

**Report on Political Screening in Hong Kong:
Disqualification of Election Candidates and Legislators**

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Civil Rights Observer



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Key facts

- **18 disqualification incidents between 2016 and 2019**
 - **3 levels of election involved, large and small**
 - **invalidated over 185 thousand votes due to disqualifications of elected legislators**
 - **disregarded over 427 thousand votes cast upon replacement candidates who were later deemed unduly elected owing to wrongful disqualifications in the first place**
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1. Introduction

This report documents the consecutive disqualifications of candidates and legislators in the Legislative Council Election, District Council Election and Rural Representative Election since 2016, following the 5th interpretation of the Basic Law by the National People's Congress Standing Committee (NPCSC).

It details the context in which disqualifications took place, the implications of political screening on civil and political rights, and the recent developments concerning election candidacy, particularly under the backdrop of the controversial national security law, for the upcoming Legislative Council that is scheduled on 6 September 2020.

The right to stand for and take part in elections is a fundamental right enshrined in both the Basic Law and the International Covenant on Civil and Political Rights (ICCPR). Noticing the wide-spread worry that large scale disqualification is likely to reoccur, Civil Rights Observer urges the government to act with restraint. We are of a view that elections should be held in a fair and just manner without censorship and intervention for fundamental civil and political rights to be fully respected.

As a human rights organisation based in Hong Kong, Civil Rights Observer monitors the implementation of these rights with reference to international standards through regular documentation. Political opinion and views that individual candidates or legislators upheld are not of our concern, we remain impartial to these positions.

2. Disqualification incidents since 2016

2.1 Disqualifications of pro-independence candidates in 2016 Legislative Council Election

An unprecedented arrangement in addition to the existing nomination form – requesting candidates to acknowledge that Hong Kong is an inalienable part of China by signing a confirmation form was introduced in 2016. Two days before the nomination period began, the Electoral Affairs Commission (EAC), an independent statutory body responsible for electoral arrangements, caught the city in surprise by making the announcement¹. In line with the EAC, the government claimed that candidates advocating and promoting

¹ HKSAR, 2016. Press statement by EAC on 2016 Legislative Council Election. Available at: <https://www.info.gov.hk/gia/general/201607/14/P2016071400441.htm>

“independence of Hong Kong” is contrary to the obligation of “uphold[ing] the Basic Law and pledg[ing] allegiance to the HKSAR” as an elected Legislative Council member.²

6 candidates previously indicated their support for independence were later disqualified by the EAC Returning Officers on the ground that their pro-independence stance could not comply with the Basic Law. They include Andy Chan, head of the Hong Kong National Party; Edward Leung, former leader of Hong Kong Indigenous; Yeung Ke-cheong from Democratic Progressive Party; Alice Lai from Conservative Party; independent candidates James Chan and Nakade Hitsujiko.

Among them, Edward Leung and Nakade Hitsujiko had returned the confirmation form. In his reply to the officer’s email, Leung emphasised that he no longer supported Hong Kong independence.³ However, the Officer could not believe Leung had genuinely changed from his past pro-independence stance and therefore barred him from standing for the election.⁴ In contrast, some pro-democracy candidates refused to sign the form were accepted.⁵

Refusal of immediate hearing

Edward Leung and other activists argued that the EAC had acted beyond its powers and filed an urgent appeal for judicial review against the new electoral rule. Seeing no urgency to handle the judicial review before the end of the nomination period, the High Court refused to immediately hear the case. Leung could only appeal through an election petition upon his disqualification, which usually takes years to schedule.⁶

2.2 Disqualifications of 6 legislators over 2016 oath-taking controversy

Using oath-taking during the inaugural meeting of the Legislative Council as an opportunity to express political will, including rewording the oath and chanting slogans, is a common practice adopted by pan-democrat legislators. The Secretary General of the Council used to accept and validate their oaths accordingly. Chances to retake oaths were given if he refused to validate. Not a single legislator has been disqualified due to invalidation of oath-taking until the 2016 controversy detailed below.⁷

² HKSAR, 2016. Statement by HKSAR Government regarding 2016 Legislative Council election. Available at: <https://www.info.gov.hk/gia/general/201607/14/P2016071400753.htm>

