

**Mandate of the Special Rapporteur on the promotion and protection of human rights and
fundamental freedoms while countering terrorism**

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(Please use this reference in your reply)

14 February 2022

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolution 40/16.

In this connection I offer the following comments on the applicability of the International Covenant on Civil and Political Rights (“ICCPR” or the “Covenant”) to law enforcement and judicial activity carried out under The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (“National Security Law” or “NSL”).¹ I note that the ICCPR is applicable to the Hong Kong Special Administrative Region (“HKSAR”) pursuant 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”),² the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (“Basic Law”),³ and the unilateral declaration of the People’s Republic of China (“PRC”) to the UN Secretary-General.⁴ I conclude that as a matter of international and domestic law, the Covenant applies to the implementation of the NSL, including where individuals are detained in the HKSAR and subsequently transferred to mainland PRC for interrogations, prosecutions, and judicial proceedings.

I provide this assessment to offer technical assistance and guidance on important legal issues relevant to my mandate and to ensure the full applicability of relevant human rights standards in your Excellency’s national practice. I, jointly with other Special Procedures, have previously raised concerns that the measures adopted in the National Security Law do not conform with your Excellency’s Government’s international legal obligations, in particular the Universal Declaration of Human Rights and the ICCPR ([CHN 13/2020](#); [CHN 17/2020](#)). My specific findings are that the law lacks precision in key respects, infringes on certain fundamental rights, and may not meet the required thresholds of necessity, proportionality, and non-discrimination under international law. I thank your Excellency’s Government for the reply received on [30 October 2020](#) to CHN 17/2020, and for the ongoing constructive and sustained dialogue on security and counter-terrorism regulation more broadly.

¹ China, *The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region* (30 June 2020). [hereinafter NSL].

² United Nations, *Treaty Series*, vol. 1399, No. 23391 (1984).

³ China, *Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China* (4 April 1990), art. 39.

⁴ United Nations Treaty Collection, Depository, ICCPR signatories, n. 6 (“Upon resuming the exercise of sovereignty over Hong Kong, China notified the Secretary-General that the Covenant will also apply to the Hong Kong Special Administrative Region”). Available at https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=en&mtdsg_no=IV-4&src=IND#4 (accessed on 7 February 2022).

Background

The National Security Law was passed by the National People's Congress Standing Committee and promulgated on 1 July 2020. It went into force on the same day. The law's adoption followed a formal decision on 28 May 2020 authorizing the Standing Committee to draft a national security law for the HKSAR. As noted above, the decision was the subject of prior communications by Special Procedures. The law regulates four distinct categories of offences: secession, subversion, terrorism, and collusion with a foreign country or with external elements to endanger national security.

This communication addresses the implications of the removal of persons detained in the HKSAR and subsequently transferred to mainland PRC for interrogations, prosecutions, or judicial proceedings – as provided under the NSL. I confirm that such subsequent proceedings are equally subject to the ICCPR, as applicable in the HKSAR, even though the PRC itself is not a party to the Covenant.

The ICCPR Protects Individuals in a State Party's Territory and when that State Exercises Authority over an Individual outside that Territory

Individuals are the beneficiaries of the rights enumerated in the ICCPR.⁵ The protections to individuals must be applied without distinction.⁶ Arbitrary deprivation of the rights protected in the ICCPR is not consistent with a State's obligations under the ICCPR⁷ – including pursuant to article 2, paragraph 1 of the ICCPR, which obliges States parties to “undertake[] to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁸

It is well-settled that article 2 of the Covenant applies broadly both to individuals physically in a State's territory and to individuals in the custody or control of the State outside of its territory. As the Human Rights Committee has authoritatively elaborated in its General Comment 31:

States Parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to **anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party.**⁹

⁵ Human Rights Committee, General Comment No. 31 on The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (2004), CCPR/C/21/Rev.1/Add.13, para. 9.

⁶ The Human Rights Committee's jurisprudence on protecting all ICCPR rights uniformly is established. For example, General Comment No. 16 on article 17 (Right to Privacy) (1988) para. 3 and 4, supports, by negative inference, that application of ICCPR rights must be consistent by stating that any interference with the right to privacy must be consistent with the other guarantees of the Covenant.

⁷ Cf. Human Rights Committee, General Comment No. 27 on article 12 (Freedom of Movement) (1999) (CCPR/C/21/Rev.1/Add.9.) para. 21: “In no case may a person be arbitrarily deprived of the right to enter his or her own country. The reference to the concept of arbitrariness in this context is intended to emphasize that it applies to all State action, legislative, administrative, and judicial; it guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.”

⁸ ICCPR, art. 2.

