

## Brief Report on Disqualifications of 2020 Legislative Council Election in Hong Kong

August, 2020

### Background

A day before the announcement of a year-long postponement of the Legislative Council Election originally scheduled for 6 September 2020, 12 candidates were disqualified by the Returning Officers (ROs), marking the largest scale of disqualification ever in the city's history. The government, in a statement issued on the same day<sup>1</sup>, supported the ROs' decisions and warned that more nominations would possibly be invalidated.

Nominations of the 12 candidates (see Appendix I for details) were deemed invalid by the ROs invoking a court judgment<sup>2</sup> that specifies the eligibility of candidates. In addition to pledging allegiance to the HKSAR, the court extended the requirement for those running for the poll from having an intention to “uphold” the Basic Law to “embrace”, “support and promote it”, perceived by some members of the public as a move of further tightening on candidacy. While the judgement was handed down in 2018, it has never been put forward by the ROs as a justification for disqualification in various elections since then, with this election an exception.

The 12 disqualified all belong to the pro-democracy camp, 9 of whom are representatives with high votes received in the unofficial primaries which took place in early July. Altogether 298,000 electors cast votes upon them (see Appendix II).

### Concerns and recommendations

In the scrutiny of the disqualification reasonings, Civil Rights Observer identifies two key patterns of the disqualifications, based on candidates' political doctrine and political affiliation and examines the elemental arbitrariness in applying criteria to consider candidates' eligibility. In combination, they present discrimination against individual political parties and candidates of dissent opinion, curtailing them of their rights to freedom of association, rights to participate in public affairs, rights to stand for elections and rights to vote – fundamental human rights which are stipulated in the International Covenant on Civil and Political Rights (ICCPR).

---

<sup>1</sup> HKSAR, 2020. HKSAR Government supports Returning Officers' decisions to invalidate certain nominations for Legislative Council General Election. Available at:

<https://www.info.gov.hk/gia/general/202007/30/P2020073000481.htm>

<sup>2</sup> Chan Ho Tin v Lo Ying-Ki Alan and others, HCAL 162/2016, [2018] HKCFI 345

Of our equal concern is that these reasonings, ranging from soliciting foreign interference in relation to the city's affairs, proposing to veto the Budget, to advocating Hong Kong independence or self-determination, appears to be precisely crafted and tailor-made according to the legal framework of the sweeping National Security Law which targets and aims to criminalise such acts. As some ROs admitted in their letters to the disqualified candidates, the newly enacted law is “relevant” to their decision to some extent<sup>3</sup>.

As a local human rights organisation, Civil Rights Observer approaches the matter from a human rights perspective and remains impartial to any political positions of the candidates involved. We, in line with UN Special Rapporteurs, are of a view that the government should guarantee an equal footing for all standing candidates as well as a free expression of the will of electors in elections. Courts should only be the last resort for disputes on disqualifications. Instead, the government should take up the responsibility to immediately refrain itself from further interfering with the election through disqualifying candidates that could otherwise stand for the poll.

## **Key patterns of disqualification reasonings**

### **1. Based on candidates' political doctrine**

Reflected in the 11 candidates' reasonings gathered (excluding Cheng Kam Moon who wishes not to publicise the notice of decision he received from the RO), all disqualifications were grounded on political opinion of the candidates, be that in relation to current or previous acts or speeches with the earliest reference traced back to 2016.

#### Objecting in principle to the enactment of the National Security Law

*Involved candidates: 7 (see Appendix I for details of figures listed here and below in each section)*

#### *Significant example:*

Gwyneth Ho was accused of her subscription to a public joint statement of the localist resistance camp dated 15 July that expressed opposition to the controversial National Security Law, being the only reason for her disqualification. According to the RO, her unequivocal position against such law was very possibly a breach of the requirement to embrace, support and promote the principle of “one country, two systems” and the Basic Law.

---

<sup>3</sup> Benjamin Mok, 2020. Notice of decision as to validity of nomination of Dennis Kwok from Civic Party.

Ho disagreed that she in principle objected to the law. In her reply to the RO, she clarified what she opposed was the unilateral enactment and promulgation of the law, contravening the independent judiciary and fundamental rights enshrined by the Basic Law<sup>4</sup>. The reply, however, was refuted by the RO as solely for securing the eligibility of her nomination and therefore not genuine and true. The candidacy of 9 other candidates who had co-signed the captioned statement was not affected.

#### Soliciting foreign intervention in HKSAR's affairs

*Involved candidates: 9*

##### *Significant example:*

The nomination of the incumbent legislator Kenneth Leung was invalidated based on his participation in a roundtable held in the US in March, with a focus on sanctions against Hong Kong SAR under the Hong Kong Human Rights and Democracy Act. The RO described his role to the imposition of sanctions as “supportive or assistive” by being a moderator in a subsequent press conference concluding the trip, even though he said nothing about sanctions.

In fact, he and other candidates accused of inviting foreign sanctions have either declared in their reply to the ROs that they had not promoted sanctions nor appealed to other governments; or had no plans to do so in the future. The ROs remained unconvinced.