³ Hong Kong Free Press, 2016. Localist signs controversial form to run in election as party readies ‘substitute candidate’. Available at: <https://hongkongfp.com/2016/07/29/localist-signs-controversial-form-run-election-party-readies-substitute-candidate/>

⁴ Hong Kong Free Press, 2016. Edward Leung has not genuinely switched from pro-independence stance, says election official. Available at: <https://hongkongfp.com/2016/08/02/edward-leung-not-genuinely-switched-pro-independence-stance-says-election-official/>

⁵ Hong Kong Free Press, 2016. Pan-democrat LegCo candidates refuse to sign new declaration stating Hong Kong is part of China. Available at: <https://hongkongfp.com/2016/07/21/pan-democrat-legco-candidates-refuse-sign-new-declaration-stating-hong-kong-part-china/>

⁶ South China Morning Post, 2016. Setback to legal challenge against new Hong Kong election rule. Available at: <https://www.scmp.com/news/hong-kong/politics/article/1995611/setback-legal-challenge-against-new-hong-kong-election-rule>

⁷ South China Morning Post, 2016. Hong Kong’s coughing, yelling lawmakers don’t stick to the script. Available at: <https://www.scmp.com/news/hong-kong/politics/article/2027351/hong-kongs-coughing-yelling-lawmakers-dont-stick-script>

Invalidation of oaths of elected pro-independence members

During the inaugural meeting of the 6th Legislative Council on 12 October 2016, Baggio Leung and Yau Wai-ching, both from pro-independence political group Youngspiration, inserted anti-China wordings into the official script and displayed a “Hong Kong is not China” banner while taking the oaths. Their oaths were considered an insult to China and were invalidated by the President of the Council a few days after.⁸

NPCSC’s interpretation of the Basic Law on oath-taking

The case sparked a judicial review and eventually prompted the interpretation of Article 104 of the Basic Law by the National People’s Congress Standing Committee (NPCSC), which declared that upholding the Basic Law and pledging allegiance to Hong Kong as a part of China are legal requirements for one to run for and take up public office.⁹ The interpretation also stipulated that “an oath-taker must take the oath sincerely and solemnly, and must accurately, completely and solemnly read out the oath prescribed by law”. Deliberate non-compliance will result in disqualification without permitting a second chance to retake the oath. Such interpretation came before the ruling on the case, the court eventually ruled under the interpretation to disqualify the two¹⁰, by which invalidated over 58 thousand votes (see Appendix I).

Further disqualifications of 4 pro-democracy legislators

Soon after the interpretation was made, the Hong Kong government further accused 4 other lawmakers – Edward Yiu, Nathan Law from Demosistō, Leung Kwok-hung from League of Social Democrats and Lau Siu-lai – of failing to take their oaths solemnly and sincerely, all of which had been previously validated by the President of the Council.

Edward Yiu was challenged for inserting an extra line “I will uphold procedural justice in Hong Kong, fight for genuine universal suffrage and serve the city’s sustainable development” to his oath; Nathan Law for ending the word “Republic” in the phrase of “People’s Republic of China” with an upward inflection; Leung Kwok-hung for chanting slogans with a yellow umbrella; Lau Siu-lai for deliberately taking her oaths in slow motion by reading each character with a six-second interval. The four lost their seats as the High Court overruled the President’s decision in 2017¹¹, leading to invalidation of more than 127 thousand votes (see Appendix I).

⁸ Secretariat of the Legislative Council, 2016. Verdict regarding the oath of 6 legislators taken on 12 October 2016. Available at: https://www.legco.gov.hk/yr16-17/chinese/pre_rul/pre20161018-ref-c.pdf

⁹ South China Morning Post, 2016. China’s top body lays down law on Hong Kong oath-taking. Available at: <https://www.scmp.com/news/hong-kong/politics/article/2043768/chinas-top-body-lays-down-law-hong-kong-oath-taking>

¹⁰ Chief Executive, Secretary for Justice and President of the Legislative Council v. Sixtus Leung Chung-hang and Yau Wai-ching. CACV 224-227/2016. Available at: https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=111120

¹¹ Secretary for Justice v. Yiu Chung-yim, Nathan Law Kwun-chung, Lau Siu-lai, Leung Kwok-hung. HCMP 3378-3382/2016. Available at: <https://www.doj.gov.hk/eng/archive/index2017.html>

2.3 Disqualifications of candidates advocating self-determination in 2018 Legislative Council By-elections

A new round of disqualification was witnessed in the by-election held on 11 March 2018 for four vacancies, following disqualifications of Nathan Law, Baggio Leung, Yau Wai-ching and Edward Yiu.

