressure on how they exercise their judicial power and functions in national security and/or politically related cases, which to the Tribunal, is tantamount to an attempt to pervert the course of justice”; concluding that such conduct was “clearly dishonourable, unprofessional and constitutes conduct unbecoming a solicitor”.

In its findings³, on 22 July 2025, the Tribunal concluded that the complaint against Mr. Yam was proven and that his misconduct was grave and serious. It ordered that Mr. Yam be struck off from the Roll of Solicitors; and pay the total sum of HK\$ 816,600.00 (a little over USD 100,000), which covered the costs and disbursements as follows:

- the costs and disbursements of the Assistant Director of the Conduct Section of the Compliance Department of the Law Society, assessed at HK\$ 90,000.00;

² Statement of Findings and Order from the Law Society of Hong Kong, 22 July 2025.

³ Statement of Findings and Order from the Law Society of Hong Kong, 22 July 2025.

- the costs of the prosecutor assessed at HK\$ 700,000.00; and
- the costs of the clerk to the Tribunal assessed at HK\$ 26,600.00.

Reports indicate that after the expiry of the time limit for the filing of any appeal by Mr. Yam, the Registrar of the High Court of Hong Kong published the order striking him off from the Roll of Solicitors in the Gazette on 22 August 2025.

The Law Society of Hong Kong later issued a public statement⁴ in “Response to Concerns regarding the Disciplinary Proceedings and Findings against Mr. Yam Kin Fung, also known as Kevin Yam” on 1 September 2025, indicating it wished to address concerns about the disciplinary proceedings. It noted: “It is important to clarify that the Tribunal’s findings were based solely on professional conduct and not on any alleged criminal offence or political opinion. The Law Society reiterates that solicitors, as officers of the Court, are bound to uphold the integrity of the profession and the rule of law. The disciplinary process is designed to protect the public, maintain the reputation of the profession, and maintain public confidence in the administration of justice.”

Without prejudging the accuracy of these allegations, we express our concern at this sanction, based at least in part on the complaint of the Secretary of Justice, which comes two years after Mr. Yam’s participation in the CECC hearing and appears to have been imposed in direct retribution for the exercise of his right to freedom of expression.

We take note with serious concern that Mr. Yam was struck off from the Roll of Solicitors without having breached any of the Law Society’s statutes or the Code of Conduct; and by a tribunal whose members are appointed by the Chief Justice, as per article 9 of the Cap 59 Legal Practitioners Ordinance⁵. The Basic Principles on the Role of Lawyers note in principle 29 that “All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles”. We observe that disciplinary proceedings, and sanctions, should not be pursued on the basis of ill-defined or arbitrary offences that are not clearly enumerated in professional standards.

We recall as well that, in line with the same Basic Principles, disciplinary proceedings against lawyers should be brought before an impartial disciplinary committee established by the legal profession and should be subject to an independent judicial review.

We recall that we had already expressed concern regarding complaints of professional misconduct against Mr. Yam made by the authorities in 2023, since they appeared to be aimed at preventing him from exercising his freedom of expression (CHN 16/2023).

We recall that principle 23 of the Basic Principles on the Role of Lawyers makes clear that lawyers, like other citizens, are entitled to freedoms of expression, peaceful

⁴ <https://www.hklawsoc.org.hk/-/media/HKLS/Press-statement/EN/2025/20250901.pdf?rev=c46bb4db4c7b4c19b04723415013a185&hash=B9DA3BE376E43870400A5BFC938FD673>

⁵ <https://www.elegislation.gov.hk/hk/cap159>

assembly, and association, and have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights. In particular, removal from the Roll of Solicitors appears to be an inappropriate sanction for exercising a protected right. We highlight that Special Procedures mandate-holders also addressed the subject explored by Mr. Yam in his statements at the CECC Hearing in May 2023. For example, the Special Rapporteur on the independence of judges and lawyers provided comments concerning the National Security Law and its impact on the independence of the judiciary and the right to a fair trial in the Hong Kong Special Administrative Region on 19 April 2023 (OL CHN 2/2023). We thank you for the reply to that letter received in June 2023.