⁹ Human Rights Committee, General Comment No. 31, para. 10.

The Committee has further stated that:

The article 2 obligation requiring that States Parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed. The relevant judicial and administrative authorities should be made aware of the need to ensure compliance with the Covenant obligations in such matters.¹⁰

The International Court of Justice has affirmed this interpretation. Upon consideration of the object, purpose, and *travaux préparatoires* of the ICCPR, as well as the Human Rights Committee's jurisprudence, the Court found that in addition to applying to activities in the State's national territory, the ICCPR "is applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory."¹¹

The internal State structure – including decentralization, federalization, and delegation – cannot in any way reduce the direct responsibility of the State party's Government to fulfill its human rights obligations within its jurisdiction.¹² As clearly stipulated in article 50 of the ICCPR, State obligations under the Covenant "shall extend to all parts of federal states without any limitations or exceptions." The Human Rights Committee has clarified that this means that "[a]ll branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the State Party."¹³

Based on the foregoing, States cannot "escape from their [ICCPR] obligations"¹⁴ by virtue of the internal or cross-boundary transfer of persons. First and foremost, as quoted above, the very act of extradition or removal of a person to another territory – "where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed"¹⁵ – plainly constitutes a violation of article 2 of the Covenant. In this manner, the removing State party is under a continued obligation to ensure compliance with the ICCPR vis-à-vis the transferred

¹⁰ *Ibid.*, para. 12.

¹¹ International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion* of 9 July 2004, paras. 109-111 [hereinafter Wall Advisory Opinion].

¹² Cf. Committee on the Rights of the Child, General Comment No 5. on General measures of implementation of the Convention on the Rights of the Child (2003) CRC/GC/2003/5. See also, Human Rights Committee, General Comment No. 31 para. 4; *Ballantyne, Elizabeth Davidson, and Gordon McIntyre v. Canada*, CCPR/C/47/D/359/1989 and CCPR/C/47/D/385/1989/Rev.1; *Coleman v. Australia*, CCPR/C/87/D/1157/2003; Concluding observations: Germany (2004), CCPR/CO/80/DEU, para. 12; Concluding observations: Switzerland (2009), CCPR/C/CHE/CO/3, para. 6; Concluding observations: Mexico (2010), CCPR/C/MEX/CO/5, para. 5; Concluding observations: Argentina (2010), CCPR/C/ARG/CO/4, para. 8; Report of the Human Rights Committee, Volume I, Supplement No. 40, Concluding observations: Australia (2000), A/55/40, paras. 516–17.

¹³ Human Rights Committee, General Comment No. 31, para. 4. Cf. Committee on the Rights of the Child, General Comment No 5.

¹⁴ ICJ, *Wall Advisory Opinion*, para. 109 (assessing the intent of the drafters of the Covenant).

¹⁵ *Ibid.*, para. 12.

persons, even when the person is moved to territory outside its jurisdiction or effective control.

Second, the fundamental rights and freedoms guaranteed under the ICCPR attach to any person, who is in a State party's territory *and/or* under the State party's jurisdiction or effective control. The individual entitlement to such fundamental rights and protections guaranteed by the ICCPR cannot be stripped by the mere act of transfer. Allowing a State party to transfer persons in order to circumvent its ICCPR obligations would squarely contravene the object and purpose of article 2 of the Covenant and the obligation to perform under the Covenant in good faith.¹⁶ It would also undermine the equality between State Parties and the effectiveness of the Covenant as a whole.

The ICCPR is Applicable to the HKSAR

The ICCPR plainly applies to the HKSAR pursuant to the Joint Declaration, the PRC's unilateral declaration to the UN Secretary-General, and the Basic Law of the HKSAR. The Joint Declaration provides in relevant part that "[i]nternational agreements to which the [PRC] is not a party but which are implemented in Hong Kong may remain implemented in the [HKSAR],"¹⁷ and that "[t]he provisions of the [ICCPR] ... as applied to Hong Kong shall remain in force".¹⁸ The phrase "as applied to Hong Kong" means that the United Kingdom's reservations, understandings, and declarations regarding the scope of application of the ICCPR to Hong Kong, limited as they may be, remain in effect.

Apart from its obligations under the Joint Declaration, the PRC signed the ICCPR on 5 October 1998 and is thus under an obligation generally "to refrain from acts which would defeat the object and purpose" of the Covenant.¹⁹ Moreover, these obligations also and separately follow from the unilateral declaration made to the United Nations Secretary-General: the United Nations Treaty Collection notes that "[u]pon resuming the exercise of sovereignty over Hong Kong, China notified the Secretary-General that the Covenant will also apply to the [HKSAR]."²⁰ Such a unilateral declaration "may have the effect of creating legal obligations" under international law.²¹

Under domestic law, the Basic Law of the HKSAR, "the constitutional document for the HKSAR,"²² further provides 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.