The scope of political screening has been expanded from barring independence to banning self-determination. Agnes Chow representing Demosistō was disqualified by the Returning Officer citing her party had called for self-determination, despite that her fellow member Nathan Law was allowed in the poll back in 2016.¹² The Officer explained in her reply that “self-determination” was inconsistent with the “one country, two systems” principle. Chief Executive Carrie Lam backed this decision by insisting any suggestion of “self-determination” or “self-autonomy” “is not in line with Basic Law requirements.”

In parallel, candidacies of two localists James Chan and Ventus Lau were ruled invalid due to their support for Hong Kong independence. Although both claimed they had already given up the doctrine, the Officer remained unconvinced.¹³

Later in November that year, Lau Siu-lai contested in another by-election for the seat vacated as a result of her disqualification. Her political stance was not a problem in her first attempt to the election. This time, however, she was barred on the grounds that she was once an advocate of self-determination.¹⁴ Playing on familiar rhetoric, the Officer argued that Lau had not genuinely changed her stance.

Successful election petitions

Three election petitions of the above cases successfully overturned the disqualification decisions. In September of 2019, a year and a half after Agnes Chow being disqualified, the High Court found the decision “wrongful” and amount to a “breach of the principle of natural justice or procedural fairness” for not providing Chow an opportunity to respond to the decision.¹⁵ Disqualifications against Ventus Lau¹⁶ and Lau Siu-lai¹⁷ were also dismissed on the basis of similar reasons.

¹² South China Morning Post, 2018. Political storm in Hong Kong as activist Agnes Chow banned from by-election over party’s call for city’s ‘self-determination’. Available at:

<https://www.scmp.com/news/hong-kong/politics/article/2130714/hong-kong-activist-agnes-chow-banned-legco-election>

¹³ South China Morning Post, 2018. Hong Kong electoral officials ‘may have exceeded scope of duty’ by barring candidates, former Legco head Jasper Tsang says. Available at:

<https://www.scmp.com/news/hong-kong/politics/article/2131799/hong-kong-electoral-officials-may-have-exceeded-scope-duty>

¹⁴ The New York Times, 2018. Hong Kong Bars Another Democracy Supporter From Running for Office. Available at: <https://www.nytimes.com/2018/10/12/world/asia/hong-kong-lau-siu-lai-democracy.html>

¹⁵ Hong Kong Free Press, 2019. Hong Kong court overturns gov’t decision to ban activist Agnes Chow from election. Available at: <https://hongkongfp.com/2019/09/02/breaking-judge-overturns-govt-decision-ban-hong-kong-activist-agnes-chow-election/>

¹⁶ Hong Kong Free Press, 2019. Hong Kong activist Ventus Lau wins appeal against election ban, unseats democrat Gary Fan. Available at: <https://hongkongfp.com/2019/09/13/hong-kong-activist-ventus-lau-wins-appeal-election-ban-unseats-democrat-gary-fan/>

¹⁷ RTHK, 2020. Lau Siu-lai wins election petition, ousts Yan Chan. Available at: <https://news.rthk.hk/rthk/en/component/k2/1527464-20200521.htm>

Notwithstanding the belated redress provided by the court, the decisions to disqualify candidates induced irreversible consequences in the first place. Au Nok-hin, Gary Fan from Neo Democrats and Chan Hoi-yan – replacement candidates of the three disqualified were deemed unduly elected owing to the wrongful disqualifications. Au criticised the government for shirking responsibility and not taking timely measures to amend the flaw in the electoral system, leaving the interests of hundreds of thousands of voters to be harmed.¹⁸ Statics from the EAC showed a sum of over 427 thousand casted votes for the replacement candidates concerned (see Appendix III).

2.4 Disqualification of Eddie Chu in 2019 Rural Representative Election

Disqualification also took place in elections of a relatively small scale. Eddie Chu, an elected Legislative Council member, was barred from running in the 2019 Rural Representative Election after being questioned twice by the Returning Officers on his stance on Hong Kong independence and self-determination. The Officers picked on Chu's two joint statements with Demosistō and Lau Siu-lai issued in 2016, on which independence as an option for Hong Kong's future was mentioned.¹⁹ They claimed that "the validity of Chu's nomination or his Legislative Council oath, is not sufficient for determining the validity of any future nominations of him".

