

## **Article 21: Right of peaceful assembly**

21.1 As explained in paragraph 375 of Part II of the initial report, the freedoms of assembly, of procession and of demonstration are guaranteed by Article 27 of the Basic Law. The provisions of the Public Order Ordinance (Cap. 245) in respect of the right to assembly were specifically framed with a view to conforming with Article 21 of the Covenant.

### **The operation of the Public Order Ordinance**

21.2 The HKSAR Government respects and takes it upon itself to protect the rights of the public to peaceful assemblies and processions and to express their views. As Hong Kong is a crowded place, large-scale public assemblies and processions will affect other people or road users, and may have impacts on public safety and order. In this connection, while facilitating expression of views by participants of processions, it is also the HKSAR Government's responsibility to maintain public order, and at the same time strike a balance by ensuring the rights of other people to use the public place or road as well as their safety. Participants of public meetings or processions, in exercising their freedom of expression, should, under the premise of observing the Hong Kong law and without affecting public order, proceed in a peaceful and orderly manner.

21.3 Under the Public Order Ordinance, any public meeting or procession the attendance of which exceeds the limit prescribed in the Ordinance should give notice to the Commissioner of Police and only be conducted if the Commissioner of Police has not prohibited or objected to it. The Commissioner of Police (or delegated officers) will carefully examine each case. He may impose condition(s) on a notified public meeting or procession as reasonably necessary to ensure public order and public safety. Generally speaking, upon receipt of a notification about a public meeting or procession, the Police will establish early contact and maintain an active and close communication with the event organiser to provide advice and assistance. The Court of Final Appeal has pointed out in a judgment that Hong Kong's legal requirement for notification is widespread in jurisdictions around the world. It has also affirmed that

the statutory requirement for notification is constitutional, and is required to enable the Police to fulfil their duty of taking reasonable and appropriate measures to enable lawful assemblies and demonstrations to take place peacefully.

21.4 If the Commissioner of Police prohibits / objects to or imposes conditions on a notified public meeting or procession under the Public Order Ordinance and the organiser disagrees, the organiser may lodge an appeal to the independent Appeal Board on Public Meetings and Processions. The Appeal Board is chaired by a retired judge and consists of three other members selected in rotation from a panel of 15 independent members appointed by the Chief Executive. It may confirm, reverse or vary the prohibition, objection or condition imposed by the Commissioner of Police.

21.5 Between 1 July 1997 and 31 December 2009, there were over 30 000 public meetings and processions in Hong Kong.

21.6 It is evident that since the establishment of the HKSAR, the public continues to enjoy a high degree of freedom of assembly. The majority of these activities were conducted in a peaceful and orderly manner and in accordance with the law.

### **The confiscation of exhibits under public entertainment laws**

21.7 Some commentators raised concerns, arising from an incident involving the use of legislation regulating places of public entertainment to remove exhibits in public display, that Government had been applying the law to infringe on the freedom of expression, and requested the Government to ensure that law enforcement agencies remain politically neutral and that such laws could not be used to interfere with the freedoms of assembly and expression. It should be noted that the Places of Public Entertainment Ordinance (Cap. 172) was enacted to ensure public safety with regard to building, hygiene, fire and ventilation aspects, as well as law and order within the premises. All places of public entertainment shall comply with the requirements set by the Food and Environmental Hygiene Department (FEHD) and other relevant departments. The HKSAR Government has no intention to suppress any

activity, as far as they are in compliance with the existing legislation.

### **Stalls for fund raising / collecting signatures during processions**

21.8 Some commentators expressed concerns about the licensing procedures and criteria for approving NGOs to set up stalls during processions for various purposes such as collection of signatures, distribution of information, fund raising and recruitment of volunteers, and whether these would be used to impede the various freedoms associated with the processions. Hong Kong residents' freedom of procession is protected by Article 27 of the Basic Law. Charitable/non-charitable organisations wishing to set up stalls to raise funds during processions have to comply with the requirements under section 4(17) of the Summary Offences Ordinance (Cap. 228) by making applications to the relevant Government departments.

21.9 Charitable/non-charitable organisations wishing to conduct fund-raising activities in public places in the form of selling of goods are required to apply for temporary hawker licences, the validity period of which is not more than one month, from the FEHD. All applications must be submitted at least 12 working days before the fund-raising activities. In handling the applications, the FEHD will consult relevant departments. Apart from checking whether the locations under applications have already been allocated to other organisations, the factors which are taken into account mainly involve public safety and order, such as whether a stall would obstruct public passageways. All applications are processed based on the same criteria. From January to September 2010, the FEHD issued a total of 479 temporary hawker licences, some of which have been issued in respect of stalls set up during processions. During the same period, the FEHD refused only some 10 applications concerning the setting up of stalls during processions, with the major reasons being that the applications were not submitted to the FEHD at least 12 working days before the funding-raising activities, the locations under application had already been allocated to other organisations, and pedestrian flow control or road closure measures would be implemented by the Police at the locations concerned.

## **Public meetings outside Central Government Offices**

21.10 Some commentators were concerned about the policies and measures to facilitate public assembly and meeting outside Central Government Offices of the HKSAR. They were also concerned about whether there will be design and management measures in the new Central Government Offices and the LegCo Building under construction to facilitate protesters in expressing their views to Government officials or LegCo Members. The Administration recognises the public's right to freedom of peaceful assembly and expression of opinions and the need to facilitate members of the public to carry out public activities. As such, it has never been the intention of the Administration to incorporate into the design of the Tamar Development Project (to house the new Central Government Offices and the LegCo Building) which will restrict the public's right to peaceful assembly. To safeguard the public's right to freedom of peaceful assembly and expression, it is our intention to identify suitable places at the new Central Government Offices to facilitate members of the public to carry out public activities which will neither compromise public order and safety nor the effective operation of the Government Secretariat.