#### Vetoing legislative proposals and budgets for protest's demands to accede

*Involved candidates: 7*

##### *Significant example:*

Kwok Ka-ki and his three fellow members from Civic Party were considered having an intention to “abuse” the constitutional role and function of the Legislative Council by means of voting down any proposals introduced by the government, including the Budget, to get the anti-extradition bill protest's demands acceded.

Following the recurring pattern observed in other cases, the RO cited Kwok's

---

<sup>4</sup> The National Security Law is introduced by the Standing Committee of the National People's Congress (NPCSC) and applied to Hong Kong directly under Annex III of the Basic Law without consulting with the legislature.

presence at a press conference on the announcement of the plan by his party as evidence, claiming that his failure to dissociate himself from it was indeed a support of the plan. There were other political parties and individual candidates who openly expressed their agreement with the veto plan, but they were not challenged by the ROs.

#### Advocating Hong Kong independence or self-determination

*Involved candidates: 3*

##### *Significant examples:*

The slogan “liberate Hong Kong, revolution of our times” displayed in a picture on Tiffany Yuen’s Instagram rendered the RO to question her acceptance of China’s sovereignty over Hong Kong, in light of its connotation of “Hong Kong independence” underscored in a government statement issued on 2 July<sup>5</sup>. While Yuen indicated that neither separation nor subversion did she advocate and had temporarily removed the picture from her account, the RO maintained that such removal was “with reluctance” and the “continuous display” of the picture since January signified her political stance of overthrowing the current government.

Similar tactics of placing disqualification grounds on previous online posts also appeared in the case of Joshua Wong, founding member of the now-defunct group Demosistō. An article titled “Our road map to self-determination: democratic self-determination embarked right here” uploaded back in June 2016 on the website of Demosistō was picked up by the RO, who regarded the non-deletion of the article as an indication of Demosistō’s and Wong’s present subscription of the ideology.

## **2. Based on candidates’ political affiliation**

*Involved candidates: 3*

Apart from political doctrine, 3 were disqualified partly because of their existing or former affiliation with particular political parties. The ROs either heavily relied on the stance or acts of the candidates’ parties other than citing that of the candidates, or unilaterally considered the candidates continue sharing standpoints of the parties from which they have already withdrawn.

---

<sup>5</sup> HKSAR, 2020. The Hong Kong government stated that the slogan connotes Hong Kong independence, separating Hong Kong from China, or subverting the state power. Available at: <https://www.info.gov.hk/gia/general/202007/02/P2020070200869.htm>

*Significant examples:*

In the letter the RO issued to Cheng Tat-hung from Civic Party, press releases and Facebook posts published under the name of Civic Party were mentioned to justify the decision of his disqualification. The RO went on and suggested that Cheng agreed with Civic Party's proposal to veto the Budget and interactions with members of the US Congress. Such presumption was made merely based on his role as a member of the Executive Committee.

While Joshua Wong was seen as pursuing in his own capacity the objective of "democratic self-determination" – a position that the RO found "cardinal" in Demosisto's political agenda, despite that Wong has already resigned before the disbandment of the party on 30 June.

### **Violations of human rights principles**

#### Unfair treatment disavouring certain political parties

Political party has been recognised as a "subset of associations" protected in the right to freedom of association stipulated in article 22 of the ICCPR, according to the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association. In his words, "no political party should be discriminated against, unfairly advantaged or disadvantaged", including under the context of elections<sup>6</sup>.

Nonetheless, some examples documented above are blunt disqualifications on the ground of political affiliation. The inconsistent application of criteria on screening candidates also suggests that members of particular political parties were targeted, as in the case of Civic Party – the mostly affected political party, 4 out of 6 of its candidates were barred from running for office for reasons that are not exclusively applicable to them. There is an arbitrariness in the decisions made without logical justification.

#### Discrimination against politicians of different views

Disqualifying candidates in light of their political view could amount to imposing "unreasonable or discriminatory requirements" outlined in the General Comment No.25 by the UN Human Rights Committee. Enshrined in the provisions of the ICCPR, one has the freedom to pursue different political ideologies, even those that are "unpopular with the authorities", for the sake of maintaining pluralism in a

---

<sup>6</sup> Maina Kiai, 2013. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association to the General Assembly, United Nations. A/68/299, para 33.

democratic society<sup>7</sup>.

The pushback on certain political views would not only risk rendering the Legislative Council as an echo-chamber of the government, but also call into question whether the disqualification is a punishing tool with retroactive powers to stifle dissents.

#### Disrespect of the public will

Elections are important avenues for the peaceful expression of the public will. Article 21 of the Universal Declaration of Human Rights stated that the will of the people shall be “the basis of the authority of government”.

As the landslide winning of almost 90% of seats in the last District Council election<sup>8</sup> and the high turnout of over 600 thousand votes for the primary in July<sup>9</sup> reflect, pro-democracy and localist candidates gain a popularity among electorates in Hong Kong. The effect of their disqualifications is equivalent to ignoring a tremendous public opinion. In particular, the will of at least tens of thousands of electors who mandated the 9 disqualified candidates in the primaries as their representatives in the Council was disrespected.