¹⁶ United Nations, Vienna Convention on the Law of Treaties, *Treaty Series*, vol. 1155, art. 26 ("Every treaty in force is binding upon the parties to it and must be performed by them in good faith.").

¹⁷ United Nations, *Treaty Series*, vol. 1399, No. 23391, Annex 1, Elaboration by the Government of the People's Republic of China of its Basic Policies Regarding Hong Kong, art. XI.

¹⁸ *Ibid.*, art. XIII.

¹⁹ Vienna Convention on the Law of Treaties, art. 18.

²⁰ ICCPR, Chapter IV, Human Rights, endnote 6.

²¹ See International Court of Justice, *Nuclear Tests (Australia v. France)*, Judgment of 20 December 1974, para. 43.

²² The Government of the HKSAR of the PRC, "Basic Law, Some Facts about the Basic Law", available at <https://www.basiclaw.gov.hk/en/basiclaw/facts.html>, (accessed on 7 February 2022).

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.²³

The Hong Kong Bill of Rights Ordinance gives effect in local HKSAR law to the substantive rights guaranteed in the ICCPR.²⁴

The Human Rights Committee has also opined on the topic and has taken the view that the ICCPR is applicable to the HKSAR both because ICCPR obligations generally transfer to a successor State²⁵ and because the Joint Declaration explicitly provides for the continued application of the ICCPR. The Committee Chairperson's statement in 1995 on this topic states in pertinent part as follows:

The Human Rights Committee - dealing with cases of dismemberment of States parties to the International Covenant on Civil and Political Rights - has taken the view that human rights treaties devolve with territory, and that States continue to be bound by the obligations under the Covenant entered by the predecessor State. Once the people living in a territory find themselves under the protection of the International Covenant on Civil and Political Rights, such protection cannot be denied to them by virtue of the mere dismemberment of that territory or its coming within the jurisdiction of another State or of more than one State.

However, the existence and contents 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 make it unnecessary for the Committee to rely solely on the foregoing jurisprudence as far as Hong Kong is concerned. In this regard, the Committee points out that the parties to the Joint Declaration have agreed that all provisions of the Covenant as applied to Hong Kong shall remain in force after 1 July 1997. These provisions include reporting procedures under article 40. As the reporting requirements under article 40 of the International Covenant on Civil and Political Rights will continue to apply, the Human Rights Committee considers that it is competent to receive and review reports that must be submitted in relation to Hong Kong.²⁶

²³ China, *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* (4 April 1990), art. 39.

²⁴ China, *Hong Kong Bill of Rights Ordinance*, (8 June 1991). See Human Rights Committee, Second Periodic Report, Hong Kong Special Administrative Region of the People's Republic of China (2005), CCPR/C/HKG/2005/2, para. 36 ("The Hong Kong Bill of Rights Ordinance ... was enacted in June 1991 specifically to give effect in local law to the provisions of the ICCPR as applied to Hong Kong.")

²⁵ Peter Malanczuk, *Max Planck Encyclopedias of International Law*, Hong Kong, Feb. 2010, para. 82 ("Thus, with respect to the ICCPR, when Hong Kong returned to China, under a—in this case unusual—rule of state succession[,] China entered into the position of the UK, limited to the territory of Hong Kong.")

²⁶ Human Rights Committee, Concluding observations: United Kingdom of Great Britain and Northern Ireland relating to Hong Kong (1995), CCPR/C/79/Add.57, Statement by the Chairperson on behalf of the Human Rights Committee relating to the consideration of the part of the fourth Periodic Report; Human Rights Committee, General Comment No. 26 on Continuity of Obligations (1997), CCPR/C/21/Rev.1/Add.8/Rev.1, para. 4 ("The Human Rights Committee has consistently taken the view, as evidenced by its long-standing practice, that once the people are accorded the protection of the rights under the Covenant, such protection devolves with territory and continues to belong to them, notwithstanding change in government of the State party, including dismemberment in more than one State or State succession or any subsequent action of the State party designed to divest them of the rights guaranteed by the Covenant.").