2.5 Disqualification of Joshua Wong in 2019 District Council Election

Demosistō was once again barred from polls in 2019 when the confirmation form was introduced to District Council Election for the first time. Its founder Joshua Wong was the only candidate disqualified in that election. The government reiterated that advocating self-determination goes counter to the law requirements²⁰, notwithstanding Wong's clarification that he and Demosistō "do not promote and support independence as an option of self-determination" in his reply to a third inquiry from a Returning Officer.²¹ Candidacy of Tiffany Yuen, a former member of Demosistō was not affected.

¹⁸ Hong Kong Free Press, 2019. Pro-democracy lawmakers Au Nok-hin and Gary Fan lose seats as Hong Kong's top court rejects election petition appeals. Available at:

<https://hongkongfp.com/2019/12/17/breaking-pro-democracy-lawmakers-au-nok-hin-gary-fan-lose-seats-hong-kongs-top-court-rejects-election-petition-appeals/>

¹⁹ South China Morning Post, 2018. Hong Kong lawmaker Eddie Chu disqualified from running in village election after being questioned twice on independence. Available at:

<https://www.scmp.com/news/hong-kong/politics/article/2176031/hong-kong-lawmaker-eddie-chu-disqualified-running-rural>; South China Morning Post, 2019. Lawmaker Eddie Chu launches legal challenge to his disqualification from rural representative election. Available at:

<https://www.scmp.com/news/hong-kong/politics/article/2184712/lawmaker-eddie-chu-launches-legal-challenge-his>

²⁰ HKSAR, 2019. HKSAR Government responds to media enquiries regarding 2019 District Council Ordinary Election. Available at: <https://www.info.gov.hk/gia/general/201910/29/P2019102900256.htm>

²¹ South China Morning Post, 2019. Banning Joshua Wong from Hong Kong district council elections shows he is thorn in Beijing's side who must be isolated despite risk of global backlash, analysts say. Available at: <https://www.scmp.com/news/hong-kong/politics/article/3035421/banning-joshua-wong-hong-kong-district-council-elections>

3. Recent arguments by Chinese authorities, Hong Kong government and pro-establishment camp

3.1 Existing pro-democracy legislators criticised of breaching the Oath of Office

In response to the Legislative Council House Committee's failure in electing a chair since last October, the Hong Kong and Macau Affairs Office of the State Council (HKMAO) and the Liaison Office of the Central People's Government in the HKSAR (the Liaison Office) issued two statements on 13 April 2020²², blaming pro-democracy legislators for deliberately stalling the chairperson election. Dennis Kwok from Civic Party, who has presided over 14 committee meetings, was named and singled out in the statements. Two agencies warned the involved lawmakers of breaching the Oath of Office and that their action might constitute misconduct in public office.

While no consequences were specified in the statement; Andrew Leung, the Legislative Council President, suggested that Article 79 of the Basic Law could be invoked should a legislator breach the oath, hinting disqualification of the office under specific conditions is an option.²³

3.2 Candidates against national security law hinted to be disqualified

The newly promulgated national security law which entered into force on 30 June 2020 has met with strong opposition, including opposition from prospective candidates in the upcoming Legislative Council election. Secretary for Constitutional and Mainland Affairs Erick Tsang, who oversees local elections, questioned whether candidates opposing the controversial law are fit to run for the office, as they may fail to uphold the Basic Law and pledge allegiance to the HKSAR²⁴ – a requirement stated in Article 6 of the new legislation.