#### Unreasonable opportunity to respond

The court confirmed in an election petition case<sup>10</sup> that procedural fairness should be upheld in the process of making an eligibility determination. Nominees concerned must be given a reasonable opportunity to respond to an adverse decision by the ROs.

Although the 12 candidates were given a chance to respond to the ROs' questions, they were notified at short notice and were required to reply within 24 hours over the weekend, outside normal office hours. In some constituencies, the response timeframe differed between nominees. The arrangement under such a pressing and unequal manner fails to guarantee a meaningful response and may render the opportunity to respond as a mere formality in the electoral procedure.

---

<sup>7</sup> A/68/299, para. 37-38.

<sup>8</sup> RTHK, 2019. Opposition wins almost 90 percent of seats. Available at: <https://news.rthk.hk/rthk/en/component/k2/1494295-20191125.htm>

<sup>9</sup> Hong Kong Free Press, 2020. 'Hong Kong people made history again': Over 600,000 vote in democrats' primaries as co-organiser hails 'miracle' turnout. Available at: <https://hongkongfp.com/2020/07/12/hong-kong-people-made-history-again-over-600000-vote-in-democrats-primaries-as-co-organiser-hails-miracle-turnout/>

<sup>10</sup> Chan Ho Tin v Lo Ying-Ki Alan and others, HCAL 162/2016, [2018] HKCFI 345, para. 101.

### Lack of effective appeal mechanism

Disqualification of candidates often leads to electoral disputes. The previous experience exposed the absence of an appeal mechanism in handling these disputes in a timely fashion. Affected candidates were left with no choice but to election petition, the only available resort for seeking a remedy.

While three candidates successfully won their cases in recent years, the court could only overturn the disqualification decision. Roots causes of the disqualifications remained unaddressed and the government, which allowed the wrongful disqualification to take place in the first place, bore no responsibility. An effective and independent system of appeals is required to democratically solve disputes from elections<sup>11</sup> and to prevent future disqualifications on unreasonable grounds.

### **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/>.

Contact: [info@hkcro.org](mailto:info@hkcro.org)

Website: [www.hkcro.org](http://www.hkcro.org)

---

<sup>11</sup> A/68/276, para. 12.

### Appendix I: List of Disqualified Candidates with Respective Reasonings

Disqualified Candidates (Political Affiliation; Constituency) <sup>12</sup>	Opposition to NSL (7 people)	Soliciting Foreign Intervention (9 people)	Vetoing Proposals and Budgets (7 people)	Advocating HK Independence/ Self-Determination (3 people)	Based on Political Affiliation (3 people)
Cheng Tat-hung (Civic Party; Hong Kong Island)	✓	✓	✓		✓
Fergus Leung (Independent; Hong Kong Island)	✓	✓	✓	✓	
Tiffany Yuen (Democrats; Hong Kong Island)	✓			✓	
Joshua Wong (Democratic Camp; Kowloon East)	✓	✓	✓	✓	✓
Gwyneth Ho (Democrats; New Territories East)	✓				
Ventus Lau (Localist; New Territories East)	✓	✓	✓		
Alvin Yeung (Civic Party; New Territories East)		✓	✓		
Kwok Ka-ki (Civic Party; New Territories West)		✓	✓		✓
Lester Shum (None; District Council (second))	✓	✓			
Dennis Kwok (Civic Party; Legal)		✓	✓		
Kenneth Leung (The Professionals Guild; Accountancy)		✓			
Alvin Cheng (Civic Passion; Hong Kong Island)	N/A *Alvin Cheng does not disclose the notice of decision issued by the RO				

<sup>12</sup> HKSAR, 2020. 2020 Legislative Council General Election – Nomination of Candidates. Available at: <https://www.elections.gov.hk/legco2020/eng/nominat2.html?1597206023467>

**Appendix II: Results of 9 Disqualified Candidates in Pro-democracy Primaries**

<b>Disqualified Candidate</b>	<b>Political Affiliation</b>	<b>Constituency</b>	<b>Votes Received / Total Valid Votes<sup>13</sup></b>
Cheng Tat-hung	Civic Party	Hong Kong Island	11,090 / 90,427
Fergus Leung	Independent	Hong Kong Island	14,743 / 90,427
Tiffany Yuen	Democrat	Hong Kong Island	19,844 / 90,427
Joshua Wong	Democratic Camp	Kowloon East	31,398 / 92,222
Gwyneth Ho	Democrats	New Territories East	26,802 / 164,453
Ventus Lau	Localist	New Territories East	26,707 / 164,453
Alvin Yeung	Civic Party	New Territories East	25,366 / 164,453
Kwok Ka-ki	Civic Party	New Territories West	13,354 / 176,537
Lester Shum	None	District Council (second)	129,074 / 529,980
Dennis Kwok	Civic Party	Legal	N/A
Kenneth Leung	Professionals Guild	Accountancy	*These candidates did not take part in the primaries
Alvin Cheng	Civic Passion	Hong Kong Island	

<sup>13</sup> Apple Daily, 2020. Results of pro-democracy primaries. Available at: <https://hk.appledaily.com/local/20200715/ZN4ZRZ2TCCGRHNGBKBNAMKZZPQ/> (Chinese only)