The ICCPR is Applicable to the NSL

As explained above, pursuant to article 2 of the ICCPR, States parties are obliged to “respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction” – or “under the power or effective control of that State Party.”²⁷ The ICCPR is undoubtedly applicable to the NSL, which applies in the HKSAR and to residents of or individuals who are subject to the jurisdiction of the HKSAR. Indeed, the NSL, which establishes in the HKSAR the crimes of secession, subversion, terrorist activities, and collusion to endanger national security, is entirely focused on addressing alleged national security threats within the HKSAR, and it relies on HKSAR institutions for its implementation.²⁸

The ICCPR applies to all of the conduct stipulated under the NSL. There are three provisions regarding the “scope of application” of the NSL: (1) article 36 applies to individuals who commit an offense under the NSL in the HKSAR or on a vessel or aircraft registered in the HKSAR; (2) article 37 applies to permanent residents of the HKSAR who commit an offense under the NSL outside of the HKSAR; and (3) article 38 purports to apply the NSL to non-permanent residents of the HKSAR who allegedly commit an offense under the law from outside of the HKSAR.²⁹ Because the NSL applies to offenses physically committed either on HKSAR territory or property or by residents under the HKSAR’s jurisdiction, the ICCPR applies.

Moreover, the NSL relies on HKSAR institutions for its implementation. Article 8 of the NSL stipulates that enforcement is to be carried out by “the law enforcement and judicial authorities of the Hong Kong Special Administrative Region”³⁰ – i.e., bodies and institutions physically inside the HKSAR. The ICCPR would therefore be applicable to any interrogations or prosecutions physically undertaken in the HKSAR, regardless of where the alleged offense takes place or under which NSL article the alleged offense arises.

By its own terms, the NSL confirms that the ICCPR is applicable. Article 1 states that the NSL is enacted “in accordance with ... the Basic Law of the Hong Kong Special Administrative Region”, which, as discussed above, enshrines the protections of the ICCPR in the HKSAR.³¹ More explicitly, article 4 of the NSL provides:

The rights and freedoms, including the freedoms of speech, of the press, of publication, of association, of assembly, of procession and of demonstration, which the residents of the Region enjoy under the Basic Law of the Hong Kong Special Administrative Region and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong, shall be protected in accordance with the law.³²

²⁷ Human Rights Committee, General Comment No. 31, para. 10.

²⁸ *Ibid.*

²⁹ The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism reserves the right to comment on the issue of the extraterritorial reach posed by these provisions.

³⁰ NSL, art. 8; see also *id.* arts. 12-19.

³¹ NSL, art. 1.

³² NSL, art. 4.

The HKSAR has further confirmed that the ICCPR is applicable to the NSL and its enforcement in its submissions to the UN Human Rights Committee. In discussing article 4 of the NSL, it stated:

Although the human rights guarantees have been provided in Chapter III of the Basic Law, article 4 of the NSL clearly stipulates that human rights shall be respected and protected in safeguarding national security in the HKSAR, and reaffirms that the rights and freedoms which HKSAR residents enjoy under the Basic Law and the provisions of the ICCPR and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall be protected in accordance with the law. Any measures or enforcement actions taken under the NSL must observe this principle.³³

The ICCPR is Still Applicable if NSL Prosecutions of HKSAR Individuals Occur on Mainland PRC

The NSL established an “Office for Safeguarding National Security of the Central People’s Government in the Hong Kong Special Administrative Region” (the “Office”).³⁴ Activities of the Office, which potentially include prosecuting certain national security cases raising heightened concern,³⁵ “shall not be subject to the jurisdiction of the [HKSAR].”³⁶ Although HKSAR authorities may not exercise jurisdiction over this Office, the NSL explicitly provides that “staff of the Office shall abide by the laws of the Hong Kong Special Administrative Region,”³⁷ which would include the Basic Law and, therefore, the ICCPR rights belonging to individuals in the HKSAR. Indeed, article 50 of the NSL also provides that the Office “shall not infringe upon the lawful rights and interests of any individual or organization,” which, for individuals in the HKSAR, would include their ICCPR rights.

If the Office exercises jurisdiction over a case under NSL article 55, the “Supreme People’s Procuratorate shall designate a prosecuting body to prosecute it, and the Supreme People’s Court shall designate a court to adjudicate it.”³⁸ Thus, the NSL may allow for the transfer of a case initiated in the HKSAR to a prosecuting body or court in mainland PRC for adjudication. There is no extradition agreement in operation between the HKSAR and mainland PRC – this is the first enacted law that would allow for such a transfer of a prosecution.

The protections of the ICCPR would continue to apply where an investigation under article 55 is undertaken by the Office and then transferred to a prosecutorial body or court outside of HKSAR (*i.e.*, in mainland PRC) pursuant to article 56 of the NSL. As quoted above, under domestic law, the NSL guarantees that the individual’s ICCPR rights “shall be protected” and the HKSAR stated in its recent submission to the Committee that “[a]ny measures or enforcement actions taken under the NSL must observe this principle.”³⁹

³³ Human Rights Committee, Replies of Hong Kong, China to the List of Issues in Relation to Its Fourth Periodic Report (2021) CCPR/C/CHN-HKG/RQ/4, para. 9; see also para. 35 (stating that “[p]olice officers [implementing the NSL] would have to discharge their duties in accordance with the laws of HKSAR,” which would include the ICCPR protections as enshrined in the Basic Law).