Signatory of the confirmation form introduced in 2016 will be made compulsory to ensure conformity, according to Tam Yiu-chung, member of the NPCSC.²⁵ Leung Chun-ying, Vice-chairman of the National Committee of the Chinese People's Political Consultative Conference and the city's former Chief Executive agreed with the arrangement, adding that a line to explicitly declare opposition to Hong Kong and Taiwan independence is

²² HKMAO, 2020. The HKMAO's comment on the Legislative Council in Hong Kong. Available at: https://www.hmo.gov.cn/xwzx/xwfb/xwfb_child/202004/t20200413_21779.html (Chinese only); Hong Kong Liaison Office, 2020. Liaison Office's comment on malicious filibustering behaviour. Available at: http://big5.locpg.gov.cn/jsdt/2020-04/13/c_1210556359.htm (Chinese only)

²³ Article 79 entitles the president to declare a member of the Council is no longer qualified for the office when he/she is condemned for misbehaviour or breach of oath by a vote of two-thirds of the council members. Hong Kong Free Press, 2020. Hong Kong democrats reject Beijing's warning over legislative stalling tactics as 'interference'. Available at: <https://hongkongfp.com/2020/04/14/hong-kong-democrats-reject-beijings-warning-over-legislative-stalling-tactics-as-interference/>

²⁴ South China Morning Post, 2020. National security law: Hong Kong official drops hints that election candidates could be barred for opposing new legislation. Available at: <https://www.scmp.com/news/hong-kong/politics/article/3089457/national-security-law-hong-kong-official-drops-hints>

²⁵ RTHK, 2020. National security law requires election candidates to pledge allegiance to the HKSAR, Tam said confirmation form is necessary. Available at: <https://news.rthk.hk/rthk/ch/component/k2/1533367-20200622.htm> (Chinese only)

necessary.²⁶

3.3 Person convicted under national security law could be permanently disqualified

Over the past week, officials and legal figures from the pro-establishment camp dropped hints to specify a list of acts in relation to election campaigns that could be deemed illegal under the new law. Upon conviction, one shall be deprived of the right to stand for polls, as stated in Article 35. No precision on the duration of such deprivation has been given in the text, Secretary for Justice Teresa Cheng later confirmed that could be for life.²⁷

Chanting slogans and singing songs with independence message

In a statement issued by the government two days after the promulgation of the law, “liberate Hong Kong, revolution of our times” – the slogan that turned popular since the anti-extradition bill protests broke out last year – was regarded as an expression of support for independence, separating Hong Kong from China, or subverting the state power.²⁸

Secretary for Justice Teresa Cheng then suggested that those in use of the slogan would definitely be barred from running for public office under the new law.²⁹ Maria Tam, Vice-chairwoman of the Basic Law Committee, backed the government’s account by describing the slogan as problematic. She also criticised the EAC for ‘overlooking’ the 2019 District Council Election as the body allowed candidates who had the slogan in their campaign to take part in it.³⁰

“Glory to Hong Kong” – a symbolic anthem that arose from last year’s movement was also targeted. Priscilla Leung, Basic Law Committee member and pro-establishment legislator, considered that the song conveys a strong sense of overthrowing the system. In line with Maria Tam, she believed the eligibility threshold in the 2019 District Council election was too loose.³¹

²⁶ Referred to Leung’s Facebook post on 5 July 2020. Available at: <https://www.facebook.com/leung.cy.108>

²⁷ Ming Pao, 2020. Teresa Cheng: person convicted under national security law could be permanently deprived of the right to stand for election. Available at: <https://news.mingpao.com/pns/%E8%A6%81%E8%81%9E/article/20200705/s00001/1593885508819/%E9%84%AD%E8%8B%A5%E9%A9%8A-%E9%81%95%E5%9C%8B%E5%AE%89%E6%B3%95%E5%8F%AF%E8%A6%96%E7%82%BA%E7%B5%82%E8%BA%AB%E5%A4%B1%E5%8F%83%E9%81%B8%E6%AC%8A>

²⁸ HKSAR, 2020. Government statement. Available at: <https://www.info.gov.hk/gia/general/202007/02/P2020070200869.htm>

²⁹ RTHK, 2020. Priscilla Leung: “Liberation” advocates should be banned from running for office. Available at: <https://news.rthk.hk/rthk/ch/component/k2/1535585-20200703.htm>

³⁰ Ming Pao, 2020. HKBA: Keeping “Liberate” slogan may be disqualified; Maria Tam: District Council election is being “overlooked”, electoral arrangement for LegCo is based on government’s decision. Available at: <https://news.mingpao.com/pns/%E8%A6%81%E8%81%9E/article/20200704/s00001/1593801323806> (Chinese only)

³¹ HK01, 2020. Singing “Glory to Hong Kong” has a sense of overthrowing the system, criticising last election candidates’ eligibility standards were too loose, said Priscilla Leung. Available at: <https://www.hk01.com/%E6%94%BF%E6%83%85/494609/%E5%9C%8B%E5%AE%89%E6%B3%9>

Using veto power entitled to vote down the Budget

Riding on the momentum of the protests, the pro-democracy camp launched a “35-plus campaign” intending to win at least 35 seats in the September election and once elected, to exercise their veto power entitled in the Basic Law over the Budget. A primary was held between 11 and 12 July 2020 as part of the campaign with a high turnout of over 600 thousand votes.