We also recall that the right to freedom of opinion and expression protects political discourse, commentary on public affairs and discussion of human rights. Any restriction on the right to freedom of expression must (i) be provided by law; (ii) pursue one of the legitimate aims for restriction, which are the respect of the rights or reputations of others and the protection of national security or of public order (*ordre public*), or of public health or morals; and (iii) be necessary and proportionate for those objectives. There is a duty of States to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (CCPR/C/GC/34).

We observe that the costs order made against Mr. Yam appears disproportionate, especially having regard to the fact that Mr. Yam did not contest or participate in the proceedings against him. We are concerned that the disciplinary proceedings brought against Mr. Yam and the harsh sanction, coupled with such a significant costs order, may be designed to have a chilling effect, discouraging other legal professionals from exercising their right to freedom of expression in the future.

Finally, in view of the fact that Mr. Yam's impugned statements were made via video link from Australia, to a congressional hearing that took place in the United States, we are concerned that the disciplinary proceedings against Mr. Yam may constitute transnational repression, defined by OHCHR as an act "conducted or directed by a State, or its proxy, to deter, silence or punish dissent, criticism or human rights advocacy towards it, expressed from outside its territory"⁶. We encourage the Chinese authorities to address this allegation of transnational repression, noting that the Special Rapporteur on Freedom of Opinion and Expression highlighted that States should "Refrain from committing, co-opting or condoning acts of transnational repression, online or offline, and ensure that all acts of transnational repression on their territory are investigated and prosecuted promptly, fully and effectively" (A/HRC/56/53, paragraph 104.d).

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:

⁶ <https://www.ohchr.org/sites/default/files/documents/publications/transnational-repression-1-en.pdf>.

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations, including on the measures taken to ensure lawyers' freedom of expression.
2. Please explain how these disciplinary proceedings are in line with the international standards related to the Role of Lawyers.
3. Please provide information about measures taken to ensure that lawyers who hold practicing certificates in Hong Kong who are in and outside of Hong Kong SAR, can carry out their professional activities in line with international human rights standards and in a safe and enabling environment without fear of harassment, criminalisation, or acts of intimidation of any kind.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we refer to the International Covenant on Civil and Political Rights (ICCPR), signed by China on 5 October 1998. While China is yet to ratify the ICCPR, as a signatory to the Covenant, China has an obligation to refrain from any acts which would defeat its object and purpose prior to its entry into force (article 18 of the 1969 Vienna Convention on the Law of Treaties). In addition, key provisions of the Universal Declaration of Human Rights (UDHR) reflect customary international law that are binding on Member States, including China.

Further, we wish to recall that applicable international human rights law and standards remain in force in the Hong Kong Special Administrative Region of the People's Republic of China in accordance with Section XI of Annex I of 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 and article 39 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. Article 39 of the Basic Law of the Hong Kong Special Administrative Region holds that "The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region". It further holds that "The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this article".

We also recall that article 4 of the National Security Law states 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".

We would like to refer your Excellency's Government to articles 2, 14, 15, and 19 of the International Covenant on Civil and Political Rights (ICCPR), and articles 10, 11, and 19 of the Universal Declaration of Human Rights (UDHR). Article 19 provides that "Everyone 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." In addition, we wish to bring to the attention of your Excellency's Government the right to an effective remedy established by article 2.3(a) of the ICCPR and article 14 of the ICCPR, which enshrines the right to a fair trial and due process. In particular, article 14(1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent, and impartial tribunal established by law.

We would like to recall that article 19 of the ICCPR guarantees the right to opinion and expression. In its general comment No. 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of

opinion and expression, including inter alia ‘political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism’, subject only to admissible restrictions as well as the prohibition of propaganda for war and advocacy of national, racial or religious hatred that constitutes incitement to hostility, violence or discrimination. Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19(3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. In this connection, the Human Rights Committee in general comment No. 34 has held that “under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression be compatible with article 19”. There is a duty of States to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (CCPR/C/GC/34).

We would also like to refer your Excellency’s Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana (Cuba), 27 August-7 September 1990). Principle 16 requires governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent lawyers from being threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics. Principle 23 stipulates that lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

Finally, Principle 29 states that disciplinary proceedings against lawyers shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.