³⁴ NSL, art. 48.

³⁵ NSL, art. 55.

³⁶ NSL, art. 60.

³⁷ NSL, art. 50.

³⁸ NSL, art. 56.

³⁹ Human Rights Committee, Replies of Hong Kong, China to the List of Issues in Relation to Its Fourth Periodic Report (2021) CCPR/C/CHN-HKG/RQ/4, para. 9.

Moreover, under international law, the PRC cannot “escape” application of the ICCPR by allowing a transfer of an individual from the HKSAR to mainland PRC. To do so would amount to arbitrary⁴⁰ and potentially discriminatory application of the ICCPR, a practice inconsistent with the object and purpose of the treaty. The PRC is bound to ensure that the ICCPR rights of such an individual are protected pursuant to its obligations under the Joint Declaration and article 2 of the ICCPR – as applicable in the HKSAR. Even if the PRC is fully in control of the Office, since the Office is located in the HKSAR, it must abide by the ICCPR pursuant to the Joint Declaration, the text of the NSL, and the Basic Law. The PRC’s affirmation of the continued application of the ICCPR to HKSAR without reservation confirms this interpretation.

In its activities on mainland PRC, the PRC must also “refrain from acts which would defeat the object and purpose” of the ICCPR.⁴¹ If the protections of the Covenant were rendered inoperative simply because the detainees had been transferred to the mainland, and the full scope of due process, fair trial rights as well as the protection of the Covenant were not applied, this would run counter to the object and purpose of the Covenant.

Practical Implications of Transfers from the HKSAR to Mainland PRC under NSL

Any act which gives rise to a criminal process under the NSL in the HKSAR, and any individuals who are then charged with offences arising under the legislation, are fully and without abrogation entitled to the right to fair trial as guaranteed under article 14 of the ICCPR in every process and every stage of process that follows (arrest, detention, charging, trial and sentencing). Should a person be transferred to mainland PRC under this legislation, all processes, including any acts of cooperation between agencies of HKSAR and government agencies (for example any established coordination mechanism under article 53 of the legislation), must be ICCPR-compliant.

I note the particular significance of ICCPR article 14 and the views of the Human Rights Committee on the crucial importance of maintaining equality before law.⁴² Individuals are entitled to a fair and public hearing by a competent, independent, and impartial tribunal.⁴³ These guarantees must be respected, regardless of legal traditions or domestic law practices.⁴⁴ Equal access and equality of arms applied to the parties no matter the charges and irrespective of the means by which the case arrives for judicial determination apply because persons find themselves in the territory or subject to the jurisdiction of the State Party.⁴⁵

Conclusion

I underscore the importance of ensuring to each individual their ICCPR rights if any transfer occurs to mainland PRC from HKSAR and upholds the duty of good

⁴⁰ International Court of Justice, *Elettronica Sicula S.p.A. (ELSI) (United States of America v Italy)*, judgment of 20 July 1989, para. 128.

⁴¹ Vienna Convention on the Law of Treaties, art. 18.

⁴² Human Rights Committee, General Comment 32 on article 14, Right to equality before courts and tribunals and to fair trial (2007), CCPR/C/GC/32, para 2. (“The right to equality before the courts and tribunals and to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the rule of law”).

⁴³ *Ibid*, para 3.

⁴⁴ *Ibid*, para 4.

⁴⁵ *Ibid*, para 8 and para. 9.

faith performance⁴⁶ of the obligations of the PRC (as implemented by the HKSAR) under the Covenant and the Joint Declaration. In sum, I assess that for any potential transfer of an individual to mainland PRC under articles 55 and 56 of the NSL, the accused retains their ICCPR rights as a matter of international law and domestic law. I particularly highlight obligations of adherence to article 7, article 9, article 10, article 14 and article 15 of the ICCPR in this regard.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I 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 observations.
2. In light of the above-mentioned observations, please provide information on the measures that will be taken to ensure the full application of your Excellency's government's obligations under the ICCPR in the case of transfer of persons to mainland PRC from HKSAR.

This communication, as a comment on 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 my highest consideration.

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

⁴⁶ Vienna Convention on the Law of Treaties, art. 26 ("Every treaty in force is binding upon the parties to it and must be performed by them in good faith.").