On the day following the primary, Chief Executive Carrie Lam heavily warned against the candidates and organisers, claiming their plan “with the objective of objecting or resisting every policy initiative of the HKSAR government [...] may fall into the category of subverting the state power”³², referencing Article 22 of the national security law. The primary also received condemnation from the Liaison Office under the frame of “colour revolution”.³³

4. Violations of international human rights law

4.1 Right to vote and to stand for election

Barring candidates to run for polls in light of their political view and political affiliation is strictly prohibited under Article 25 of the ICCPR. As the UN Human Rights Committee outlined in the General Comment No.25³⁴, political opinion should not be used as a ground for justification of such restriction. Likewise, limitations by reasons of political affiliation could amount to “unreasonable or discriminatory requirements”.

It is not merely a matter of the right to stand for election, the right to vote is also at stake. Disqualifications of 6 elected legislators detailed above invalidated a sum of at least 185 thousand votes cast upon them (see Appendix I-III), not to mention other candidates who were not even given a chance to stand. Hundreds of thousands of electors were left with limited choices of candidates.

The Committee made it clear that free expression of the will of electors should be safeguarded by ensuring a free choice in an election. Any genuine electoral system must reflect and represent diverse political views in the community. Hong Kong has been urged by the UN to establish a new electoral system in compliance with international standards.³⁵

[5-%E6%A2%81%E7%BE%8E%E8%8A%AC-%E5%94%B1-%E6%A6%AE%E5%85%89-%E6%9C%89%E6%89%93%E5%80%92%E9%AB%94%E5%88%B6%E6%84%8F%E8%AD%98-%E6%89%B9%E5%8D%80%E9%81%B8dq%E6%A8%99%E6%BA%96%E9%AC%86](https://www.scmp.com/video/hong-kong/3093045/hong-kong-leader-carrie-lam-says-primary-election-might-have-violated) (Chinese only)

³² South China Morning Post, 2020. Hong Kong Leader Carrie Lam says primary election might have violated national security law. Available at: <https://www.scmp.com/video/hong-kong/3093045/hong-kong-leader-carrie-lam-says-primary-election-might-have-violated>

³³ Xinhua, 2020. Liaison office of China's central gov't in HKSAR condemns opposition camp for damaging fairness of LegCo election. Available at: http://www.xinhuanet.com/english/2020-07/14/c_139209929.htm

³⁴ UN Human Rights Committee, 1996. General Comments under article 40, paragraph 4 of the International Covenant on Civil and Political Rights - General Comment No.25. CCPR/C/21/Rev.1/Add.7

³⁵ UN Human Rights Committee, 2013. Concluding observations on the third periodic report of Hong Kong, China, adopted by the Committee at its 107th session. CCPR/C/CHN-HKG/CO/3. Available at: <https://www.refworld.org/docid/539031324.html>

4.2 Procedural justice

The arrangement of the confirmation form and the power of Returning Officers to decide the eligibility of candidates appears to be substantive. However, as the decisions often come under short notice, candidates were not given sufficient time to respond; in some cases, no response was allowed.

There is no open and clear procedure to regulate the validation of a candidacy, except resorting to the court.³⁶ Results of election petitions or judicial reviews could take years to reach, by then the legal dispute had become academic. Inadequate appeal channels and the lack of timely remedy against an adverse decision made by the Returning Officer resulted in procedural injustice and diminished the candidates' right to be heard – a fundamental principle of natural justice protected under the ICCPR.

4.3 The principle of non-retroactivity

According to Article 12 of the Hong Kong Bill of Rights Ordinance, “no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under Hong Kong or international law, at the time when it was committed.”

