



## Briefing Paper

# Concerning Hong Kong Freedom of Assembly and Association in the Age of Covid-19

### A. Summary

- Prepared by **Hong Kong Human Rights Monitor, Civil Rights Observer, Hong Kong Civil Hub, and Civil Human Rights Front**, this briefing paper summarizes new regulations and measures imposed by the Hong Kong SAR Government in responding to the coronavirus outbreak.
- Hong Kong is a special administrative region in China. Under the “One Country, Two Systems” principle, measures and policies in response to Covid-19 are decided in Hong Kong; national regulations in force in mainland China are not applicable to Hong Kong.
- ICCPR is applicable to Hong Kong and incorporated into domestic legislation.
- Confirmed cases of Covid-19 in Hong Kong by April 7: 935; number of deaths: 4
- **NO** state of emergency announced so far. But the Hong Kong Government invoked section 8 of Prevention and Control of Disease Ordinance (Cap 599), which empowers the Chief Executive in Council, in an occasion of a public health emergency, to make any regulation to protect public health.
- Public health emergency regulations are introduced and in force with little to no scrutiny.
- Against the backdrop of an undemocratic society with deteriorating rule of law, the Hong Kong government has been abusing their power to restrict civic freedom in the names of public health, and the restriction is likely to continue.

### B. Restrictions to freedom of assembly and association directly related to government new public health regulations

- Public health emergency regulations made:
  - compulsory quarantine for people entering Hong Kong for 14 days
  - Closure of places such as cinema, arcade and social gathering venue (*Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation* (Cap 599F))
  - regulate seating plan and distance between customers in restaurants. Max penalty (on restaurant owners): fine and 6 months imprisonment. (Cap 599F)
  - Ban of gatherings of more than four people, and power to disperse crowd in any public place. Max penalty: fine and 6 months imprisonment

*(Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap 599G))*

- No scrutiny of the regulations: The regulations are subordinate legislations introduced by negative vetting, meaning that they are in force until amended or voted against by the legislature (The Legislative Council, “LegCo”). LegCo businesses have been largely suspended, following government advice in view of the epidemic in Hong Kong. No bills committee has been formed to vet any of the regulations. It is unlikely that the legislature will have the chance to scrutinise the provisions before term ends in September 2020. Note that to the authors’ knowledge, no request for forming bills committee has been made; but urgent questions and special meeting sessions to ask for response from the government about relevant measures have been made/ requested.
- The regulations came into effect very shortly (in less than a day) after the Government had made announcement of the regulation in a press conference. The wording of the regulation was only gazetted around the time of them coming into effect or shortly before that.
- Uncertainty of the law: The meaning of some choice of words in the regulation also caused confusion, with little clarification made by the police. For example, a 4-person gathering is generally prohibited but the clear definition of gathering is not well-defined or readily available in other statutes.
- The routes to address problems with the regulations (uncertainty, draconian, etc) are left to argue in court when somebody is prosecuted, or by judicial review, both of which are costly with time delay. And it’s not an “effective remedy” to redress the human rights violation.
- The crux of issues in Hong Kong still lies in policing, where clashes between police and crowds in assembly have been frequent since June 2019 during the Anti-extradition Bill protests.
- The new regulations with disease prevention focus have given police for apparently arbitrary and reckless policing. Police has allegedly targetted individuals or business entities who profess support for democracy, i.e. discrimination on the ground of political opinion.
  - For example, on 31st March 2020, a public assembly was held outside a metro station in Mong Kok, downtown area of Hong Kong. People were participating in a public commemoration for victims of police violence in August last year. There have been reports that the police officers stopped and grouped together five passers-by on the street for stop and search, then later accused them of violating the prohibition on gathering with four or more people.<sup>1</sup> Many of the passers’ freedom of movement were temporarily deprived for hours. According to the police, they issued warnings and ordered people passers to disperse according to the new disease control regulation. The police later stopped, searched, and

<sup>1</sup> HKCNews, 1 Apr 2020, <https://bit.ly/39Qd7Ma>

questioned 75 passers, 54 people were arrested that night, though they were arrested for various crimes related to protest and assembly other than for the public health emergency regulation.



Stop and search by the police on 31st March 2020. (Source: StandNews, <https://bit.ly/2whMm5s>)

- Police also allegedly repeatedly inspected certain restaurants supportive of the protest movements, and harassed patrons.
- In short, some of the enforcement of the public health emergency regulations are not for the purpose of public health.

### **C. Space for Human Rights Defenders are restricted**

- Civil society were among the first to advocate for proper response from the Government towards the epidemic, as the Hong Kong Government was reluctant to take the epidemic seriously, allegedly for fear of antagonising the Chinese government.
- Since the social-distancing regulations were introduced recently, and are short-term arrangements as seen at this moment, civil society groups can adapt to the special circumstances.
- While most interactions and communication, even public assembly, are conducted online in Hong Kong, the protection of internet security, privacy, and freedom of expression are under threat. The police have arrested admins of protest-oriented telegram channels for incitement crimes. The police also threatened to use vaguely-defined anti-terrorism law on violent protestors. These create a chilling effect on the free exchange of information, expression of opinion, and association in the internet realm.

- The most obviously affected human rights defenders are lawmakers and lawyers, and the Legislative Council (“LegCo”) and courts/ tribunals are closed to a certain extent.
- In LegCo, very limited meetings were held; there had been little chance for lawmakers to question the administration for their anti-epidemic measures, or to scrutinise the public health emergency regulations.
- A “General Adjournment Period” was announced by the judiciary since 29 January 2020, only handling certain urgent and essential business. There are allegations that arrested persons are remanded pending trial for longer than usual. Access to justice in general is restricted and delayed. The judiciary is slowly introducing technological assistance to allow resumption of court services to a limited extent.
- Human rights defenders arrested for protest-related offences also face delay in trial. Some are remanded pending trial.

#### **D. Recommendation**

We recommend the following guiding principles should be provided to state authorities for protecting public health while ensuring freedom of assembly and association to the greatest extent possible.

- The state has a positive duty to protect and facilitate freedom of expression and freedom of assembly. The government and law enforcement should provide health guidelines and facilitation to citizens who organize or participate in public assembly. Dispersion of public gathering with force, or ban to public assembly based on public health reason should be the last resort.
- Purpose of promulgating and enforcing the public health laws powers must be for public health only. When exercising their power to enforce health measures, law enforcement should refrain from causing disproportionate infringement to citizens’ privacy (which occur when police stop and search citizens’ belongings and ID) and freedom of movement.
- The public health regulations often come into effects with short notice due to the emergency. They must be certain, easy to understand, especially when there’s criminal liability (e.g. prison sentence).
- Content of new regulations and measures should be accessible to all, migrant workers are often omitted in public consultation and education, delay of information would make them prone to health risk.
- A grace period should be included in new regulations with criminal liability
- Regulations should be set in accordance to the principle of legality, consistency, and due process. Governments should provide guidelines and enforcement rules to the law enforcement units to avoid abuses of power.
- Regulations and orders set in emergency shall have an expiry date. The government should seek experts and civil society opinions in implementations of the rules, any extension shall be subject to legislative and judicial scrutiny.

## Appendix. Order and Regulations

### Cap 599 [Prevention and Control of Disease Ordinance](#)

599C	<a href="#">Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation</a>
599D	<a href="#">Prevention and Control of Disease (Disclosure of Information) Regulation</a>
599E	<a href="#">Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation</a>
599F	<a href="#">Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation</a>
599G	<a href="#">Prevention and Control of Disease (Prohibition on Group Gathering) Regulation</a>