Notwithstanding the principle of non-retroactivity, some candidates were disqualified for breaching the regulation that had yet to exist at the time of oath-taking, or for their previous political belief. Their declaration of changing stance was considered by the Returning Officers as not genuine, which rendered the disqualification as a punishment tool with retroactive powers.

4.4 Right to freedom of speech and expression

Not only did the above disqualifications affect previous elections, but also created a chilling effect, shaping and moulding future candidates to act in a certain way to be eligible. Prospective localist candidate Owen Chow admitted in an interview with the media that he has taken out sensitive wordings, such as “against colonization” and “Hong Kong nation”, from his latest promotion materials for the election campaign.³⁷

³⁶ Hong Kong Bar Association, 2018. Statement of the Hong Kong Bar Association on Disqualification. Available at: <https://www.hkba.org/sites/default/files/20180214%20-%20Statement%20of%20the%20Bar%20Association%20on%20Disqualification%20%28SW%29%20%28WK%29%20%28LL%29%20%2814%20Feb%29%20English%20version%20at%201522.pdf>

³⁷ Citizen News, 2020. Localist candidate Owen Chow removed “against colonization” and “Hong Kong nation” from his election campaign. Available at: https://www.hkcnews.com/article/31582/%E6%B0%91%E4%B8%BB%E6%B4%BE%E5%88%9D%E9%81%B8-%E6%B8%AF%E7%89%88%E5%9C%8B%E5%AE%89%E6%B3%95-%E9%84%92%E5%AE%B6%E6%88%90-31582/%E6%B8%AF%E7%89%88%E5%9C%8B%E5%AE%89%E6%B3%95?_cf_chl_captcha_tk_=28074fa120a75560ba9aa6b88a96a477c6104b49-1594280908-0-AUozQwTypoVX6dd6ACr2tFeHgtE6SIYWlWDYX2pf1zkkui2vstNHMSKIHHfmVS_6pzcM0FmywYcocq8LsnXci9nal6dtfCyAmi1yqiR9m9agYZzXCtjRYQXKlInyYAYyk8stepcnXERidGTy2SKDK_G88a26r7KdKda5wIkGwzf6DdSZ8lclLklUhaJseaZxtplhmg-oSJHn41AHq-xGqheUfiPhzBtuEk9RDwtuiM5rrdi0eDOGj1_kQqpEgpdSISvKuiVVEc-mTybTGbbqfXieozOvuc-etCFIfYcQbhzaS_ren5vOyZPV7oXrq--k2cfgGcRfoWdE_fQ073gK3f-HMAvW6RiUzoYAq0TrilkPQZCzY4Mfe8nG2Mjy-

5. Conclusion and recommendations

Previous incidents of political screening documented in this report constitute a systematic and direct intervention to the elections and are blunt violations of the ICCPR. Of our grave concern are the seemingly arbitrary and unlimited power entitled to the EAC Returning Officers in deciding the eligibility of candidates, inadequate appeal channels and the lack of redress in a timely manner.

With the sweeping new national security law written in vague and overly broad terms enacted, the upcoming Legislative Council election in September is under tremendous threat. Civil Rights Observer shares the view that large scale disqualifications of candidates for alleged violations of the national security law is highly possible, given the recent hints dropped by officials and the pro-Beijing camp.

We urge the Chinese and Hong Kong government to act with restraint and stop screening candidates by restrictions that deviate from international human rights standards. Instead, the authorities should uphold the right to vote and to be elected of Hong Kong residents, the right to freedom of speech and expression of all candidates, and ensure different political views in the community are duly represented in elected bodies.

About Civil Rights Observer

Established in 2014, the Civil Rights Observer works to protect and promote civil and political rights in Hong Kong, with a focus on police abuse of powers. The four pillars of our work are: human rights education, police power monitoring, policy advocacy, and emergency human rights support. More information available at: <https://www.hkcro.org/>.

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(Chinese only)

APPENDIX I: Disqualification in 2016 Legislative Council Election

Invalidation of nomination (July to August, 2016)

Disqualified Candidate	Political Affiliation	Constituency	No. of registered voters ³⁸
1) Andy Chan Ho-tin	Hong Kong National Party	New Territories West	1,086,511
2) Yeung Ke-cheong	Democratic Progressive Party	Kowloon West	488,129
3) Nakade Hitsujiko	None	New Territories West	1,086,511
4) Alice Lai Yee-man	Conservative Party	Hong Kong Island	627,807
5) Edward Leung Tin-kei	Hong Kong Indigenous	New Territories East	975,071
6) James Chan Kwok-keung	None	New Territories East	975,071

Disqualification of elected lawmakers (November to December, 2016)

Disqualified Candidate	Political Affiliation	Constituency	Votes Received ³⁹ / No. of Registered Voters ⁴⁰
1) Baggio Leung Chung-hang	Youngspiration	New Territories East	37,997 / 975,071
2) Yau Wai-ching	Youngsiration	Kowloon West	20,643 / 488,129
3) Edward Yiu Chung-yim	None	Architectural, Surveying, Planning and Landscape	2,491 / 7,371
4) Lau Siu-lai	None	Kowloon West	38,183 / 488,129
5) Leung Kwok-hung	LSD	New Territories East	35,595 / 975,071
6) Nathan Law Kwun-chung	Demosistō	Hong Kong Island	50,818 / 627,807

APPENDIX II: Disqualification of candidates in 2018 Legislative Council By-election

Disqualified Candidate	Political Affiliation	Constituency	No. of Registered Voters ⁴¹
1) Agnes Chow Ting	Demosistō	Hong Kong Island	616,732
2) Ventus Lau Wing-hong	None	New Territories East	994,640
3) James Chan Kwok-keung	None	Kowloon West	487,160
4) Lau Siu-lai	None	Kowloon West	487,160

³⁸ HKSAR, 2016. Voter Registration Statistics. Available at:

<https://www.voterregistration.gov.hk/eng/statistic20161.html#2>

³⁹ HKSAR, 2016. 2016 Legislative Council Election - Election Results. Available at:

https://www.elections.gov.hk/legco2016/eng/rs_gc_GC.html?1594276210439

⁴⁰ HKSAR, 2016. Voter Registration Statistics. Available at:

<https://www.voterregistration.gov.hk/eng/statistic20161.html#2>

⁴¹ HKSAR, 2018. Voter Registration Statistics. Available at:

<https://www.voterregistration.gov.hk/eng/statistic20181.html#1>

APPENDIX III: Result of 2018 Legislative Council By-election

Candidate	Political Affiliation	Constituency	Votes Received / No. of Registered Voters ⁴²
1) Au Nok-hin	None	Hong Kong Island	137,181 ⁴³ / 616,732
2) Rebacca Chan Hoi-yau	DAB	Kowloon West	106,457 ⁴⁴ / 487,160
3) Gary Fan Kwok-wai	Neo Democrats	New Territories East	183,762 ⁴⁵ / 994,640

*Note: The captioned candidates were deemed unduly elected by the High Court following wrongful disqualification of elected legislator they replaced. They filed appeals to the Court of Final Appeal, applications of Au and Fan were rejected; that of Chan remains pending.

APPENDIX IV: Disqualification of candidate in 2019 District Council Election

Candidate	Political Affiliation	Constituency	No. of Registered Voters ⁴⁶
1) Joshua Wong Chi-fung	Demosistō	South Horizons West	9,325

⁴² HKSAR, 2018. Voter Registration Statistics. Available at:

<https://www.voterregistration.gov.hk/eng/statistic20181.html#1>

⁴³ HKSAR, 2018. 2018 Legislative Council By-election - Election Result (Hong Kong Island). Available at: https://www.elections.gov.hk/legco2018by/eng/rs_gc_LC1.html

⁴⁴ HKSAR, 2018. 2018 Legislative Council Kowloon West Geographical Constituency By-election – Election Result. Available at:

<https://www.elections.gov.hk/legco2018kwby/eng/results.html?1594285515418>

⁴⁵ HKSAR, 2018. 2018 Legislative Council By-election - Election Result (New Territories East). Available at: https://www.elections.gov.hk/legco2018by/eng/rs_gc_LC5.html

⁴⁶ HKSAR, 2019. Age and Sex profile of registered electors by 452 District Council Constituency Areas in 2019 (Southern District). Available at:

https://www.voterregistration.gov.hk/pdf/Age%20and%20Sex%20profile%20of%20registered%20electors%20by%20452%20District%20Council%20Constituency%20Areas%20in%202019PR_D.pdf